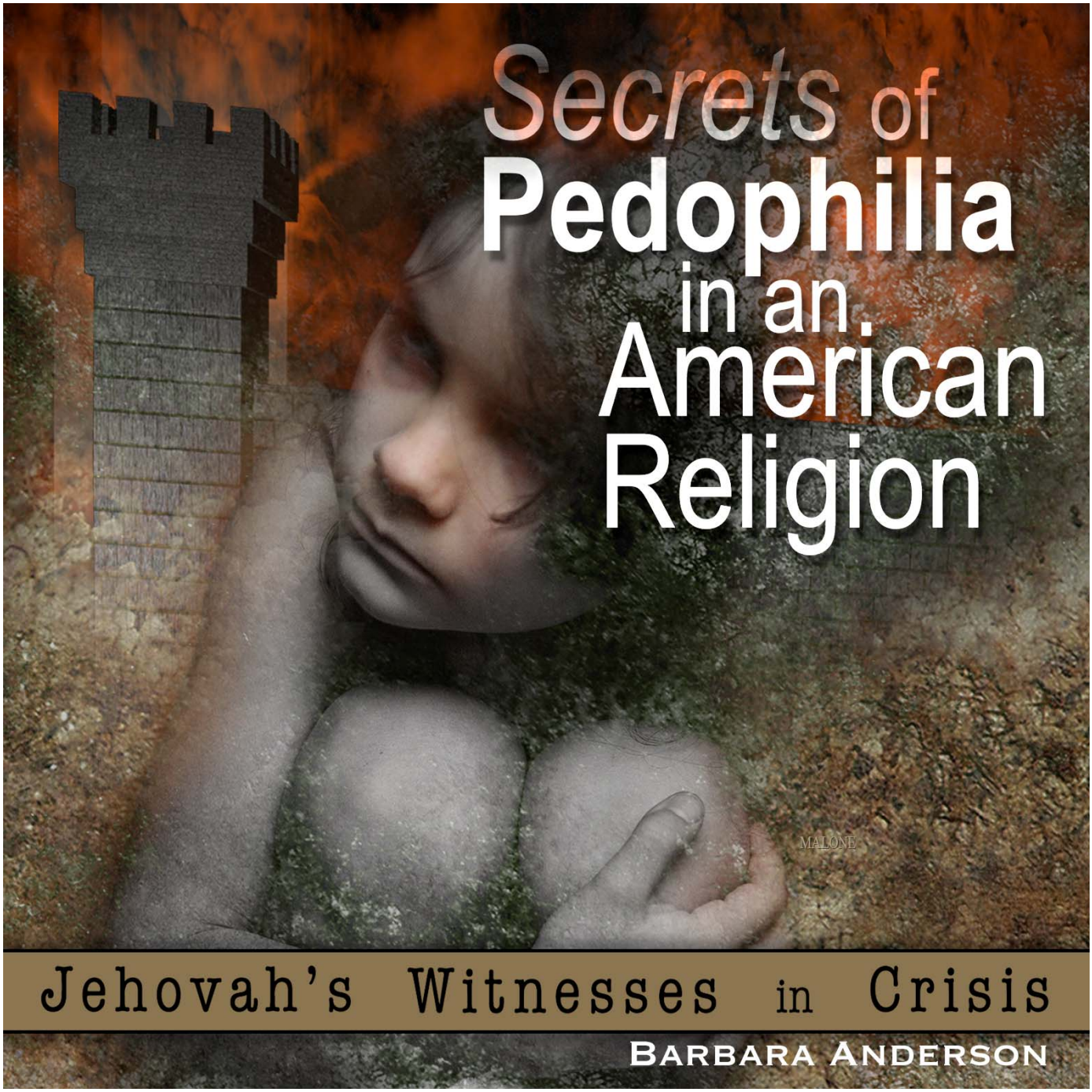


Court Documents

Charissa et al Coordinated Cases

vs

Jehovah's Witnesses

Charissa et al Coordinated Cases
Vs
Jehovah's Witnesses

Introduction

The following information is presented as supplied and filed by the Napa County Superior Court of California. This resource contains over 3700 pages of documentation, consisting of over 400 separate documents.

The Napa County Superior Court has arranged these documents beginning in reverse chronological order, and then reverting to standard chronological order. Accordingly, pages 3-2945 run from May 16, 2005 to July 24, 2003. Pages 2946-3738 run from June 2, 2005 to April 10, 2007.

Though the filing order is somewhat disconcerting, this PDF data collection has bookmarks with date stamps to assist in understanding the sequence of events. The first bookmarked document on page 3 is dated 050516 (year/month/day).

The sheer number of documents would, in the opinion of this author, create such an unwieldy table of contents as to make it self-defeating. For this particular presentation, the built in bookmarks will better serve as a table of contents.

When the Court originally supplied these documents it inadvertently released pages that should have been sealed. Pages 3685 to 3701 of this collection show the result. In particular, pages 3687 and 3701 detail and explain what occurred.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** *Department B* **Event:** Motion/Case Management Conference **PID # :**	**Case #** 26-22191 **Event Date:** May 16, 2005 **Clerk:** J. Roche **Reporter:** Malinda Hentz **Cite/Report #:**

Appearances:
William L. Brelsford, Jr. Attorney for Plaintiff
Rudy Nolen, Attorney for Plaintiff
Robert J. Schnack, Attorney for Defendant

This matter comes on this date for hearing on Motion to Be Relieved as Counsel for Fred M. and for Case Management Conference.

After hearing comments of counsel, the Court Grants the Motion.

At this time, the Court, counsel, court staff and court reporter retire to chambers.

On the record the court hears comments of counsel.

Mr. Schnack shall submit a declaration as to certain facts contained in the Nathan D. case, which after review by Plaintiff, shall ascertain the need for production of the claims file.

CONTINUANCES

DATE	TIME	DEPT	PURPOSE	TIME EST
6/7/05	9:30 AM	B	Case Management Conference	.30

-oOo-

MC-053

FILED

FOR COURT USE ONLY

MAY 16 2005

Clerk of the Napa Superior Court
By: Jane O'Sheet
Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
William Brelsford, SBN 202839
William L. Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
TELEPHONE NO.: (916)564-9990 FAX NO. (optional): (916)564-9991
E-MAIL ADDRESS (optional):
ATTORNEY FOR (Name): DANIELLE A.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma
STREET ADDRESS: Hall of Justice
MAILING ADDRESS: 600 Administrion Drive, Rm 107-J
CITY AND ZIP CODE: Santa Rosa, CA 95403
BRANCH NAME:

Judicial Council Coordination Proceeding No. 4374

Coordinated with Napa County Superior Court Case No. 26-22191

CASE NAME: DANIELLE A. v. Watchtower, et al.

CASE NUMBER: 234140

ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL — CIVIL

HEARING DATE: May 16, 2005
DEPT.: B TIME: 9:30 am
BEFORE HON.: W. Scott Snowden
DATE ACTION FILED: Dec. 31, 2003
TRIAL DATE: None

1. The motion of *(name of attorney):* William Brelsford, SBN 202839 to be relieved as counsel of record for *(name of client):* DANIELLE A. a party to this action or proceeding, came on regularly for hearing at the date, time, and place indicated above.

2. The following persons were present at the hearing: William Brelsford of NOLEN SAUL BRELSFORD

FINDINGS

3. Attorney has
   a. [ ] personally served the client with papers in support of this motion.
   b. [ ] served client by mail and submitted a declaration establishing that the service requirements of California Rules of Court, rule 376, have been satisfied.

4. Attorney has shown sufficient reasons why the motion to be relieved as counsel should be granted and why the attorney has brought a motion under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1).

ORDER

5. Attorney is relieved as counsel of record for client
   a. [X] effective upon the filing of the proof of service of this signed order upon the client.
   b. [ ] effective on *(specify date):*

6. The client's [ ] current [X] last known address and telephone number: Danielle A., 2281 Peachtree Drive, Apt. 11, Fairfield, CA 94533; Last known telephone: 707-720-6063

If the client's current address is known, service on the client must hereafter be made at that address unless otherwise ordered in item 13. If the current address is not known, service must be made according to Code of Civil Procedure section 1011(b) and rule 202.5 of the California Rules of Court.

7. a. The next scheduled hearing in this action or proceeding is set for *(date, time, and place):*

   b. The hearing will concern *(subject matter):*

NOTICE TO CLIENT
You or your new attorney, if any, must prepare for and attend this hearing.

Form Adopted for Mandatory Use
Judicial Council of California
MC-053 [Rev. January 1, 2003]

Legal Solutions Plus

Code of Civil Procedure, § 284; Cal. Rules of Court, rule 376

CASE NAME: DANIELLE A. v. Watchtower, et al.	CASE NUMBER: 234140

8. The following additional hearings and other proceedings (including discovery matters) are set in this action *(describe the date, time, place, and subject matter of each):*

9. The trial in this action or proceeding:
   a. [X] is not yet set.
   b. [ ] is set for *(specify date, time, and place):*

10. Client is hereby notified of the following effects this order may have upon parties.

NOTICE TO CLIENT

Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A conservator
- A trustee
- A personal representative
- A probate fiduciary
- A corporation
- A guardian ad litem
- An unincorporated association

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

11. Client is notified that, if the client will be representing himself or herself, the client shall be solely responsible for the case.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

You will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

12. Client is notified that it is the client's duty to keep the court informed at all times of the client's current address.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

The court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

13. The court further orders *(specify):*

Date: 5/16/07

JUDGE OR JUDICIAL OFFICER

CASE NAME: Danielle A., et al. v. Roes, et al.
COURT: Sonoma County Superior Court
CASE NO.: 234168

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On April 11, 2005, I caused the within **ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL - CIVIL**, the originals of which were produced on recycled paper, to be served as follows:

xxxx **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On April 8, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Adrian L. Randolph
RANDOLPH, CREGGER & CHALFANT, LLP
1030 G Street
Sacramento, CA 95814

Danielle A.
2281 Peachtree Drive, Apt. 11
Fairfield, CA 94533

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 11, 2005, at Sacramento, California.

Susan Gilbert

MC-053

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): William Brelsford, SBN 202839 William L. Brelsford, SBN 202839 NOLEN SAUL BRELSFORD 350 University Avenue, Suite 280 Sacramento, CA 95825 TELEPHONE NO.: (916)564-9990 FAX NO. (optional): (916)564-9991 E-MAIL ADDRESS (optional): ATTORNEY FOR (Name): FRED F. ONLY	FILED FOR COURT USE ONLY MAY 16 2005 Clerk of the Napa Superior Court By: Jane O'Brien Deputy Judicial Council Coordination Proceeding No. 4374 Coordinated with Napa County Superior Court Case No. 26-22191
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sonoma STREET ADDRESS: Hall of Justice MAILING ADDRESS: 600 Administration Drive, Rm 107-J CITY AND ZIP CODE: Santa Rosa, CA 95403 BRANCH NAME:	
CASE NAME: DENNIS S., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 234168
ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL — CIVIL	HEARING DATE: May 16, 2005 DEPT.: B TIME: 9:30 am BEFORE HON.: W. Scott Snowden DATE ACTION FILED: Dec. 31, 2003 TRIAL DATE: None

1. The motion of *(name of attorney):* William Brelsford, SBN 202839 to be relieved as counsel of record for *(name of client):* FRED F. ONLY a party to this action or proceeding, came on regularly for hearing at the date, time, and place indicated above.

2. The following persons were present at the hearing: William Brelsford of NOLEN SAUL BRELSFORD

FINDINGS

3. Attorney has
   a. ☐ personally served the client with papers in support of this motion.
   b. ☒ served client by mail and submitted a declaration establishing that the service requirements of California Rules of Court, rule 376, have been satisfied.

4. Attorney has shown sufficient reasons why the motion to be relieved as counsel should be granted and why the attorney has brought a motion under Code of Civil Procedure section 284(2) instead of filing a consent under section 284(1).

ORDER

5. Attorney is relieved as counsel of record for client
   a. ☒ effective upon the filing of the proof of service of this signed order upon the client.
   b. ☐ effective on *(specify date):*

6. The client's ☐ current ☒ last known address and telephone number: Fred F., P.O. Box 1055, Clearlake, CA 95422 Last known telephone number: (707) 995-1219

If the client's current address is known, service on the client must hereafter be made at that address unless otherwise ordered in item 13. If the current address is not known, service must be made according to Code of Civil Procedure section 1011(b) and rule 202.5 of the California Rules of Court.

7. a. The next scheduled hearing in this action or proceeding is set for *(date, time, and place):*

   b. The hearing will concern *(subject matter):*

NOTICE TO CLIENT
You or your new attorney, if any, must prepare for and attend this hearing.

Form Adopted for Mandatory Use
Judicial Council of California
MC-053 [Rev. January 1, 2003]

Legal Solutions Plus

Code of Civil Procedure, § 284; Cal. Rules of Court, rule 376

CASE NAME: DENNIS S., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 234168

8. The following additional hearings and other proceedings (including discovery matters) are set in this action *(describe the date, time, place, and subject matter of each):*

9. The trial in this action or proceeding:
   a. [X] is not yet set.
   b. [ ] is set for *(specify date, time, and place):*

10. Client is hereby notified of the following effects this order may have upon parties.

NOTICE TO CLIENT

Your present attorney will no longer be representing you. You may not in most cases represent yourself if you are one of the parties on the following list:

- A guardian
- A conservator
- A trustee
- A personal representative
- A probate fiduciary
- A corporation
- A guardian ad litem
- An unincorporated association

If you are one of these parties, YOU SHOULD IMMEDIATELY SEEK LEGAL ADVICE REGARDING LEGAL REPRESENTATION. Failure to retain an attorney may lead to an order striking the pleadings or to the entry of a default judgment.

11. Client is notified that, if the client will be representing himself or herself, the client shall be solely responsible for the case.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

You will not have an attorney representing you. You may wish to seek legal assistance. If you do not have a new attorney to represent you in this action or proceeding, and you are legally permitted to do so, you will be representing yourself. It will be your responsibility to comply with all court rules and applicable laws. If you fail to do so, or fail to appear at hearings, action may be taken against you. You may lose your case.

12. Client is notified that it is the client's duty to keep the court informed at all times of the client's current address.

NOTICE TO CLIENT WHO WILL BE UNREPRESENTED

The court needs to know how to contact you. If you do not keep the court and other parties informed of your current address and telephone number, they will not be able to send you notices of actions that may affect you, including actions that may adversely affect your interests or result in your losing the case.

13. The court further orders *(specify):*

Date: 5/16/05

JUDGE OR JUDICIAL OFFICER

CASE NAME: Dennis S., et al. v. Roes, et al.
COURT: Sonoma County Superior Court
CASE NO.: 234168

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On April 11, 2005, I caused the within **[PROPOSED] ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL,** the original of which was produced on recycled paper, to be served as follows:

xxxx **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On April 8, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Drive
Suite 105
Gold River, CA 95670

In Pro Per
Donald Glew
P.O. Box 424245
San Francisco, CA 94142

Fred F.
P.O. Box 1055
Clearlake, CA 95422

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 11, 2005, at Sacramento, California.

Susan Gilbert

Robert J. Schnack, SBN 191987
Tiffany P. Scarborough SBN 180981
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
MAY 5 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **DEFENDANT CCJW'S NOTICE OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES** **Date:** **August 16, 2005** **Time:** **8:30 a.m.** **Dept:** **B** **Trial Dates:** **Not yet set**
AND COORDINATED CASES	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on August 16, 2005, at 8:30 a.m. before the Honorable W. Scott Snowden in Dept. B of the above-entitled Court, defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES ("CCJW") will and hereby does seek an order granting it summary judgment or, in the alternative, summary adjudication against each cause of action alleged against it by each plaintiff in each of these coordinated cases.

These motions are brought pursuant to CCP § 437c on grounds that there is no dispute as

to any material fact and CCJW is entitled to summary judgment or summary adjudication as a matter of law. The basis for CCJW's motions for summary judgment or alternative motions for summary adjudication is that CCJW did not exist as a legal entity at any time period relevant to these coordinated cases, *i.e.*, during the periods in which plaintiffs each contend they were abused and, therefore, CCJW cannot be liable under any legal theory alleged by plaintiffs in these coordinated cases.

These motions are based on this notice and the concurrently filed memorandum of points and authorities, the separate statement of undisputed material facts, the Affidavit of William H. Nonkes, and all other papers and pleadings on file in these coordinated cases.

DATED: May 3, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for CCJW

*****

5023540.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 3, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT CCJW'S NOTICE OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by

an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 3, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Robert J. Schnack, SBN 191987
Tiffany P. Scarborough SBN 180981
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
MAY 5 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT CCJW'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES

Date: **August 16, 2005**
Time: **8:30 a.m.**
Dept: **B**
Trial Dates: **Not yet set**

Introduction

The alleged facts in these coordinated cases relevant to these motions for summary judgment or alternative motions for summary adjudication are straightforward. All causes of action alleged by each plaintiff in each of these coordinated cases arise from alleged sexual abuse committed by an individual or an individual defendant against each plaintiff. (Each plaintiff alleges that only one person allegedly abused him or her, and each individual defendant has been sued in only one or two cases.) The complaints in these coordinated cases generally

allege that the alleged abusers were each in an appointed position with a local congregation when the abuse occurred.

Each plaintiff alleges eight causes of action against CCJW, as follows: (a) Common law negligence; (b) negligent appointment, retention, and/or supervision of the alleged abuser; (c) gross negligence – willful misconduct; (d) breach of fiduciary duty; (e) intentional infliction of emotional distress; (f) fraud – misrepresentation; (g) fraud – concealment; and (h) conspiracy.[1]

However, in view of the indisputable fact that CCJW was not incorporated and thus did not come into existence until August 21, 2000, which was well after the dates of the alleged abuse in each of the coordinated cases, it was legally impossible for CCJW to have acted negligently at any relevant time period, to have owed and/or breached any legally cognizable duty to any plaintiff at any relevant time period, to have committed fraud at any relevant time period, to have conspired with any person or entity at any relevant time period, etc. As a result, CCJW is entitled to summary judgment or, in the alternative, summary adjudication as to each plaintiff's causes of action alleged in each of the coordinated cases.

Undisputed Material Facts

CCJW's required separate statement of undisputed material facts establishes the following: The moving defendant, CCJW, was incorporated as a non-profit corporation in Putnam County, New York on August 21, 2000. (Undisputed Material Fact ("UMF") No. 1) The address of CCJW is 2821 Route 22, Patterson, New York, 12563-2237. (UMF No. 2) CCJW is a not-for-profit corporation and exists as a separate corporate entity that is distinct from all other corporations and entities. (UMF No. 3)

No other corporation or entity controls CCJW by reason of interlocking directorates or other reasons. (UMF No. 4) CCJW is not financially accountable to or financially responsible for any other corporation or entity. (UMF No. 5). Upon incorporation, CCJW did not purchase

[1] Some of those causes of action were dismissed as a result of the court's April 2005 rulings on the Church Defendants' demurrers. However, for purposes of the instant motions, those rulings are inconsequential, because defendant CCJW moves against all causes of action alleged against it by each plaintiff.

or otherwise acquire, and has not since purchased or otherwise acquired, any other corporation or entity that existed prior to August 21, 2000. (UMF No. 6) When CCJW was incorporated it did not assume any liabilities, contingent or otherwise, of any other defendant named in these coordinated cases, nor has CCJW assumed any such liabilities since incorporation. (UMF No. 7)

Plaintiffs in the coordinated cases have alleged that their abuse took place during the following years:

1. *Charissa W. v. Watchtower et al.*
   Napa County Superior Court no. 26-22191
   Alleged abuse: 1972 to 1985, *Amended Complaint*, ¶¶ 27, 29

2. *Tabitha H. v. Watchtower et al.*
   Napa County Superior Court no. 26-23929
   Alleged abuse: 1977-1980, *Amended Complaint*, ¶ 24

3. *Javier C. v. Watchtower New York, et al.*
   Placer County Superior Court no. SCV16723
   Alleged abuse: 1986-1998, *Complaint*, ¶ 23

4. *Ken L . v. Watchtower New York, et al.*
   Placer County Superior Court no. SCV16600
   Alleged abuse: 1984-1987, *Amended Complaint*, ¶ 24

5. *Daniel West, Shane Pence, et al. v. Watchtower New York, et al.*
   Yolo County Superior Court no. CV03-1439
   Alleged abuse: 1990-1997, *Complaint*, ¶¶ 28, 29, 31

6. *Jocelyn A., et al. v. Watchtower New York, et al*
   Sonoma County Superior Court no. 234320
   Alleged abuse: 1982-1989, *Complaint*, ¶¶ 28-31

7. *Danielle A. v. Watchtower New York, et al.*
   Sonoma County Superior Court no. 234140
   Alleged abuse: 1977-1985, *Second Amended Complaint*, ¶ 24

8. *Dennis S., et al. v. Watchtower New York, et al.*
   Sonoma County Superior Court no. 234168
   Alleged abuse: 1980-1988, *First Amended Complaint*, ¶¶ 27-29

9. *Julianne Wimberly Gutierrez, et al. v. Watchtower New York, et al.*
   Tehama County Superior Court no. 52598
   Alleged abuse: 1976-1982, *Second Amended Complaint*, ¶¶ 24-25

10. *Tim W. v. Watchtower New York, et al.*
Tehama County Superior Court no. 52594
Alleged abuse: 1994, *First Amended Complaint*, ¶¶ 21-22

(UMF No. 8)

In sum, the earliest abuse is alleged to have taken place in *Charissa W. v. Watchtower et al.* (Napa County Superior Court no. 26-22191) in the year 1972, which was 28 years *before* CCJW was formed as a corporation. On the other hand, the most recent incident of abuse is alleged to have taken place in *Javier C. v. Watchtower et al.* (Placer County Superior Court no. SCV16723) in the year 1998, which still was two years *before* CCJW was formed as a corporation.

CCJW brings these motions for summary judgment or alternative motions for summary adjudication on the grounds that, because CCJW did not exist as a corporation or other legal entity until August 21, 2000, CCJW cannot be held liable or responsible under any legal theory alleged by plaintiffs for their alleged abuse which, as detailed above, plaintiffs variously allege occurred in the years 1972 to 1998.

Discussion

Standard for summary judgment. The standard for summary judgment is set forth at the Code of Civil Procedure ("CCP") § 437c(a), which provides in pertinent part: "Any party may move for summary judgment in any motion or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." CCP § 437c(c) provides, in part:

> The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deductible from the evidence....

The purpose of the summary judgment procedure is to protect the rights of the parties from spurious or meritless complaints or answers and to expedite litigation by avoiding needless trials. *McCreery v. Eli Lilly and Co.* (1978) 87 Cal.App.3d 77, 81. The primary duty of the court in ruling on a motion for summary judgment is to determine whether there are any material issues of fact to be tried. *Blair v. Pitchess* (1971) 5 Cal.App.3d 268, 284. If examination of the affidavits and other evidence filed in connection with a motion for summary judgment reveals that no triable issue of fact exists, summary judgment is appropriate. *Conde v. Union Oil Co.* (1945) 129 Cal.App.2d 558, 562.

When the defendant is the moving party, the defendant has the initial burden of putting forth evidence that one or more of the plaintiff's causes of action cannot be established or that there is a complete defense to that cause of action. CCP § 437c(c)(1), (2). Once the defendant meets this burden, the burden then shifts to plaintiff to show that a triable issue on one or more material facts exists to the action or defense. *Id.* If plaintiff fails to carry this burden, summary judgment must be granted.

The plaintiffs cannot prevail on any claim against CCJW, because there is no actual case or controversy between plaintiffs and CCJW. It is well settled that California courts may only render judgments in actual controversies between parties. As the California Supreme Court has stated:

> It is settled that "the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions on moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it."

Paul v. Milk Depots, Inc. (1964) 62 Cal.App.2d 129, 132, 41 Cal.Rptr. 468, 470 (citation omitted); *see also National Ass'n of Wine Bottlers v. Paul* (1969) 268 Cal.App.2d 741, 746, 74 Cal.Rptr. 303, 306. The controversy itself must be "definite" and "concrete" and affect the legal

relations of parties having adverse legal interests. *Alameda County Land Use Ass'n v. City of Hayward* (1995) 38 Cal.App.4th 1716, 1722, 45 Cal.Rptr.2d 752, 755.

The case or controversy principle "'is a tenet of common law jurisprudence, the precise content of which is difficult to define and hard to apply. ... A controversy is 'ripe' when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.'" *Id.* (citing *California Water & Telephone Co. v. County of Los Angeles* (1967) 253 Cal.App.2d 16, 22, 61 Cal.Rptr. 618). Thus, a court has no jurisdiction over a matter where there is no actual controversy between two parties, and such matters must be dismissed.

With respect to each of the coordinated cases, CCJW was not incorporated until August 21, 2000, which was some two years after the last alleged incident abuse in all of the coordinated cases. (*See* UMF Nos. 1 and 8) Because CCJW did not exist at any time during the various time periods of alleged abuse of plaintiffs, it was legally impossible for CCJW to have acted negligently at any relevant time period, to have owed and/or breached any legally cognizable duty to any plaintiff at any relevant time period, to have committed fraud at any relevant time period, to have conspired with any person or entity at any relevant time period, etc. Simply stated, CCJW could not have been legally responsible or liable for the welfare of the various plaintiffs during the time periods in which plaintiffs each allege they were abused.

Although plaintiffs may argue that CCJW is somehow an alter ego of one of the other corporate defendants, Mr. Nonkes' affidavit establishes that CCJW was incorporated as a not-for-profit corporation in 2000 and exists as a separate corporate entity that is distinct from all other corporations and entities. (UMF Nos. 1 and 3). Additionally, CCJW is not controlled by any other corporation or entity, is not financially accountable to or financially responsible for any other corporation or entity, and did not purchase or otherwise acquire any other corporation

or entity that existed prior to CCJW's incorporation on August 21, 2000. (UMF Nos. 4-6) In addition, CCJW did not and has not assumed or acquired any liabilities, contingent or otherwise, of any other defendant named in these coordinated cases. (UMF No. 7)

Thus, as a matter of law, CCJW could not have been an alter ego of any other corporation or entity prior to the time CCJW came into existence. It necessarily follows that any such alter ego argument by plaintiffs here would be disingenuous at best and, indeed, as a matter of law would lack all merit.

Conclusion

Defendant CCJW, a corporation, was formed and came into existence *only after* the alleged abuse of each plaintiff had occurred in all of the coordinated cases. Plaintiffs thus fail to allege any viable causes of action against CCJW, because CCJW could not have had any connection whatsoever to the alleged liability producing conduct in each of the coordinated cases. It follows that the Court should grant CCJW's motions for summary judgment or alternative motions for summary adjudication as to each and every one of plaintiffs' causes of action alleged in each of the coordinated cases. CCJW should be dismissed with prejudice from all of the coordinated cases and awarded its costs herein.

Dated: May 3, 2005

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack, Esq.
Attorney for CCJW

5023760.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 3, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT CCJW'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by

an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 3, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
Tiffany P. Scarborough SBN 180981
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
MAY 5 2005
Clerk of the Napa Superior Court
By: Dora O'Z Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT CCJW'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES

Date: August 16, 2005
Time: 8:30 a.m.
Dept: B
Trial Dates: Not yet set

Undisputed Material Facts Applicable to All Causes of Action Alleged Against Defendant CCJW

Undisputed Material Facts	Supporting Evidence
1. Defendant Christian Congregation of Jehovah's Witnesses ("CCJW"), was incorporated as a non-profit corporation on August 21, 2000, in Putnam County, New York.	1. Affidavit of William H. Nonkes, attached hereto as Exhibit A, at ¶3.
2. The address of CCJW is 2821 Route 22, Patterson, New York, 12563-2237.	2. Affidavit of William H. Nonkes at ¶3.

3. CCJW is a not-for-profit corporation and exists as a separate corporate entity distinct from all other corporations and entities.	3. Affidavit of William H. Nonkes at ¶¶4, 6.
4. CCJW is not controlled by any other corporation or entity by reason of interlocking directorates or other reasons.	4. Affidavit of William H. Nonkes at ¶4.
5. CCJW is not financially accountable to, or financially responsible for, any other corporation or entity.	5. Affidavit of William H. Nonkes at ¶4.
6. CCJW did not purchase or otherwise acquire any other corporation or entity that existed prior to August 21, 2000, nor has CCJW done so since then.	6. Affidavit of William H. Nonkes at ¶5.
7. At the time of its incorporation, CCJW did not assume or acquire, nor has it since then assumed or acquired, any liabilities, contingent or otherwise, of any defendant named as a party in any of these coordinated cases.	7. Affidavit of William H. Nonkes at ¶5.
8. The time periods of alleged abuse as alleged in the complaints in each of the coordinated cases are, in sum, from 1972-98.	8. *Charissa W. v. Watchtower et al.* Napa County Superior Court no. 26-22191 Alleged abuse: 1972 to 1985, *Amended Complaint*, ¶¶ 27, 29 *Tabitha H. v. Watchtower et al.* Napa County Superior Court no. 26-23929 Alleged abuse: 1977-1980, *Amended Complaint*, ¶ 24 *Javier C. v. Watchtower New York, et al.* Placer County Superior Court no. SCV16723 Alleged abuse: 1986-1998, *Complaint*, ¶ 23 *Ken L . v. Watchtower New York, et al.* Placer County Superior Court no. SCV16600 Alleged abuse: 1984-1987, *Amended Complaint*, 24 *Daniel West, Shane Pence, et al. v. Watchtower New York, et al.*

	Yolo County Superior Court no. CV03-1439 Alleged abuse: 1990-1997, *Complaint*, ¶¶ 28, 29, 31 *Jocelyn A., et al. v. Watchtower New York, et al* Sonoma County Superior Court no. 234320 Alleged abuse: 1982-1989, *Complaint*, ¶¶ 28-31 *Danielle A. v. Watchtower New York, et al.* Sonoma County Superior Court no. 234140 Alleged abuse: 1977-1985, *Second Amended Complaint*, ¶ 24 *Dennis S., et al. v. Watchtower New York, et al.* Sonoma County Superior Court no. 234168 Alleged abuse: 1980-1988, *First Amended Complaint*, ¶¶ 27-29 *Julianne Wimberly Gutierrez, et al. v. Watchtower New York, et al.* Tehama County Superior Court no. 52598 Alleged abuse: 1976-1982, *Second Amended Complaint*, ¶¶ 24-25 *Tim W. v. Watchtower New York, et al.* Tehama County Superior Court no. 52594 Alleged abuse: 1994, *First Amended Complaint*, ¶¶ 21-22

Dated: May 3, 2005

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack, Esq.
Attorney for CCJW

5023762.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 3, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT CCJW'S SEPARATE STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF MOTIONS FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTIONS FOR SUMMARY ADJUDICATION IN ALL COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 3, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
Tiffany P. Scarborough SBN 180981
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
MAY 5 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **AFFIDAVIT OF WILLIAM H. NONKES IN SUPPORT OF DEFENDANT CCJW'S MOTIONS FOR SUMMARY JUDGMENT** **Date: TBA** **Time: TBA** **Dept: B** **Trial Dates: Not yet set**
AND COORDINATED CASES	

State of New York)
) ss:
County of Putnam)

I, William H. Nonkes, after having been duly sworn, hereby depose and say:

1. I am over the age of eighteen (18) years, of sound mind, and am legally competent in all respects. I have personal knowledge of the matters stated herein, and they are all true and correct.

2. I am the Secretary and Treasurer of Christian Congregation of Jehovah's Witnesses (hereinafter "CCJW") and in such capacity, I am the designated agent of CCJW for

the purposes of this litigation.

3. CCJW was incorporated in the State of New York, County of Putnam, on August 21, 2000. The address of the corporation is 2821 Route 22, Patterson, New York 12563-2237. CCJW did not exist prior to its date of incorporation and, therefore, did not exist at any time from 1972 to 1998, the dates of the alleged abuse identified in the plaintiffs' complaints in the coordinated lawsuits.

4. CCJW is incorporated and operates as a not-for-profit corporation. CCJW has not been and is not controlled by any other corporation or entity by reason of interlocking directorates or other reasons. CCJW has not been and is not financially accountable to or financially responsible for any other corporation or entity involved in these lawsuits.

5. CCJW did not purchase or otherwise acquire any other corporation or entity that existed prior to CCJW's incorporation on August 21, 2000, nor has CCJW done so since then. At the time of its incorporation, CCJW did not assume or acquire, and since that time has not assumed or acquired, any liabilities, contingent or otherwise, of any defendant named as a party in any of the coordinated cases.

6. CCJW is a separate corporate entity from all other corporations and entities, including, but not limited to, Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania, Religious Order of Jehovah's Witnesses, Kingdom Support Services, Inc., and all congregations of Jehovah's Witnesses.

7. At the time of the alleged abuses that are the bases of these coordinated lawsuits, namely 1972 to 1998, none of the co-defendants including, Edward Villegas (Charissa W. v. Watchtower and Tabitha H. v. Watchtower), Carlos Vasquez (Javier C. v. Watchtower), Albert W. (Red) Harriman (Ken L. v. Watchtower), Timothy Silva (West v. Watchtower), Donald Glew (Jocelyn A. v. Watchtower and Dennis S. v. Watchtower), Shawn Appling (Danielle A. v.

Watchtower), Alvin Heard (Wimberly Gutierrez v. Watchtower), or James Henderson (Wimberly Gutierrez v. Watchtower and Tim W. v. Watchtower), were acting as a volunteer, agent, servant, employee, officer, director, or representative of CCJW, and none of them ever acted in such capacities for CCJW prior to 1972 or since 1998.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

W. H. Nonkes

William H. Nonkes
Secretary and Treasurer for Christian Congregation of Jehovah's Witnesses

STATE OF NEW YORK)
) ss:
COUNTY OF PUTNAM)

SUBSCRIBED AND SWORN TO BEFORE ME on the 14th day of March, 2005, to certify which witness my hand and official seal.

Donna S. Reimer

Notary Public, State of New York

DONNA S. REIMER
Notary Public, State of New York
No. 4950436
Qualified in Putnam County
Commission Expires May 31, 2007

5023761.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 3, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

AFFIDAVIT OF WILLIAM H. NONKES IN SUPPORT OF DEFENDANT CCJW'S MOTIONS FOR SUMMARY JUDGMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 3, 2005, at Gold River, California.

By Claudia Poh

Claudia Pohlman

Rudy Nolen, Esq., SBN 59808
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

MAY 4 2005

Clerk of the Napa Superior Court
By: Jana O'Donnell
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 Jury Trial Demanded **Second Amended Complaint for Damages:** 1. Common Law Negligence 2. Negligent Appointment, Retention, and Supervision 3. Gross Negligence - Wilful Misconduct 4. Breach of Fiduciary Duty 5. Intentional Infliction of Emotional Distress

RECEIVED
MAY - 2 2005
Napa Superior Court

PLAINTIFFS' SECOND AMENDED COMPLAINT

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs in the above entitled cause,

and files this, their First Amended Complaint, and allege as follows:

I.

PARTIES

1. Plaintiff CHARISSA W., born February 8, 1969, is and at all times mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

2. Plaintiff NICOLE D., born November 9, 1971, is and at all times mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

3. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and has appeared herein.

4. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of California through its agents and alter egos and has appeared herein for the purpose of seeking to quash service on jurisdictional grounds.

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

conducted business within the State of California through its agents and alter egos and has appeared herein.

6. Defendant NAPA KINGDOM HALL, now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and alter egos and has appeared herein.

7. OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES , NAPA, CA, INC., a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and has appeared herein.

8. Plaintiffs allege on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who therefore sues such defendants by such fictitious names, and will amend the complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

10. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged and joined with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.

II.

JURISDICTION AND VENUE

11. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

12. Venue is proper in Napa County, California because most of the acts or omissions that give rise to Plaintiffs' claims occurred in Napa County, California and Defendant NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SIVERADO CONGREGATION is a resident of Napa County.

III.

FACTS COMMON TO ALL CAUSES OF ACTION

13. In the past, certain Elders, Ministerial Servants, Pioneers, agents, volunteers and other leaders and representatives of the WATCHTOWER DEFENDANTS' organization, including Edward Villegas, have used their appointed positions of authority within the WATCHTOWER DEFENDANTS' organization to sexually abuse minors, including Plaintiffs. The WATCHTOWER DEFENDANTS were notified of the abuse of these minors perpetrated by their appointed elder, Edward Villegas, and others, but intentionally concealed this information and continued to place Edward Villegas in positions of authority where he could abuse children while pursuing activities within the scope of his appointment. The WATCHTOWER DEFENDANTS failed to take reasonable steps to ensure the safety of Plaintiffs and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for Plaintiffs who were victims of this sexual abuse.

14. All paragraphs of this Complaint are based on information and belief, except for those allegations, which pertain to the Plaintiffs and their counsel. Plaintiffs' information and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint either has, or is likely to have, evidentiary support upon further investigation and discovery.

15. The WATCHTOWER DEFENDANTS' organization has a hierarchical structure with a strict chain of command that extends over individual and entity in the organization. These individuals and entities act agents, servants and alter egos of each other.

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

17. Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume responsibility for the development, protection and discipline of its membership, especially the children of members. Elders, Ministerial Servants, Pioneers and other leaders are appointed and empowered by the WATCHTOWER DEFENDANTS to carry out this responsibility.

18. To further their goals, the WATCHTOWER DEFENDANTS authorize male Elders, Ministerial Servants, Pioneers and other appointed male leaders to develop relationships of trust with women, children and families and to assume a role of counselor and advocate for problems that might arise, including claims of child abuse. It is the responsibility of the Elders and those higher in the chain of command to decide if abuse has occurred and how it should be handled.

19. Despite knowledge of a problem with sexual abuse of minors by appointed leaders in the WATCHTOWER DEFENDANTS' organization, the WATCHTOWER DEFENDANTS acted to continue to appoint these sexual offenders to positions of authority and put them in positions which gave them the opportunity to abuse children through activities within the scope of their appointment. The WATCHTOWER DEFENDANTS demonstrated willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the WATCHTOWER DEFENDANTS engaged in a systematic pattern and practice of

suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect the WATCHTOWER DEFENDANTS' reputation as well as those within the WATCHTOWER DEFENDANTS' organization who committed acts of sexual molestation against children.

20. The WATCHTOWER DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers and other appointed leaders in the organization. The existence of these files and the contents thereof were not disclosed or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS concealed complaints of sexual misconduct to law enforcement authorities and failed to remove molesting leaders or prevent their access to children. Known molesting leaders were reaffirmed as leaders in good standing in the organization and were given authority that permitted continued frequent and unsupervised access to children in the organization.

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

22. The WATCHTOWER DEFENDANTS also failed to provide Plaintiffs and their families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The WATCHTOWER DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The WATCHTOWER DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access to and control over their victims.

23. Beginning in at least 1970, if not earlier, the WATCHTOWER DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women and children in the WATCHTOWER DEFENDANTS' organization.

24. In approximately 1970, Plaintiff CHARISSA W. and her mother, Betty Hopkins, came under the instruction and care of the WATCHTOWER DEFENDANTS' organization through their agent, Edward Villegas, and his wife, Marsha Villegas. The WATCHTOWER DEFENDANTS used the daycare center run out of the Villegas home to attract new converts. Plaintiff CHARISSA W. was approximately 1 year old at the time. Betty Hopkins became one of those new converts and entrusted her daughter, Plaintiff CHARISSA W. to the WATCHTOWER DEFENDANTS' care.

25. In approximately 1971, Plaintiff NICOLE D. and her family came under the care of the WATCHTOWER DEFENDANTS' organization and entrusted NICOLE D. to the leadership of the WATCHTOWER DEFENDANTS' agent, Edward Villegas. Through his position of leadership with the WATCHTOWER DEFENDANTS, Edward Villegas developed a relationship of trust and confidence with Plaintiff NICOLE D. and her family, working with them at WATCHTOWER DEFENDANT events and inviting them into his home.

26. Beginning by at least 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the WATCHTOWER DEFENDANTS organization and to sexually abuse them. Villegas also exploited the victims' youth.

27. In about 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas began sexually molesting Plaintiff, CHARISSA W. by, among other things, fondling her genitals, digitally penetrating her vagina and forcing her to have oral sex. She was approximately three (3) or four (4) years old at the time. For the next twelve (12) to thirteen (13) years, the WATCHTOWER DEFENDANTS' agent, Edward Villegas continued to use his leadership position as an Elder to gain access to and sexually abuse Plaintiff, CHARISSA W., who was under the WATCHTOWER DEFENDANTS' care. Plaintiff's

position as a minor in the WATCHTOWER DEFENDANTS' organization, as well Edward Villegas' position as a spiritual leader and authority figure in the WATCHTOWER DEFENDANTS' organization allowed him to maintain control and influence over Plaintiff and others. The WATCHTOWER DEFENDANTS enabled Edward Villegas to abuse Plaintiff and others by appointing him to positions of authority to engage in activities that gave him access to children, and then actively concealing his ongoing sexual abuse. The WATCHTOWER DEFENDANTS, each of them, used their positions in the organization to aid and abet Edward Villegas and other leaders in the sexual abuse and exploitation of minors in the organization and in furtherance of the conspiracy to conceal the sexual molestation occurring within the WATCHTOWER DEFENDANTS' organization.

28. During this time period, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, was also using his appointed position of authority as an Elder to sexually abuse other children under the WATCHTOWER DEFENDANTS' care.

29. In approximately 1978, Edward Villegas used his appointed position as an Elder and leader in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiff, NICOLE D., a child under the care of the WATCHTOWER DEFENDANTS' organization. Plaintiff, NICOLE D. was approximately seven (7) years old when the abuse occurred. Using his delegated authority as a leader in the WATCHTOWER DEFENDANTS' organization, Edward Villegas forced Plaintiff, NICOLE D. to have oral sex with him.

30. When Plaintiff, NICOLE D. told her parents about the abuse, her father immediately reported it to the Elders of Defendant, NAPA KINGDOM HALL pursuant to instructions by the WATCHTOWER DEFENDANTS. In response, the WATCHTOWER DEFENDANTS took no steps to hold him accountable or to otherwise notify members and the families of the children whom they had placed under the authority of their agent, Edward Villegas to sexually abuse minor children. Instead, they intentionally concealed this information. Therefore, Edward Villegas was able to continue to use his position of authority.

31. For over two decades, the WATCHTOWER DEFENDANTS knew or should have known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents under the care of the organization. Nevertheless, the WATCHTOWER DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the WATCHTOWER DEFENDANTS' local congregations. The WATCHTOWER DEFENDANTS' agent then used his position of authority in the organization to gain access to and sexually molest Plaintiffs and others. The WATCHTOWER DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the WATCHTOWER DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiffs and others, thereby aiding and abetting the abuse.

32. When the WATCHTOWER DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the WATCHTOWER DEFENDANTS assumed the exclusive responsibility for dealing with the problem. They instructed families of victims that they should leave the matter to the WATCHTOWER DEFENDANTS to handle. The WATCHTOWER DEFENDANTS chose not to report the abuse to law enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with authority over children. They did not act to help Plaintiffs or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The WATCHTOWER DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

33. Edward Villegas used the authority of his position in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiffs and others. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to

Plaintiffs by, among other things:

a. aiding and abetting the abuse of children by their appointed agents;

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

c. intentionally failing to report such sexual abuse, including the abuse by Edward Villegas to law enforcement and governmental child welfare agencies and requiring that members not make such reports;

d. intentionally refusing to warn Plaintiffs, their families, and others of the risk of abuse by Edward Villegas after they knew or should have known of his propensities to use his positions of leadership to engage in acts of sexual abuse against children entrusted to the WATCHTOWER DEFENDANTS' care;

e. negligently failing to train its Elders, Overseers, Ministerial Servants and other appointed leaders to identify, investigate, prevent and respond to or report child abuse;

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

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

h. negligently failing to provide child abuse victims and their families with assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse;

i. intentionally concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that their agent, Edward Villegas was using his position of authority to abuse young children entrusted

to their care by the WATCHTOWER DEFENDANTS;

j. negligently retaining and failing to properly supervise Edward Villegas as a leader in the organization or to monitor his activities after they knew or should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

34. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Edward Villegas, but failed to act to protect them from said harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

36. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

37. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS knew or should have known of their agents, Edward Villegas', propensities to use his position as a leader in the local congregation to engage in acts of sexual abuse of young, vulnerable and defenseless victims such as Plaintiffs. The WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, and otherwise research the background of their agent, Edward Villegas, prior to appointing him to leadership positions and allowing him unsupervised access to young victims such as Plaintiffs.

39. Plaintiffs further allege that after Edward Villegas was appointed by WATCHTOWER DEFENDANTS acting on behalf of and under the supervision of the WATCHTOWER DEFENDANTS, WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, monitor and supervise the conduct of their agent, Edward Villegas, during his interactions with children to whom WATCHTOWER DEFENDANTS allowed him unsupervised access.

40. Plaintiff's further allege that WATCHTOWER DEFENDANTS failed to provide adequate warning to Plaintiffs and their families of their agent's dangerous propensities and unfitness to lead.

41. Plaintiffs further allege the WATCHTOWER DEFENDANTS negligently investigated, appointed, retained and supervised Edward Villegas in the organization at a time when they knew or should have known of his propensities to use his appointed position to engage in acts of sexual abuse against Plaintiffs and other young children under the WATCHTOWER DEFENDANTS' care.

42. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning

capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
GROSS NEGLIGENCE/WILFUL MISCONDUCT

43. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 42 of this Complaint as if fully set forth herein.

44. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS demonstrated a conscious indifference to the safety and welfare of Plaintiffs. Defendants knew or should have known of the dangerous propensities of their agent, Edward Villegas, yet failed to act to protect the health, safety and welfare of children in the custody and care of WATCHTOWER DEFENDANTS, thereby allowing Plaintiffs to be sexually abused. But for the WATCHTOWER DEFENDANTS' wilful misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs, in violation of WATCHTOWER DEFENDANTS' duty to protect the children entrusted to their and Edward Villegas' care and custody, the sexual abuse would have been prevented.

45. Plaintiffs further allege that WATCHTOWER DEFENDANTS' actions, constituting wilful misconduct and gross negligence described hereinabove, caused significant mental, emotional, and physical injuries as a result of the acts of sexual abuse described hereinabove.

46. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

47. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. Plaintiffs allege, at all times herein mentioned, that by holding Edward Villegas out as a qualified Elder and leader in the WATCHTOWER DEFENDANTS' organization, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiffs, who were young and vulnerable, the WATCHTOWER DEFENDANTS, created a fiduciary relationship with Plaintiffs. The WATCHTOWER DEFENDANTS were in positions of trust and confidence with Plaintiffs and such relationship imposed on them a duty to act to protect Plaintiffs' best interests.

49. Plaintiffs further allege that because of this special relationship, Plaintiffs, who were young and vulnerable, and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS to protect them from harm and to warn Plaintiffs of potential harm. This conduct was a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

50. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

51. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. Plaintiffs allege WATCHTOWER DEFENDANTS purposefully, intentionally, and after much deliberation, engaged in a pattern of conduct, as described more fully hereinabove, designed and intended to cover up allegations, acts, and investigations pertaining to sexual abuse suffered by children in their organization including, but not limited to, Plaintiffs.

53. Plaintiffs further allege WATCHTOWER DEFENDANTS' conduct of quelling complaints of sexual abuse by Plaintiffs and others created a dangerous environment for Plaintiffs and others to be sexually abused by members and agents in good standing with WATCHTOWER DEFENDANTS' organization.

54. Plaintiffs further allege that after WATCHTOWER DEFENDANTS were on notice that their members and agents, including Edward Villegas, were sexually abusing Plaintiffs and others, WATCHTOWER DEFENDANTS purposefully, intentionally and deliberately took action to prohibit and prevent Plaintiffs and their family from reporting the acts of sexual abuse to legal or secular authorities, where Plaintiffs and their family could have obtained assistance to address, prevent and/or resolve the continuous sexual abuse and its residual aftereffects.

55. Plaintiffs further allege that WATCHTOWER DEFENDANTS' conduct was extreme and outrageous and exceeded the bounds tolerated by any civilized community because they purposefully, intentionally and deliberately engaged in a pattern and practice of quelling complaints by Plaintiffs and their family of the sexual abuse inflicted by WATCHTOWER DEFENDANTS' members and agents. Additionally, their conduct was outrageous based on their knowledge, imputed or otherwise, that their member Edward Villegas sexually abused other organization members since at least 1970, if not earlier, yet refrained from taking any action whatsoever to prevent or prohibit Villegas from sexually abusing Plaintiffs, or to protect Plaintiffs from being sexually abused.

56. Plaintiffs further allege that WATCHTOWER DEFENDANTS intended to cause Plaintiffs emotional distress by engaging in the above described conduct in order to

prevent harm to their organization's reputation and to avoid civil liability.

57. Plaintiffs further allege that WATCHTOWER DEFENDANTS acted with reckless disregard of the of the probability that Plaintiffs would suffer emotional distress, knowing that Plaintiffs were present when the conduct was occurring, on-going and continuing to occur because of inaction on the part of WATCHTOWER DEFENDANTS to protect Plaintiffs entrusted to their care from sexual abuse.

58. As a result of WATCHTOWER DEFENDANTS' extreme and outrageous conduct, Plaintiffs suffered and continue to suffer extreme emotional distress and that WATCHTOWER DEFENDANTS' conduct was a substantial factor in causing Plaintiffs' severe emotional distress.

59. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Plaintiffs sustained loss of earnings and earning capacity. Plaintiffs incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

PRAYER

WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;
2. For past and future medical expenses according to proof;
3. For past and future loss of earnings according to proof;
4. For prejudgment interest;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Dated: April 28, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On April 29, 2005, I caused the within **SECOND AMENDED COMPLAINT,** the original of which was produced on recycled paper, to be served as follows:

__X__ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On April 29, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 29, 2005, at Sacramento, California.

Susan Gilbert

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

MAY 3 2005

Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

ORDER ON CHURCH DEFENDANTS' DEMURRERS AND MOTIONS TO STRIKE

RECEIVED

APR 29 2005

Clerk of the Napa Superior Court

Defendants Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, and the local congregations of Jehovah's Witnesses named as party defendants in each of the coordinated cases (collectively the "Church Defendants") filed demurrers and motions to strike against plaintiffs' operative complaints in each of the coordinated cases. The Court issued its tentative rulings on those demurrers and motions to strike and a hearing was held thereafter on April 8, 2005. Plaintiffs were represented at the hearing by their attorneys of record William Brelsford, Gregory Love, and Hartley Hampton, and the Church Defendants were represented by their attorney of record Robert Schnack. The Court considered the parties' briefs and argument of counsel. Now, therefore, the Court being fully advised,

IT IS HEREBY ORDERED that the Court's tentative rulings, which are attached hereto

as Exhibit A and incorporated by this reference, are adopted as the order of this Court with respect to the Church Defendants' demurrers and motions to strike as to all of the coordinated cases.

IT IS HEREBY FURTHER ORDERED THAT plaintiffs shall have until April 28, 2005 in which to replead consistent with the above rulings.

DATED: 4/25, 2005

By _____
W. Scott Snowden
Superior Court Judge

APPROVED AS TO FORM:

Nolen, Saul, Brelsford

By _____
William Brelsford
Attorneys for Plaintiffs

5026702.1

Watchtower Coordinated Proceeding **26-22191 (lead case)**

1) CHURCH DEFENDANTS' DEMURRERS

TENTATIVE RULING:

Sexual Battery – Sustained without leave to amend as to Church defendants. Plaintiffs explain that they are not bringing this cause of action against the Church defendants.

Conspiracy – Sustained without leave to amend. The complaints allege that each defendant is the agent, servant or alter ego of the other. It is settled that agents cannot conspire with their principal. Additionally, and as plaintiffs recognize, conspiracy is not a separately cognizable cause of action, but is, rather, a theory of liability. As discussed below in the ruling on defendants' motion to strike, the plaintiffs may amend their complaint to clarify their theory of liability based upon conspiracy.

Fraud – Sustained with 20 days leave to amend. The fraud causes of action do not contain the specificity required for a fraud claim against a corporate defendant. No specifics have been alleged as to who made what specific representations (or concealed what specific information) when, and to whom, and by what means. Additionally, because the causes of action are directed to corporate defendants, they must contain specific allegations concerning the alleged speaker's authority on behalf of the corporation. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Intentional Infliction of Emotional Distress – Overruled. The allegations are sufficient to state a cause of action for intentional infliction of emotional distress.

Negligence/breach of duty Causes of Action – Overruled. The facts alleged state a cause of action for negligence. The complaints allege duty and a special relationship in various ways by alleging, for example, that the Church defendants "assumed responsibility for the development, protection and discipline of its membership, especially the children of members" and that they undertook "the religious instruction and spiritual and emotional counseling of plaintiffs." The complaints further allege that the Church defendants breached their duty to the plaintiffs by failing to report known abuse, preventing plaintiffs and their families from reporting known abuse, placing leaders with known pedophiliac propensities in positions with easy access to and authority over young members. Whether the alleged duty did, in fact, exist, is not a matter to be decided on demurrer. As the court noted in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 401, "Duty, being a question of law, is particularly amenable to resolution by summary judgment.... ¶ Since Rowland was decided, its innumerable judicial descendants have adopted the Rowland court's multi-

EXHIBIT A

element duty assessment in determining whether a particular defendant owed a tort duty to a given plaintiff. These factors include: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with resulting potential liability."

Failure to Report Suspected Child Abuse – Sustained without leave to amend. Plaintiff has presented no authority for stating a private right of action for violation of the California Child Abuse and Neglect reporting Act (Pen. Code § 11164 et seq.)

Plaintiffs shall have 20 days leave to amend their fraud causes of action. Defendants shall have 20 days thereafter to respond.

2) CHURCH DEFENDANTS' MOTION TO STRIKE

TENTATIVE RULING.

References to ecclesiastical discipline – Denied. The complaints' references to various defendants being members in "good standing" is not irrelevant in the context of allegations of the complaint. The allegations are relevant to, for example, plaintiffs' allegations that the defendants held positions of trust, which facilitated their ability to abuse young members. Contrary to defendants' assertion, the complaints do not attempt, by the reference to the members good standing, to enmesh this court in questions of ecclesiastical discipline.

Allegations concerning conspiracy – Granted with 20 days leave to amend. As noted above, the complaint currently alleges that each defendant was the agent, servant or alter ego of the other. Yet, the complaints allegations make reference throughout to conspiracies among the various defendants to conceal or cover up the alleged abuses. If plaintiffs believe they can allege facts entitling them to recover under a conspiracy theory, they may amend their complaint to make clear the various relationships among the defendants that would allow such a theory to stand.

Negligent employment and retention allegations – Denied. Plaintiffs' claims are not barred by the First Amendment. (See this Court's 12/17/03 Ruling on Demurrer in Charissa W. Case No. 26-22191.) The case relied on by defendants, *Schmoll v. Chapman University* (1999) 70 Cal.App.4th 1434, is readily distinguishable. There, a minister sought the court's intervention in her employment dispute with her employer, a religious organization. The court held that a judicial review of the employment decision (reducing plaintiff's hours)

would have constituted an excessive entanglement with religion. The court found that under the free exercise clause, there was no state interest sufficiently compelling to override defendant's interest in deciding how the plaintiff could best serve the spiritual needs of the relevant community. By contrast, here, the state has a strong interest in protecting children from sexual molestation and in allowing civil damages against a church that facilitates such behavior.

Failure to report allegations – Denied. The court has sustained defendants' demurrer to plaintiff Pence's failure to report cause of action. Nevertheless, the general allegations included throughout the complaints concerning the Church defendants' failure to report abuse to police authorities may properly remain in the complaints, because they contribute to the allegations of negligence.

Superior Court of California
County of Napa

Judges
W. Scott Snowden
Ronald T. L. Young
Richard A. Bennett
Francisca P. Tisher
Stephen T. Kroyer
Raymond A. Guadagni

Commissioners
Michael Williams
Rodney G. Stone

Executive Officer
Stephen A. Bouch

Asst. Executive Officers
Georgene Larsen
Richard D. Feldstein

Human Resources Manager
Beverly Lane

General Counsel
Joanna Mittman

May 4, 2005

Robert J. Schnack, Esq.
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Sacramento, CA 95670

Re: *The Watchtower Cases*, JCCP No. 4374

Dear Mr. Schnack,

Judge Snowden has signed the order that you submitted on the demurrers and motions to strike in these coordinated cases. I have filed the signed original and filed it for Napa County. I will place the original in Charissa W. et al. Case No. 26-22191, and a copy in Tabitha H. Case No. 26-23929.

I am returning to you two copies. One is a fully endorsed copy of the order as signed. The second is a copy stamped with the judge's name, but not endorsed. Please submit a copy of this to each court in which there is a coordinated case. The order should be filed in each court. I am sending a copy of this letter to each court, so that they will know what to expect in regard to the filing of this order.

As you are no doubt aware, Mr. Bresford, attorney for the plaintiffs, has submitted a second amended complaint in the Charissa W. et al. case. It is my understanding that it has been agreed to proceed with this case until the issues are clarified. At that point, amended complaints should be filed in each coordinated case.

Please feel free to contact me at any time regarding these coordinated cases. Thank you for your cooperation.

Very truly yours,

Sora O'Doherty

Sora O'Doherty
Judicial Assistant
(707) 299-12140

Telephone
(707) 299-1100

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825 Brown Street
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Criminal Courts Building
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(707) 253-4673

Cc:(letter only)
William Bernard, Esq.
William L. Brelsford, Esq.
Craig Diamond, Esq.
Fibich, Hampton, Leebron & Garth
James Henderson
Donald Glew
Michael Jansen, Esq.
Love & Norris
The Thompson Law Office
Superior Court, County of Placer
Superior Court, County of Sonoma
Superior Court, County of Tehama
Superior Court, County of Yolo
Chair, Judicial Council of CA AOC

Enclosure: Order

Superior Court of California
County of Napa

Judges
W. Scott Snowden
Ronald T. L. Young
Richard A. Bennett
Francisca P. Tisher
Stephen T. Kroyer
Raymond A. Guadagni

Commissioners
Michael Williams
Rodney G. Stone

Executive Officer
Stephen A. Bouch

Asst. Executive Officers
Georgene Larsen
Richard D. Feldstein

Human Resources Manager
Beverly Lane

General Counsel
Joanna Mittman

May 4, 2005

Robert J. Schnack, Esq.
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Sacramento, CA 95670

Re: *The Watchtower Cases*, JCCP No. 4374

Dear Mr. Schnack,

Judge Snowden has signed the order that you submitted on the demurrers and motions to strike in these coordinated cases. I have filed the signed original and filed it for Napa County. I will place the original in Charissa W. et al. Case No. 26-22191, and a copy in Tabitha H. Case No. 26-23929.

I am returning to you two copies. One is a fully endorsed copy of the order as signed. The second is a copy stamped with the judge's name, but not endorsed. Please submit a copy of this to each court in which there is a coordinated case. The order should be filed in each court. I am sending a copy of this letter to each court, so that they will know what to expect in regard to the filing of this order.

As you are no doubt aware, Mr. Bresford, attorney for the plaintiffs, has submitted a second amended complaint in the Charissa W. et al. case. It is my understanding that it has been agreed to proceed with this case until the issues are clarified. At that point, amended complaints should be filed in each coordinated case.

Please feel free to contact me at any time regarding these coordinated cases. Thank you for your cooperation.

Very truly yours,

Sora O'Doherty

Sora O'Doherty
Judicial Assistant
(707) 299-12140

Telephone
(707) 299-1100

Historic Courthouse
825 Brown Street
Napa, CA 94559
FAX
(707) 259-8318

Criminal Courts Building
1111 Third Street
Napa, CA 94559
FAX
(707) 253-4673

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Superior Court, County of Tehama
Superior Court, County of Yolo
Chair, Judicial Council of CA AOC

Enclosure: Order

DF 4/29

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Rudy Nolen, Esq. SBN 59808
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Charissa W. and Nicole D.

FOR COURT USE ONLY

FILED

APR 12 2005

Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
STREET ADDRESS: 825 Brown St.
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

Judicial Council Coordination Proceeding No. 4374

CASE MANAGEMENT STATEMENT

(Check one): [X] **UNLIMITED CASE** (Amount demanded exceeds $25,000) [ ] **LIMITED CASE** (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: April 29, 2005 Time: 9:30 a.m. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [ ] This statement is submitted by party *(name):*
   b. [X] This statement is submitted **jointly** by parties *(names):* Plaintiffs in the consolidated action.

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):* July 24, 2003. Consolidated pursuant to order.
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Common law negligence, neligent appointment, retention and supervision, gross negligence - wilful misconduct, breach of fiduciary duty, fraud, fraudulent concealment and conspiracy.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiffs are a group of individuals that were sexually abused as children, entrusted to the care of the Watchtower Defendants. Plaintiffs contend the Watchtower Organization had notice that the individual pedophiles in their organization were prone to sexually molest young children, such as Plaintiffs, but failed to take appropriate measures to protect Plaintiffs entrusted to their care. These lawsuits seek compensation for the injuries Plaintiffs have sustained.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☒ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* Plaintiffs of all consolidated cases.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
SEE ATTACHMENT

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 20-25 days
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☒ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [X] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [ ] Neutral case evaluation
    - (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

    g. [X] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):* Amount in controversy exceeds $50,000; numerous witnesses will testify; extensive expert testimony will be required.

11. **Settlement conference**

    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

    a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

    b. Reservation of rights: [ ] Yes [ ] No

    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

    [ ] Bankruptcy [ ] Other *(specify):*

    Status:

14. **Related cases, consolidation, and coordination**

    a. [X] There are companion, underlying, or related cases.
    - (1) Name of case:
    - (2) Name of court:
    - (3) Case number:
    - (4) Status:

    [X] Additional cases are described in Attachment 14a.

    b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* A motion to coordinate these cases has already been granted.

15. **Bifurcation**

    [ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):* Extensive Motions to Compel discovery from Watchtower Defendants.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Watchtower Defendant Witnesses Depositions	08/05
	Percipient Witness Depositions	09/05
	Expert Discovery	Pursuant to CCP Section 2034

    c. ☒ The following discovery issues are anticipated *(specify):* Plaintiffs anticipate Watchtower Defendants will continue to assert *Serbian* and First Amendment as objections throughout discovery.

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: April 7, 2005

William L. Brelsford
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

April 2005:

20	MSC
6 - May 6	Trial

May 2005:

2 - 11	Trial
9	MSC
17	MSC
17 - 27	Trial
23 - 31	Trial
27 - June 3	Trial
31 - June 10	Trial

June 2005:

23	MSC
24 - July 1	Trial

July 2005:

5 - 15	Trial
6 - 15	Trial
22	MSC

August 2005:

2 - 12	Trial

September 2005:

6 - 30	Trial

October 2005:

November 2005:

14 - 28	Trial

December 2005:

January 2006:

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Tommy Fibich, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract – Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' motions are scheduled for 10/5/04.

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Monterey County Superior Court
3) Case Number: M68295
4) Status: Defendants' motions are scheduled for 9/17/04.

1) Name of Case: Danielle A. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Suprior Court
3) Case Number: 234140
4) Status: Defendants recently filed motions to strike, demurrer, and motion to quash.

1) Name of Case: Dennis S., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234168
4) Status: Complaint was recently served on all defendants.

1) Name of Case: Jocelyn A.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234320
4) Status: Defendant's motions are scheduled for 9/15/04.

1) Name of Case: Tabitha H.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-23-929
4) Status: Defendant's motions are scheduled for 8/31/04.

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Wimberely
2) Name of Court: Tehama County Superior Court
3) Case Number: 52598
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On April 7, 2005, I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On April 7, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

///

///

Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Tommy Fibich, Esq.
Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
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In Pro Per

Alvin Heard
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Attorney for A.W. Harriman
Craig A. Diamond
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P.O. Box 1147
Cedar Ridge, CA 95924-1147

Donald Glew
P.O. Box 424245
San Francisco, CA 94142
(*In Pro Per*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 7, 2005, at Sacramento, California.

Susan Gilbert

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden ***Courtroom:*** *Department* B **Event:** Motion **PID # :**	**Case #** 26-22191 **Event Date:** April 8, 2005 **Clerk:** G. Orta **Reporter:** Jennifer Antolin **Cite/Report #:**

APPEARANCES:
Gregory Love Attorney for Plaintiffs
William L. Brelsford, Jr., Attorney for Plaintiffs
Hartley Hampton, Attorney for Plaintiffs
Robert Schnack, Attorney for Defendants

Related Case: Tabitha H, vs. Watchtower Bible Tract Society of New York, LLC, et al
Case NO: 26-23929

Hearing:
This matter comes on this date for Motion to Compel, Motion to Strike and Demurrer.

By order of the Court, the Tentative Rulings are adopted and incorporated into the minute order subject to the agreement counsel made in court.

The Court vacates the court date of April 29, 2005 and continues the matter to May 16, 2005 at 9:30 A.M. in Courtroom B. TE: ½ day.

1) CHURCH DEFENDANT'S DEMURRERS

RULING:

Sexual Battery – Sustained without leave to amend *as to Church defendants. Plaintiffs* explain that they are not bringing this cause of action against the Church defendants.

Conspiracy – Sustained without leave to amend. The complaints allege that each defendant is the agent, servant or alter ego of the other. It is settled that agents cannot conspire with their principal. Additionally, and as plaintiffs recognize, conspiracy is not a separately cognizable cause of action, but is, rather, a theory of liability. As discussed below in the ruling on defendants' motion to strike, the plaintiffs may amend their complaint to clarify their theory of liability based upon conspiracy.

Fraud – Sustained with 20 days leave to amend. The fraud causes of action do not contain the specificity required for a fraud claim against a corporate defendant. No specifics have been alleged as to who made what specific representations (or concealed what specific information) when, and to whom, and by what means. Additionally, because the causes of action are directed to corporate defendants, they must contain specific allegations concerning the alleged

speaker's authority on behalf of the corporation. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Intentional Infliction of Emotional Distress – Overruled. The allegations are sufficient to state a cause of action for intentional infliction of emotional distress.

Negligence/breach of duty Causes of Action – Overruled. The facts alleged state a cause of action for negligence. The complaints allege duty and a special relationship in various ways by alleging, for example, that the Church defendants "assumed responsibility for the development, protection and discipline of its membership, especially the children of members" and that they undertook "the religious instruction and spiritual and emotional counseling of plaintiffs." The complaints further allege that the Church defendants breached their duty to the plaintiffs by failing to report known abuse, preventing plaintiffs and their families from reporting known abuse, placing leaders with known pedophiliac propensities in positions with easy access to and authority over young members. Whether the alleged duty did, in fact, exist, is not a matter to be decided on demurrer. As the court noted in *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal. App. 4th 377, 401, "Duty, being a question of law, is particularly amenable to resolution by summary judgment.... ¶ Since Rowland was decided, its innumerable judicial descendants have adopted the Rowland court's multi-element duty assessment in determining whether a particular defendant owed a tort duty to a given plaintiff. These factors include: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with resulting potential liability."

Failure to Report Suspected Child Abuse – Sustained without leave to amend. Plaintiff has presented no authority for stating a private right of action for violation of the California Child Abuse and Neglect reporting Act (Pen. Code § 11164 et seq.)

Plaintiffs shall have 20 days leave to amend their fraud causes of action. Defendants shall have 20 days thereafter to respond.

2) CHURCH DEFENDANT'S MOTION TO STRKE

RULING:

References to ecclesiastical discipline – Denied. The complaints' references to various defendants being members in "good standing" is not irrelevant in the context of allegations of the complaint. The allegations are relevant to, for example, plaintiffs' allegations that the defendants held positions of trust, which facilitated their ability to abuse young members. Contrary to defendants' assertion, the complaints do not attempt, by the reference to the members good standing, to enmesh this court in questions of ecclesiastical discipline.

Allegations concerning conspiracy – Granted with 20 days leave to amend. As noted above, the complaint currently alleges that each defendant was the agent, servant or alter ego of the other. Yet, the complaints allegations make reference throughout to conspiracies among the various defendants to conceal or cover up the alleged abuses. If plaintiffs believe they can allege facts entitling them to recover under a conspiracy theory, they may amend their complaint to make clear the various relationships among the defendants that would allow such a theory to stand.

Negligent employment and retention allegations – Denied. Plaintiffs' claims are not barred by the First Amendment. (See this Court's 12/17/03 Ruling on Demurrer in Charissa W. Case No. 26-22191.) The case relied on by defendants, *Schmoll v. Chapman University* (1999) 70 Cal.App.4th 1434, is readily distinguishable. There, a minister sought the court's intervention in her employment dispute with her employer, a religious organization. The court held that a judicial review of the employment decision (reducing plaintiff's hours) would have constituted an excessive entanglement with religion. The court found that under the free exercise clause, there was no state interest sufficiently compelling to override defendant's interest in deciding how the plaintiff could best serve the spiritual needs of the relevant community. By contrast, here, the state has a strong interest in protecting children from sexual molestation and in allowing civil damages against a church that facilitates such behavior.

Failure to report allegations – Denied. The court has sustained defendants' demurrer to plaintiff Pence's failure to report cause of action. Nevertheless, the general allegations included throughout the complaints concerning the Church defendants' failure to report abuse to police authorities may properly remain in the complaints, because they contribute to the allegations of negligence.

3) PLAINTIFF'S MOTIN TO COMPEL DISCOVERY FROM DEFENDANT WATCH TOWER PENNSYLVANIA

RULING:

***Serbian* objection** – The court will not rule on the defendants' "*Serbian*" objection at this time. Notwithstanding defendants' objection that the requested discovery "seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog," they responded to the discovery requests. Therefore, the issue of the validity of the objection is not currently before the court.

PMK deposition - Documents requested

#3 – Denied. Defendants have produced documents. Plaintiffs' apparent belief that defendants may be withholding some responsive documents cannot form the basis for an order to compel.

#4 – Granted to the extent documents exist for time periods now encompassed by coordinated actions. Otherwise, denied. Plaintiffs' apparent belief that defendants may be withholding some responsive documents cannot form the basis for an order to compel.

#8 - Granted to the extent documents exist for time periods now encompassed by coordinated actions. Otherwise, denied. Plaintiffs' apparent belief that defendants may be withholding some responsive documents cannot form the basis for an order to compel.

PMK deposition – areas of inquiry

The parties' arguments on the PMK areas of inquiry are confusing. As presented the court cannot tell precisely what is in dispute. The court will hear oral argument and decide the matter at the hearing or take the matter under submission.

Form Interrogatories

#4.1 – Denied. Notwithstanding plaintiffs' belief that Watch Tower Pennsylvania obtains insurance for California Kingdom Halls, this interrogatory does not ask for such information. It asks for information concerning Watch Tower Pennsylvania's own insurance, which is not relevant to the issue of whether defendant is subject to personal jurisdiction in California.

#4.2 – Denied. Notwithstanding plaintiffs' belief that Watch Tower Pennsylvania obtains insurance for California Kingdom Halls, this interrogatory does not ask for such information. It asks for information concerning Watch Tower Pennsylvania's own insurance, which is not relevant to the issue of whether defendant is subject to personal jurisdiction in California.

Request for Production, set one

#1 – Denied. This request asks defendant to produce "the Corporate Book relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#2 – Denied. Defendants have produced documents. Plaintiffs apparent belief that defendants may be withholding some responsive documents cannot form the basis for an order to compel.

#3 - Denied. This request asks defendant to produce "the organizational meeting minutes relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time

period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#4 - Denied. This request asks defendant to produce "all Board of Director meeting minutes from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#5 - Denied. This request asks defendant to produce "all shareholder or member meeting minutes from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#6 - Denied. This request asks defendant to produce "all committee meeting minutes from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#7 - Denied. This request asks defendant to produce "all resolutions from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#8 - Denied. This request asks defendant to produce "a complete list of all shareholders and/or members from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#9 - Denied. This request asks defendant to produce "any and all documents indicating corporate restructuring or reorganization from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#10 - Denied. This request asks defendant to produce "the hierarchical flow chart of positions/personnel from 1970 to the present relating to your organization/operation." The

request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#11 - Denied. This request asks defendant to produce "all documents reflecting officers and directors from 1970 to the present relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#14 - Denied. This request asks defendant to produce "all documents which indicate a relationship to or with other business or corporate entities relating to your organization/operation." The request is clearly overbroad, as it is not narrowed for the limited purpose of discovering defendant's contacts in California during the relevant time period, as permitted by this court's order concerning defendant's motion to quash service of summons.

#20 – Granted. This requests asks for documents relating to financing or purchases of buildings for use by assemblies or congregations in California. This request is relevant to the limited issue presented here. Defendant has responded that it provided funds to 197 congregations to build Kingdom Halls in California. This response is inadequate. Defendant shall produce documents responsive to the request.

#21-24, 26-28 – Granted. Defendant can produce documents indicating the money it has admittedly received from 1,997 congregations in California. Aside from asserting that it does not segregate the contributions it receives by state of origin, defendant has not explained in detail how responding to this request would be oppressive and burdensome.

#25 – Denied. The financial information sought will be adequately provided in response to document requests 21-24 and 26-28. There is no reason at this time to require the production of defendant's tax returns.

#29 – Denied. The request for "all corporate or governmental filings from 1970 to the present" is overbroad.

Special Interrogatories, set one

#1 – Denied. The interrogatory asks for a description of defendant's function/purpose within the Watchtower Society/Jehovah's Witnesses organization. Defendant has provided a general response to the general question. If plaintiffs desired more specific responses concerning certain functions, they could have asked for them. Also, more details were requested and provided in the PMK deposition.

#2 – Denied. This interrogatory asks defendant to "describe all changes to its function/ purpose since 1970." Defendant has provided a general response to the general question. If plaintiffs desired more specific responses concerning certain functions, they could have asked for them. Also, more details were requested and provided in the PMK deposition.

#3 – Denied. See 1 and 2, above.

#4 – Denied. See 1 and 2, above.

#13 – Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#14 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintifsf wanted a more detailed response they could have asked a more detailed question.

#15 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#16 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#17 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#18 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#19 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#20 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiff wanted a more detailed response it should have asked a more detailed question.

#21 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#22 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response it should have asked a more detailed question.

#23 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiff wanted a more detailed response they could have asked a more detailed question.

#24 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#25 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#26 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#27 - Denied. Defendant has responded to the interrogatory and provided additional information concerning Kingdom Hall financing in its PMK deposition. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#29 - Denied. Defendant has responded to the interrogatory and provided additional information concerning Kingdom Hall Assistance Arrangements in its PMK deposition. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#30 - Denied. Defendant has responded to the interrogatory and provided additional information concerning risk management in its PMK deposition. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#31 - Denied. Defendant has responded to the interrogatory and provided additional information concerning Kingdom Hall loans in California in its PMK deposition. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#32 - Denied. Defendant has responded to the interrogatory and provided additional information concerning Kingdom Hall Assistance Arrangements in its PMK deposition. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#33 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

#34 – Granted. The identity of the person who oversaw the Risk Management Office during the relevant time period could lead to the discovery of admissible evidence on the issue of California's right to exercise personal jurisdiction over defendant.

#35 - Granted. The manner in which the Risk Management Officer administered the Kingdom Hall Assistance Arrangements fund during the relevant time period could lead to the discovery of admissible evidence on the issue of California's right to exercise personal jurisdiction over defendant.

#36 - Granted. The manner in which the Risk Management Officer purchased insurance to protect congregations during the relevant time period could lead to the discovery of admissible evidence on the issue of California's right to exercise personal jurisdiction over defendant.

#37 - Denied. Defendant has responded to the interrogatory. Plaintiffs dissatisfaction with the nature of the response is not a ground to compel a different response. If plaintiffs wanted a more detailed response they could have asked a more detailed question.

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Sopa

BY FAX

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
MAR 30 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES** Date: April 8, 2005 Time: 9:30 a.m. Dept. B Trial Date: None

PLAINTIFFS' REPLY TO WATCH TOWER PENNSYLVANIA'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL DISCOVERY

I. *SERBIAN* OBJECTION

Defendant Watch Tower Pennsylvania interposed its *Serbian* Objection forty-nine times to the discovery currently at issue[1], but attempts to avoid having this Court rule on that objection by attacking the breadth and scope of Plaintiffs' discovery.

Although Defendant arguably has waived its specious assertion of ecclesiastical privilege to Plaintiffs' minimum contacts discovery, the parties need guidance from this Court on whether the *Serbian* case has any application to this controversy. The Watchtower Defendants have asserted the *Serbian* Objection sixty-seven (67) times in response to the most recent sets of discovery propounded by Plaintiffs, and no doubt will continue to obstruct discovery based on their tortured construction of *Serbian* until this Court rules on its application to these cases.

II. SCOPE OF DISCOVERY

A. Appropriate Scope of Discovery

This Court's December 2, 2003 Order states:

> *Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period."*

Thus, Plaintiffs were limited to conducting discovery concerning the issue of whether Watch Tower Pennsylvania had sufficient contacts with California during the relevant time periods of to justify a California court's exercise of jurisdiction over that entity. The scope of minimum contacts discovery has been well-defined by California courts and is fully briefed in Plaintiffs' Memorandum of Points and Authorities.

B. *Calcor* Case

In its Response, Watch Tower Pennsylvania did not address the law or analysis regarding the appropriate scope of minimum contacts discovery. Instead, it cited the *Calcor Space Facility, Inc. v. Superior Court* for the proposition that Plaintiffs' discovery is

[1] See pages 3 through 9 of Plaintiffs' Memorandum of Points and Authorities.

abusive. (1997) 53 Cal.App.4th 216; 61 Cal.Rptr.2d 567. *Calcor* held that a subpoena for documents to a non-party must describe the documents to be produced with reasonable particularity and that the party seeking discovery must demonstrate a reasonable relationship between the materials sought to be produced and the issues involved in the case.

The discovery Plaintiffs propounded to Watch Tower Pennsylvania is very narrowly-tailored and particular. Plaintiffs have attempted to meet and confer with Watch Tower Pennsylvania to address questions and concerns without much success.[2] In their Motion to Compel, Plaintiffs have described the information sought and its relationship to the minimum contacts issue. Plaintiffs discovery does not run afoul of *Calcor*.

III. DISCOVERY IN DISPUTE

A. Organization of Watch Tower Pennsylvania

Plaintiffs have attempted to discover Watch Tower Pennsylvania's function within the Jehovah's Witnesses organization during the relevant time periods and changes to its function within the relevant time periods (1972 through 2003). The answers given by Watch Tower Pennsylvania (subject to the *Serbian* Objection) have been inadequate and misleading.

Plaintiffs have requested documents concerning Watch Tower Pennsylvania's corporate structure and organization during the relevant time period of 1972 through 2003. The documents requested have nothing to do with the religious doctrine of the Jehovah's Witness organization, but instead are those that all corporations customarily generate and keep. See Requests 1-10:

No. 1: Watch Tower Pennsylvania's Corporate Book

No. 2: Bylaws

No. 3: Organizational meeting minutes

[2]See Exhibits A-C attached to Declaration of William Brelsford in support of the instant Motion to Compel.

No. 4: Board of Director meeting minutes

No. 5: shareholder/member meeting minutes

No. 6: committee meeting minutes relating to organization/operation

No. 7: resolutions

No. 8: list of shareholders

No. 9: corporate restructuring

No. 10: hierarchical flow chart of positions/personnel

The records requested above are non-privileged, relevant and discoverable.

PMK Inquiry Area No.1 asked for an opportunity to depose a representative concerning Defendants' organizational and corporate structure. Once Plaintiffs are given appropriate responses to the discovery in issue, Plaintiffs would request an order compelling Watch Tower Pennsylvania to produce a PMK witness for deposition testimony.

B. Relationship Between The Various Watchtower Entities

Plaintiffs have alleged that Watchtower Pennsylvania is involved in a large single business enterprise wherein several corporations, entities and individuals act as agents for and on behalf of one another. As briefed in Plaintiffs' Motion to Compel (with no response by Watch Tower Pennsylvania), agency is a theory that confers general jurisdiction on the entity that is shown to have agency relationships within California or doing business in California. Discovery of the relationships between Watch Tower Pennsylvania and other Watch Tower corporations that have not challenged personal jurisdiction, as well as entities that are carrying on work in California on behalf of the Jehovah's Witnesses organization, is surely germaine to the minimum contacts issue.

Again, Plaintiffs have served on Watch Tower Pennsylvania specifically tailored discovery requests.

No. 13: Relationship between WTPA and Napa Congregation

No. 14: Relationship between WTPA and Oak Knoll Congregation

No. 15: Relationship between WTPA and Watchtower New York

No. 16: Relationship between WTPA and Christian Congregation of JW

No. 17: Relationship between WTPA and the Service Department

No. 18: Relationship between WTPA and the Legal Department

No. 19: Relationship between WTPA and the Writing Department

No. 20: Relationship between WTPA and the Office of Public Information

No. 21: Relationship between WTPA and Public Affairs Office

No. 22 Relationship between WTPA and Governing Body

No. 23: Relationship between WTPA's Board of Directors and the Governing Body

No. 24: Relationship between WTPA' officers and the Governing Body

Watch Tower Pennsylvania's responses to these interrogatories (subject to several objections including the *Serbian* Objection) are either misleading or untrue. For example, Plaintiffs requested a description of Watch Tower Pennsylvania's relationship with the Jehovah's Witnesses' Legal Department in Interrogatory No. 18. Subject to several objections (including the *Serbian* Objection), responded that Watch Tower Pennsylvania is a "client" of the Legal Department. These lawyers, however, are on Watch Tower Pennsylvania's legal staff as reflected in Watch Tower Pennsylvania's "Statement Pursuant to Section 496 of the Judiciary Law" which was filed in New York (and attached hereto as Exhibit A). Similarly, Religious Order of Jehovah's Witnesses (ROJW) and Kingdom Support Services (KSS), both corporations associated with the Jehovah's Witnesses organization, file similar Statements identifying the same legal staff (similar Statements for ROJW and KSS are attached hereto as Exhibits B and C).

Plaintiffs have alleged that the Jehovah's Witnesses' Legal Department is a legal department that serves all of the corporations and individuals associated with the Jehovah's Witnesses organization, including involvement in child sexual abuse matters. Watch Tower Pennsylvania would like to avoid the discovery of information that associates its legal department with the allegations contained in Plaintiffs' Complaint by calling itself a "client". This response is misleading, at best. The responses to the other Interrogatories listed above are similarly misleading.

Plaintiffs seek an order from this Court overruling Watch Tower Pennsylvania's objections and compelling complete responses to the interrogatories.

PMK Inquiry Area No. 3 requests testimony concerning "the relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present (including but not limited to the Governing Body, Watchtower New York, Branch Committees, Christian Congregation of Jehovah's Witnesses, California District, California Circuits and California Congregations)."

This information is relevant to the issue of an agency analysis, which Plaintiffs' counsel repeatedly attempted to explain before and during the PMK deposition.

Watch Tower Pennsylvania relied upon the *Serbian* Objection, among others, to prevent discovery in this area. Additionally, the PMK witness admitted that he was not the person most knowledgeable about the corporate structure of the organization.

Plaintiffs seek an order from this Court that overrules Watch Tower Pennsylvania's objections and compels Watch Tower Pennsylvania make available a "person most knowledgeable" regarding Watch Tower Pennsylvania's relationships with the entities listed in Inquiry Area No. 3 after complete answers are given to the other discovery requests at issue here.

IV. WATCH TOWER PENNSYLVANIA'S BUSINESS IN CALIFORNIA

Watch Tower Pennsylvania has been directly and indirectly conducting significant business transactions in California for decades. In California alone, Watch Tower Pennsylvania has loaned millions of dollars for the purchase of real estate through its Kingdom Hall Financing program; the purpose was to create buildings that would further the business of the Jehovah's Witnesses organization. Watch Tower Pennsylvania would secure their interest in the California properties with deeds of trust (not yet produced). The PMK deposition revealed that hundreds of loans have been made in California (all interest bearing) and that there are records going back as far as the mid-1980s. Plaintiffs have directed discovery to Watch Tower Pennsylvania to obtain the very records their PMK has testified exists.

a. **Kingdom Hall Financing**

Interrogatory No. 27, 31: Kingdom Hall Financing (KHF)

Request for Production No. 20: financing kingdom hall buildings

PMK Inquiry Area Nos. 6-8: Kingdom Hall Financing and California property interests

By these requests and interrogatories, Plaintiffs seek to obtain records regarding loans made in California including loan files, deeds of trust and payment information. Plaintiffs seek to learn how much profit Watch Tower Pennsylvania has made and continues to make through its California loan business.

After receiving the documents, Plaintiffs seek a PMK deponent that will provide testimony regarding the Kingdom Hall Financing program and the amounts received by Watch Tower Pennsylvania from this business program between 1972 and 2003.

b. **KHAA and Risk Management**

Watch Tower Pennsylvania has been engaged in the insurance and risk management business in California for over 25 years. Watch Tower Pennsylvania relating to the Jehovah's Witnesses organization's business Through its insurance programs (including KHAA) during the relevant time periods, Watch Tower Pennsylvania collected millions of dollars from California for the purchase of insurance policies. Additionally, Watch Tower Pennsylvania operated a Risk Management business that included investigating and discretionarily paying claims in California. Those claims include a significant payment by Watch Tower Pennsylvania for "Elder Misconduct" by one of the Track 1 defendant Elders.

Through the narrowly drawn discovery requests listed below, Plaintiffs have attempted to discover the details of this significant California contact. Plaintiffs seek information regarding Watch Tower Pennsylvania's risk management business, the processing of claims made to Watch Tower Pennsylvania from California and the process for investigating and paying claims in California.

Watch Tower Pennsylvania has been collecting a stream of insurance invoice payments from California for at least 20 years. Plaintiffs have attempted to discover the

deficit or surplus that Watch Tower Pennsylvania operates its insurance and risk management businesses.

Interrogatory Nos. 29-30, 32-37 request Watch Tower Pennsylvania to provide information regarding its involvement in the Kingdom Hall Assistance Arrangement (KHAA), the function of the Risk Management Office, the people involved in the operation of the KHAA, the administration of the KHAA program and the Risk Management Office, the purchase of insurance policies and contributions made by congregations to fund the insurance program

Plaintiffs requested through the PMK deposition notice in **PMK Request No. 4** that Watch Tower Pennsylvania produce the same types of documents: "Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution") from Watch Tower PA to California congregations, forms used in the operation of the KHAA, and claims paid in California.

PMK Inquiry Area Nos. 4-5 requested deposition testimony regarding "the Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present (including but not limited to amounts collected and amounts paid by the KHAA)" and the "Risk Management Office and its operation from 1970 to the present."

Plaintiffs seek an order from this Court overruling Watch Tower Pennsylvania's objections and compelling complete answers to the Interrogatories and Requests before Watch Tower Pennsylvania provides a PMK witness to testify about the areas described in Inquiry Areas 4 and 5.

c. **Other Monies Received From California (*i.e.* donations)**

Request for Production Nos. 21-28: monies received from California

PMK Request No. 8: monies received from California (donations, premiums, payments)

Records already produced indicate that all Jehovah's Witnesses congregations and individuals in California were instructed that donations were to be made to Watch Tower Pennsylvania. Plaintiffs have sought to discover the amount of money donated to Watch

Tower Pennsylvania from individuals and congregations in California. Watch Tower Pennsylvania has refused to provide this information that should describe its donation solicitations as a significant contact in California.

V. ALTER EGO v. AGENCY

Area of Inquiry No. 2 requested a deponent who could address "the make up and function of the Governing Body from 1970 to the present."

In its Opposition, Watch Tower Pennsylvania argues that "Plaintiffs here attempt to do an end run around and create confusion concerning the 'alter ego' issue".[3] However, again, Watch Tower Pennsylvania ignores Plaintiffs' allegations of agency, which confers general jurisdiction over the entity found to have contacts in a forum state through its agents.[4]

To the extent to which Watch Tower Pennsylvania has conducted business in California, both as an agent and through agents, is relevant to the minimum contacts analysis this Court must make.[5]

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[3] See pages 6 through 8 of Watch Tower Pennsylvania's Opposition to Plaintiffs' Separate Statement regarding the PMK Deposition Areas of Inquiry.

[4] Agency may confer general jurisdiction in the forum state over a foreign corporation. *Sonora Diamond* at 540 (citing 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, Section 167, p. 730). Whether an agency exists is a question of fact to be determined from the circumstances of each case. *Stevens v. Roman Catholic Bishop of Fresno*, (1975) 49 Cal.App.3d 877, 884. The significant test of an agency relationship is the principal's right to control the activities of the agent. *Id.* The *Stevens* court held that the priest was the corporation's agent and that he was acting within the scope of the agency at the time of the [motor vehicle] accident... the corporation had a right of control over the priest's activities within its geographical jurisdiction. Control is the key characteristic of the agent/principal relationship. *Sonora Diamond* 83 Cal.App.4th at 541. The by-laws and internal rules and regulations of religious organizations have been held to be relevant to the existence of a principal-agent relationship between various church bodies and religious workers. *Stevens* 49 Cal.App.3d at 883 (citations omitted).

[5] See Don Adams Affidavit attached hereto as Exhibit "D".

Dated: March 30, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Attorney for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On March 30, 2005, I caused the within **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES,** the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_X_ **FACSIMILE** – On March 30, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 30, 2005, at Sacramento, California.

Susan Gilbert

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
MAR 30 2005
Clerk of the Napa Superior Court
By: Deputy

BY FAX

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF WILLIAM BRELSFORD, ESQ. IN SUPPORT OF REPLY BRIEF REGARDING THE MOTION TO COMPEL DISCOVERY RESPONSES BY WATCHTOWER PENNSYLVANIA** Date: April 8, 2005 Time: 9:30 a.m. Dept. B Trial Date: None

I, William Brelsford, Jr., declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of an Amended and Restated Charter Watch Tower Bible and Tract Society of Pennsylvania.

3. Attached hereto as Exhibit B is a true and correct copy of a Certificate of Incorporation of Religious Order of Jehovah's Witnesses.

4. Attached hereto as Exhibit C is a true and correct copy of a Certificate of Incorporation of Kingdom Services Inc.

5. Attached hereto as Exhibit D is a true and correct copy of an affidavit by Watch Tower Pennsylvania President Don Adams dated February 11, 1986.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Dated: March 30, 2005

William L. Brelsford

EXHIBIT A

AMENDED AND RESTATED CHARTER
WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

A Nonprofit Corporation
Principal Office
25 Columbia Heights
Brooklyn, New York 11201-2483
Made in the United States of America

Date of original incorporation December 15, 1884, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved on the twenty-ninth day of April, *Anno Domini,* one thousand and eight hundred and seventy-four, and its supplements.

FIRST

The name of the corporation is Watch Tower Bible and Tract Society of Pennsylvania.

SECOND

The purposes of the corporation are religious, educational, and charitable, including to act as the servant and legal entity for the religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

THIRD

The location of its registered office is 1630 Spring Run Road Extension, Corapolis, Pennsylvania 15108.

FOURTH

The corporation is to exist perpetually.

FIFTH

The corporation is organized on a nonstock basis. The corporation is one that does not contemplate pecuniary gain or profit, incidental or otherwise.

SIXTH

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

SEVENTH

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The corporation shall have the powers and authority granted by law, specifically including the power to sell, lease, encumber, and otherwise convey interests in its real and personal property and the power to borrow money.

EIGHTH

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in ARTICLE SECOND. The corporation is not an employer. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any political party or in opposition to any candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

NINTH

Upon winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the

Watchtower Bible and Tract Society of New York, Inc. If the Watchtower Bible and Tract Society of New York, Inc., is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

STATEMENT PURSUANT TO § 496 OF THE JUDICIARY LAW

COPY

Watch Tower Bible & Tract Society of Pennsylvania ("Watch Tower") makes the following statement pursuant to § 496 of the New York Judiciary Law:

1. Watch Tower is a nonprofit religious, educational, and charitable corporation with offices located at 25 Columbia Heights, Brooklyn, New York 11201, and was organized for religious purposes pursuant to Pennsylvania's Act to Provide for the Incorporation and Regulation of Certain Corporations in 1874.

2. As stated in its charter, Watch Tower's corporate purposes are:

> religious, educational, and charitable, including to act as the servant and legal entity for the religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

3. Watch Tower's officers are: President, Don A. Adams, Vice President, Robert W. Wallen, Vice President, William F. Malenfant, Secretary and Treasurer, Richard E. Abrahamson, Assistant Secretary and Treasurer, Danny L. Bland, Assistant Secretary and Treasurer, Philip D. Wilcox, Assistant Secretary and Treasurer, John N. Wischuk.

4. On occasion Watch Tower may allow attorneys on its legal staff to counsel or represent individual Jehovah's Witnesses in legal matters affecting the religious interests of Jehovah's Witnesses.

5. The names and addresses of attorneys admitted to practice in the State of New York who have, in the past year, made commitments to Watch Tower to provide legal services are:

William R. Bell, 100 Watchtower Drive, Patterson, New York 12563

Christine Benham 275 Tanner Marsh Road, Guilford, Connecticut 06437

Philip Brumley, 100 Watchtower Drive, Patterson, New York 12563

Max Custer, 100 Watchtower Drive, Patterson, New York 12563

Michelle Dickinson, 27 Hudson Watch Drive, Ossining, New York 10562

Lisa Douglas, 100 Watchtower Drive, Patterson, New York 12563

Robert C. James, 100 Watchtower Drive, Patterson, New York 12563

Richard King, 100 Watchtower Drive, Patterson, New York 12563

Adam Linett, 100 Watchtower Drive, Patterson, New York 12563

James M. McCabe, 4817 Santa Monica Avenue, Suite B, San Diego, California 92017

John Miller III, 100 Watchtower Drive, Patterson, New York 12563

Richard Moake, 100 Watchtower Drive, Patterson, New York 12563

Mario F. Moreno, 100 Watchtower Drive, Patterson, New York 12563

Erna Neufeld, 100 Watchtower Drive, Patterson, New York 12563

Gregory D. Olds, 100 Watchtower Drive, Patterson, New York 12563

Paul D. Polidoro, 100 Watchtower Drive, Patterson, New York 12563

Donald T. Ridley, 100 Watchtower Drive, Patterson, New York 12563

Carolyn R. Wah, 100 Watchtower Drive, Patterson, New York 12563

WATCH TOWER BIBLE & TRACT
SOCIETY OF PENNSYLVANIA

Dated: April 8, 2003
Brooklyn, New York

Signed: Don A. Adams
Don A. Adams, President

Joel T. Dellinger
JOEL T. DELLINGER
Notary Public, State of New York
No. 01DE6062104
Qualified in Kings County
Commission Expires July 30, 2005

EXHIBIT B

CERTIFICATE OF INCORPORATION
OF
RELIGIOUS ORDER OF JEHOVAH'S WITNESSES
Under Section 402 of the Not-for-Profit Corporation Law

The undersigned incorporator hereby certifies:

ARTICLE I

The name of the corporation is RELIGIOUS ORDER OF JEHOVAH'S WITNESSES.

ARTICLE II

The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

ARTICLE III

The purposes of the corporation are religious and, specifically, to act as the legal entity for the religious order of those Jehovah's Witnesses who, in the spirit of Isaiah 6:8 and under a vow of obedience and poverty, are serving under the ecclesiastical direction of the Governing Body of Jehovah's Witnesses as special ministers who are devoting their full-time efforts to advancing the preaching, teaching, and dissemination of the gospel of God's Kingdom under Christ Jesus as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12).

ARTICLE IV

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

ARTICLE V

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The number of directors, directors' qualifications, the manner of electing directors, and other matters pertaining to directors shall be as provided in the bylaws. The names and addresses of the initial directors are as follows:

Philip Brumley
131 Brimstone Road
Patterson, New York 12563

Mario F. Moreno
720 Route 292
Holmes, New York 12531

Gregory D. Olds
79 Willow Street
Brooklyn, New York 11201

ARTICLE VI

This corporation is to exist perpetually.

ARTICLE VII

The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is: 25 Columbia Heights, Brooklyn, New York 11201-2483.

ARTICLE VIII

The office of this corporation is to be located in Kings County, State of New York.

ARTICLE IX

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in ARTICLE III hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any political party or candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code.

ARTICLE X

Upon the winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the Watch Tower Bible and Tract Society of New York, Inc. If the Watch Tower Bible and Tract Society of New York, Inc. is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code.

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STATEMENT PURSUANT TO § 496 OF THE JUDICIARY LAW COPY

Religious Order of Jehovah's Witnesses makes the following statement pursuant to § 496 of the New York Judiciary Law:

1. Religious Order of Jehovah's Witnesses, is a not-for profit religious corporation with offices located at 25 Columbia Heights, Brooklyn, New York 11201, and was organized for religious purposes under Section 402 of New York's Not-for-Profit Corporation Law in 2000.

2. As stated in its charter, Religious Order of Jehovah's Witnesses' corporate purposes are:

> religious and, specifically, to act as the legal entity for the religious order of those Jehovah's Witnesses who, in the spirit of Isaiah 6:8 and under a vow of obedience and poverty, are serving under the ecclesiastical direction of the Governing Body of Jehovah's Witnesses as special ministers who are devoting their full-time efforts to advancing the preaching, teaching, and dissemination of the gospel of God's Kingdom under Christ Jesus as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12).

3. Religious Order of Jehovah's Witnesses' officers are: President, Patrick J. LaFranca, Vice President, Ralph E. Walls, Vice President, Peter D. Molchan, Secretary and Treasurer, Joseph D. Mercante, Assistant Secretary and Treasurer, Eugene D. Rosam, Jr., Assistant Secretary and Treasurer, Kenneth J. Pulcifer, Assistant Secretary and Treasurer, Marvin G. Smalley.

4. On occasion Religious Order of Jehovah's Witnesses may allow attorneys on its legal staff to counsel or represent individual Jehovah's Witnesses in legal matters affecting the religious interests of Jehovah's Witnesses.

5. The names and addresses of attorneys admitted to practice in the State of New York who have, in the past year, made commitments to Religious Order of Jehovah's Witnesses' to provide legal services are:

William R. Bell, 100 Watchtower Drive, Patterson, New York 12563

Christine Benham 275 Tanner Marsh Road, Guilford, Connecticut 06437

Philip Brumley, 100 Watchtower Drive, Patterson, New York 12563

Max Custer, 100 Watchtower Drive, Patterson, New York 12563

Michelle Dickinson, 27 Hudson Watch Drive, Ossining, New York 10562

Lisa Douglas, 100 Watchtower Drive, Patterson, New York 12563

Robert C. James, 100 Watchtower Drive, Patterson, New York 12563
Richard King, 100 Watchtower Drive, Patterson, New York 12563
Adam Linett, 100 Watchtower Drive, Patterson, New York 12563
John Miller III, 100 Watchtower Drive, Patterson, New York 12563
Richard Moake, 100 Watchtower Drive, Patterson, New York 12563
Mario F. Moreno, 100 Watchtower Drive, Patterson, New York 12563
Erna Neufeld, 100 Watchtower Drive, Patterson, New York 12563
Gregory D. Olds, 100 Watchtower Drive, Patterson, New York 12563
Paul D. Polidoro, 100 Watchtower Drive, Patterson, New York 12563
Donald T. Ridley, 100 Watchtower Drive, Patterson, New York 12563
Carolyn R. Wah, 100 Watchtower Drive, Patterson, New York 12563

RELIGIOUS ORDER OF JEHOVAH'S WITNESSES.

Dated: April 8, 2003
Patterson, New York

Signed: Patrick J. LaFranca
Patrick J. LaFranca, President

STATE OF NEW YORK)
) ss.:
COUNTY OF PUTNAM)

Sworn to before me on April 8, 2003.

Michael A Guzman
Notary Public

My commission expires:

MICHAEL A. GUZMAN
Notary Public-State of New York
No. 01GU6076764
Qualified in Putnam County
My Commission Expires July 1, 2006

EXHIBIT C

CERTIFICATE OF INCORPORATION
OF
KINGDOM SUPPORT SERVICES, INC.
Under Section 402 of the Not-for-Profit Corporation Law

The undersigned incorporator hereby certifies:

ARTICLE I

The name of the corporation is KINGDOM SUPPORT SERVICES, INC.

ARTICLE II

The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law and is a Type B corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

ARTICLE III

The purposes of the corporation are religious and specifically to: own, operate, and maintain vehicles for the use and benefit, and otherwise provide for the transportation needs, of the members of any religious order of Jehovah's Witnesses and other persons who, from time to time, may be asked to assist any such religious order; provide for the transportation of religious literature and materials for the advancement of the religious activities of Jehovah's Witnesses; provide technical and construction services for the benefit of Jehovah's Witnesses in planning and erecting places of religious worship, facilities for the administration of the religion of Jehovah's Witnesses, religious educational facilities, facilities for publishing, printing, recording, and other activities in furtherance of the religion of Jehovah's Witnesses worldwide; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

ARTICLE IV

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

ARTICLE V

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The number of directors, directors' qualifications, the manner of

electing directors, and other matters pertaining to directors shall be as provided in the bylaws. The names and addresses of the initial directors are as follows:

Philip Brumley
131 Brimstone Road
Patterson, New York 12563

Mario F. Moreno
720 Route 292
Holmes, New York 12531

Gregory D. Olds
79 Willow Street
Brooklyn, New York 11201

ARTICLE VI

This corporation is to exist perpetually.

ARTICLE VII

The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the corporation served upon him is: 98 Montague Street, Brooklyn, New York 11201.

ARTICLE VIII

The office of this corporation is to be located in Kings County, State of New York.

ARTICLE IX

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in ARTICLE III hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any political party or candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any



future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code.

ARTICLE X

Upon the winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the Watch Tower Bible and Tract Society of New York, Inc. If the Watch Tower Bible and Tract Society of New York, Inc. is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding section of any future federal tax code.

STATEMENT PURSUANT TO § 496 OF THE JUDICIARY LAW COPY

Kingdom Support Services, Inc., makes the following statement pursuant to § 496 of the New York Judiciary Law:

1. Kingdom Support Services, Inc., is a not-for profit religious corporation with offices located at 2823 Route 22, Patterson, New York 12563, and was organized for religious purposes under Section 402 of New York's Not-for-Profit Corporation Law in 2000.

2. As stated in its charter, Kingdom Support Services, Inc.'s corporate purposes are to:

> own, operate, and maintain vehicles for the use and benefit, and otherwise provide for the transportation needs, of the members of any religious order of Jehovah's Witnesses and other persons who, from time to time, may be asked to assist any such religious order; provide for the transportation of religious literature and materials for the advancement of the religious activities of Jehovah's Witnesses; provide technical and construction services for the benefit of Jehovah's Witnesses in planning and erecting places of religious worship, facilities for the administration of the religion of Jehovah's Witnesses, religious educational facilities, facilities for publishing, printing, recording, and other activities in furtherance of the religion of Jehovah's Witnesses worldwide; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

3. Kingdom Support Services, Inc.'s officers are: President, Harold L. Corkern, Vice President, Robert L. Butler, Vice President, Alan D. Janzen, Secretary and Treasurer, Alexander W. Reinmueller, Assistant Secretary and Treasurer, Alan G. Browning, Assistant Secretary and Treasurer, Thomas Kalimeris, Assistant Secretary and Treasurer, James F. Mantz, Jr.

4. On occasion Kingdom Support Services, Inc., may allow attorneys on its legal staff to counsel or represent individual Jehovah's Witnesses in legal matters affecting the religious interests of Jehovah's Witnesses.

5. The names and addresses of attorneys admitted to practice in the State of New York who have, in the past year, made commitments to Kingdom Support Services, Inc. to provide legal services are:

William R. Bell, 100 Watchtower Drive, Patterson, New York 12563

Christine Benham 275 Tanner Marsh Road, Guilford, Connecticut 06437

Philip Brumley, 100 Watchtower Drive, Patterson, New York 12563

Max Custer, 100 Watchtower Drive, Patterson, New York 12563

Michelle Dickinson, 27 Hudson Watch Drive, Ossining, New York 10562
Lisa Douglas, 100 Watchtower Drive, Patterson, New York 12563
Robert C. James, 100 Watchtower Drive, Patterson, New York 12563
Richard King, 100 Watchtower Drive, Patterson, New York 12563
Adam Linett, 100 Watchtower Drive, Patterson, New York 12563
John O. Miller III, 100 Watchtower Drive, Patterson, New York 12563
Richard Moake, 100 Watchtower Drive, Patterson, New York 12563
Mario F. Moreno, 100 Watchtower Drive, Patterson, New York 12563
Erna Neufeld, 100 Watchtower Drive, Patterson, New York 12563
Gregory D. Olds, 100 Watchtower Drive, Patterson, New York 12563
Paul D. Polidoro, 100 Watchtower Drive, Patterson, New York 12563
Donald T. Ridley, 100 Watchtower Drive, Patterson, New York 12563
Carolyn R. Wah, 100 Watchtower Drive, Patterson, New York 12563

KINGDOM SUPPORT SERVICES, INC.

Dated: Brooklyn, New York

Signed: Harold L. Corkern
Harold L. Corkern, President

SWORN TO BEFORE ME THIS 18th DAY OF JUNE, 2003.

David Bean

DAVID BEAN
Notary Public, State of New York
No. 01BE5045991
Qualified in Kings County
Commission Expires June 26, 2003

EXHIBIT D

EXHIBIT D

FILED

FEB 10 1986

Time 11:40 O'Clock A M
EVA LINDSEY
District Clerk, Fannin Co., Texas
By Connie Eller Deputy

AFFIDAVIT OF DON ADAMS

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Don Adams, after being duly sworn, depose and say:

1. I am over 21 years of age and reside at 124 Columbia Heights, Brooklyn, New York 11201. I have never been convicted of a felony or a crime of moral turpitude and I am competent to testify.

2. I am the Assistant Secretary-Treasurer of the Watchtower Bible and Tract Society of New York, Inc., and, as such, I am familiar with the books, records, publications and operating procedures of the Watchtower Bible and Tract Society of New York, Inc. I have personal knowledge of the facts set out herein and I am a custodian of the official records and publications described herein.

3. The Watchtower Bible and Tract Society of New York, Inc. is the parent organization of all congregations of Jehovah's Witnesses in the United States, including the Bonham Congregation of Jehovah's Witnesses located in Bonham, Texas.

4. It is the teaching and practice of Jehovah's Witnesses to follow the example of first century Christians. A Governing Body, at present comprised of thirteen men, direct all teaching, preaching, disciple-making and congregational activ-

EXHIBIT
27

ities of Jehovah's Witnesses throughout the world. (See the basic organization manual of Jehovah's Witnesses, Organized to Accomplish Our Ministry, pages 10 and 25, and The Watchtower, the official semimonthly journal of Jehovah's Witnesses, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

5. Regarding the position of the Governing Body, Organized to Accomplish Our Ministry states at page 28:

> All in the organization recognize God's way of theocratic control. The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangements for the benefit of all.

6. To implement their decisions, the Governing Body uses a hierarchial organization together with corporate entities, when appropriate, to accomplish its worldwide work of teaching and declaring the good news of God's established Kingdom. The principal corporation used by the Governing Body is the Watch Tower Bible and Tract Society of Pennsylvania. (See Organized to Accomplish Our Ministry, page 26.)

7. Under the Watch Tower Bible and Tract Society of Pennsylvania, the Governing Body directs 95 branches through Branch Committees that report their progress to the Governing Body and implement the directives of the Governing Body in a uniform manner. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

8. The Watchtower Bible and Tract Society of New

York, Inc. is a branch used to administer to the needs of Jehovah's Witnesses in the United States. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

9. The United States Branch is part of a zone, which is supervised by a Zone Overseer. Organized to Accomplish Our Ministry states at page 53:

> Periodically, arrangements are made by the Governing Body to have qualified brothers serve each of the branches throughout the earth.

These visits are comprehensive and cover every aspect of the branch's activities. A primary objective is to assure that each branch is working in harmony with the directives of the Governing Body.

10. Each zone is made up of districts. Each district is supervised by a District Overseer. Organized to Accomplish Our Ministry states at page 51:

> The district overseer is a traveling elder who is also appointed by the Governing Body and assigned by the branch office to serve a number of circuits that comprise a district.

At regular intervals, the District Overseer reports to the branch on the progress and spiritual health of the circuits which make up the district to which he is assigned. Like the Zone Overseer, he is charged with the responsibility to assure that all of the activities in the district conform to the directives of the Governing Body. (See Organized to Accomplish Our Ministry, pages 51 and 52.)

> [I]t is Jehovah's arrangement and he will hold the overseers responsible for their actions. They are representing him and his theocratic rule. He will remove from office [through the actions of the Governing Body] those overseers who fail to manifest the fruitage of the spirit and whose pattern of life falls short of the Scriptural requirements.

(Also See Organized to Accomplish Our Ministry, pages 41-53.)

14. The responsibility of all of these positions is to assure the unity and oneness of the congregations throughout the world with the direction of the Governing Body. (See Organized to Accomplish Our Ministry, page 54.)

15. Each position is filled by appointment from the Governing Body and each appointed representative is required to cooperate with the Governing Body. (See Organized to Accomplish Our Ministry, page 41 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

16. Appointed representatives within the congregations fall into two catagories, elders or overseers and ministerial servants. (See Organized to Accomplish Our Ministry, pages 28 to 40 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 599 to 601.)

17. It is the responsibility of the body of elders to see that the congregation is managed according to the directives of the Governing Body. In harmony with these directives, each body of elders has specific responsibilities to be filled by qualifying elders. Each congregation has the following positions to be filled: the presiding overseer, secretary, service

overseer, Watchtower Study conductor and Theocratic Ministry School overseer. Organized to Accomplish Our Ministry states at page 42:

> The presiding overseer serves as chairman at the meetings of the body of elders. Communications and important records of the congregation are handled by the secretary who keeps the elders informed about important communications. Arrangements for field activity and other service-related matters come under the direction of the service overseer.

18. There are five scheduled meetings of worship which each member of the congregation attends. While these meetings are conducted by the local body of elders in each congregation, the material covered in the meetings is prescribed by the Governing Body in order to assure that all of the congregations are receiving the same information and direction. (See The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 601 to 603.)

19. One area in which the body of elders would conduct matters for the benefit of the congregation and subject to the Governing Body would be in the area of buying or selling real estate to be used by the local congregation as a place of worship know as the Kingdom Hall.

20. By "Memorandum on Kingdom Halls" from Hayden C. Covington, General Counsel for Watchtower Society and Jehovah's Witnesses, dated September 1960, bodies of elders in the United States Branch received instructions regarding ownership of Kingdom Halls. Under the subheading, "Relationship Between

Congregation and Titleholders," the memorandum states in part:

> When either a corporation or trustee arrangement is made and title to property is vested in the corporation or trustees, the titleholders have the same relationship to the congregation as does any other instrument, equipment or property necessary to carry out the work of the congregation, which is preaching the good news in the assigned territory and holding meetings. All such instruments or tools are used to serve the congregation in harmony with the theocratic government.
>
> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants of the congregation in whom is vested legal title to the Kingdom Hall. Titleholders as such do not act as a part of the congregation committee to operate the Kingdom Hall or run the business of the congregation. They have absolutely nothing to do with the use to be made of the property and cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the Kingdom Hall, making of repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

21. By memorandum entitled "Information Regarding Ownership of Kingdom Halls" from the Office of the Secretary and Treasurer of the Watch Tower Bible and Tract Society of Pennsylvania, dated April 1, 1982, similar language defines the relationship between congregation and titleholders:

> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants

> of the congregation in whom is vested legal title to the Kingdom Hall. The titleholders as such do not act as a part of the committee to operate the Kingdom Hall or run the business of the congregation. The titleholders, as such, have absolutely nothing to do with the use to be made of the property. They cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the hall, making repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

22. The trustees holding title for any Kingdom Hall resemble the "Trustees" which held title to the church property which was the subject of the controversy in a landmark United States Supreme Court case, Watson v. Jones, 80 U.S. 679 at 681:

> Connected with each local church, and apparently without any functions in essence ecclesiastically, are what are called the "Trustees;" three persons usually, in whom is vested for form's sake, the legal title to the church edifice and other property; the equitable power of management of the property being with the Session. These Trustees are usually elected biennially; they are subject to the Session, and may be removed by the congregation.

23. In 1964 when the Bonham Congregation secured a mortgage through the Watchtower Bible and Tract Society, it was determined by vote from the congregation that it would be willing to contribute to cover the expenses of a mortgage and contemplated construction expenses. All matters were handled between the body of elders and Watchtower Bible and Tract Society of New York, Inc. acting in harmony with the directives of the Governing Body as expressed in the above-mentioned correspondence and other publications of the Watchtower Bible and Tract Society

of New York, Inc.

24. By notice dated June 4, 1985, the following duly appointed elders of the Bonham Congregation of Jehovah's Witnesses were deleted from their appointed positions and are no longer elders of Jehovah's Witnesses: (1) Wendel Baker; (2) Trymer L. Berry; (3) James E. Coleman; (4) Ralph E. Deal; and (5) Tony M. Jones.

25. There are currently four duly appointed elders in the Bonham Congregation of Jehovah's Witnesses who are recognized by the Governing Body of Jehovah's Witnesses. They are (1) Luther Brogdon; (2) Richard L. Scofield; (3) Ronald H. Williams; and (4) Bennie Bolin. Their dates of appointment were (1) Luther Brogdon—July 4, 1985; (2) Richard L. Scofield—June 4, 1985; (3) Ronald H. Williams—November 28, 1985; and (4) Bennie Bolin—November 28, 1985.

26. From the dates of their appointment, the above-mentioned duly appointed elders (Luther Brogdon, Richard L. Scofield, Ronald H. Williams, and Bennie Bolin) have had the duty and responsibility to insure that the Kingdom Hall property located at 1105 Pecan Street, Bonham, Texas, is properly cared for and secured on behalf of the Bonham Congregation of Jehovah's Witnesses.

27. Each Kingdom Hall owned by Jehovah's Witnesses, including the Bonham Kingdom Hall, is dedicated solely to the worship and service of Almighty God Jehovah by means of a solem

ceremony conducted in harmony with the Holy Scriptures and by virtue of such dedication, may not be used for any secular or mundane purpose or for religious services which are in conflict with the Holy Scriptures and the theocratic organization of Jehovah's Witnesses which is directed by the Governing Body and of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc.

28. Only the four above-mentioned appointed elders act on behalf of the Governing Body of Jehovah's Witnesses under authority customarily delegated to congregational elders. They and the Bonham Congregation of Jehovah's Witnesses, are entitled to the uninterrupted use and enjoyment of the Bonham Congregation Kingdom Hall located at 1105 Pecan Street, Bonham, Texas.

Respectfully submitted,

Don Adams

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

On the 11th day of February, 1986, before me personally came Don Adams, a person known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Roger T. Biles

Roger T. Biles
Notary Public, State of New York
No. 24-01BI4761180
Qualified in Kings County
Comm. Expires March 30, 1986



I hereby certify that the aforesaid is a true and correct copy on file or of record in the 336th Judicial District Court, Fannin Co., Texas, signed and sealed this 28th day of Feb., 2005 A.D.

Rochelle Turner
Clerk, District Courts,
Fannin County, Texas

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CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On March 30, 2005, I caused the within **DECLARATION OF WILLIAM BRELSFORD, ESQ. IN SUPPORT OF REPLY BRIEF REGARDING THE MOTION TO COMPEL DISCOVERY RESPONSES BY WATCHTOWER PENNSYLVANIA**, the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_X_ **FACSIMILE** – On March 30, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 30, 2005, at Sacramento, California.

Susan Gilbert

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
MAR 2 1 2005
Clerk of the Napa Superior Court
By: Ana O. Lohers
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

CHURCH DEFENDANTS' REPLY IN SUPPORT OF MOTIONS TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINTS

DATE: **April 8, 2005**
TIME: **9:30 AM**
DEPT.: **B**
TRIAL DATES: **Not yet set**

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1. Plaintiffs' references to ecclesiastical discipline or standing should be struck.

Plaintiffs go to great length in their opposition brief (at pp. 4-6) to discuss sex abuse claims *in general* and how courts across the country have arguably addressed such claims, thereby skirting the narrow issue presented by this motion. Indeed, Plaintiffs' lengthy discussion does *not* demonstrate that the allegations concerning the individual co-defendants or alleged abusers being a "member in good standing" of a congregation are either "essential" or "pertinent" to any of the claims alleged in the complaint. *See* CCP §431.10(b)(1), (2).

Moreover, the courts cannot constitutionally substitute their judgment for that of a church as to whether a church member should be in "good standing," "bad standing," or some

other category of standing. The Church Defendants have cited and discussed *only* California cases and Ninth Circuit case law that expressly hold that such questions of religious faith, discipline, and custom are expressly reserved to the church judicatories. *See* Church Defendants' original supporting memorandum at pp. 5-6. Plaintiff's opposition brief does not even address those cases or the points on which Church Defendants rely.

This motion to strike should be granted.

2. As pled by Plaintiffs, the Church Defendants are legally incapable of conspiring with themselves. Therefore, all conspiracy allegations should be struck.

Plaintiffs' opposition ignores the similarly pled paragraphs of each Plaintiff's complaint, in which each Plaintiff unambiguously alleges that each of the Church Defendants were "the agent of . . . each other" and, at all relevant times, were each "acting within the scope and course of his or its authority as an agent . . ." with respect to certain alleged activities. Thus, as expressly pled by each Plaintiff, *the agent's immunity rule* articulated in the *Applied Equip. Corp.* and *Wise* cases discussed in the Church Defendant's original supporting memorandum (at pp. 7-8) renders each of the Church Defendants *legally incapable* of conspiring with each other. As a result, each Plaintiff's conspiracy allegations are legally immaterial and impertinent and should be struck.

3. Plaintiff's negligent *appointment* and *retention* allegations should be struck.

Plaintiffs' opposition brief does not properly address the issues raised in this motion, because Church Defendants did *not* move to strike the negligent ***supervision*** allegations from each Plaintiff's cause of action; instead, the motion very specifically addressed only the constitutionally impermissible negligent ***appointment*** and negligent ***retention*** allegations. Thus, Plaintiffs' citation to and reliance upon case law from across the country concerning negligent ***supervision*** claims is both misplaced and wholly irrelevant to the this motion.

The case law cited in Church Defendants' original supporting memorandum (at pp. 9-10) supports this motion, because courts may not constitutionally interfere with the *appointment* and *retention* decisions of a church with respect to its clergy or ministers. The courts simply are prohibited from imposing standards on such appointment and retention decisions by churches,

so those allegations are legally impermissible and immaterial.

Accordingly, this motion to strike also should be granted.

4. The allegations concerning failure to report should be struck.

Plaintiffs essentially admit that the California Child Abuse and Neglect Reporting Act, or CANRA, is inapplicable to these cases. Moreover, plaintiffs do not even discuss, much less dispute, that *church entities and corporations have never had a duty to report*, as briefed by the Church Defendants. Thus, there is neither a statutory basis nor a negligence *per se* theory on which Plaintiffs can rely here to support their failure to report allegations.

Instead, Plaintiffs now argue there is a new *common law* duty to report, notwithstanding a complete absence of legal authority to support such a contention. (Indeed, given Plaintiffs' penchant for citing case law from across the country on the other pending motions, it is a fair assumption that they found no case law supporting assertion of a purely common law negligence theory underlying a failure to report claim.)

The failure to report allegations should be struck from each Plaintiff's complaint.

CONCLUSION

For the reasons discussed in the Church Defendants' supporting memorandum and this reply, each of the four motions to strike should be granted in each of the coordinated cases.

DATED: March 16, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

5024696.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 16, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANT'S REPLY IN SUPPORT OF MOTIONS TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINTS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 16, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
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Attorneys for The Church Defendants

FILED

MAR 2 1 2005

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **CHURCH DEFENDANTS' REPLY IN SUPPORT OF DEMURRERS** **DATE:** **April 8, 2005** **TIME:** **9:30 AM** **DEPT.:** **B** **TRIAL DATES: Not yet set**
AND COORDINATED CASES	

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I. DISCUSSION[1]

A. Plaintiffs have failed to plead their fraud claims with the particularity required by California law.

The crux of the demurrer against Plaintiffs' fraud causes of action is that a fraud claim requires the pleading of "how, when, where, to whom, and by what means the representations were tendered." *Lazar v. Superior Court of Los Angeles* (1996) 12 Cal.4th 631, 645, 49 Cal.Rptr.2d 377, 385. Here, Plaintiffs admit in their opposition that they have *not* complied with California law requiring that fraud claims be pled with that degree of particularity.

[1] Notwithstanding the allegations in Plaintiffs' complaints, Plaintiffs now belatedly state that the cause of action alleging sexual battery in each complaint was not alleged against the Church Defendants. *Plaintiff's Opposition* at p. 5. The Church Defendants accept Plaintiffs' concession, and the demurrer should thus be sustained.

As the Court in *Lazar* stated, a plaintiff's burden in pleading fraud *against a corporation* is so great that the plaintiff must allege the names of the persons who made the allegedly fraudulent representations, their authority to speak on behalf of the corporation, to whom the representations were made, what they said or wrote, and when the representations were made. *Id.*, 12 Cal.4th at 645.

Even though Plaintiffs specifically pled that each of the Church Defendants is a corporation, Plaintiffs have not in turn pled their fraud claims with the particularity required by *Lazar* in any of the coordinated cases. Accordingly, the demurrers to Plaintiffs' fraud causes of action should be sustained in each of these cases.

B. Plaintiffs do not allege the unique circumstances necessary to support their breach of fiduciary duty claims.

Plaintiffs fail to allege the foundational facts necessary to support the required element of a fiduciary duty owed to each of them by each of the Church Defendants and instead rely on allegations that are nothing more than legal conclusions. Also, while case law supports the view that an individual priest may have a fiduciary relationship with a parishioner under certain limited circumstances, *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 279, 130 Cal.Rptr.2d. 601, 616, Plaintiffs here have *neither* pled the unique factual circumstances required to establish that the corporate Church Defendants owed Plaintiff a fiduciary duty *nor* cited any case law to support such a view. The demurrer to each Plaintiff's breach of fiduciary duty claim thus should be sustained.

C. Under the agent's immunity rule, Plaintiffs' conspiracy causes of action fail as a matter of law.

Plaintiffs specifically pled in their complaints in each of the coordinated cases that each of the Church Defendants "is the agent, servant, and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint."

Thus, under the agent's immunity rule, and as specifically pled by each Plaintiff, the

Church Defendants are *legally incapable* of conspiring with each other. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 512, 28 Cal.Rptr.2d 475, 479. Accordingly, the agent's immunity rule dictates that this demurrer be sustained.

Moreover, Plaintiffs' opposition recognizes that under California law (*see Applied Equip. Corp.*, 7 Cal.4th at 510-11), conspiracy does not constitute a separate, cognizable cause of action. For that reason also, the demurrer to the conspiracy cause of action should be sustained.

D. As a matter of law, Plaintiffs cannot assert failure to report claims under negligence *per se* or common law negligence theories.

Plaintiff Shane Pence continues to assert that he has a viable claim under the California Child Abuse and Neglect Reporting Act ("CANRA"), Penal Code §11165.7(a)(32). However, Plaintiff ignores the fact that *corporate entities* like the Church Defendants do not fall within the statutory definition of "clergy member" in that sub-section and thus are *not* mandated reporters under §11165.7(a)(32). It necessarily follows that Plaintiff's argument fails as a matter of law, and the demurrer should be sustained.

Moreover, as previously briefed in their original supporting memorandum (at pp. 14-15), CANRA does not create a private right of action on behalf of a person like Plaintiff Shane Pence. For that reason also, the demurrer should be sustained.

E. Plaintiffs' IIED claims fail as a matter of law.

Plaintiffs' intentional infliction of emotional distress ("IIED") claims rely on alleged inaction of the Church Defendants to protect them. However, Plaintiffs' complaints in these coordinated cases fail to allege how any such inaction, or omission, was *primarily directed* at each Plaintiff, as required by California law. *See Potter v. Firestone Tire and Rubber Co.* (1993) 6 Cal.4th 965, 1002, 25 Cal.Rptr.2d 550 ("The requirement that the defendant's conduct be directed primarily at the plaintiff is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury.")

Thus, Plaintiffs here each fail to allege facts sufficient to support that required element of an IIED claim. This demurrer should be sustained.

F. Plaintiffs' negligence causes of action against the Church Defendants fail because Plaintiffs have not alleged the foundational facts necessary to support the legal duty element.

To proceed on a negligence claim, Plaintiffs here must establish that Church Defendants each had an actionable legal duty to use due care with respect to each Plaintiff, that this duty was breached, and that the breach proximately caused Plaintiff's alleged injuries. *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 292, 253 Cal.Rptr. 97. However, Plaintiffs have failed to allege *any* foundational facts that would establish that any of the Church Defendants owed any of the Plaintiffs an actionable legal duty.[2] [3]

***Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.*, and *Meyer v. Lindala, et al.* provide guidance on the special relationship issue.** It is instructive to first look to appellate court decisions from other jurisdictions involving Jehovah's Witnesses that address the special relationship issue. The Maine Supreme Court faced this precise issue in *Bryan R. v. Watchtower Bible and Tract Society of New York, Inc.* (Maine 1999) 738 A.2d 839, *cert. denied* (2000) 528 U.S. 1189, which was dismissed at the pleading stage of the case. There, the Maine Supreme Court expressly "decline[d] to recognize a general common law duty on the part of an organization such as a church to protect its members from each other." 738 A.2d at 845. The creation of a general common law duty on the part of a church or other voluntary organization requiring it to protect its members from each other would give rise to "both unlimited liability and liability out of all proportion to culpability." *Id.* at 847. In affirming the dismissal of the *Bryan R.* case at the pleading stage, the Maine Supreme Court did *not* allow a generalized common law duty to be imposed on voluntary organizations to protect their members from one another in the absence of a finding of a special relationship between the

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[2] "[T]he existence of a duty is a question of law, not an issue of fact." *Parsons v. Crown Disposal Co.* (1997) 15 Cal.4th 456, 465, 63 Cal.Rptr. 291. Also, Plaintiffs disingenuously contend in their opposition that this Court has already ruled as that the Church Defendants did, in fact, owe Plaintiffs a legal duty. A review of the Order's submitted by Plaintiffs simply do *not* support that contention.

[3] In the coordinated of *Charissa W.* (Napa County case no. 26-22191), this Court previously overruled a demurrer against negligence causes of action based largely on plaintiffs' allegations in *Charissa W.* that the alleged abuser, Edward Villegas, "used a daycare center run out of the Villegas home to attract new converts" to the local congregation. *Charissa W.*, Amended Complaint at ¶24. Any such allegations or alleged nexus to church activities is notably absent from the operative complaints in the coordinated cases from other counties.

parties.

In another case involving Jehovah's Witnesses, *Meyer v. Lindala* (Minn. App. 2004) 675 N.W.2d 635, the plaintiffs sued the Watchtower Bible and Tract Society of New York and a local congregation of Jehovah's Witnesses, alleging that the plaintiffs had been sexually abused by a congregation member who was his late teens at the time. The plaintiffs alleged that the Church Defendants had a legal duty to protect them from foreseeable harm and that they had a special relationship with the Church Defendants. However, the trial court granted the Church Defendants' motion for summary judgment, holding that the Church Defendants had no such duty and that the plaintiffs had no special relationship with the Church Defendants.

The Minnesota Court of Appeals affirmed, holding that "[p]roviding faith-based advice or instruction, without more, does not create a special relationship." *Id.* at 640. Additionally, the court of appeals stated that even if "the organization's doctrine ... requires members to bring complaints exclusively to the attention of elders ... [the] Congregation and Watchtower did not assume a duty owed to [plaintiffs] but rather acted within their constitutional right to religious freedom, which includes the authority to 'independently decide matters of faith and doctrine' and 'to believe and speak what it will.'" *Id.* at 641 (citations omitted). The Minnesota appellate court accordingly concluded that the trial court "did not err in finding there was no special relationship between the parties and therefore no duty owed." *Id.* (In May 2004, the Minnesota Supreme Court denied review of the Court of Appeals' ruling that there was no special relationship between the plaintiffs and the Church Defendants.)

In sum, Church Defendants here had no "special relationship" with Plaintiff and thus owed no legally cognizable duty to Plaintiff. The demurrers to Plaintiff's tort-based causes of action should each therefore be sustained.

Under California law there is no duty to warn a plaintiff of foreseeable harm *absent a special relationship*. With respect to the duty element of each Plaintiff's negligence causes of action, Plaintiff's opposition brief really makes no argument at all. However, California law is clear: "One is ordinarily not liable for the actions of another and is under no duty to protect another from harm, *in the absence of a special relationship of custody or control.*" *Nally*, 47

Cal.3d at 293 (emphasis added). Later cases have recognized this pronouncement as the beginning "proposition" that led the *Nally* Court to hold that "unlicensed spiritual counselors had *no duty* to prevent even a foreseeable suicide, and no general professional duty of care." *Quigley v. First Church of Christ, Scientist* (1998) 65 Cal.App.4th 1027, 1034, 76 Cal.Rptr.2d 792, 796.

As explained by the California Supreme Court in *Nally,* "[m]ere foreseeability of the harm or knowledge of the danger is *insufficient* to create a legally cognizable special relationship giving rise to a legal duty to prevent harm." *Nally* at 297 (emphasis added). This is true even if it involves the foreseeable harm of a criminal act of a third party. *Rodriguez v. Inglewood Unified School District* (1986) 186 Cal.App.3d 707, 712, 230 Cal.Rptr. 823. Thus, any argument by Plaintiffs about a foreseeability of harm analysis is inapposite and essentially puts the cart before the horse.

Each Plaintiff alleges that he or she was injured as a result of the criminal acts of an individual defendant and that Church Defendants negligently failed to warn him or her that the individual defendant was a child molester. Plaintiffs' allegations in each case against Church Defendants thus sound in nonfeasance, not misfeasance. *Rodriguez*, 186 Cal.App.3d at 712. As previously briefed, the distinction between misfeasance and nonfeasance is important in determining whether a defendant owes a plaintiff a legal duty of care. But even if it is assumed, *arguendo,* that Church Defendants knew an individual defendant was a child molester, the Church Defendants still did not owe a legal duty to any Plaintiff. A person has no legal duty "to control the conduct of another, nor to warn those endangered by such conduct" unless he "stands in some special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct." *Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425, 435, 131 Cal.Rptr.14.

As a matter of law, Church Defendants did not have a "special relationship" with any Plaintiff. California law does not recognize a special relationship between a minister and a parishioner, nor does a minister owe a parishioner a heightened duty of care. *Rodriguez*, 186 Cal.App.3d at 712, 713; *Roman Catholic Bishop of San Diego v. Superior Court* (1996) 42

Cal.App.4th 1556, 1568, 50 Cal.Rptr.2d 399; *Richelle L.*, 106 Cal.App.4th at 270 (holding that there is not a special relationship between ministers and their parishioners for purposes of a negligence claim). It follows that, as a matter of law, a church entity cannot have a special relationship with a parishioner.

Moreover, Plaintiffs here simply have not alleged any foundational facts that would support a claim of a special relationship with the corporate Church Defendants. Rather, each Plaintiff relies on an allegation of a pure legal conclusion that the Church Defendants somehow "assume[d] responsibility for the development, protection and discipline of its membership," which, in turn, created a special relationship. *See, e.g. Complaint,* in *Javier C.* at ¶16. But that conclusory allegation and other similar allegations in the other complaints do not give rise to a special relationship under California law.

In *Roman Catholic Bishop of San Diego, supra,* the plaintiff alleged that she had been sexually abused by a priest and that the diocese and parish were liable for damages because the church had placed priests "in a unique position of trust and confidence" and because the priests' vow of celibacy "add[ed] to their aura of spiritual power and authority, [under which] a child [parishioner] should suppose herself to be safe from sexual abuse." *Id.*, 42 Cal.App.4th at 1567-68. Nonetheless, the Court of Appeal affirmed the diocese's motion for summary judgment and held that a special relationship did not exist because "the church had no greater civil duty based upon its religious tenets." *Id.* at 1568. The Court of Appeal also noted that plaintiffs are precluded from alleging a special relationship based on a church's religious structure or practices or on a church's beliefs. *Id.*

In Richelle L., supra, the plaintiff sued a Catholic priest and the Archdiocese of San Francisco, seeking damages for injuries she allegedly sustained as a result of a sexual relationship initiated by the priest. *Id.*, 106 Cal.App.4th at 264. The complaint alleged a cause of action for "general negligence" against both the priest and the archdiocese. *Id.* at 265. To establish the requisite element of duty, the plaintiff argued that the priest's or archdiocese's nonfeasance, *i.e.*, their alleged failure to act to protect her, was actionable because of her "special relationship" with the priest. *Id.* at 268. To support that special relationship argument,

the plaintiff pointed to such long-established special relationships as the physician/patient and attorney/client relationships. *Id.* However, the Court of Appeal rejected that argument, holding that a minister "cannot be liable to [the plaintiff] for breach of a duty to arising out of a special relationship" with a parishioner because that would be equivalent to a prohibited clerical malpractice claim. *Id.* at 270. The Court of Appeal held that, as a matter of law, no "special relationship" exists between ministers and their parishioners for the purposes of a negligence claim, thereby foreclosing the plaintiff's "general negligence" claim against the archdiocese as well. *Id.*

Plaintiffs here also each make the conclusory allegation that they were a child "entrusted" to Church Defendants' care, custody, and supervision, again without alleging any foundational facts to support that allegation. *E.g., Complaint in Javier C.* ¶¶ 1, 16, 26, 43. However, such general and conclusory allegations are insufficient to establish a special relationship. *Roman Catholic Bishop of San Diego*, 42 Cal.App.4th at 1567. In *Quigley v. First Church of Christ, Scientist*, 65 Cal.App.4th at 1033-36, the Court of Appeal refused to recognize a legal duty of care owed by a church to one of its members. In *Quigley*, a child's mother sued the church and various individuals who had provided her son with the spiritual treatment, alleging they had breached a duty of care owed to her child when they failed to refer him to traditional medical care. The mother further alleged that the church had voluntarily assumed a duty of due care because the child had been entrusted to the church's care.

Relying heavily on *Nally*, the *Quigley* court found that a spiritual counselor is not in a special relationship with a parishioner and is thus under no actionable legal duty to protect the parishioner from harm. As a secondary argument, the mother in *Quigley* also asserted that the church had voluntarily assumed a duty of due care regarding the child's illness because his physical well being had been "entrusted to defendants' nationally coordinated system for treating seriously ill children." *Quigley*, 65 Cal.App.4th at 797. However, the court flatly rejected that argument because it was clear that the church's involvement was meant to address spiritual, not physical problems. *Id.*

As was the case in *Quigley*, Plaintiffs here have not alleged that they had any secular

connection or relationship with Church Defendants. Thus, because, as pled by Plaintiffs, Church Defendants' alleged relationship to each Plaintiff is spiritual in nature, California case law bars this Court from imposing a duty of care on Church Defendants. *Nally,* 47 Cal.3d at 292; *Quigley*, 65 Cal.App.4th at 1033-36; *Roman Catholic Bishop of San Diego*, 42 Cal.App.4th at 1568.

Finally, the *Quigley* court refused to "create a general duty of care owed by all persons toward children." *Quigley*, 65 Cal.App.4th at 1034. Rather, the court correctly pointed out that only the father (who had legal custody of the child) owed the child a duty of care and that the child's dependency was on his father, not the church. *Id.* at 1035. In these cases, Plaintiffs allege they were young children at the time of the alleged abuse. As such, each Plaintiff's dependence here was clearly on their parents, not the Church Defendants.

II. CONCLUSION

For the reasons set forth above and in the Church Defendants' original supporting memorandum, this Court should sustain the Church Defendants' demurrers to each of the causes of action alleged against the Church Defendants in Plaintiffs' complaints.

DATED: March 18, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

5024698.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 18, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' REPLY IN SUPPORT OF DEMURRERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 18, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
MAR 14 2005
Clerk of the Napa Superior Court
By: Nora O'K Sheehy
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **WATCH TOWER PENNSYLVANIA'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL DISCOVERY** **Date: April 8, 2005** **Time: 9:30 AM** **Dept: B** **Trial Dates: Not yet set**
AND COORDINATED CASES	

INTRODUCTION

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") appears specially herein, in that it earlier moved to quash service of summons and complaint based on the personal jurisdiction defense. The Court then allowed plaintiffs to conduct "limited discovery" regarding "Watch Tower PA's contacts in California [.]"[1] Following that, plaintiffs propounded broad ranging discovery, much of which was plainly out of bounds on the personal jurisdiction issue. Last August, plaintiffs also spent about a day and a half deposing

[1] The Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint stated: "Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period."

the person most knowledgeable, or "PMK," of Watch Tower PA concerning Watch Tower PA's contacts in California. Plaintiffs now move to compel further discovery from Watch Tower PA, based largely on cumulative, overly broad and unduly burdensome discovery requests, as well as with regard to many requests to which Watch Tower PA did in fact respond, but which plaintiffs simply do not like the responses provided. Thus, the Court need not even reach the ecclesiastical structure issue and other issues briefed *ad nauseum* by plaintiffs, because their broad ranging and often repetitive discovery requests are demonstrably infirm for these other reasons.

OVERVIEW OF PLAINTIFFS' DISCOVERY TO DATE

Information already "discovered" from Watch Tower PA. At the outset, it is important for the Court to understand what information has been "discovered" to date about "Watch Tower PA's contacts in California during the relevant time period" (which, as noted in footnote 1 above, is the issue now before the Court). Watch Tower PA's discovery responses, document production, and PMK deposition testimony have already revealed the following information about Watch Tower PA's non-traditional contacts in California:

1. Watch Tower PA is a Pennsylvania not-for-profit corporation. It has no subsidiaries or parent corporations. The corporate charters, by-laws, articles of incorporation, etc., have been produced to plaintiffs, and plaintiffs' counsel had the full opportunity to query the PMK about those documents in deposition.

2. Watch Tower PA holds the copyright to most Jehovah's Witnesses publications. Those publications are distributed to and used by congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 congregations in California) and worldwide, although the actual publishing and distribution is accomplished by other entities.

3. Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of

the Risk Management Office is to process claims made to the KHAA.

4. For some period of time prior to the creation of KHAA in 1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program.

5. Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition, there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans.

6. Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, all U.S. congregations sent monetary contributions to Watchtower New York.

7. Watch Tower PA also receives bequests of real property from Jehovah's Witnesses throughout the U.S. (including California). The property bequests from California include burial plots and remainder interests in real property, but Watch Tower PA currently has less than 10 such properties, which include remainder interests in six properties.

8. Watch Tower PA has been used in the past to communicate the Governing Body's spiritual supervision to Branch Committee's of Jehovah's Witnesses throughout the world (there was never a U.S. Branch Committee until about April 2002), but no longer does so and has never done so to the U.S. Branch Committee. Watch Tower PA has never communicated the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the 48 contiguous states of the U.S.

In addition, the Court needs to be aware that in advance of the August 25 - 26, 2004 videotaped deposition of the designated PMK of Watch Tower PA taken by plaintiffs' Texas counsel, Watch Tower PA produced a large number of documents responsive to the document requests contained in plaintiffs' fourth amended notice of the Watch Tower PA "PMK" deposition. *See* Exhibit A to the declaration of Robert J. Schnack, which is a true copy of defendant Watch Tower PA's objections and response to the fourth amended notice of PMK deposition.

The PMK deposition. Perhaps even more significantly, all of the topics referenced above, as well as others, were addressed at length in the August 25 – 26, 2004 deposition of the Watch Tower PA PMK taken by plaintiffs' Texas counsel. For example, issues relating to the KHAA (including administration of the KHAA by Watch Tower PA, contributions to the KHAA from California congregations, claims paid in California from the KHAA, insurance purchased through KHAA, etc.), the KHF (including contributions to the KHF from California, loans made to California congregations from the KHF, and the general terms of such loans), and insurance purchased prior to the inception of the KHAA consumed several hours of testimony and were addressed at the following pages of the deposition transcript, among other places: Pages 51-52, 79-94, 118-183, 223, 269-318, 322-324, and 334-378. Watch Tower PA's holding of the copyrights to Jehovah's Witnesses publications that were or are distributed in California was addressed at, among other places, pages 55-68 and 382-383 of the deposition transcript.

It thus necessarily follows that the additional information and documents requested by plaintiffs in the instant motion are wholly cumulative or duplicative, unduly burdensome, and transparently intended to harass and cause undue burden to defendant Watch Tower PA rather than being targeted to reveal any additional *relevant* information "concerning Watch Tower PA's contacts in California during the relevant time period."

Moreover, as discussed in Watch Tower PA's response to plaintiffs' separate statements, many of plaintiffs' discovery requests were vague and overly broad such that plaintiffs' "argument" section was needed to explain what plaintiffs now seek from Watch Tower PA. Plaintiffs' own "arguments" thus demonstrate the vagueness and overbreadth of the requests.

For all of these reasons, plaintiffs' discovery motion should be denied.

PERMISSIBLE SCOPE OF DISCOVERY

California discovery rules are admittedly broad; however, the discovery process is not limitless, and the information sought must be, at a minimum, reasonably calculated to lead to the discovery of admissible evidence. C.C.P. §2017(a); *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216; 61 Cal.Rptr.2d 567. Specifically, the Code of Civil Procedure states: "***Unless otherwise limited by order of the court*** … any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action … if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence…" C.C.P. §2017(a) (emphasis added).

Here, the Court's December 2, 2003 Order *specifically limited* the scope of discovery: "Plaintiff shall be permitted to conduct *limited discovery* concerning *Watch Tower PA's contacts in California* during the relevant time period." (Emphasis added.) As is readily apparent from plaintiffs' separate statements in support of their motion to compel discovery, as well as by their extensive briefing, plaintiffs here seek to go well beyond any "limited discovery" regarding "Watch Tower PA's contacts *in California* [.]"

Moreover, the Code of Civil Procedure specifically sets forth when a court should limit discovery: "The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence…." C.C.P. §2017(c).

Code of Civil Procedure section 2019 sets forth the methods of discovery that are available to the parties engaging in the discovery process. That section also sets forth limitations to the discovery processes that can be employed so that abusive behavior can be avoided. Specifically, with regard to limitations, section 2019 states:

"(b) The court shall restrict the frequency or extent of use of these discovery methods if it determines either of the following:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive.

(2) The selected method of discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, and the importance of the issues at stake in the litigation." C.C.P. § 2019(b)(1)(2)

The case law that has addressed the limitations of the discovery process states "although the scope of civil discovery is broad, it is ***not limitless***." *Calcor*, *supra*, 53 Cal.App.4th at 223 (emphasis added). *Calcor* involved a contractual dispute between corporate entities regarding the supply of gun mounts. The plaintiff corporation served a subpoena pursuant to Code of Civil Procedure section 2020 on a non-party corporation. The subpoena encompassed thirty-four categories of documents and gave facially detailed descriptions of the categories, but it also contained three pages of definitions and another three pages of instructions. The Court of Appeal observed that although the demands "would seem to satisfy a requirement of 'particularity,' it is, in effect, a blanket demand and hardly constitutes 'reasonable' particularity." *Id.*, 53 Cal.App.4th at 222. The court went on to state that the "12-page demand might as well be condensed into a single sentence: Produce everything in your possession which in any way relates to gun mounts." *Id.* The court in *Calcor* determined that "whether served on a party or a nonparty, the procedure used here was to compel production of documents and other materials represents an outrageous abuse of the discovery system, and exemplifies the misuses to which the discovery statutes are prone absent judicial consideration for the great burdens which may be imposed on parties and nonparties alike." *Id.* at 221.

Plaintiffs' conduct in this case is similar to that chastised by the court in *Calcor*. Through their motion here, plaintiffs plainly are abusing the discovery process. The *Calcor*

court set forth its disdain for abusing the discovery process as follows:

> "Sometime ago, this court recognized the potential for such abuse in *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776, when we noted 'We are also aware the discovery process is subject to frequent abuse, and like a cancerous growth, can destroy a meritorious cause or defense...' [Citation omitted]." Our observations of the day-to-day practice of law lead us to conclude the cancer is spreading and judges must become more aggressive in curbing these abuses. *Courts must insist discovery devices be used to facilitate litigation rather than as weapons to wage litigation.* These tools should be well calibrated; the lancet is to be preferred over the sledge hammer." *Id.*, 53 Cal.App.4th at 221. (emphasis added).

Plaintiffs here are abusing the discovery process and transparently using it as an economic tool to punish and harass defendant Watch Tower PA. The original discovery requests from plaintiffs simply were not tailored to the issue of "Watch Tower PA's contacts in California [.]"[2] Although plaintiffs now appear to have abandoned many of those improper discovery requests, their pursuit by the present motion of cumulative and duplicative discovery, through interrogatories, document requests, further PMK depositions, and so on, certainly gives pause and makes one question plaintiffs' true intentions in pursuing the gluttony of cumulative and duplicative discovery, particularly in connection with a straightforward issue of "Watch Tower PA's contacts in California [.]" Given the information detailed above that has been "discovered" about "Watch Tower PA's contacts with California," plaintiffs' further efforts here seem transparently aimed at harassing Watch Tower PA and economically punishing Watch Tower PA for having brought its motion challenging personal jurisdiction.

Code of Civil Procedure section 2023 states:

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[2] For example, plaintiffs propounded a number of requests for admissions and interrogatories concerning the Governing Body, alleged agents or representatives of the Governing Body, the Watchtower Legal Department, circuit and district overseers, etc. (E.g., "Admit or deny that the congregation Elders are expected by the Governing Body to follow the directives given by the Legal Department," "Admit or deny that it is an objective of the Governing Body to assure that each branch, district, circuit and congregation is acting in conformity with the directives of the Governing Body," and "What has been the purpose/function of a District Overseer with respect to judicial committees[.]") Notwithstanding the patently improper nature of such discovery requests on the narrow issue of "Watch Tower PA's contacts in California," plaintiffs still propounded a large number of such discovery requests and required Watch Tower PA to respond.

"Misuses of the discovery process include, but are not limited to the following: (1) Persisting over objections and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery." [C.C.P. § 2023(a)(1)];

.....

(3) Employing discovery in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden or expense." [C.C.P. § 2023(a)(3)].

In this case, plaintiffs are abusing the discovery process in that they have moved to obtain cumulative and duplicative discovery by means of vague, duplicative, and overly broad requests. The motion and discovery requested in it are oppressive and intended to harass and cause Watch Tower PA undue burden and expense. The motion should be denied.

OPPOSITIONS TO PLAINTIFFS' SEPARATE STATEMENTS

Defendant Watch Tower PA also responds separately to each of plaintiffs' "arguments" in their "separate statements." Rather than repeat and discuss those responses here, Watch Tower PA respectfully refers the Court to Watch Tower PA's responses contained in the separate statements in the concurrently filed oppositions to plaintiffs' separate statements. (For the Court's easy reference, Watch Tower PA's responses to plaintiffs' arguments are set out in **bold** type therein.)

CONCLUSION

For the reasons stated herein and in Watch Tower PA's oppositions to plaintiffs' separate statements, plaintiffs' motion to compel discovery should be denied.

Dated: March 11, 2005

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack
Attorneys for Defendant
Watch Tower PA

5024346.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

WATCH TOWER PENNSYLVANIA'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL DISCOVERY

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
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Attorneys for The Church Defendants

FILED
MAR 1 4 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO DOCUMENT REQUESTS CONTAINED IN FOURTH AMENDED DEPOSITION NOTICE OF PMK** **DATE: April 8, 2005** **TIME: 9:30 AM** **DEPT.: B** **TRIAL DATES: Not yet set**
AND COORDINATED CASES	

FOURTH AMENDED NOTICE OF DEPOSITION OF

PERSON MOST KNOWLEDGEABLE - DOCUMENTS REQUESTED

REQUESTED DOCUMENT NO. 3:

Documents describing the organizational structure and reporting relationships within the Watch Tower PA, specifically, and Watchtower Society, generally (describing how Watch Tower PA fits into the overall organization).

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 39, 40, and 54.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The scope of the requested information sought from Watch Tower Pennsylvania is appropriate in light of their on-going tortious conduct as alleged in Plaintiffs' Amended Complaint.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch

Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." Ironically, Watch Tower Pennsylvania's own President signed an Affidavit under penalty of perjury establishing that Watch Tower Pennsylvania is a conduit, if not the conduit, which directs its congregational activities. But they failed to produced that affidavit. Clearly, this multi-million dollar corporation has documents, which explain their relation with the other corporate defendants, and all such documents should be produced to evaluate their contacts with California, in conjunction with further deposition testimony of a person most knowledge for further inquiry and explanation.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA produced documents in response to this request. No further response is required. Notwithstanding its objections, Watch Tower PA identified its current and former directors and produced an excerpt from the publication "Organized to Accomplish Our Ministry" entitled "Use of Religious Corporations." (Those documents are referenced as Exhibits 39, 40, and 54.) Watch Tower PA also produced its charters, bylaws, and articles of incorporation (*see* Exhibit 59). Thus, it is not clear what further documents plaintiffs are requesting.

Plaintiffs' argument also ignores a key point, that being the objections that the request is vague and overly broad with respect to the question of "Watch Tower PA's contacts in California during the relevant time period." Plaintiffs' argument references an almost 20-year old affidavit from a Texas lawsuit and then, without explanation, suggests some nefarious withholding of documents by Watch Tower PA. Notwithstanding that this request is vague and overly broad, defendant Watch Tower PA produced responsive information and documents. In any event, the objections should be sustained and plaintiffs' motion denied.

REQUESTED DOCUMENT NO. 4:

Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution") from Watch Tower PA to California congregations, forms used in

the operation of the KHAA, and claims paid in California.

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and an invasion of privacy of individuals not parties to this lawsuit, unduly burdensome, and intended for purposes of harassment.

Subject to and without waiving those objections, Watch Tower PA responds as follows: See documents for 1972 to 1985 and 203, attached hereto as Exhibits 5, 10, 12, 14, 15, 17, 18, 21, 25, 26, 28, 29, 31, 36, 37, 38, 49, 50, 51, 52, and 58. Defendant Watch Tower PA had less than 20 claims in California involving the KHAA for the year 2003 and no claims paid from 1972 to 1985 because the KHAA did not come into existence until 1989.

ARGUMENT:

This case is part of a coordination action wherein numerous plaintiffs allege Watch Tower Pennsylvania engaged in systematic tortious conduct since approximately 1970 to the present. The scope of requested is not overbroad, in light of their on-going activities in the State of California. Documents reflecting covered claims in the form of an insurer reflect on-going business activities in this State creating what Plaintiffs contend are the requisite contacts for this Court to exercise jurisdiction over Watch Tower Pennsylvania. Watch Tower Pennsylvania should be estopped from asserting their motion to quash, and then fail to provide documents that

would establish their contacts with this State.

Such documents should be produced as discussed at pages 26-32 of the concurrently filed Motion to Compel, and further deposition inquiry into these documents should be allowed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request. No further response is necessary. The above response to this request shows that, notwithstanding valid objections, a large number of documents were produced to plaintiffs (*see* the exhibit numbers referenced in the response), including Exhibit 58 concerning claims paid by or through KHAA in California. In addition, plaintiffs' Texas counsel spent several hours questioning the PMK of Watch Tower PA about Exhibit 58 and claims paid in California, about the KHAA and its relationship to California congregations, about insurance purchased by Watch Tower PA that covered California congregations who chose to participate in the insurance program, and so on. It is important to note that the discovery already undertaken has revealed the following: Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989; KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California); the KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world; one of the activities of the Risk Management Office is to process claims made to the KHAA; for some period of time prior to the creation of KHAA in 1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program; and claims have been paid in California from or through the KHAA.

Thus, contrary to plaintiffs' unsupported assertion, Watch Tower PA has *not* failed in any way to disclose information regarding the nature of its contacts with California. The only plausible purpose in plaintiffs now requesting the cumulative and duplicative documents and information is to harass Watch Tower PA and drive up the expense of this

lawsuit. The objections should be sustained and plaintiffs' motion denied.

REQUESTED DOCUMENT NO. 8:

Documents related to monies received by you from California for any reason from 1970 to the present (including but not limited to donations, payments, premiums, and rental/lease income).

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, an invasion of privacy, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA sends letters on a monthly basis to each congregation acknowledging the receipt of donations sent by the congregation to Watch Tower PA. See also Exhibits 1, 5, 7, 10, 11, 12, 13, 14, 15, 22, 25, 26, 29, 30, 36, 37 and 38.

ARGUMENT:

This case is part of a coordination action wherein numerous plaintiffs allege Watch Tower Pennsylvania engaged in systematic tortious conduct since approximately 1970 to the present. The scope of requested is not overbroad, in light of their on-going activities in the State of California. Documents reflecting covered claims in the form of an insurer reflect on-going

business activities in this State creating what Plaintiffs contend are the requisite contacts for this Court to exercise jurisdiction over Watch Tower Pennsylvania. Watch Tower Pennsylvania should be estopped from asserting their motion to quash, and then fail to provide documents that would establish their contacts with this State.

Such documents should be produced as discussed at pages 32-34 of the concurrently filed Motion to Compel, and further deposition inquiry into these documents should be allowed.

WATCH TOWER PA'S RESPONSE TO PLAINITIFFS' ARGUMENT:

Watch Tower PA responded to this request. No further response is required. The above response to this request again shows that, notwithstanding valid objections, a large number of documents were produced to plaintiffs (*see* the exhibit numbers referenced in the response). In addition, the issue of monetary donations to Watch Tower PA was discussed at length in the August 2004 PMK deposition, including donations to Watch Tower PA's general fund, to the KHAA, and to the KHF. In addition, much of plaintiffs' argument immediately above does not even relate to the request at issue here. The deposition inquiries made by plaintiffs' Texas counsel also addressed the state of information currently available to Watch Tower PA regarding donations made to the *corporation, thus demonstrating further the undue overbreadth of this request.*

In any event, the request for documentation of money donations, of other unidentified forms of "payments," and of insurance premiums is redundant and cumulative of the information already obtained by plaintiffs in this case. (There are no lease payments or rental income for California properties, as was testified to in the PMK deposition.) The clear intent of plaintiffs is to harass and create undue burden and expense for Watch Tower PA rather than to obtain truly relevant *additional* information about "Watch Tower PA's contacts in California." The objections should be sustained.

DATED: March 11, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Watch Tower PA

5024252.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO DOCUMENT REQUESTS CONTAINED IN FOURTH AMENDED DEPOSITION NOTICE OF PMK

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen

Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
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Attorneys for The Church Defendants

FILED
MAR 1 4 2005
Clerk of the Napa Superior Court
By: Lora O'Sheehy
Deputy

COURT EXECUTIVE OFFICER
MAR 1 4 2005

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO PMK DEPOSITION AREAS OF INQUIRY

DATE: **April 8, 2005**
TIME: **9:30 AM**
DEPT.: **B**
TRIAL DATES: **Not yet set**

FOURTH AMENDED NOTICE OF DEPOSITION OF

PERSON MOST KNOWLEDGEABLE - INQUIRIES

INQUIRY NO. 1:

Organizational and corporate structure of Watch Tower PA from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal

jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony relevant to the secular organizational structure of the Watch Tower PA corporation for the time periods of 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

Watch Tower PA should be compelled to provide a person most knowledgeable,

preferably Don Adams, the President of Watch Tower PA, to testify regarding the organizational and corporate structure of this "out-of-state" corporation since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Notwithstanding valid objections, Watch Tower PA has responded and, moreover, plaintiffs have "discovered" substantial information about Watch Tower PA's "organizational" and "corporate" structure (as well as about the relevant issue of "Watch Tower PA's contacts in California"). For example, plaintiffs have discovered the following information about Watch Tower PA's "organizational" structure:

1. Watch Tower PA holds the copyright to most Jehovah's Witnesses publications. Those publications are distributed to and used by congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 congregations in California) and worldwide, although the actual publishing and distribution is accomplished by other entities.

2. Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of the Risk Management Office is to process claims made to the KHAA.

3. For some period of time prior to the creation of KHAA in 1989 and for a few

years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program.

4. Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition, there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans.

5. Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, all U.S. congregations sent monetary contributions to Watchtower New York.

6. Watch Tower PA also receives bequests of real property from Jehovah's Witnesses throughout the U.S., including California. The property bequests from California include burial plots and remainder interests in real property, but Watch Tower PA currently has less than 10 such properties, which include remainder interests in six properties.

7. Watch Tower PA has been used in the past to communicate the Governing Body's spiritual supervision to Branch Committee's of Jehovah's Witnesses throughout the world (there was never a U.S. Branch Committee until about April 2002), but no longer does so and has never done so to the U.S. Branch Committee. Watch Tower PA has never communicated the appointment of elders and ministerial servants to congregations

of Jehovah's Witnesses in the 48 contiguous states of the U.S.

In addition, Watch Tower PA produced its corporate charter, articles of incorporation, and bylaws, and plaintiffs' counsel had the full opportunity to inquire at the PMK deposition about those documents. Thus, plaintiffs already have the answers to this topic, but appear not to like the answers provided. Therefore, it is not clear what plaintiffs truly seek here, other than to harass and cause undue burden to Watch Tower PA. At this stage of discovery, particularly after having deposed the Watch Tower PA PMK, a further PMK deposition on this topic would truly be cumulative and redundant. Plaintiffs' motion should be denied.

INQUIRY NO. 2:

The make up and function of the Governing Body from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. This request is not limited to Watch Tower PA, in that this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). Also, because the Governing Body is involved with spiritual and ecclesiastical matters related to the Jehovah's Witnesses religion, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected fro discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through

examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's make up and function of the Governing Body.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the make up and function of the Governing Body of this "out-of-state" corporation since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Plaintiffs here attempt to do an end run around and create confusion concerning the "alter ego" issue. The issue is whether Watch Tower PA is the alter ego of the defendant California congregations sued in these coordinated cases, *not* whether Watch Tower PA is the alter ego to some other alleged out-of-state "parent entity" that is *not* a party defendant to these coordinated cases (*i.e.*, the Governing Body).

With respect to the alter ego doctrine, the acts of a subsidiary corporate entity may only be imputed to an out-of-state parent entity for purposes of asserting personal jurisdiction over the parent when there exists justification to *disregard* the subsidiary's

independent identity. "Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations." *Sonora Diamond Corp. v. Superior Court*, 83 Cal.App.4th 523, 538, 99 Cal.Rptr.2d 824, 836. However, the corporate identity "may be disregarded – the 'corporate veil' pierced – where an abuse of the corporate privileges justifies holding the equitable ownership of a corporation liable for the acts of the corporation." *Sonora Diamond*, 83 Cal.App.4th at 538, citing *Roman Catholic Archbishop v. Superior Court*, 15 Cal.App.3d 405, 411, 93 Cal.Rptr. 338 (1971). "[C]ourts will ignore the corporate entity and deem the corporation's acts to be those of the persons or [parent] organizations controlling the [subsidiary] corporation," thereby justifying the assertion of personal jurisdiction over the parent or controlling organization. *Id.*

In California, two conditions must be met before the alter ego doctrine will be invoked: First, there must be "such a *unity of interest and ownership* between the corporation and its equitable owner that the separate personalities do not in reality exist[;]" and second, there must be an "inequitable result if the acts in question are treated as those of the [subsidiary] corporation alone." *Id.* (emphasis added).

For example, factors that would support applying the alter ego doctrine include commingling of funds and other assets of the two entities, the holding out of one entity that it is liable for the debts of the other, identical ownership in the two entities, use of the same officers and employees, and use of one as "a mere shell or conduit for the affairs of the other." *Id.*, quoting *Roman Catholic Archbishop, supra*, 15 Cal.App.3d at 406, 411.

While the alter ego doctrine may be supported by any of the above factors, "so long as the separation between parent and subsidiary corporations is real, *even if merely formal*, the use of the subsidiary to conduct business in California does not automatically subject the parent to suit in this state." *Sammons Enterprises, Inc. v. Superior Court*, 205 Cal.App.3d 1427, 1434, 253 Cal.Rptr. 261, 265 (1988) (emphasis added). As the *Sammons* court stated,

> Sole ownership of the subsidiary by the parent is not enough; in addition, there must be *'clear evidence that the parent in fact*

> ***controls the activities of the subsidiary.*' Where ... there is no showing the subsidiary is undercapitalized, that corporate formalities are not maintained, or that the subsidiary is held out as the agent of the parent, plaintiff has not met his burden to show personal jurisdiction based upon the *alter ego* theory.**

205 Cal.App.3d at 1434, 253 Cal.Rptr. at 265; quoting *Ryder Truck Rental v. Acton Foodservices Corp.* 554 F.Supp. 277, 279 (1983) (citations omitted).

Thus, plaintiffs' bald inquiry here about the Governing Body, without reference in any way to Watch Tower PA or the limited issue of "Watch Tower PA's contacts in California," dictate that plaintiffs' motion be denied.

INQUIRY NO. 3:

Relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present (including but not limited to the Governing Body, Watchtower New York, Branch Committees, Christian Congregation of Jehovah's Witnesses, California District, California Circuits and California Congregations).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle & Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside

the scope of proper inquiry in civil courts and protected from discovery by the First Amendment of the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's relationship between Watch Tower PA and other entities.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA has provided ample discovery on this topic, notwithstanding valid objections. Plaintiffs apparently did not like the answers given, both in the PMK

deposition and in discovery responses. There are no corporate relationships with the entities and person identified in the topic. Based on similar interrogatories propounded by plaintiffs, it also is not clear what plaintiffs mean by an "organizational" or "theocratic" relationship with the other entities referenced. Nonetheless, even though not truly responsive here, in other discovery plaintiffs have learned that Watch Tower PA cooperates with Watch Tower New York and, since CCJW's inception in 2000, with CCJW. Watch Tower PA has provided some funding to Watchtower New York and to CCJW and carries those as long-term receivables. Plaintiffs also have learned that Watch Tower PA holds the copyright to literature that Watchtower New York published and distributed to congregations of Jehovah's Witnesses in the U.S. (including in California). In any event, an order compelling a further PMK deposition here would be another empty gesture, unless and until plaintiffs clarify what information they really are seeking. However, Watch Tower PA expects that whatever further responses its PMK might provide on this topic would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INQUIRY NO. 4:

The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present (including but not limited to amounts collected and amounts paid by the KHAA).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle &

Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, furnishing details as to amounts collected and paid by the KHAA is unduly burdensome, an invasion of privacy, harassment, and is not reasonably calculated to lead to discovery of admissible evidence on the issue of whether Watch Tower PA is subject to personal jurisdiction in California.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to KHAA and its operation with respect to California in 2003. The KHAA did not come into existence until 1989.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's KHAA.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the KHAA since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First

Amendment of the U.S. Constitution and its California analog in reliance on Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

It appears the KHAA acts as a conduit for receiving monies from California and then purchasing insurance or acting as a self-insured retention fund to cover claims that occur in California. Accordingly, inquiry into the KHAA is proper to address the Watch Tower PA's minimum contacts with the State of California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA here refers the Court to its response to plaintiffs' argument to Inquiry No. 1 above. Plaintiffs' Texas counsel questioned the PMK at length about the KHAA, the related insurance issues, contributions to the KHAA from congregations, etc., and further discovery on this topic would plainly be unduly cumulative and duplicative. Plaintiffs' motion should be denied.

INQUIRY NO. 5:

The Risk Management Office and its operation from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. This line of questioning is not limited to Watch Tower PA, in that this request seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle & Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972

to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Risk Management's operations through Watch Tower PA in California, if any, from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's Risk Management Office.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the Risk Management Office since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on Serbian Eastern Orthodox Diocese v. Milivojevich (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

It appears the KHAA acts as a conduit for receiving monies from California and then purchasing insurance or acting as a self-insured retention fund to cover claims that occur in

California. Accordingly, inquiry into the KHAA is proper to address the Watch Tower PA's minimum contacts with the State of California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA again refers the Court to its response to plaintiffs' argument to Inquiry No. 1 above. Plaintiffs' Texas counsel questioned the PMK at length about the KHAA, related insurance issues, etc., and it also has been "discovered" that one of the activities of the Risk Management Office is to process claims made to the KHAA. Further discovery on this topic would, again, be unduly cumulative and duplicative. Plaintiffs' motion should be denied.

INQUIRY NO. 6:

Kingdom Hall financing in California from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle & Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing in California from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Reinmueller. Mr. Reinmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA here also refers the Court to its response to plaintiffs' argument to Inquiry No. 1 above. Plaintiffs' Texas counsel questioned the PMK at length about the KHF (Kingdom Hall Fund), loans made to congregations in California from the KHF, the terms of those loans, etc., and further discovery on this topic would certainly be unduly cumulative and duplicative. Plaintiffs' motion should be denied.

INQUIRY NO. 7:

Financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses (assemblies or congregation functions) from 1970 to the present (this category to include but not be limited to Kingdom Halls and Assembly Buildings).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle & Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Reinmueller. Mr. Reinmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA here also refers the Court to its response to plaintiffs' argument to Inquiry No. 1 above. Like the KHAA, plaintiffs' Texas counsel questioned the PMK at length about the KHF (Kingdom Hall Fund), loans made to congregations in California from the KHF, the number of those loans, terms of those loans, etc., and further discovery on this topic would certainly be unduly cumulative and duplicative. The PMK testified that Watch Tower PA does not lease any properties in California and owns less than 10 properties in California that were bequeathed to Watch Tower PA, including remainder interests in six properties, some burial plots, etc. The bottom line is that plaintiffs' simply do not like Watch Tower PA's responses. Plaintiffs' motion should be denied.

INQUIRY NO. 8:

Financing, leasing and/or ownership of property/real estate in California from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts

when the alleged conduct occurred and at the time of service of summons. DVI, Inc. v. Superior Court (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; see also Boaz v Boyle & Co., (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Reinmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Reinmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Reinmueller testified in his deposition at page 49, lines 2-24, attached as Exhibit H to the concurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Reinmueller. Mr. Reinmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA refers the Court to its response immediately above. For the

reasons stated, this motion should be denied.

DATED: March 11, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Watch Tower PA

5024253.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO PMK DEPOSITION AREAS OF INQUIRY

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

MAR 1 4 2005

Clerk of the Napa Superior Court
By: Nora O'K Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES

DATE: April 8, 2005
TIME: 9:30 AM
DEPT.: B
TRIAL DATES: Not yet set

FORM INTERROGATORIES, SET ONE

FORM INTERROGATORY NO. 4.1:

At the time of the INCIDENT, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the INCIDENT? If so, for each policy state:

(a) the kind of coverage;

(b) the name and ADDRESS of the insurance company;

(c) the name, ADDRESS, and telephone number of each named insured;

(d) the policy number;

(e) the limits of coverage for each type of coverage contained in the policy;

(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and

(g) the name, ADDRESS, and telephone number of the custodian of the policy.

RESPONSE:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This interrogatory asks only about Watch Tower PA's insurance, not about

insurance coverage for Kingdom Halls, congregations of Jehovah's Witnesses in California, circuit overseers and district overseers in California, etc. Thus, plaintiffs' argument above is confusing, in that the argument appears to address some interrogatory other than form interrogatory no. 4.1. Indeed, whether Watch Tower PA has insurance that might provide coverage *for the claims alleged against Watch Tower PA* by plaintiffs simply does *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. The objections should be sustained and plaintiffs' motion denied.

FORM INTERROGATORY NO. 4.2:

Are you self-insured under any statute for the damages, claims or actions that have arisen out of the INCIDENT? If so, specify the statute.

RESPONSE:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Like form interrogatory no. 4.1 above, this interrogatory asks only about Watch Tower PA's self-insurance, not about any such self-insurance for other entities or persons. Thus, plaintiffs' argument above is again confusing, in that the argument appears to address some interrogatory other than form interrogatory no. 4.2. Indeed, whether Watch Tower PA is self-insured under some statute *for the claims alleged against Watch Tower PA* by plaintiffs simply does *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. The objections should again be sustained and plaintiffs' motion denied.

DATED: March 11, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Watch Tower PA

5024254.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
MAR 1 4 2005
Clerk of the Napa Superior Court
By: Lora O'Sheit
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE

DATE: **April 8, 2005**
TIME: **9:30 AM**
DEPT.: **B**
TRIAL DATES: Not yet set

REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

REQUEST FOR PRODUCTION NO. 1:

Please produce the Corporate Book relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on

Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Evidence regarding Watch Tower Pennsylvania's existence, set forth in their Corporate Book, is directly relevant to the issue of their contacts with California. The by-laws and internal rules and regulations of a corporation will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

The Serbian objection raised by Watch Tower Pennsylvania is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This is particularly true with regard to the Court's Order, which limits discovery to "Watch Tower PA's contacts in California during the relevant time period." Production of Watch Tower PA's Corporate Book, in its entirety and for all time periods, *i.e.*, not limited to the time relevant time period, would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. Such a production of documents also is not calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time period. The objections should be sustained and plaintiffs' motion must be denied. (Additionally, Watch Tower PA did not make a so-called *Serbian* objection here, so plaintiffs' argument against such an objection is meritless.)

REQUEST FOR PRODUCTION NO. 2:

Please produce the Bylaws relating to your organization/operation.

RESPONSE:

See the attached documents Bates nos. WTPA 00001-4.

ARGUMENT:

Watch Tower Pennsylvania provided the 4 pages attached hereto as Exhibit 1. These 4 pages hardly reflect all of the by-laws of Watch Tower Pennsylvania, a multi-million dollar corporation. This response is incomplete and the remaining by-laws should be produced.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request and also produced a number of documents concerning Watch Tower PA's corporate charter, articles of incorporation, etc. (*See* Exhibit 59 to Watch Tower PA's document production in response to the fourth amended notice of PMK deposition.) Plaintiffs' Texas counsel had the full opportunity to query the PMK on these documents at the August 25 – 26, 2004 deposition. Thus, no further response is required. Plaintiffs simply did not like the answers given, and plaintiffs' counsel neglected to take the opportunity to inquire at the PMK deposition. No different response can be compelled, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 3

Please produce the organizational meeting minutes relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Organizational meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-

agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request also is plainly objectionable, and those objections should be sustained. This is again particularly true with regard to the Court's Order, which limits discovery to "Watch Tower PA's contacts in California during the relevant time period." Production of all of Watch Tower PA's organizational meeting minutes would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California, and production of such documents also is not calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time, particularly after the PMK deposition already taken. The objections should be sustained, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 4

Please produce all Board of Director meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Board of Director meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business

operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This is particularly true with regard to the Court's Order, which limits discovery to "Watch Tower PA's contacts in California during the relevant time period." Production of all of Watch Tower PA's Board of Director meeting minutes would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California, nor would such a production of documents be calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time. The objections should be sustained, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 5

Please produce all shareholder or member meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Shareholder or member meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Like the foregoing requests, this request also is plainly objectionable, and those objections should be sustained. The Court's Order limits discovery to "Watch Tower PA's contacts in California during the relevant time period," and production of all member meeting minutes of Watch Tower PA would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. Any such production of documents also is not reasonably calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time. The objections should be sustained, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 6

Please produce all committee meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Committee meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is, again, plainly objectionable, and those objections should be

sustained. The Court's Order limits discovery to "Watch Tower PA's contacts in California during the relevant time period," and production of all of Watch Tower PA's committee meeting minutes would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. Such a production of documents also is not calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time, so the objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 7

Please produce all resolutions from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Corporate resolutions will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. In addition, Watch Tower PA has produced corporate resolutions relating to California properties (*see, e.g.*, Exhibit 53 to Watch Tower PA's document production in response to

the fourth amended notice of PMK deposition), and plaintiffs' counsel queried the PMK on those properties and corporate resolutions at the August 25 – 26, 2004 deposition. Thus, Watch Tower PA has responded consistently with the Court's Order, which limits discovery to "Watch Tower PA's contacts in California during the relevant time period." Moreover, production of all of Watch Tower PA's organizational resolutions from 1970 to the present does *not* affect whether Watch Tower PA is subject to personal jurisdiction in California. The objections should be sustained, and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 8

Please produce a complete list of shareholders and/or members from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

ARGUMENT:

A list of all shareholders and members since 1970 will provide background information regarding the individuals, and/or other corporations, that formulate policy making decisions or carry out the activities of the corporation. This evidence is directly relevant to the issue of their contacts with California, especially if such individuals reside in California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This is, again, particularly true with regard to the Court's Order, which limits discovery to "Watch Tower PA's contacts in California during the relevant time period."

Nonetheless, Watch Tower PA has produced lists of its current directors and its former directors dating back to 1970. *See* Exhibits 39 and 40 to Watch Tower PA's document production in response to the fourth amended notice of PMK deposition. Moreover, production of a complete list of all of Watch Tower PA's members would *not* affect whether Watch Tower PA is subject to personal jurisdiction in California, as it is not calculated to lead to the discovery of admissible evidence regarding Watch Tower PA's contacts in California during the relevant time. The objections should be sustained, and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 9

Please produce any and all documents indicating corporate restructuring or reorganization from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA has no responsive documents, because there has been no corporate restructuring.

ARGUMENT:

Documents regarding corporate restructuring or reorganizing will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

Watch Tower Pennsylvania indicated in its response that there has been no restructuring but failed to identify whether there has been any reorganizing.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request, notwithstanding valid objections, stating that there has not been any corporate restructuring of Watch Tower PA. No further response is required. Plaintiffs simply did not like the answer given, and they now make an argument that is patently frivolous (*i.e.*, that corporate "restructuring" is somehow different from corporate "reorganizing"). Moreover, Watch Tower PA, as noted above, produced corporate charters, articles of incorporation, and bylaws. No different response can be compelled, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents describing the hierarchical flow chart of positions/personnel from 1970 through the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, no responsive documents.

ARGUMENT:

The requested documents will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California. It seems implausible that a multi-million dollar corporation like Watch Tower Pennsylvania will not have documents describing how its personnel interacts with one another.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request, notwithstanding valid objections. No further response is required. Plaintiff simply did not like the answer given, *i.e.*, that there are no documents concerning a "hierarchical flow chart." No different response can be compelled, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents reflecting officers and directors from 1970 through the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome. Subject to and without waiving those objections, see Watch Tower PA's response to special interrogatory no. 10.

ARGUMENT:

Documents identifying officers and directors from 1970 to the present may assist in identifying who is responsible for governing the conduct of this statewide, national, and international corporation. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request, notwithstanding valid objections, and as noted above, has identified current directors and former directors dating back to 1970. No further response is required. Plaintiff simply did not like the answers given. It is

unclear to Watch Tower PA what additional information plaintiffs are seeking. No different response can be compelled, and plaintiffs' motion must be denied.

REQUEST FOR PRODUCTION NO. 14

Please produce all documents which indicate a relationship to or with other business or corporate entities relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and vague. Subject to and without waiving those objections, Watch Tower PA will supplement this response if Plaintiff's clarify specifically what "other business or corporate entities" this request refers to.

ARGUMENT:

Plaintiff's counsel clarified to defense counsel that this request is an attempt for Plaintiffs to understand the relationship between Watch Tower Pennsylvania and "other business and corporate entities"; more specifically, any person, organization, corporation or entity that is somehow related to the Jehovah's Witnesses organization. Watch Pennsylvania never supplemented its response.

Documents regarding the relationship Watch Tower Pennsylvania has with other business or corporate entities will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA has provided ample discovery on this topic, notwithstanding valid

objections. Plaintiffs apparently did not like the answers given, both in the PMK deposition and in discovery responses. There are no corporate relationships with the entities identified in the topic. Also, in other discovery plaintiffs have learned that Watch Tower PA cooperates with Watch Tower New York and, since CCJW's inception in 2000, with CCJW. Watch Tower PA has provided some funding to Watchtower New York and to CCJW and carries those as long-term receivables. Plaintiffs also have learned that Watch Tower PA holds the copyright to literature that Watchtower New York published and distributed to congregations of Jehovah's Witnesses in the U.S. (including in California). In any event, the document request here does not particularize specifically what documents plaintiffs are requesting. Thus, unless and until plaintiffs clarify what documents they really are seeking, Watch Tower PA cannot reasonably respond. However, Watch Tower PA expects that whatever further responses might be provided, they would not be acceptable to plaintiffs' counsel. Given all of the foregoing, the objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 20

Please provide documents relating to financing or purchases of building(s) for use by assemblies and/or congregations in California, including but not limited to Kingdom Halls and Assembly Buildings.

RESPONSE:

Objection. This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, Watch Tower PA has provided funds to 197 congregations to build Kingdom Halls in California.

ARGUMENT:

These requested documents relate to Watch Tower Pennsylvania's business contacts with California. They are directly relevant to "minimum" contacts inquiry this Court will be asked to make as a result of Watch Tower Pennsylvania's Motion to Quash for lack of Personal Jurisdiction. Watch Tower Pennsylvania indicated in their response that they have provided funds to 197 Jehovah's Witnesses' congregations to build Kingdom Halls in California, but

failed to provide any document referencing these loans. These documents should be produced.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This request is indeed overly broad, vague and unduly burdensome as to the scope and volume of documents requested. In addition, plaintiffs have already discovered substantial information about this topic, through the August 25 – 26, 2004 PMK deposition and related document production. For example:

1. Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of the Risk Management Office is to process claims made to the KHAA.

2. For some period of time prior to the creation of KHAA in 1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program.

3. Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition; there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans.

4. Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA

has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, all U.S. congregations sent monetary contributions to Watchtower New York.

Additional information about Watch Tower PA's California-related activities was obtained in the August 2004 PMK deposition. Thus, at this stage of discovery, particularly after having deposed the PMK, a further response to this request would elevate form over substance. The objections should be sustained, and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 21

Produce all documentation that relates to monies you have received from California including but not limited to organizational financial statements from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome, and seeks private and confidential financial information in the form of financial statements for purposes of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with

California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This request is indeed overly broad, vague and unduly burdensome as to the scope and volume of documents requested, particularly in light of Watch Tower PA's response that contributions and/or donations it receives are not segregated by state of origin. In addition, plaintiffs have already discovered substantial information about Watch Tower PA's contacts with California, as outlined in the response to request no. 20 above. Watch Tower PA also expects that whatever further response it might provide to this request would not be acceptable to plaintiffs' counsel. At this stage of discovery, particularly after having deposed the PMK on issues regarding contributions to Watch Tower PA, a further response to this request would, again, elevate form over substance. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 22

Produce all documentation that relates to monies you have received from California including but not limited to documents that indicate or reflect the origin of monies received by you.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request is overly broad, unduly burdensome, and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA refers the Court to its response to request no. 21 immediately above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO.23

Produce all documentation that relates to monies you have received from California including but not limited to documents that describe how monies from California congregations are received by you from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request is overly broad, unduly burdensome, and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA receives contributions from approximately 1,997 congregations in California, which contributions are received by cash, checks and electronic transfers.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA again refers the Court to its response to request no. 21 above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 24

Produce all documentation that relates to monies you have received from California including but not limited to treasurer summaries and reports from 1970 to the present

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request is overly broad, vague, and unduly burdensome, and seeks private and confidential documents for purpose of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA refers the Court to its response to request no. 21 above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 25

Produce all documentation that relates to monies you have received from California including but not limited to tax returns and other government filings or reportings from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on

Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request violates privacy interests and privacy rights. This request is overly broad, unduly burdensome, and is intended to harass Defendant.

ARGUMENT:

The requested documents will reflect monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This request is plainly objectionable, and those objections should be sustained. This request is indeed overly broad, vague and unduly burdensome as to the scope and *volume of documents requested.* Watch Tower PA also refers the Court to its response to request no. 21 above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 26

Produce all documentation that relates to monies you have received from California including but not limited to documents that memorialize wire transfers or deposits from congregations in California from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA refers the Court to its response to request no. 25 immediately above. *The objections should be sustained and plaintiffs' motion denied.*

REQUEST FOR PRODUCTION NO. 27

Produce all documentation that relates to monies you have received from California including but not limited to deposit summaries from individuals and/or congregations in California from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome,

violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA again refers the Court to its response to request no. 25 above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 28

Produce all documentation that relates to monies you have received from California including but not limited to bank statements reflecting amounts received from California by you from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and

without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA refers the Court to its response to request no. 25 above. The objections should be sustained and plaintiffs' motion denied.

REQUEST FOR PRODUCTION NO. 29:

Produce all corporate and/or governmental filings (state or federal) from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that there are none in California.

ARGUMENT:

The requested documents will likely reflect monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA responded to this request. No further response is required. Plaintiff simply did not like the answer given and appear to be confused (as evidenced by the argument submitted, which is not remotely relevant to the actual request) about what they are actually seeking. Plaintiffs' motion must be denied.

DATED: March 11, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Watch Tower PA

5024255.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
MAR 1 4 2005
Clerk of the Napa Superior Court
By: Dora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

DATE: April 8, 2005
TIME: 9:30 AM
DEPT.: B
TRIAL DATES: Not yet set

SPECIAL INTERROGATORIES, SET ONE

INTERROGATORY NO. 1:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe your function/purpose within the Watchtower Society/Jehovah's Witnesses organization.

RESPONSE:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous.

This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to, and without waiving those objections, Defendant Watch Tower Bible and Tract Society of Pennsylvania (Watch Tower PA") responds as follows: Watch Tower PA is a legal non-profit corporation that in the past has communicated with Governing Body's spiritual supervision to Branch Committees of Jehovah's Witnesses throughout the world. Watch Tower PA no longer does so. Watch Tower PA never communicated the Governing Body's spiritual counsel to the U.S. Branch Committee which went into operation in about April 2002. Watch Tower PA is the copyright holder for publications of Jehovah's Witnesses, holds funds donated for the world wide work of Jehovah's Witnesses and to the Kingdom Hall Building Fund, operates the Kingdom Hall Assistance Arrangement, and provides funds to branches and congregations of Jehovah's Witnesses throughout the world who may be in need of such funds.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to

branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. This interrogatory is indeed vague, overly broad, and ambiguous as to what information plaintiffs are requesting. However, notwithstanding those valid objections, Watch Tower PA has responded and, moreover, plaintiffs have discovered substantial information about the relevant issue of "Watch Tower PA's contacts in California." For example, plaintiffs have discovered the following information about Watch Tower PA's contacts with California:

1. Watch Tower PA holds the copyright to most Jehovah's Witnesses publications. Those publications are distributed to and used by congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 congregations in California) and worldwide, although the actual publishing and distribution is accomplished by other entities.

2. Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of the Risk Management Office is to process claims made to the KHAA.

3. For some period of time prior to the creation of KHAA in 1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program.

4. Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling

of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition, there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans.

5. Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, U.S. congregations sent monetary contributions to Watchtower New York.

6. Watch Tower PA also receives bequests of real property from Jehovah's Witnesses throughout the U.S., including California. The property bequests from California include burial plots and remainder interests in real property, but Watch Tower PA currently has less than 10 such properties, which include remainder interests in six properties.

7. Watch Tower PA has been used in the past to communicate the Governing Body's spiritual supervision to Branch Committee's of Jehovah's Witnesses throughout the world (there was never a U.S. Branch Committee until about April 2002), but no longer does so and has never done so to the U.S. Branch Committee. Watch Tower PA has never communicated the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the 48 contiguous states of the U.S.

If plaintiffs clarify what information they are seeking, Watch Tower PA could likely further respond. However, information about Watch Tower PA's California-related activities was obtained in the August 2004 PMK deposition, and Watch Tower PA also expects that whatever further response it might provide to this interrogatory would not be acceptable to plaintiffs' counsel. At this stage of discovery, particularly after having

deposed the PMK, a further response to this interrogatory would truly elevate form over function. The objections should be sustained.

INTERROGATORY NO. 2:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe all of the changes to your function/purpose since 1970.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant refers Plaintiffs to the answer to No. 1 above.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. First, Watch Tower PA has produced its charters, bylaws, and articles of incorporation (Exhibit 59). Second, as detailed above by Watch Tower PA in the response to plaintiffs' argument about special interrogatory no. 1, plaintiffs have obtained substantial discovery about the very issues identified in plaintiffs'

"argument" immediately above, including information about the KHAA, the KHF, etc. Thus, it truly is not clear what further information plaintiffs are suggesting be provided here. In addition, Watch Tower PA also expects that whatever further response it might provide to this interrogatory would not be acceptable to plaintiffs' counsel. The clear intent of plaintiffs is to harass and create undue burden and expense for Watch Tower PA rather than to obtain truly relevant *additional* information about "Watch Tower PA's contacts in California." The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 3:

If your answer to Interrogatory No. 2 is in the affirmative, why and when such changes were made.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant responds: Not applicable.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Watch Tower PA here incorporates its response to plaintiffs' arguments to interrogatories nos. 1 and 2 above.

INTERROGATORY NO. 4:

If your answer to Interrogatory No. 2 is in the affirmative, please state who made the changes.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant responds: Not applicable.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Watch Tower PA here incorporates its response to plaintiffs' arguments to interrogatories nos. 1 and 2 above.

INTERROGATORY NO. 13:

Describe the relationship between you and Defendant Jehovah's Witnesses - Napa Congregation (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with its own Napa based congregations.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Plaintiffs simply did not like the answer given. Again, as detailed above, plaintiffs have obtained substantial information about "Watch Tower PA's

contacts in California," but plaintiffs appear unsatisfied with the responses. An order compelling a further response here would be an empty gesture, as it will not change the response that was given. Plaintiffs' motion must be denied.

INTERROGATORY NO. 14:

Describe the relationship between you and Defendant Jehovah's Witnesses - Oak Knoll Congregation (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in as sufficient detail to understand its relationship with its own Napa based congregations.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. An order compelling a further response here would be an empty gesture, as it will not change the response that was given. Plaintiffs' motion must be denied.

INTERROGATORY NO. 15:

Describe the relationship between you and Defendant Watchtower Bible and Tract Society of New York, Inc. (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: No legal relationship, because Watchtower NY is a separate legal entity that is neither a parent corporation nor subsidiary of Watch Tower PA.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry out the essential purposes of this organization. Surprisingly, Defendant Watch Tower New

York and Watch Tower Pennsylvania are located in the same building in the State of New York, but Watch Tower Pennsylvania filed a motion to quash for lack of personal jurisdiction, while Watch Tower New York did not. How these corporations operate in relation to one another will help address their contacts with California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Plaintiffs simply did not like the answer given. There is no corporate relationship. It truly is not clear what plaintiffs mean by an "organizational" or "theocratic" relationship. Nonetheless, even *though not truly responsive here, in other* discovery plaintiffs have learned that Watch Tower PA has provided funding to Watchtower New York and carries it as a long term receivable and that the two corporations cooperate. Plaintiffs also have learned that Watch Tower PA holds the copyright to literature that Watchtower New York published and distributed to congregations of Jehovah's Witnesses in the U.S. (including in California). In any event, an order compelling a further response here would be another empty gesture, unless and until plaintiffs clarify what information they really are seeking. Indeed, Watch Tower PA expects that whatever further response it might provide to this interrogatory would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 16:

Describe the relationship between you and Defendant Christian Congregation of Jehovah's Witnesses (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution

and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. *Plaintiffs simply did not like the answer given.* There is no corporate relationship. It truly is not clear what plaintiffs mean by an "organizational" or "theocratic" relationship. In addition, plaintiffs' counsel is fully aware that CCJW (Christian Congregation of Jehovah's Witnesses, a non-profit corporation) did not come into existence until 2000, which was at least two years *after* the last allegation of abuse was alleged in plaintiffs' pleadings in the coordinated cases. Thus, this interrogatory, besides being disingenuous, is plainly not reasonably calculated to lead to discovery of admissible evidence. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 17:

Describe the relationship between you and Watchtower Service Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California *during the relevant time period*"). *Subject to and without waiving those objections*, Watch Tower PA responds as follows: None.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Service Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Service Department is essential to understanding their contacts with California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Plaintiffs simply did not like the answer given. There is no "corporate" relationship. Again, as plaintiffs' counsel are fully aware, prior to March 2001, the Service Department, as well as the Office of Public Information and the

***Convention Office, all of which are located in* New York, generally carried out their activities through Watchtower New York and *not* through Watch Tower PA. (The Writing Correspondence Department also generally carried out its activities through Watchtower New York, although Watch Tower PA holds the copyrights to the material written.) Those departments all cooperate with each other but there are no reporting relationships. On a hierarchical basis, those departments all stand in equal position and one does not supervise or direct another.**

In any event, an order compelling a further response would not change the response already provided. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 18:

Describe the relationship between you and Watchtower Legal Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Legal Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Legal Department is essential to understanding their contacts with California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. This interrogatory is plainly objectionable, but a response was still provided: "Watch Tower PA is a client" of the Watchtower Legal Department. It is not clear what else plaintiffs expect Watch Tower PA to answer here, but those six words, "Watch Tower PA is a client[,]" fully describe the relationship. The objections should otherwise be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 19:

Describe the relationship between you and Watchtower Writing Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch

Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA holds the copyright to writings published by the Writing Department of Jehovah's Witnesses in the United States.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Writing Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Writing Department is essential to understanding their contacts with California.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Plaintiffs simply did not like the answer given. There is no "corporate" relationship, but Watch Tower PA holds the copyright to literature written by the Writing Department. This issue also was addressed in the August 2004 PMK deposition (*see, e.g.*, transcript at pp. 56 – 57).

An order compelling a further response here would not change the response already provided, including the response in the PMK deposition. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 20:

Describe the relationship between you and Office of Public Information (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Office of Public Information is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Office of Public Information is essential to understanding their contacts with California. Their response that "Watch Tower PA is a client" is rather vague and further clarification should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered *this interrogatory, notwithstanding valid objections.* No further response is required. Again, plaintiffs simply did not like the answer given. There is no "corporate" relationship, but Watch Tower PA is a client. In any event, an

order compelling a further response here would not change the response already provided. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 21:

Describe the relationship between you and Public Affairs Office (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: The Public Affairs Office is now known as the Office of Public Information. See also response to No. 20 above.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Office of Public Information is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Office of Public Information is

essential to understanding their contacts with California. Their response that "Watch Tower PA is a client" is rather vague and further clarification should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. There is no "corporate" relationship, but Watch Tower PA is a client. Again, an order compelling a further response would not change the response already provided. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 22:

Describe the relationship between you and Governing Body (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: No legal relationship.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." *This should be explained. Watch Tower Pennsylvania should be* ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. There is no "legal" relationship between Watch Tower PA and the Governing Body. Again, an order compelling a further response would not change the response already provided. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 23:

Please describe the relationship between the Board of Directors for Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the *internal ecclesiastical government* of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Until October 1971, Watch Tower PA's board of directors consisted exclusively of individuals who later became members of the Governing Body. Since about October 2000, no Governing Body member is or has been on the Watch Tower PA board of directors.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. As discovery has revealed, there is no "corporate" relationship, but during the time period relevant to the allegations of abuse in these coordinated cases, some members of the Governing Body were on the board of directors of Watch Tower PA. Prior to that, and up to about October 1971, Watch Tower PA's board of directors consisted exclusively of

individuals who later became members of the Governing Body. Also, since about October 2000, no Governing Body member is or has been on the Watch Tower PA board of directors.

It appears from plaintiffs' argument above that plaintiffs now seek some other information about the "relationship" of the Governing Body to the Watch Tower PA board of directors, because plaintiffs' argument includes Watch Tower PA's funding of Kingdom Hall loans, purchase of insurance, etc. Such information indisputably was *not* requested by the specific interrogatory at issue here (which suggests that the interrogatory was either vaguely or even inartfully worded). In any event, the objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 24:

Please describe the relationship between the officers of Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 23 above.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations. Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. *Much like the response to plaintiffs' argument immediately above, it appears that* plaintiffs now seek some other information about the "relationship" of the Governing Body to the "officers" of Watch Tower. Again, such information indisputably was *not* requested by the specific interrogatory at issue here (which again suggests that the interrogatory was either vaguely or even inartfully worded). The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 25:

Please describe every way that the Governing Body used the Watch Tower Bible and Tract Society of Pennsylvania to help carry out the activities of Jehovah's Witnesses in the United States, including but not limited to the State of California, from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is

specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This interrogatory is overly broad, vague and ambiguous as to what is specifically meant by the phrase "help carry out the activities of Jehovah's Witnesses." Subject to and without waiving those objections, Watch Tower PA responds as follows: Up until about 2001, Watch Tower PA was occasionally "used" to communicate with congregations in California by mail. Watch Tower PA has held, and still holds, copyrights to literature published by Jehovah's Witnesses and used by many publishers in California. See also response to No. 1 above.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations. Watch Tower Pennsylvania's response

seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. In addition, here again, plaintiffs have discovered substantial information about the relevant issue of "Watch Tower PA's contacts in California." To repeat, plaintiffs have discovered the following information about Watch Tower PA's contacts with California, all of which arguably are responsive here:

1. Watch Tower PA holds the copyright to most Jehovah's Witnesses publications. Those publications are distributed to and used by congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 congregations in California) and worldwide, although the actual publishing and distribution is accomplished by other entities.

2. Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of the Risk Management Office is to process claims made to the KHAA.

3. For some period of time prior to the creation of KHAA in 1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program.

4. Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling

of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition, there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans.

5. Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, all U.S. congregations sent monetary contributions to Watchtower New York.

6. Watch Tower PA also receives bequests of real property from Jehovah's Witnesses throughout the U.S., including California. The property bequests from California include burial plots and remainder interests in real property, but Watch Tower PA currently has less than 10 such properties, which include remainder interests in six properties.

7. Watch Tower PA has been used in the past to communicate the Governing Body's spiritual supervision to Branch Committee's of Jehovah's Witnesses throughout the world (there was never a U.S. Branch Committee until about April 2002), but no longer does so and has never done so to the U.S. Branch Committee. Watch Tower PA has never communicated the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the 48 contiguous states of the U.S.

Additional information about Watch Tower PA's California-related activities was obtained in the August 2004 PMK deposition. Thus, it is not clear to Watch Tower PA what additional information plaintiffs are seeking. If plaintiffs clarify what information they are, in fact, seeking, Watch Tower PA could likely attempt to further respond. However, Watch Tower PA also expects that whatever further response it might provide

to this interrogatory would not be acceptable to plaintiffs' counsel. Also, at this stage of discovery, particularly after having deposed the PMK, a further response to this interrogatory would again elevate form over substance. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 26:

Please describe how Watch Tower Bible and Tract Society of Pennsylvania has operated as the Service Committee of the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has not operated as the Service Committee of the Governing Body.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be

ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations. Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Again, plaintiffs simply did not like the answer given. The answer was that "Watch Tower PA has *not* operated as the Service Committee of the Governing Body" [emphasis added], and no different response can be compelled. Plaintiffs' motion must be denied.

INTERROGATORY NO. 27:

Please describe any and all involvement you have had with Kingdom Hall financing from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and

complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has provided money to congregations upon request so that the congregations could build Kingdom Halls.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent they hold funds from congregations in California and worldwide, they operate the Kingdom Hall Building Fund for congregations in California, they operate the Kingdom Hall Assistance Arrangement for California congregations, and they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. The issue of Kingdom Hall loans in California was addressed at length in the PMK deposition on August 25 – 26, 2004, as discussed above, and supplementing that deposition testimony (and the prior document production and discovery responses) on this topic would again elevate form over substance. In any event, whatever further response Watch Tower PA might provide to this interrogatory, such a response likely would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 29:

Please describe any and all involvement you have had with Kingdom Hall Assistance

Arrangements (KHAA) from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that is has received annual contributions from congregations to fund the KHAA since about 1989 and has managed the funds in KHAA.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent they hold funds from congregations in California and worldwide, they operate the Kingdom Hall Building Fund for congregations in California, they operate the Kingdom Hall Assistance Arrangement for California congregations, and they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Like with the issue of Kingdom Hall loans in California addressed above, the issue of KHAA was addressed at length in the PMK deposition on August 25 – 26, 2004. Supplementing that deposition testimony and the prior document production and discovery responses on this topic would, again, serve only to elevate form over substance. Watch Tower PA again believes that whatever further response Watch Tower PA might provide to this interrogatory, such a response would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 30:

Please describe any and all involvement you have had with risk management for California congregations and their respective Kingdom Halls from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety

of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. The issue of risk management, like the issues of Kingdom Hall loans in California and the KHAA addressed above, was addressed at length in the PMK deposition on August 25 – 26, 2004. Supplementing that deposition testimony and the prior document production and discovery responses on this topic would, again, serve only to elevate form over substance. Watch Tower PA again believes that whatever further response Watch Tower PA might provide to this interrogatory, such a response would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 31:

Please describe your involvement with the purchase and/or financing of Kingdom Halls, generally, and the specific Kingdom Halls used by Defendant Napa Congregation of Jehovah's Witnesses and Defendant Oak Knoll Congregation of Jehovah's Witnesses.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's

Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it provides money to congregations of Jehovah's Witnesses upon request in order to financially assist the congregations with building Kingdom Halls of Jehovah's Witnesses. Watch Tower PA was not involved in the purchase or building of the Kingdom Hall used by Defendants Napa and Oak Knoll Congregations of Jehovah's Witnesses and did not provide any monies to those two congregations for that purpose.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page 23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with its own Napa based congregations.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections.

No further response is required. The issues of Kingdom Hall loans in California and the KFH have been addressed above and, again, were addressed at length in the PMK deposition on August 25 – 26, 2004. Supplementing that deposition testimony and the prior document production and discovery responses on this topic would, again, serve only to elevate form over substance. Watch Tower PA again believes that whatever further response Watch Tower PA might provide to this interrogatory, it would not be acceptable to plaintiffs' counsel. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 32:

Please describe the existence and operation of the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "describe the existence" of KHAA. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the KHAA was established in about 1989 to consolidate the insurance needs of congregations Jehovah's Witnesses throughout the United States. Each congregation may contribute to the fund. In turn, those monies are used to purchase a CGL insurance policy for all congregations and to cover certain claims for which there is no insurance.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. The issues of the KHAA and insurance purchased for congregations of Jehovah's Witnesses in the U.S. (including in California) have been addressed above at length and, again, were also addressed at length in the PMK deposition on August 25 – 26, 2004. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 33:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide all of the functions of the Risk Management Office from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California

analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the Risk Management Office of Watch Tower PA does not operate within the United States, except with respect to KHAA.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. The issues of the KHAA and insurance purchased for congregations of Jehovah's Witnesses in the U.S. (including in California) have been addressed above at length and the question here about the Risk Management Office has been answered. As noted repeatedly above, these issues were addressed at length in the

PMK deposition on August 25 – 26, 2004. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 34:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide who at the Watch Tower Bible and Tract Society of Pennsylvania oversaw/oversees the Risk Management Office from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and

California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This interrogatory is plainly objectionable, and those objections should be sustained. Moreover, issues regarding the KHAA and insurance purchased for congregations of Jehovah's Witnesses in the U.S. (including in California) and the Risk Management Office have been addressed above at length. As noted repeatedly above, these issues were addressed at length in the PMK deposition on August 25 – 26, 2004. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 35:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe how the Society's Risk Management Office administers the KHAA Fund 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32,

Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This interrogatory is, again, plainly objectionable, and those objections should be sustained. Moreover, issues regarding the KHAA and insurance purchased for congregations of Jehovah's Witnesses in the U.S. (including in California) and the Risk Management Office have been addressed above at length. As noted repeatedly above, these issues were addressed at length in the PMK deposition on August 25 – 26, 2004. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 36:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe from 1970 to the present how the Risk Management Office purchases commercial excess insurance to protect congregations from catastrophic loss.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and

not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

This interrogatory is, again, plainly objectionable, and those objections should be sustained. Moreover, issues regarding the KHAA and insurance purchased for congregations of Jehovah's Witnesses in the U.S. (including in California) and the Risk Management Office have been addressed above at length. As noted repeatedly above, these issues were addressed at length in the PMK deposition on August 25 – 26, 2004. The objections should be sustained and plaintiffs' motion denied.

INTERROGATORY NO. 37:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in seeking contributions for the Kingdom Hall Assistance Arrangement from 1970 to the

present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that Watch Tower PA informs congregations of Jehovah's Witnesses in the United States once each year of the need to support the KHAA and suggests to them a dollar amount per publisher in each congregation that they may wish to contribute toward the fund.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

WATCH TOWER PA'S RESPONSE TO PLAINTIFFS' ARGUMENT:

Watch Tower PA answered this interrogatory, notwithstanding valid objections. No further response is required. Documents have been produced in this regard, and plaintiffs' counsel queried the Watch Tower PMK about this topic in the August 25 – 26, 2004 deposition. Again, it appears that plaintiffs simply did not like the answers given. However, no different responses can be compelled. Plaintiffs' motion must be denied.

DATED: March 11, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Watch Tower PA

5024256.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT'S OPPOSITION TO PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

MAR 14 2005

Clerk of the Napa Superior Court
By: Sara O'Sheets
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF WATCH TOWER PENNSYLVANIA'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL DISCOVERY** **DATE: April 8, 2005** **TIME: 9:30 AM** **DEPT.: B** **TRIAL DATES: Not yet set**
AND COORDINATED CASES	

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the attorneys of record for defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") in these coordinated actions. I make the following statements from personal knowledge.

2. Attached hereto as Exhibit A is a true copy of defendant Watch Tower PA's objections and response to plaintiffs' fourth amended notice of PMK deposition.

3. I personally attended the deposition of Watch Tower PA's designated PMK, Alexander Reinmueller, on August 25 - 26, 2004. Attached hereto as Exhibit B are true copies

of excerpts from the transcript of that deposition that are referenced at p.4 of Watch Tower PA's response in opposition to plaintiffs' motion to compel discovery and, subject to the errata sheet submitted by Mr. Reinmueller, I believe those excerpts accurately reflect the testimony given.

4. Attached hereto as Exhibit C are true copies of the documents produced in conjunction with defendant Watch Tower PA's objections and response to plaintiffs' fourth amended notice of PMK deposition (*see* paragraph 2 above) that were identified as Exhibits 39, 40, 54, 58, and 59, as referenced in Watch Tower PA's response and opposition papers to plaintiffs' motion to compel discovery. The other documents produced with defendant Watch Tower PA's objections and response to plaintiffs' fourth amended notice of PMK deposition will be made available to court at the hearing or otherwise as may be requested or necessary.

5. I have been personally involved as one of Watch Tower PA's attorney in discovery in these coordinated cases. Through that discovery, plaintiffs have learned the following: Watch Tower PA cooperates with Watch Tower Bible and Tract Society of New York, Inc. and, since the inception of Christian Congregation of Jehovah's Witnesses ("CCJW") in 2000, with CCJW; and Watch Tower PA has provided some funding to Watchtower New York and to CCJW and carries those as long-term receivables.

6. In addition to the discovery noted above in paragraph 5, plaintiffs have "discovered" the following about Watch Tower PA's non-traditional contacts with California: (a) Watch Tower PA holds the copyright to most Jehovah's Witnesses publications. Those publications are distributed to and used by congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 congregations in California) and worldwide, although the actual publishing and distribution is accomplished by other entities; (b) Watch Tower PA administers the Kingdom Hall Assistance Arrangement ("KHAA"), which was started in 1989. KHAA pays some claims on a discretionary basis and provides funds to secure insurance for many congregations of Jehovah's Witnesses in the U.S. (including California). KHAA is funded by contributions from congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world. One of the activities of the Risk Management Office is to process claims made to the KHAA; (c) for some period of time prior to the creation of KHAA in

1989 and for a few years thereafter, Watch Tower PA purchased insurance policies that provided general liability and certain other insurance coverage to congregations of Jehovah's Witnesses in the U.S. (including California) that chose to participate in the insurance program; (d) Watch Tower PA administers the Kingdom Hall Fund ("KHF"), which was started in 1983 and provides loans upon request to congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world for construction or remodeling of Kingdom Halls (*i.e.*, places of worship for local congregations). There have been about 375 such loans to California congregations since the mid-1980s and, as of the August 2004 PMK deposition, there were 197 existing loans to California congregations through KHF. Congregations of Jehovah's Witnesses in the U.S. (including California) and throughout the world donate funds to the KHF that are used for such Kingdom Hall construction loans; (e) Watch Tower PA receives monetary donations to its general fund from Jehovah's Witnesses in the U.S. (including California) and worldwide. Watch Tower PA has only received monetary contributions to its general fund from congregations of Jehovah's Witnesses in the U.S. (including the approximately 1,997 California congregations) since September 1, 2001. Prior to that time, U.S. congregations sent monetary contributions to Watchtower New York; (f) Watch Tower PA also receives bequests of real property from Jehovah's Witnesses throughout the U.S., including California. The property bequests from California include burial plots and remainder interests in real property, but Watch Tower PA currently has less than 10 such properties, which include remainder interests in six properties; (g) Watch Tower PA has been used in the past to communicate the Governing Body's spiritual supervision to Branch Committee's of Jehovah's Witnesses throughout the world (there was never a U.S. Branch Committee until about April 2002), but no longer does so and has never done so to the U.S. Branch Committee. Watch Tower PA has never communicated the appointment of elders and ministerial servants to congregations of Jehovah's Witnesses in the 48 contiguous states of the U.S.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct upon my knowledge, information and belief.

Executed this 11th day of March, 2005, at Gold River, California.

By _____
Robert J. Schnack

5024601.1

EXHIBIT A

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Defendant
WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **DEFENDANTS' OBJECTION TO THE FOURTH AMENDED NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE**

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion challenging personal jurisdiction which is still pending with the Court and, therefore, specially appears herein to object to plaintiffs' CCP §2025(d)(6) notice of deposition *duces tecum* to Watch Tower PA regarding (1) the areas of inquiry of the Watch Tower PA representative, and (2) the documents requested in the notice of PMK deposition, as follows:

OBJECTIONS TO SCOPE OF SUBJECT MATTER INQUIRY

SUBJECT MATTER NO. 1:

Organizational and corporate structure of Watch Tower PA from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 1:

Objection. This request is overly broad as to time and geographic scope. Further, this

EXHIBIT A

line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony relevant to the secular organizational structure of the Watch Tower PA corporation for the time periods of 1970 to 2003.

SUBJECT MATTER NO. 2:

The make up and function of the Governing Body from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 2:

Objection. This request is overly broad as to time and geographic scope. This request is not limited to Watch Tower PA, in that this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in

California during the relevant time period"). Also, because the Governing Body is involved with spiritual and ecclesiastical matters related to the Jehovah's Witnesses religion, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

SUBJECT MATTER NO. 3:

Relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present (including but not limited to the Governing Body, Watchtower New York, Branch Committees, Christian Congregation of Jehovah's Witnesses, California District, California Circuits and California Congregations).

RESPONSE TO SUBJECT MATTER NO. 3:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside

the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to its relationship, if any, with any entity that carried out any activity for Jehovah's Witnesses in California from 1970 to 2003.

SUBJECT MATTER NO. 4:

The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present (including but not limited to amounts collected and amounts paid by the KHAA)

RESPONSE TO SUBJECT MATTER NO. 4:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, furnishing details as to amounts collected and paid by the KHAA is unduly burdensome, an invasion of privacy, harassment, and is not reasonably calculated to lead to discovery of admissible evidence on the issue of whether Watch Tower PA is subject to personal jurisdiction in California.

Subject to and without waiving those objections, the designated representative of Watch

Tower PA will provide testimony as to KHAA and its operation with respect to California in 2003. The KHAA did not come into existence until 1989.

SUBJECT MATTER NO. 5:

The Risk Management Office and its operation from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 5:

Objection. This request is overly broad as to time and geographic scope. This line of questioning is not limited to Watch Tower PA, in that this request seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Risk Management's operations through Watch Tower PA in California, if any, from 1970 to 2003.

SUBJECT MATTER NO. 6:

Kingdom Hall financing in California from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 6:

Objection. This request is overly broad as to time and scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in

California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the Defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing in California from 1970 to 2003.

SUBJECT MATTER NO. 7:

Financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses (assemblies or congregation functions) from 1970 to the present (this category to include but not be limited to Kingdom Halls and Assembly Buildings).

RESPONSE TO SUBJECT MATTER NO. 7:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972

to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses from 1970 to 2003.

SUBJECT MATTER NO. 8:

Financing, leasing and/or ownership of property/real estate in California from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 8:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California from 1970 to 2003.

SUBJECT MATTER NO. 9:

Watch Tower PA's operation as the Service Committee of the Governing Body from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 9:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Service Committee's operations through Watch Tower PA in California, if any, from 1970 to 2003.

SUBJECT MATTER NO. 10:

Watch Tower PA's participation in Gilead Schools from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 10:

Objection. This request is overly broad as to time and geographic scope. Further, this

line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to Watch Tower PA's participation in Gilead School activity in California, if any, from 1970 to 2003.

OBJECTIONS TO DOCUMENT REQUESTS

REQUEST NO. 1:

Watch Tower PA's corporate book (which should include lists of officers, directors, organizational meeting minutes, resolutions and changes in organizational function and structure).

RESPONSE TO REQUEST NO. 1:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is

the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has already provided a list of all its directors in its prior response to Plaintiffs' interrogatories. See also Exhibits 39 and 40.

REQUEST NO. 2:

Governmental filings (state and federal) by Watch Tower PA from 1970 to the present.

RESPONSE TO REQUEST NO. 2:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, as well as vague and ambiguous as to what might

be termed a "government filing."

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has not made any "government filings" in California. However for the federal filing of the corporation, see Exhibit 59.

REQUEST NO. 3:

Documents describing the organizational structure and reporting relationships within the Watch Tower PA, specifically, and Watchtower Society, generally (describing how Watch Tower PA fits into the overall organization).

RESPONSE TO REQUEST NO. 3:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 39, 40, and 54.

REQUEST NO. 4:

Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution") from Watch Tower PA to California congregations, forms used in the operation of the KHAA, and claims paid in California.

RESPONSE TO REQUEST NO. 4:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and an invasion of privacy of individuals not parties to this lawsuit, unduly burdensome, and intended for purposes of harassment.

Subject to and without waiving those objections, Watch Tower PA responds as follows: See documents for 1972 to 1985 and 2003, attached hereto as Exhibits 5, 10, 12, 14, 15, 17, 18, 21, 25, 26, 28, 29, 31, 36, 37, 38, 49, 50, 51, 52, and 58. Defendant Watch Tower PA had less than 20 claims in California involving the KHAA for the year 2003 and no claims paid from 1972 to 1985 because the KHAA did not come into existence until 1989.

REQUEST NO. 5:

Documents related to financing Kingdom Halls and other buildings used by or for Jehovah's Witnesses in California from 1970 to the present (including but not limited to the *Instructions for Congregation Accounting* forms and other documents that describe the initiation of the transactions).

RESPONSE TO REQUEST NO. 5:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA presently has about 197 Kingdom Hall loans in California. See also Exhibits 5, 6, 7, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 36, 41, 44, 49, 50, 51, and 52.

REQUEST NO. 6:

Documents provided by Watch Tower PA to any California district office, circuit office, congregation, elder, accounts servant or member from 1970 to the present (including but not limited to the Service Committee for the Governing Body).

RESPONSE TO REQUEST NO. 6:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the Defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 45, 46, 47, 48, 56, and 57.

REQUEST NO. 7:

Documents related to Watch Tower PA's involvement in the application process or presentations at the Gilead School from 1970 to the present.

RESPONSE TO REQUEST NO. 7:

Objection. This request seeks documents and information not reasonably calculated to

lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003, and to California.

Further, this request is overly broad and vague. Also, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 19 and 20.

REQUEST NO. 8:

Documents related to monies received by you from California for any reason from 1970 to the present (including but not limited to donations, payments, premiums, and rental/lease income).

RESPONSE TO REQUEST NO. 8:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be

permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, an invasion of privacy, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA sends letters on a monthly basis to each congregation acknowledging the receipt of donations sent by the congregation to Watch Tower PA. See also Exhibits 1, 5, 7, 10, 11, 12, 13, 14, 15, 22, 25, 26, 29, 30, 36, 37 and 38.

REQUEST NO. 9:

Documents sent or prepared by Watch Tower PA that provide instruction for elders and other congregation leaders in California from 1970 to the present.

RESPONSE TO REQUEST NO. 9:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the

years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this request is overly broad and vague. Further, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 45, 47, 48, and 55.

REQUEST NO. 10:

Documents sent or prepared by Watch Tower PA that provide instruction for district or circuit overseers in California from 1970 to the present.

RESPONSE TO REQUEST NO. 10:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

This request is overly broad, vague, and unduly burdensome. Further, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 1, 2, 3, 4, 5, 7, 8, 9, 19, 23, and 24.

DATED: August 11, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Defendant Watch Tower Bible and Tract Society of Pennsylvania

4109508.1

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EXHIBIT B

SUPERIOR COURT CALIFORNIA
COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

-against-

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

Defendants.

August 25, 2004
9:10 a.m.
333 Adams Street
Brooklyn, New York

DEPOSITION

of ALEXANDER REINMUELLER, a Witness appearing on behalf of one of the Defendants herein, held at the above-noted time and place before Brian Brenner, a Shorthand Reporter and Notary Public of the State of New York, pursuant to Court Order, the Provisions of the CPLR pertaining thereto, and stipulations between counsel.

EXHIBIT B

A. REINMUELLER
just circle that whole level and just take it out?
A. Part from that. The rest of the hierarchy from a religious perspective is reasonably accurate.
Q. If you would, pick up that pen and do that, or if you would like to, hand if back to me, and I'll do that.
A. (Handing).
Q. In California, do you know how many districts there are, or is California just one state of many in a district?
A. Yes, and districts are not allocated strictly by state. There is some overlapping. I'm not exactly sure of how many there are.
MR. SCHNACK: Again, counsel, he's probably not the person most knowledgeable on that. That wasn't in the notice of deposition. I think we haven't designated Mr. Reinmueller as the PMK on that issue.
Q. Do you know how many circuits there are in California?

A. REINMUELLER
A. I'm not exactly sure.
Q. In some of the interrogatory responses that I could show you if you need me to, it indicates that Watch Tower Pennsylvania receives donations from 1,977 congregations in California.
Do you recall that?
MR. SCHNACK: It was 1,997, I believe, in the response.
Q. Even more. 1,997 congregations in California have made contributions to catch Tower Pennsylvania, I assume, last year?
A. That's correct.
Q. Is safe for me to assume that there are at least 1,997 congregations in California?
A. Yes, it's fair.
Q. Using the mathematics of approximately 20 congregations per circuit, is it fair for me to assume there is approximately 100 circuits in California?
A. That would be reasonable.

A. REINMUELLER
Q. Of the 100 circuits in California, would it be fair for me to assume that there is one circuit overseer per circuit?
A. Yes, that's correct.
Q. So there are approximately at present 100 circuit overseers in California, assuming that there are at least 1,997 congregations in California?
A. Yes. That would be reasonable.
Q. With respect to the congregations that donate to Watch Tower Pennsylvania, do you know how many congregations there are that haven't donated to Watch Tower Pennsylvania?
A. Im not aware of any that have not.
Q. All of them do, don't they?
A. I would expect that to be true.
Q. In one form or another, correct?
A. Yes.
Q. So is it fair increase know to assume that when I read the interrogatory response that 1,997 congregations are

A. REINMUELLER
making donations that there are 1,997 congregations, correct?
A. Yes.
Q. So there is not just a couple of renegades out there that won't give money?
A. No.
Q. Do you know whether there is a district overseer over California?
A. There are several.
Q. So there are several districts in California, correct?
A. Yes.
Q. More than ten?
A. Probably around ten.
Q. So there is approximately ten district overseers in California?
A. Yes.
Q. Of course, the one branch that oversees business in California is the US branch, correct?
A. The US branch oversees all of the spiritual activities of Jehovah's Witnesses of the US.
Q. Is the branch committee the

A. REINMUELLER

California, correct?

A. It provides spiritual direction for our preaching work.

Q. Do you consider how to inspect the roof of a Kingdom Hall a spiritual matter?

A. No.

Q. Do you consider checking the security at the Kingdom Hall a spiritual matter?

A. Not specifically.

Q. Do you consider to make sure sharp objects are not left on the premises at a Kingdom Hall a spiritual matter?

A. Not specifically.

Q. Isn't it true that some of the materials copyrighted by the Watch Tower Pennsylvania are not just spiritual instructions?

A. There may be some. There may be some examples. It would be rather minor, however, to my knowledge.

Q. Tell me, what is a regional building committee?

A. REINMUELLER

MR. SCHNACK: If you know?

A. It's a group of elders in an area with construction experience that help congregations build new Kingdom Halls when necessary.

Q. And the Kingdom Hall Fund, describe to me what is the Kingdom Hall Fund.

A. Kingdom Hall Fund is a fund that Watch Tower Pennsylvania operates where congregations contribute monies that, in turn, are made available to congregations on loan when they're building new facilities and need additional financing.

Q. Isn't it true in the process of getting a loan from the Kingdom Hall Fund, a regional building committee is used?

A. Regional building committee provides assistance to the congregation in applying for a loan.

Q. Are there regional building committees, like one in Southern California, one in Northern California, or are they per district? How many of them

A. REINMUELLER

are there in California?

A. I don't know exactly, but I would guess it would be less than ten.

Q. Less than ten in California?

A. In California.

Q. And it's made up of elders?

MR. SCHNACK: Again, Greg, I'll object unless you somehow link this to Watch Tower Pennsylvania. Regional building committees have nothing to do with Watch Tower Pennsylvania.

MR. LOVE: It has a lot to do with Watch Tower Pennsylvania. Your materials that I'm about to give him show that the regional building committee was involved in the approval of the loan by Watch Tower Pennsylvania.

MR. SCHNACK: That's fine, but it doesn't -- it doesn't link it to Watch Tower California.

MR. SCHNACK: Go ahead. You could ask that question if you're suggesting that they were under the

A. REINMUELLER

control of Watch Tower Pennsylvania.

Q. In the interrogatory responses, I want to read this response to you that I've got written in my notes. Tell me if you could agree with it. I'll get it out. "Watchtower Pennsylvania administers a fund for the construction of church buildings entitled to Kingdom Hall Funds. Through this fund, Watchtower Pennsylvania makes funds available for buildings Kingdom Halls and Assembly Halls."

Is that true?

A. With the exception that the monies for the assembly halls do not come from the Kingdom Hall Fund. It's only for Kingdom Halls.

Q. Where does the money come from for the Assembly Halls?

A. Out of the Watch Tower Pennsylvania's general funds.

Q. How many funds are there at Watch Tower Pennsylvania that are available to entities in California?

A. Not sure how to characterize

A. REINMUELLER
your expression that are available to congregations.
Q. For Assemblies. To anybody in California?
A. What do you mean by, "are there available"?
Q. You talked about the Kingdom Hall Fund, which you said, was available to only congregations in California.
A. Correct.
Q. Now, you mentioned that there is a general --
MR. SCHNACK: I object. You mischaracterized his testimony. He said it was only available to congregations in California.
Q. I meant only available for the congregations for the building buildings. Is that fair?
MR. SCHNACK: Objection to form of the question. Would you rephrase the question?
MR. LOVE: I understand. It was grammatically correct, but it sounded

A. REINMUELLER
really bad. Strike that.
Q. Isn't it true that the Kingdom Hall Fund is available to congregations for the building of Kingdom Halls?
A. Yes, that is true.
Q. And that is true in California, correct?
A. That is true in California.
Q. You mentioned then a general fund, which is monies can be used to build Assembly Halls in California, correct? Not just in California, but it is available in California, correct?
A. It's not available. It's not something that could be applied for, but the corporation may use its general funds for a variety of purposes.
Q. Let's talk about the use of that Watch Tower Pennsylvania's funds for the construction of Assembly Halls. From the beginning of the process, explain to me how it would work.
A. To the best of my knowledge, there have been two Assembly Hall products

A. REINMUELLER
in California which received funding from Watch Tower Pennsylvania.
Q. When?
A. One is very recently in 2003, 2004, and one before that was in the early '90s.
Q. Is it your testimony that those are the only two Assembly Halls that Watch Tower Pennsylvania has contributed funds to, to build, or those are the only ones you're aware of?
A. Those are the only ones in the State of California that I'm aware of.
Q. So prior to the early '90s, there may have been some, that you just don't know about?
A. Not in the records that are available to me.
Q. So you reviewed enough records that you could give testimony that between 1970 and 2003, Watch Tower Pennsylvania's general fund has only been used to construct two Assembly Halls in California?

A. REINMUELLER
A. To the best of my knowledge, yes.
Q. Who seeks those monies that are provided out of the general fund? How does that come about?
A. With respect to either the halls?
Q. Yes.
A. The hall -- when an Assembly Hall is approved to be constructed, generally the congregations that will be using the facility are able to come up with the funds that they need. If they're not, then the directors of that corporation, the Assembly Hall corporation, may approach Watch Tower Pennsylvania to ask for funding.
Q. Let me see if I'm understanding you. A number of congregations decide that they want an Assembly Hall built. They'll create a corporate entity for the ownership of that property in that building?
A. That is correct.

A. REINMUELLER
Q. And they may choose a handful of elders to serve as either trustees or corporate officers of that created entity to own that property and building?
A. Correct.
Q. And that they call themselves anything like an Assembly Hall Committee or anything like that?
A. Not the directors. They will be just the directors of that corporation.
Q. Besides owning the property, that is all they do, correct, in that corporate capacity?
A. Yes.
Q. With respect to the group of people that are a committee to have that Assembly Hall built, do they call themselves anything?
A. I'm not the most knowledgeable on the organizational procedure, but to the best of my knowledge, once the facility is close to completion and ready to be operated, then an operating committee is established.

A. REINMUELLER
Q. But prior to that, it's still a collection of people going through a building program?
A. Correct.
Q. How does that group of elders communicate to Watch Tower Pennsylvania that they want funds or need funds?
A. Generally, they'll write a letter.
Q. Who will they write the letter to?
A. Usually to -- just to the branch office, a number of departments would be involved.
Q. Would the branch office is not Watch Tower Pennsylvania, is it?
A. No, it is not.
Q. How does the communication get to Watch Tower Pennsylvania?
A. When a project has been approved and funds are -- have been approved, the board of directors will direct the treasurer's office to follow through and establish the funding and whatever loan

A. REINMUELLER
agreement is arrived at.
Q. So the financing will be arranged on the front side, correct, before anything is built? They'll organize how it will be paid for, and they involve Watch Tower Pennsylvania money, correct?
A. It may, and the -- the financing may come in later. As I said, Assembly Halls are mostly financed locally. So we may come in only towards the end of a project.
Q. Is there a loan application?
A. There is for Kingdom Hall, a Kingdom Hall Fund.
Q. Is there a loan application for the Assembly Halls?
A. Not specifically.
Q. Is there a promissory note?
A. A promissory note would be executed if a loan was approved.
Q. And it would be executed to Watch Tower Pennsylvania?
A. Yes.

A. REINMUELLER
Q. And it would be a loan with interest, correct?
A. Generally speaking, yes.
Q. We've talked briefly about the Kingdom Hall Fund, and we've talked about the general fund.
Are there any funds at Watch Tower Pennsylvania that are used to do business in California?
A. Kingdom Hall's Assistance Arrangement.
Q. Is there any other?
A. There are no other funds in Watch Tower Pennsylvania that are used.
Q. Where do the funds come from at Watch Tower Pennsylvania from which they make these loans?
MR. SCHNACK: You're talking about the Kingdom Hall Fund?
Q. I am talking about the Kingdom Hall Fund or the general fund.
A. All of the funds in Watch Tower Pennsylvania are received by voluntary donations.

A. REINMUELLER

Q. And is it also true that some of the monies received are interests income on loans?

A. Yes, that is true.

Q. Does Watch Tower Pennsylvania have records of how many Kingdom Hall loans have been made in California since 1960?

MR. SCHNACK: Since 1960? That is overly broad for the purposes of the lawsuit.

MR. LOVE: I know, but there are records that say that the loans are up to ten years in term, which would be loaned that reach into our scope that we're talking about.

MR. SCHNACK: I'll let you ask from 1974, otherwise I'm going to object.

Q. Mr. Reinmueller, does the Watch Tower Pennsylvania have any records that can identify how many Kingdom Hall loans have been made since 1970?

A. Our records on Kingdom Hall

A. REINMUELLER

loans presently go back to the mid 1980's.

Q. Why is that so?

A. Just retention schedules, there was no need to keep them beyond seven years once they're completed.

Q. But you don't have any records that show who may have received the loan?

A. Not prior to that time.

Q. No database, nothing?

A. No.

Q. If someone from Watch Tower Pennsylvania were to call a congregation in California and ask if they had ever had a Kingdom Hall loan, do you suppose the people in the congregation would know?

MR. SCHNACK: Again, I'll instruct the witness not to guess. If you hadn't asked the question, "do you suppose," it involves a guessing by the way that your question is phrased.

If you have an answer, go ahead.

A. I wouldn't know the answer you would get.

Q. What did you personally do, if

A. REINMUELLER

anything, to research what loans had been made to Kingdom Halls in California since 1970?

A. I reviewed the number of loans that are in our records that were made to the State of California. That is as far as back as our records go.

Q. In preparation for this deposition?

A. Yes.

MR. SCHNACK: Actually, I think that was involved with prior discovery responses, as opposed to this deposition.

Q. What exactly did you review, and what form did it exist in?

A. I reviewed the list of congregations that received loans according to our records in the State of California.

Q. How many congregations appeared on that list?

A. About 375.

Q. Does that include the loans that

A. REINMUELLER

are presently in existence?

A. Yes, it does.

Q. So there's been 375 loans made by Watch Tower Pennsylvania to California congregations for the purposes of building Kingdom Halls since the mid 1980's?

A. That's correct.

Q. Did the list you looked at also indicate the amount of the loans?

A. No.

Q. Are there records at Watch Tower Pennsylvania that would verify the amount of those loans?

A. Yes, thre are.

Q. Are there records at Watch Tower Pennsylvania that would indicate how much money had come in by virtue of the 375 loans in the form of interest income?

A. I believe so. I can't verify exactly for the early part that, because our computer systems may not have segregated it prior to the mid '90s, but I believe so.

Q. Let me make sure I didn't

A. REINMUELLER
misunderstand you. You said 375 loans from the mid '90s or the mid '80s?
A. The mid '80s.
MR. SCHNACK: I believe that number is high, based on our discussion previously.
MR. LOVE: Again, if you have better information, I would like to have it.
MR. SCHNACK: I'm not sworn to testify. My understanding was 250 to 300, but I'll go with his recall.
I'm just trying to create an accurate record for you, Greg.
MR. LOVE: I know you are, and I would like it to be from somebody with knowledge. I would like to be able to use that information. If there is a way in which you could give that to me in a form which I can use it, I would appreciate it.
MR. SCHNACK: We could discuss it over a break and address the number again.

A. REINMUELLER
MR. LOVE: Then let's discuss all of those things on break.
MR. SCHNACK: Fine. Give me a list.
MR. LOVE: I don't want any of your comments on the record, other than objections.
MR. SCHNACK: Some of the earlier comments, Greg, were on topics that you asked were not noticed as being a topic of this deposition. Don't get on my case about trying to give you an accurate record.
MR. LOVE: I just need the information that supports what you understand, if this witness doesn't know it.
MR. SCHNACK: He's giving you his best testimony.
MR. LOVE: Please mark these as 10 and 11.
(Whereupon, the above mentioned documents were marked Exhibit 10 and 11 for identification.)

A. REINMUELLER
Q. Mr. Reinmueller, I'm handing you what was marked as deposition Exhibits 10 and 11.
Have you reviewed these letters in the course of your preparation for this deposition?
A. Briefly.
Q. Do they appear to be true and correct copies of letters from Watch Tower Pennsylvania?
A. They do.
Q. Now, both of these letters relate to Kingdom Hall financing; is that correct?
A. Yes, they do.
Q. Do you see that the letterhead of this particular document, Exhibit 10, is Watch Tower Pennsylvania, correct?
A. Yes, it is.
Q. Does it say Watchtower New York anywhere on that document?
A. Not that I could see.
Q. Do you see underneath the letterhead Watch Tower Pennsylvania,

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office of the secretary and treasurer?
A. Yes, I do.
Q. Do you see an address underneath that?
A. Yes.
Q. And that address is of Watch Tower Pennsylvania; is that correct?
A. Correct.
Q. That doesn't say office of the secretary treasurer of Watch Tower New York, does it?
A. No, it doesn't.
Q. Is there a separate office of the secretary and treasurer, other than the one you've testified about, at Watchtower New York?
MR. SCHNACK: I'll object to the question, to the extent it mischaracterizes his prior testimony.
Go ahead and answer.
A. The secretary treasurer office of the Pennsylvania corporation does have an office in that capacity that is different and distinct from the department

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all.

Q. Because it goes further and says, "Coverage can be arranged through the Brooklyn office."

Do you see that?

A. Yes.

Q. So Watch Tower Pennsylvania in the mid '80s would loan the funds to congregations in California, correct?

A. Yes.

Q. And it would be considered an insured in California, correct?

A. The congregation?

Q. Watch Tower Pennsylvania would be named as an insured with respect to property in California?

A. In some cases, yes.

Q. With respect to the insurance arrangement handled out of Brooklyn, that was also arranged by Watch Tower Pennsylvania; is that correct?

A. Yes, whatever insurance program was in place at that time was in Watch Tower Pennsylvania.

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Q. So Watch Tower Pennsylvania had the tools with respect to a loan in California to loan the money and then arrange for the insurance of itself in connection with that property, correct?

A. Yes. That would be correct.

Q. In parenthetical number 18, it asks, "Do you hold a properly executed promissory note for the amount of the loan, showing the amount, the monthly payments, and the interest at six percent?"

Did I read that right?

A. Yes, you did.

Q. Would there be a promissory note evidencing the loaning of monies by Watch Tower Pennsylvania to congregations in California?

A. Yes, there would.

Q. Do you know where those notes are kept?

A. Those notes are kept in the treasurer's office.

Q. If I asked you for a note on a

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California congregation's Kingdom Hall, would you walk to a particular filing cabinet to access that particular information?

A. Yes, I would.

Q. Is the information with respect to the promissory notes in connection with loans in California all in one place?

A. Yes, it is.

Q. How far back do those records go?

A. As I mentioned earlier, to about the mid '80s.

Q. So the 197 present congregation loans in California, loaned by Watch Tower Pennsylvania, there are promissory notes for each one of those loans, correct?

A. Yes, that's correct.

Q. With Watch Tower Pennsylvania as the lender, correct?

A. Yes, that's correct.

Q. With the stated amount of interest in one each of those notes?

A. Yes.

A. REINMUELLER

Q. There would be a term also of that note, correct?

A. Yes.

Q. And identified monthly payments, correct?

A. Yes.

Q. And in most cases, it would include Watch Tower Pennsylvania in connection with that transaction as an insured, correct?

MR. SCHNACK: You're talking about the promissory note?

MR. LOVE: The transaction.

A. In what sense are you saying?

Q. I backed up to paragraph 15, in connection with the 375 promissory notes between 1970 and the present, Watch Tower Pennsylvania is listed as an insured on the property of most of them, correct?

A. I believe not, because the Kingdom Hall Assistance Arrangement began in 1989, and since that time, I do not believe that the Watch Tower Pennsylvania is named in connection with the insurance

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of that particular property. The congregation would be named.
Q. So is it fair for me to assume that Watch Tower Pennsylvania was a named insured up until the creation of the Kingdom Hall Assistance Arrangement?
A. That is likely.
Q. And the system just changed, correct?
A. Correct.
MR. LOVE: Please mark this as 12.
(Whereupon, the above mentioned document was marked Exhibit 12 for identification.)
Q. I want to hand you what I marked as Exhibit 12. I will represent to you that it's a document that I received from the Yolo County Records Department in California which is a deed of trust in connection with Woodland Congregation of Jehovah's Witnesses, Inc.
Take a moment to look at that document, and I want to ask you some

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questions about that document.
Are you familiar with that form of a document?
A. Generally, although I'm not really an expert in these matters.
Q. Do you recognize this as a short form deed of trust?
A. Yes.
Q. I'll represent to you that your interrogatory response to interrogatory 16 indicates that Woodland Hall Congregation received a Kingdom Hall loan that was paid in full in 2001, okay?
A. Okay.
Q. Do you have any idea as to whether this particular transaction which appears to have originated in April of 1967 is that same loan, or was there another one?
A. It's unlikely that it was the same loan.
Q. Talking about this document, do you see at the top left-hand corner the identification of one of the parties to

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this transaction as Watch Tower Bible and Tract Society of Pennsylvania?
A. Yes, I do.
Q. The address was this address at the time, correct?
A. Yes.
Q. It looks like it was filed in April 21, 1967. Do you see that?
A. Yes.
Q. It indicates Woodland Congregation of Jehovah's Witness, Inc., a California corporation, correct?
A. Correct.
Q. And I believe we've sued that entity, just to let you know.
Is it your testimony that that corporation did anything, other than own the title to the property?
A. To the best of my knowledge, the corporation would have only been involved in holding title to the property.
MR. LOVE: Please mark this as Exhibit 13.
(Whereupon, the above mentioned

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document was marked Exhibit 13 for identification.)
Q. I'll hand you what I marked as Exhibit 13 (handing). Do you recognize that document?
A. Yes, I do.
Q. And is it a true and correct copy of the November 1, 1995 communication from the office of the secretary and treasurer of Watch Tower Pennsylvania in connection with the ownership of Kingdom Halls?
A. It appears to be.
Q. When a congregation receives information regarding the ownership of Kingdom Halls from the office of the secretary and treasurer of Watch Tower Pennsylvania, would they consider this information to be authoritative?
MR. SCHNACK: Same objection as to the word "authoritative."
Go ahead and respond.
A. I believe that they would respect it.

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Q. And they would follow the instructions laid out here, wouldn't they?

A. To the best of their ability, I'm sure.

Q. Do you see at the bottom of the left-hand corner of the first page, two ways to take title?

A. Yes.

Q. It mentions in there that you could take title either in a trustee on behalf of the congregation or a corporation formed by the congregation, correct?

A. Correct.

Q. And on the bottom right-hand side, it describes that process of incorporation to own title to a Kingdom Hall, doesn't it?

A. Yes.

Q. Obviously, the Woodland Congregation chose the corporation method, correct?

A. It would appear so.

MR. LOVE: Please mark these as

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14 and 15.

(Whereupon, the above mentioned documents were marked Exhibits 14 and 15 for identification.)

Q. I'm handing you what was marked as Exhibits 14 and 15 (handing). I'll represent to you that those are legal pleadings filed in litigation that existed in Bonum, Texas, or thereabouts, in dispute with a Kingdom Hall ownership.

I want to ask you a couple of questions about some of the exhibits that are attached to those just so you understand the context in which I have them, because they're document that weren't produced to me.

I don't know that you reviewed them in the course of your preparation. All right?

MR. SCHNACK: Counsel, are you going to link these to California somehow?

MR. LOVE: Absolutely.

MR. SCHNACK: Can you give me a

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little highlight as to how?

MR. LOVE: Yes. Let me first find my copies.

MR. SCHNACK: Unless you could link these up to California, I'll just instruct him not to answer at all. This is so far outside the grounds.

MR. LOVE: I understand.

Q. On the document --

MR. SCHNACK: Do you want to talk about this off the record first?

MR. LOVE: I'll take you to where I'm going, and you could make your objection.

Q. There is an exhibit attached to number 15. One of those attachments is the Organized to Accomplish Our Ministry. You identified that, and we talked about that book, haven't we?

MR. SCHNACK: Counsel, I won't let him answer anything until you tell me where you're going with this. I have two Texas documents. One was filed in 1987 in the Sixth Supreme

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Judicial District Court, and the other is also in Texas.

Unless you could link it up to California somehow, I won't allow him to answer any questions on this.

MR. LOVE: I want to talk about the general memorandum attached to Exhibit B to that pleading, and I'm just trying to lay the predicate to describe to the witness where I am going.

MR. SCHNACK: You're going to need to describe to me where you're going, or I'm not going to let him answer. You could do it on the record or off the record, but this --

MR. LOVE: Exhibit B is entitled memorandum on Kingdom Halls. I believe that some of the language pulled from this 1995 document comes from the memorandum, because I don't have November 5, 1995, instructions preceding 1995. I want to know him what was Jehovah's Witness instruction

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in 1959, 1960-ish, and ask him if there are any changes between that period in 1995. I suspect that all of these relate to Kingdom Halls in California.
MR. SCHNACK: Why go through all of this by attaching a Texas pleading?
MR. LOVE: I want to be able to show you and the record the context for me having it. You didn't produce it to me.
MR. SCHNACK: I didn't produce it to you. We're going to get into Texas from 18 years ago?
MR. LOVE: Are you finished?
MR. SCHNACK: I'm just trying to figure out where you're going with this. How is this related to California? I haven't heard anything yet.
MR. LOVE: I'll explain it to you on the record, if you will let me.
MR. SCHNACK: Proceed, counsel.
Q. California is included in the

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United States. This memorandum ways attached to this pleading is only authoritative to me because somebody as a representative of the Watch Tower Society considered it authoritative. They're citing to a Court, Here is our position with respect to Kingdom Halls.
This precedes his involvement, so by being attached to this document, it carries with it with the authority that I'm expecting that it has that it's instructional. In the 1980's --
MR. SCHNACK: I haven't heard California in that whole discussion.
MR. LOVE: California is not mentioned in the November 1, 1995 document, either they're generally relating to the ownership of Kingdom Halls in the US.
As soon as I'm allowed to ask him the question about how that works, I want to follow that up, because it's very important for me to follow that up, that it -- let me finish --

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that it involves California.
MR. SCHNACK: You're getting a little touchy, counsel.
MR. LOVE: I'm getting there.
MR. SCHNACK: I agree. You're getting touchy. If you want to take a break and calm down --
MR. LOVE: No. I'm perfectly calm. Are you going to allow me to ask this witness questions about memorandum on Kingdom Halls?
MR. SCHNACK: Yes, but not on Texas lawsuits. I've got a half-inch of paper from two different Texas lawsuits. You could stare me down all you want. It's not going to get you anywhere.
MR. LOVE: I'm waiting for you to finish talking, because you don't let me.
MR. SCHNACK: Talk all you want. I'll listen.
MR. LOVE: I want to ask this witness questions about this

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memorandum. If you don't see how it relates, and if it doesn't, you could tell the Court all about it. How is it going to hurt you?
MR. SCHNACK: How is it going to hurt me? I would like to follow the Court's orders. This is on limited discovery on the issue of whether Watch Tower Pennsylvania is subject to personal jurisdiction in California. You're drawing out 18-year-old lawsuits from Texas saying that it's relevant. If you want to ask about Watch Tower Pennsylvania, I suggest you do it.
Did I let you finish your speech on it?
MR. LOVE: I hope I've been clear.
MR. SCHNACK: You haven't. That is why we continue to debate this, apparently.
MR. LOVE: I'm ready to move forward.

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MR. SCHNACK: I am, too, but I get the impression you aren't. I'm ready to move forward with the issue we're here for.

We both traveled across the country for a deposition on the personal jurisdiction issues. If you're willing to proceed with that, let's proceed. If you're going to talk about 18-year-old Texas lawsuits, let's go to another topic.

Q. Mr. Reinmueller, please turn to Exhibit B of Exhibit 15, which is a memorandum entitled "Memorandum on Kingdom Halls."

Do you see that document?

A. I do.

Q. Do you who the name -- do you know who Hayden Covington is?

A. I know only that he was general counsel for the Society.

Q. It says so on the top of that document, correct?

A. Yes.

A. REINMUELLER

Q. If you would, turn to the second page of that Exhibit B. Do you see a paragraph on the right-hand side that says "Relationship between congregation and title holders"?

A. Yes, I do.

Q. Do you see a subparagraph 23?

A. Yes.

Q. It says, "The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed. It can function separately and apart from the congregation and be used to guide its policies."

Did I read that right?

A. Yes.

Q. Is that a true statement, even today?

A. Corporations are trustees that hold title to a Kingdom Hall property do not in any way -- are not in any way involved in the operation of the congregation.

A. REINMUELLER

Q. It goes further. "The title holder (trustees or corporation) are merely special servants of the of the congregation in whom is vested the legal title to the Kingdom Hall."

Did I read that right?

A. Yes.

Q. That is what you're trying to say, isn't it?

A. That those -- the legal entities who hold title to the property are not involved in making decision for the congregation.

Q. And that is true in California, correct?

A. That's true.

Q. And where it has the parenthetical of trustees or corporations, the Woodland Congregation used a corporation, correct?

A. That's correct.

Q. Then it goes further. "Title holders as such have absolutely nothing to do with the use to be made of the

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property. They cannot determine who is going to live on the property or what kind of work is going to be done in it."

Is that still true today?

A. That is still true today.

Q. And that would have been true as to the Woodland Congregation of Jehovah's Witnesses, Inc?

A. To the best of my knowledge.

Q. Down at the bottom, there is paragraph 25. Do you see that?

A. Yes, I think I do.

Q. It says, "The title holder (trustees or corporation) -- and Woodland, of course, is a corporation, correct?

A. That's correct.

Q. " -- are mere figureheads or puppets who hold legal title to the property for the use and benefits of the congregation and instead of the congregation. The fact that the Kingdom Hall is under the jurisdiction of the congregation servant and the committee acting for the entire congregation does

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not mean that they ought to disregard sound business practice."

In other words, it means that they still work together, but the corporation only owns title, correct?

A. That is correct.

Q. The November 1, 1995 directions from Watch Tower Pennsylvania, which is Exhibit 13, there is also a section entitled Relationship Between Congregation and Title Holders, isn't there?

A. Yes.

Q. If you would, read through paragraphs 25, 26, and 27. Tell me if you think it says anything different than Hayden Covington's memorandum.

A. "The title holders, either trusties or corporation, have the same relation to the congregation as any other instrument, equipment, or property necessary to carry out the work of the congregation."

Q. You could read it to yourself if you want.

A. REINMUELLER

A. Oh.

MR. SCHNACK: Your question is whether those in substance are the same, or whether they're identical?

MR. LOVE: Whether in substance they're the same.

A. In substance, they're the same.

Q. So am I safe in assuming that between the period when Hayden Covington created his memorandum and the time when the November 1, 1995 information piece came from Watch Tower Pennsylvania, that these congregations had been operating under the same instructions with respect to the ownership of title to Kingdom Halls?

A. To the best of my knowledge, that would be a safe assumption.

Q. And from November 1, 1995 forward, what changes in that substance have been instituted with respect to owning title to a Kingdom Hall?

A. There have been no changes in substance since that time.

A. REINMUELLER

Q. Of course when you read Mr. Abrahamson's deposition with regard to the Florida case, Mr. Abrahamson was saying the same thing about the Florida corporation; isn't that correct?

A. I believe that's true.

Q. It's real hard to read on this exhibit number 12, the Woodland Congregation Deed of Trust. Do you see Watch Tower Bible and Tract Society of Pennsylvania, a non-profit corporation, listed right on the top of that boxed area?

A. Yes.

Q. It's essentially identifying the parties to this deed of trust. Do you see that?

A. Yes.

Q. It lists Watch Tower Bible and Tract Society of Pennsylvania as a beneficiary. Do you see that?

A. Oh, yes, I see that.

Q. Do you know what it means to be a beneficiary of a dead of trust?

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A. I am not familiar with that.

Q. Are you aware of the fact that a beneficiary of a deed of trust, in this case Watch Tower Pennsylvania, enjoys the protection of California law as it relates to this transaction?

A. I'm not personally familiar with the details of that.

Q. So you're not familiar then with the effect of a deed of trust as it relates to Watch Tower Pennsylvania as the beneficiary?

A. No.

Q. Who would be knowledgeable about that?

A. Likely someone in my office that works with this program.

Q. Who would that be?

A. I would have to ascertain who is the best qualified to answer that.

Q. Are there certain departments within your area?

A. Certain assignments of responsibility.

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Q. Who is assigned to the real estate area?
A. In what aspect are you talking about? The Kingdom Hall loan program?
Q. Yes.
A. David -- David Giglio works directly with those files.
Q. And how do you spell that last name?
A. G-I-G-L-I-O.
Q. What is his position?
A. We don't have positions. It's just his assignment to care for the Kingdom Hall loan processing.
Q. He is a volunteer in the accounting office?
A. In the treasurer's office.
Q. Does Watch Tower Pennsylvania have a copy of the deed for trust of which they are named as the beneficiary?
A. I would expect that to be true, yes.
Q. And where do you expect it to be?

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A. They would be in the file together in the file with any documents relating to a loan application.
Q. And did you review any deeds of trust before giving your testimony today?
A. No, I didn't.
Q. Are you familiar enough with the real estate transactions that if the Woodland Congregation of Jehovah's Witnesses would have defaulted in their loan, Watch Tower Pennsylvania had legal rights pursuant to this lead of trust, does it not?
MR. SCHNACK: I'll object to the extent it calls for a legal conclusion. He's already testified about his educational background, and it doesn't include legal training.
You could go ahead and respond, if you can.
A. I'm not particularly sure of the legalities involved.
Q. In this document, it lists Title insurance and Trust Company as the trustee

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for Watch Tower Pennsylvania. Do you know who Title Insurance and Trust Company is?
MR. SCHNACK: I object to the characterization as worded in the question.
You could go ahead and respond, if you can.
A. I don't. I am not familiar with that organization.
Q. Do you see that it references it as being a California corporation?
A. I see that.
Q. So is it safe for me to assume that there is a promissory note that was created in connection with this transaction involving Woodland Congregation in 1967?
A. That would be safe to assume, yes.
Q. But it's your testimony that you don't have those records?
A. Not from 1967.
Q. Do you know of anybody that would have a copy of that record?

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A. To the best of my knowledge, we don't keep closed files for that period of time.
MR. LOVE: Please mark this as 16.
(Whereupon, the above mentioned document was marked Exhibit 16 for identification.)
Q. I've handed you what we've marked as Exhibit 16. Take a second to look at the document and see if you recognize it as a similar form of deed of trust.
I'll represent to you that there are two deeds of trust in connection with the Red Bluff Congregation of Jehovah's Witnesses, a corporation.
A. Yes. There appears to be two deeds of trust here.
Q. And like the prior document, Watch Tower Pennsylvania is the beneficiary of this deed of trust, correct?
A. Which one are we referring to?

A. REINMUELLER

Q. The top one, the one filed in February of 19 -- that is a good question. Let's stop and go over to the older one, which is the third page of that collection.

It's a transaction, dated May 15, 1960. Do you see that?

A. Yes.

Q. Do you have any reason to doubt that the Watch Tower Pennsylvania was making Kingdom Hall loans in 1960?

A. No, I have no reason to doubt that.

Q. Do you see this document which indicates Watch Tower Pennsylvania as the beneficiary of the dead of trust in connection with this Red Bluff Congregation transaction?

A. Yes, I see that.

Q. It says to Tahama County Title Company, a corporation herein called trustee. Do you see that?

A. Yes.

Q. Do you know who the Tahama

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County Title Company is?

A. No. I'm not familiar with it.

Q. Do you know that they are acting as a trustee on behalf of the beneficiary Watch Tower Pennsylvania?

A. Yes, I understand that.

Q. And that the trustee is a California corporation, correct?

A. Yes.

MR. SCHNACK: It doesn't say that.

A. It doesn't say that.

MR. LOVE: Well, by law, it has to be.

Q. If you would, turn to the first page of that stapled Exhibit 16. Do you see that the Red Bluff Congregation of Jehovah's Witnesses also was involved in a real estate transaction in February of 1973?

A. Yes.

Q. Again, the Watch Tower Bible and Tract Society of Pennsylvania is the lender, correct?

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A. Yes.

Q. And they are listed as a beneficiary of the deed of trust in California?

A. That's correct.

Q. Have you ever seen a deed of trust with respect to a loan in California?

MR. SCHNACK: Prior to today?

Q. Prior to today?

A. No, I haven't.

Q. But you are pretty confident there are documents like this on file in your office?

A. Yes.

Q. Have you seen records indicating a loan by Watch Tower Pennsylvania that precedes 1960 to a California congregation?

MR. SCHNACK: I'll draw the line. We're talking about 1970 to 2003. Move on.

MR. LOVE: You are instructing him not to answer?

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MR. SCHNACK: Yes. It's, again, outside the scope of what the deposition is about.

MR. LOVE: I'm required to show the Court continuous and systematic transactions and contacts in California. I'm just trying to find out if this witness has any idea of how continuous it has been.

MR. SCHNACK: You could address the Court. The Court put the parameters on this.

Q. Now, you reviewed the interrogatory responses prior to the deposition, correct?

A. Yes.

Q. Do you recall one of the responses, more specifically number 31, that says, "Watch Tower Pennsylvania was not involved in the purchase or building used by the Defendants, Napa, and did not provide any monies to the congregation for that purpose"?

A. Yes.

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Q. What did you do or look at or research to confirm to yourself that that was true?

A. We had Mr. Giglio check the files.

Q. Does Mr. Giglio know more about the real estate transactions in California than you do?

A. Perhaps certain details, but not in total. I would suspect not.

MR. LOVE: Please mark this as number 17.

(Whereupon, the above mentioned document was marked Exhibit 17 for identification.)

Q. I'm handing you what was marked as Exhibit 17 (handing). Do you recognize that as an additional deed of trust document?

A. Yes, I do.

Q. Do you see Watch Tower Pennsylvania listed as the beneficiary of that trustee -- of that transaction?

A. Yes, I do.

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Q. Do you see where the maker of the loan in this deed of trust, the trustee -- the trustor, is the Napa Congregation of Jehovah's Witnesses, Inc.?

A. Yes, I do.

Q. Napa, obviously, in terms of its title holding used the corporation method, correct?

A. Correct.

Q. It appears that there is a transaction involving the loaning of money from the Watch Tower Pennsylvania to the Napa Congregation in April of 1976, correct?

A. Correct it appears to.

Q. We've seen records here an hour ago that the terms of the loan were usually at six percent for a ten-year period, right?

A. Correct.

Q. So if this loan were paid monthly, it would have extended into 1986, correct?

A. That's correct.

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Q. I'll represent to you also that this was not produced to me.

Do you know whether or not this loan has been paid from the Napa Congregation?

A. Given that we did not have any records on them, I would assume that the loan was paid off and the file was closed and no longer in our possession.

Q. Turn to the second page of the document, if you would. There is an Exhibit A, which references a mortgagor agreeing to deliver certain things to the mortgagee. Do you see that?

A. I do.

Q. I'll represent to you that the Watch Tower Pennsylvania would be the mortgagee. All right?

A. All right.

Q. What can you tell me about Watch Tower Pennsylvania acting as the mortgage company with respect to loans in California?

MR. SCHNACK: I'll object. It's

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overbroad. How do you want him to respond? "What can you tell me with respect to this?"

Q. You testified earlier that there were promissory notes, correct?

A. Yes.

Q. This is referencing a mortgage with a deed of trust.

What records exist that could we are help me understand the transactions that precede the order, the understanding of the loan?

A. The mortgages used to be obtained for these Kingdom Hall loans, but until about 1980's. After that time -- my previous responses were the present practice. It's been many years since we required mortgages, and I don't believe that any of the existing 197 loans have a mortgage attached to them anymore.

Q. Do you understand the period of time that we're to discuss in this deposition is to include 1970 to 2003, correct?

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A. Yes.
Q. What can you tell me between 1970 and the mid '80s was the procedure for transactions that involved mortgages, or are you not the right guy?
A. All I could tell you is that we were -- it was the practice during that period of time to have each of the loans secured by a mortgage up until about the early to mid '80s.
Q. You don't have any of those records anymore?
A. I believe not.
Q. Again, Watchtower Pennsylvania in connection with the 1976 transaction was protected as the beneficiary of the trust; was it not?
A. It appears so.
Q. And it would be protected by the laws of the State of California, correct?
A. I am not a legal expert.
Q. Isn't it true that the Jehovah's Witnesses Organization considered these loan transactions to Kingdom Halls to be

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investments?
A. I wouldn't characterize it that way.
Q. Let's look at Exhibit 3 again. Of course, that is entitled the branch office procedure, correct?
A. That's correct.
Q. If you would, look at paragraph 16, subparagraph 50, with me. Do you see a paragraph entitled Annual Branch Report of Activities and Financial Status?
A. Yes, I do.
Q. Do you see at the bottom where it reads, "Kingdom Hall loans are considered as an investment which means they will be listed under assets on your balance sheets"?
A. I do.
Q. This is a document that Watch Tower Pennsylvania holds the copyright to, correct?
A. Correct.
Q. And these were materials that were disseminated by the Governing Body,

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correct?
A. That is correct.
Q. Not only are they investments, but they're used to advance the Kingdom work, correct, the loans to build the congregation's Kingdom Halls?
A. Yes. The Kingdom Halls provide meeting places which are where the congregations can perform their work.
MR. LOVE: Please mark this as 18.
(Whereupon, the above mentioned document was marked Exhibit 18 for identification.)
Q. I will hand you what was marked as Exhibit 18. I'll represent to you that those three points were produced to me. I'll also represent to you that it's three different documents from three different periods of time.
A. That's correct.
Q. I'll just call these remittance forms. Is that fair?
A. It's fair.

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Q. And these remittance forms relate to monies paid from the congregations to Watch Tower Pennsylvania; is that correct?
A. And/or Watchtower New York.
Q. Then let's start with the first one. Do you see any reference on that particular remittance form to Watchtower New York?
A. No, I don't.
Q. In fact, there is a list of things that you could give money for that you total at the bottom, correct?
A. Yes, that's correct.
Q. Where does it say to make the check payable to?
A. To Watchtower Bible and Tract Society of Pennsylvania.
Q. Do you see a date on that form?
A. Yes.
Q. September of 1990?
A. That's correct.
Q. One of the things listed on this remittance form to pay to Watch Tower

A. REINMUELLER

Pennsylvania was contributions for Society Kingdom Hall funds. Do you see that?

A. Yes.

Q. That is not necessarily the payment on the loan, is it?

A. No, it is not.

Q. That is an opportunity for the congregation to simply pour money into that fund and it can be made available to the congregation of the Kingdom Halls; is that correct?

A. Correct.

Q. Down on the bottom part of the list, it says, "Payment for property loan number one and payments for property loan number two."

Did I read that right?

A. Yes, you did.

Q. And, of course, there's a place to identify how many payments are being made and the amount, correct?

A. Yes, that's correct.

Q. In 1990, payments for those loans were not made to Watch Tower New

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York, were they?

A. No, they were not.

Q. Prior to this form of September 1990, isn't it true that the same payments that are listed in this remittance form were made payable to Watch Tower Pennsylvania?

A. That's correct -- Excuse me, can you rephrase that question again?

Q. Isn't it true that the same list of things being asked to remit payment to Watch Tower Pennsylvania prior to 1990 were also payments that were made to Watchtower Pennsylvania?

In other words, this form didn't institute a change for what would be happening in the years prior?

A. No. That is correct.

Q. The next document in that collection is a form called Loan Remittance Form, dated March 1993. Do you see that?

A. I do.

Q. Again, this is a form used by

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congregations to make payments on their Kingdom Hall loan, correct?

A. Correct.

Q. These were the types of remittance forms used in California, correct?

A. Likely so, yes.

Q. It also indicates where the payments are to be made, doesn't it?

A. Yes, it does.

Q. And it says they're to be made to Watch Tower Pennsylvania?

A. Yes.

Q. Please turn to the last one. Do you see that the form is entitled Record of Electronic Funds Transferred, but it's dated August of 1997?

A. Yes.

Q. Now, it appears that the congregation has available to them the opportunity to make their payments electronically. Correct?

A. Correct.

Q. Do you see at the very last

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statement on that document, it says, "All property loan payments will be acknowledged on your Pennsylvania Corporation statement."

Did I read that right?

A. Yes, you did.

Q. What is the Pennsylvania Corporation statement?

A. Every congregation that has an outstanding loan with a Pennsylvania Corporation receives a monthly statement acknowledging their payments on that loan and the outstanding balance.

Q. When did that procedure get instituted, or has it been the case for as long as you know?

A. As long as I know.

Q. Are there records available that show those communications back to the congregation?

A. We do not keep a copy of the statement.

Q. For how long do you keep them before you destroy them?

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A. We don't keep a copy in our file since we've been doing it on computer.

Q. So are the records kept on computer?

A. Yes, they are.

Q. If I wanted to recreate a loan transaction that was made to one of these present 197 Kingdom Halls with an outstanding loan, and all of the documentation that has gone back and forth between that congregation and Watch Tower Pennsylvania or whoever was related to that transaction, in what form would those records be kept?

A. They would be kept electronically for the last few years.

Q. And at whose computer would I need to get access?

A. Any one of several people in the treasurer's office.

Q. Which includes you?

A. Probably not myself, but some others in the office.

Q. Who would someone else be that

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would have more knowledge about obtaining the documents than you?

A. Mr. Giglio or others working with him.

MR. SCHNACK: Do you want to break here?

THE VIDEOGRAPHER: We're going off the record at 12:16.

[TIME NOTED: 12:16 p.m.]

[Whereupon, after a luncheon recess was taken, the following was had:]

A. REINMUELLER

MR. LOVE: What was my last question before lunch?

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

THE VIDEOGRAPHER: We're back on the record. The time is now 1:35 p.m.

ALEXANDER REINMUELLER, the Witness, having earlier been duly sworn by the Notary Public, was examined and continued to testify as follows:

EXAMINATION BY

MR. LOVE:

Q. Mr. Reinmueller, we were talking about -- before we took a break, we were talking about the remittance forms. What exhibit was that?

A. It was 18.

Q. Those particular three forms cover about a nine-year period, don't they? One's in 1990, one is in 1993, and one is in 1997, correct?

A. Right, so that's about -- almost

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eight years. Yes.

Q. And all of them reference making payments to Watch Tower Pennsylvania, correct?

A. With respect to the property loan payments, that's correct.

Q. In fact, the first two of these three documents, every payment listed there is to be made to Watch Tower Pennsylvania; is that correct?

A. Correct.

Q. Before we leave the area of the loan transactions and switch to another subject, I want to hand you another document that was produced to me that I don't have. I want to be careful, because they're not stapled.

MR. LOVE: Please mark these documents as Exhibits 19, 20, and 21.

(Whereupon, the above mentioned documents were marked Exhibits 19, 20, and 21 for identification.)

Q. I want to hand you what I marked as Exhibits 19, 20, and 21 (handing).

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I'll stand up and kind of look over it with you.

Have you seen those documents before?

A. Yes, I have.

Q. Are they form documents used in connection with the loan process for Kingdom Hall loan?

A. Yes, they are.

Q. The first document, what is the title of that document?

A. Kingdom Hall Loan Application.

Q. And that is Exhibit 19; is that correct?

A. That's correct.

Q. Do you see a date that the form was created, it's on the left-hand side of the page?

A. It was last revised on April 2004.

Q. Meaning that it's not the first time a Kingdom Hall loan application has been in existence, that's just the version it was revised in 2004, correct?

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A. Correct.

Q. So there may have -- not may have -- there were prior versions of the loan application; is that correct?

A. Yes.

Q. Did it look similar to that application, to the best of your knowledge?

A. To the best of my knowledge, it contained similar information.

Q. Similar information requested to be able to process the loan, correct?

A. That's correct.

Q. If you would, move document 19. Documents 20 and 21, as far as I could tell, are the same document, except for one is relating to a transaction with a congregation that creates a corporation. The difference is, 21 relates to a congregation that chooses to do its title ownership by trustee. Is that correct?

A. That's correct.

Q. In both situations, they are forms that are approving a loan request,

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correct?

A. Yes, that's correct.

Q. And that loan approval is being communicated from Watch Tower Pennsylvania; is that correct?

A. That's correct.

MR. SCHNACK: What is the Bates number on 20?

MR. LOVE: 387.

Q. Of course, there are blanks in both of those documents because they're not relating to a particular congregation, correct?

A. That's correct.

Q. When these were filled out and sent to congregations, that would include California, correct?

A. Yes, that's correct.

Q. Would they go to the congregations monthly or yearly?

A. This particular form?

MR. LOVE: Strike that.

Q. This is simply the form that stipulates "We're going to loan you the

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money"?

A. Yes.

Q. And it identifies the terms and also identifies what is required now that the relationship of lender-lendee is going to be created, correct?

A. That's correct.

Q. And it's again coming from Watch Tower Pennsylvania; is that correct?

A. Yes.

Q. When the elders of the congregations in California receive letters like the ones marked as Exhibits 20 and 21, these instructions are intended to be followed; is that correct?

A. Yes, that's correct.

Q. And again, this letter comes out of the office of the secretary and treasurer of Watch Tower Pennsylvania; is that correct?

A. Yes.

Q. Is this the letter that is still used today?

A. It is.

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Q. Is a similar letter --
MR. LOVE: Strike that.
Q. Has a similar letter been used in years before today?
A. Essentially. To the best of my knowledge, yes.
Q. So Exhibits 20 and 21, or some similar form of them, have been sent to the congregations for years, correct?
A. To all congregations with whom we have extended a loan.
Q. And that would include California, correct?
A. That would include California.
Q. Do you keep copies of these letters when they go to the congregations?
A. A copy of this letter would be kept in the active loan file.
Q. And is there a different active loan file for every congregation that has an active Kingdom Hall loan?
A. That's correct, yes, sir.
Q. Does this particular document, Exhibit 21, relate to a payment being made

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for communication with Watchtower New York?
MR. SCHNACK: Could you repeat the question?
A. I'm not sure I understand it.
Q. Is there anything in the instructions contained in Exhibit 21 that relate to payments being made for obligations to Watchtower New York?
A. No, there are not.
Q. I want to hand you (handing) Exhibit 20. Would your answer be the same with respect to the congregations that have a loan by virtue of creating a corporation?
In other words, your answer is not different, is it?
A. No. This document does not provide for any payments to be paid to Watchtower of New York.
Q. And there are no instructional instructions given in either of those letters of required communication with Watchtower New York, is there?

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A. No, there are not.
Q. All the communication and all the instructions relate to a relationship between the congregation and Watch Tower Pennsylvania; is that correct?
A. For the purpose of this loan.
Q. And these loans occur in California; is that correct?
A. That's correct.
Q. And the same instructions would be provided to the congregations in California?
A. To each of the congregations a loan has been extended.
Q. True?
A. Yes.
Q. Exhibit 19 is a Kingdom Hall loan application form.
Would that form or something like it have been used in California for the loans extended to those congregations?
A. Yes.
Q. These documents refer to the creation of a promissory note evidencing

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the loan between Watch Tower Pennsylvania and the congregation, correct?
A. Correct.
Q. Who prepares that promissory note?
A. The treasurer's office prepares that promissory note, and it's executed by the congregation.
Q. The office of the secretary and treasurer of Watch Tower Pennsylvania?
A. With the assistance of staff from the treasurer's office.
Q. Would the promissory note be created by the office of the secretary and treasurer of Watch Tower of Pennsylvania?
A. Yes.
Q. And that's been true for as long as loans have been made to the congregation in California, correct?
A. To the best of my knowledge.
Q. Of course, the terms of the loan were already preset, correct?
A. In the majority of cases, that would be true.

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Q. Generally, ten-year notes at six percent, correct?

A. That's correct.

Q. And those were terms created by Watch Tower Pennsylvania, is that correct?

A. Yes.

Q. Who, if anyone, inspected the real estate relating to the property for which loans were being made in California?

A. During the entire period in question?

Q. During the initial part of the loan transaction?

A. Presently, or --

Q. Tell me about presently first.

A. Presently, the congregations would avail themselves of the assistance of contacts that the regional building committee would have to assist them with inspection. They may use local experts to help them do that.

Q. And the purpose of the inspection is to be sure that the transaction is a reasonable one for the

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lender, correct?

A. And for the congregation.

Q. But in part, the committee is acting on behalf of the lender; are they not?

A. To a greater extent, on behalf of the congregation, is our perspective.

Q. To some extent, the regional building committee is acting on behalf of the lender to inspect the property, correct?

MR. SCHNACK: Objection. It's been asked and answered. Go ahead and answer again.

A. To some extent.

Q. And the regional building committee is made up of elders, correct?

A. That's correct.

Q. And that is true for California; is that correct?

A. That's correct.

Q. When a loan was going to be memorialized in paper, who would do that paperwork? Would it be the office of the

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secretary of treasurer of Watch Tower Pennsylvania?

MR. SCHNACK: Can you clarify what you mean by "memorialized on paper"? Are you talking about the promissory note, or are you talking about other documents?

MR. LOVE: Just the loan transaction documents.

Q. If all there is, is the promissory note, then tell me that.

A. The actual loan application or the documentation of the loan?

Q. Once the application is received and approved, there is paperwork created to memorialize that loan, correct?

A. Correct.

Q. What documentation does that include, and who prepares it?

A. It includes the promissory note primarily and a copy of these form letters that we just reviewed, Exhibits 20 and 21, and they would be prepared in the treasurer's office.

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Q. And that is the office of the secretary and treasurer of Watch Tower Pennsylvania?

A. Yes.

Q. I need to follow up on a question regarding the regional building committee.

You described to me how that is done today. How would that process have been different before today?

A. The regional building committee's only been in existence --

Q. Since 1986?

A. About '86. So prior to that time -- they were not always involved in the selection of property. That is only -- that only occurred within the last ten or twelve years. Prior to that, the congregations would have sought local expertise through their own contacts to examine those properties prior to purchase.

Q. With respect to the title companies in California, who hired them?

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A. The local congregations, to the best of my knowledge.

Q. So in the documents that we've seen, the deeds of trust documents, do you have any idea who hired those particular title companies to serve as the trustee for Watch Tower Pennsylvania?

A. To the best of my knowledge, it was done at the local level by the trustees or the corporation that would be holding titles to the properties.

Q. You understand that the congregation's corporation didn't hold the claim title to the property, correct?

A. Correct.

Q. There was a title company acting as a trustee for Watch Tower Pennsylvania; is that correct?

A. Yes.

Q. But you don't know who hired that particular California company?

A. I don't know specifically.

Q. Was the legal department ever -- the Watch Tower's legal --

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MR. LOVE: Strike that.

Q. There is such thing as the legal department; is that correct?

A. At the Watch Tower?

Q. Yes. Mr. Moreno is a member of that department, correct?

A. The Watchtower Bible and Tract Society of New York has a legal department, correct.

Q. Does Watch Tower Pennsylvania have a separate and distinct legal department?

A. No, it does not.

Q. Does the Religious Order of Jehovah's Witnesses have a distinct legal department?

A. No.

Q. And neither does Kingdom Support Services, does it?

A. No, it does not.

Q. Does the legal department you're referring to ever have any involvement in the loan transaction to congregations in California?

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A. I'm not specifically aware of what involvement they may have had.

Q. So maybe, maybe not?

A. Maybe, maybe not. Not on a regular basis.

Q. Who from the Watch Tower Pennsylvania, if anyone, signed the promissory notes?

A. One of the officers generally would have done so.

Q. One of the officers of Watch Tower Pennsylvania?

A. Correct.

Q. Isn't it true that up until the year 2000, the officers of Watch Tower Pennsylvania were also members of the Governing Body?

A. That's correct.

Q. Do you have any records that indicate how much interest income Watch Tower Pennsylvania has earned on its Kingdom Hall loans in the year 2003?

A. We do not --

MR. SCHNACK: I'll restrict that

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to California, if at all.

MR. LOVE: I'll re-ask the question. I apologize for not doing that.

Q. Is it possible to determine how much interest income Watch Tower Pennsylvania has earned on its Kingdom Hall loans in California in the year 2003?

A. It would be possible to determine. It's not something that we track separately as an item or -- certainly not by state.

Q. And I assume sitting here today, you don't know how much that was?

A. No, I don't.

Q. Is it possible to determine how much interest income Watch Tower Pennsylvania has earned on Kingdom Hall loans in California since 1970?

A. No, it's not.

Q. Why not?

A. The records just don't exist anymore.

Q. How far back do the records go,

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such that you could tell me from what years forward I could determine that?

A. To the best of my knowledge, it goes back to somewhere in the middle of '97.

Q. So if I asked you how much interest income Watch Tower Pennsylvania has earned on California Kingdom Hall loans, the only accurate information you could give me would be from 1997 forward?

A. With some effort, we could probably get the figures -- that figure from 1997, middle of 1997 forward.

Q. But you at least -- but you could at least have access to loan records from 1986-ish forward, correct?

A. Physical loan files, yes.

Q. Are you able to determine how much money has been loaned to California congregations by Watch Tower Pennsylvania since 1970?

A. No. That would not be possible to determine accurately.

Q. For what time periods can you

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tell me money had been loaned by Watch Tower Pennsylvania to California congregations?

A. Probably from -- probably all new loan activity from about ten years ago are in our current active files. So 197 or so loans that are still active.

Q. With respect to the information that you reviewed to come up with the 397 loans number that we discussed earlier, would that information have also indicated the amount of those loans?

MR. SCHNACK: I object to the extent you mischaracterized the number. Go ahead.

A. It didn't. The information I reviewed did not have the amount. Just the congregations that received loans.

Q. Isn't it true that Watch Tower Pennsylvania owns real estate in California?

A. Watch Tower Pennsylvania at the present time owns less than ten properties that were part of bequests to the

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corporation, of which the majority have -- the individuals still live on them with life rights, so we haven't been able to divest ourselves of any of them as of yet.

Q. I believe your interrogatory responses mentions that six of the properties, Watch Tower Pennsylvania owns a remainder interest?

A. Correct.

Q. So, in other words, you don't retain possession until something future happens?

A. That's correct.

Q. Usually the death of the person that occupies the property; is that correct?

A. That is correct.

Q. With respect to the other properties that make up that ten or so, your discovery responses indicated property in Apple Valley, California, just northeast of Loss Angeles, correct?

A. Correct.

Q. What is the nature of --

A. REINMUELLER

MR. LOVE: Strike that.

Q. What is the property?

A. I am not familiar with the details of that property, other than its current use.

Q. What is its current use?

A. We have a member of our Religious Order using -- living there at the moment.

Q. And who lives there at the moment?

A. I don't know them by name.

Q. Who is he by position?

A. They are a member of our Religious Order.

Q. Under what arrangements does he live in this home or this property?

A. He is, as any member of our Religious Order, permitted to live on this property until they die. They are a retired member, and we're providing them a place to live.

Q. Why don't I ask you this instead: What type of place is this? Is

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bottom.

Do you see the word "resolution" in the middle?

A. Yes.

Q. Do you see that Watch Tower Pennsylvania is resolving to hire a lawyer to act for and in behalf of Watch Tower Pennsylvania in California?

A. Yes.

THE VIDEOGRAPHER: We're ending tape number two at 2:36.

[A recess was taken.]

THE VIDEOGRAPHER: Back on the record. The time is now 2:41 p.m., and it begins tape number three.

Q. If you would, turn to the document WTPA33. In that body of that paragraph entitled Resolution, it's resolved that WL Barry and JE Barr of Watch Tower Bible and Tract Society of Pennsylvania, being they hereby are authorized and directed to execute for and as the acting deed of Watch Tower Pennsylvania request for full reconveyance

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of the estate held by Central State Title Company.

Do you see that?

A. Yes.

Q. Reconveyance means that they were holding a deed of trust to a piece of property, correct?

A. I believe that is true.

Q. Somebody paid off a loan and Watch Tower Pennsylvania is executing the document to release the deed of trust, correct?

A. Yes. That is my understanding.

Q. It's a reconveyance of that deed to the person who just paid off the loan, correct?

A. As I said, I am not a legal expert, but that is my understanding.

Q. With respect to this document --

MR. LOVE: Strike that.

Q. Was Watch Tower Pennsylvania loaning money to anybody, other than congregations in California?

A. Not to my knowledge.

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Q. So is it fair for me to assume that this transaction relates to reconveying a deed to a congregation corporation?

A. That would be my conclusion.

Q. Look at the next page. Tell me if your conclusion would be the same about that March 19, 1985 transaction.

A. I'm not familiar with the details, but I would draw a similar conclusion.

Q. Are you familiar with a corporation called the Fontana Company of Jehovah's Witnesses, a corporation?

A. No, I'm not, but the term "company" used to be used before we formed congregations. My understanding would be that Company Fontana must be an older congregation in California, and when they were incorporated, they simply used the name company, which was the common term in those days.

Q. So this is referencing a congregation corporation?

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A. Correct.

Q. If you would, turn to the next page. Do you see that that one now is dated June 4, 2003?

A. Yes.

Q. And now we have the signature of all of the board of director members, correct?

A. Correct.

Q. If you would, turn to the second next page, which is dated August 6, 2003. It mentions Daniel Reis. I believe you've mentioned his name. Who is Danny Reis, and what is the real property office?

A. For about five or six years, the real property office has been a small group in Watchtower of New York to provide services for various property-related regulatory issues of our properties in New York, and from time to time, they are also -- they provide services with respect to the conveyances with respect to some of the properties that are conveyed to us by bequest in various parts of the country.

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Q. On the right-hand column, do you see the first full paragraph that starts "At that unforgettable"?

A. Yes.

Q. Does it read: "At that unforgettable annual meeting in 1971, a distinction was clearly drawn between the spirit anointing members of the Governing Body and the directors of the Pennsylvania corporation"?

Did I read that right?

A. Yes.

Q. And it goes further, "Still, members of the Governing Body continue to serve as the directors and officers of the Society."

Of course, we've seen that, haven't we?

A. Yes.

Q. And they did, in fact, remain as officers and directors of the Watch Tower Pennsylvania until October 5, 2000, correct?

A. Correct.

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Q. I want to refer you back to Exhibit 8, which is the Organize To Accomplish Our Ministry book.

MR. SCHNACK: That is actually number 9, I believe.

MR. LOVE: You're right.

Q. Number 9. Again, this is the particular document that was used by Don Adams in support of that paragraph six and seven, correct?

A. That's correct.

Q. If you would, turn to page 26. Do you see the section entitled "Use of religious corporations"?

A. Yes.

Q. I want to look at the sentence that picks up on the right right-hand side with the word "it."

It reads: "It has proved to be the course of wisdom for the faithful slave to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate print facilities that

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produce and distribute bibles and bible literature on a worldwide basis for the use in the Kingdom Ministry."

Did I read that right?

A. Yes.

Q. And it goes further, "The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania."

Correct?

A. Correct.

Q. And again, the policy makers, officers, and directors of Watch Tower Pennsylvania were the Governing Body members between October 1970 and October 5, 2000; is that correct?

A. That's correct.

MR. LOVE: Please mark this as 35.

(Whereupon, the above mentioned document was marked Exhibit 35 for identification.)

Q. I hand you what was marked as Exhibit 35 (handing). Do you recognize

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that document?

A. Yes.

Q. One of them is a memorandum to circuit overseers, and there is an attachment entitled Key Facts About Congregation Insurance, correct?

A. Correct.

Q. And the cover memorandum has a note on it that it was dated in 1987, correct?

A. Yes.

Q. Do you have any reason to believe otherwise?

A. No.

Q. Is the attachment also 1987?

A. It appears to be, yes.

Q. This is not referring to Kingdom Hall Assistance Arrangement, is it?

A. No, it is not.

Q. I want to look at this attachment which starts on the second page of the document, the key facts.

Again, the letterhead is Watch Tower Pennsylvania; is that correct?

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A. Correct.
Q. And the specific reference is to the office of the secretary and treasurer, correct?
A. Correct.
Q. At this point, that would have been Grant Suiter?
A. In -- I'm not entirely sure.
Q. It's either Grant Suiter or Lyman Swingle?
A. Either Grant Suiter or Lyman Swingle, yes.
Q. Correct?
A. Correct.
Q. Either way, it's a member of the Governing Body, correct?
A. That's correct.
Q. And that office of the secretary and treasurer in 1987 was separate and distinct from anything at Watchtower New York, correct?
A. Correct.
Q. This is a memorandum that was directed to the body of elders, correct?

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A. Yes.
Q. In the middle of the page, there is a section entitled "How to Obtain Information."
Did I read that right?
A. Yes.
Q. Is it says, "If after reading this memorandum you have questions concerning your coverage through the Society's group arrangement, contact the Society directly at the following address."
Correct?
A. Correct.
Q. And the entity that you're directed to contact with Watch Tower Pennsylvania?
A. Yes.
Q. And it mentions an insurance desk, doesn't it?
A. Yes.
Q. That insurance desk still exists?
A. It's now referred to as the risk

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management desk.
Q. But your inquiry is directed to Watch Tower Pennsylvania, correct?
A. Correct.
Q. So at the time, the insurance desk was within Watch Tower Pennsylvania; is that correct?
A. Technically, or specifically, the insurance desk was part of the treasurer's office, as we talked about earlier today, that provides financial services to Watchtower of New York, Pennsylvania, and other corporations.
The insurance desk was a part and continues to be a part of the treasurer's office operating -- communicating in this respect under the Watch Tower Bible and Tract Society of Pennsylvania.
Q. Now, that is not how I recall your testimony. I recalled your testimony being the office of the secretary and treasurer was an office of a particular individual at Watch Tower Pennsylvania?

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A. It is.
Q. So is it your testimony now that the office of the secretary and treasurer is not only Watch Tower Pennsylvania, it's larger than that and serves more people --
A. No.
Q. -- or are you talking about a department?
MR. SCHNACK: I'll object. You've mischaracterized his prior testimony. You further implied it or inferred it -- whichever word you want to use. I think it's improper.
Go ahead and respond.
A. My clarification's with respect to the insurance desk, not the office of the secretary and treasurer. The insurance desk is part -- was and continues to be part of the treasurer's office that services the various corporations. The office of the secretary and treasurer is distinct.
Q. This particular letter is directing someone to make an inquiry to

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Watch Tower Pennsylvania; is that correct?
A. Yes.
Q. And it gives a specific attention to the insurance desk; is that correct?
A. Correct.
Q. This document goes further and describes an insurance policy, doesn't it?
A. Yes. It appears to.
Q. And isn't it true that Watch Tower Pennsylvania purchased one large insurance policy and let different congregations participate?
A. I believe that's correct, yes.
Q. The fact, there were different levels of insurance, wasn't there?
A. Yes.
Q. If you have questions about the insurance or the extent of your coverage, you're directed again to contact Watch Tower Bible and Tract Society of Pennsylvania; that is correct?
A. Yes, correct.
Q. It goes further and describes

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how to protect your Kingdom Hall or some suggestions for protecting your Kingdom hall. Do you see that?
A. Yes.
Q. It talks about making an inspection on a regular basis, doesn't it?
A. Yes.
Q. And analyzing your security needs?
A. Yes.
Q. Frequent maintenance checks, correct?
A. Correct.
Q. Those aren't spiritual matters, are they?
A. Not specifically.
Q. Those are practical business directions, correct?
A. I guess you could characterize them that way.
Q. "Check your roof for seasonal problems."
Is that a spiritual instruction?
A. Not specifically, no.

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Q. "Starting, increasing, or cancelling your insurance."
Then there are some instructions given, correct?
A. Correct.
Q. It's talking about congregations obtaining insurance, and it's done through Watch Tower Pennsylvania; is that correct?
A. Yes, that's correct.
Q. It says in the third paragraph underneath that title, "To cancel your insurance, notify the Society. Your insurance will not be cancelled because failed to pay your premium."
Did I read that right?
A. Yes.
Q. What is a premium?
A. In a general sense, or the way it's being used here?
Q. If it's different from the way it's being used here, in a general sense?
MR. SCHNACK: I object. I don't understand the question.
MR. LOVE: I'll start again.

A. REINMUELLER
Q. It says premium, doesn't it?
A. Yes.
Q. It doesn't say volunteer donation, doesn't?
A. Right.
Q. The bottom describes reporting and handling a property loss, injury, or lawsuit, doesn't it?
A. Yes.
Q. And it describes the three categories of claims that your insurance covers, doesn't it?
A. Yes.
Q. One of those is listed as lawsuits, correct?
A. Correct.
Q. And if there is a lawsuit, you should report it immediately to the Society, correct?
A. Yes.
Q. And again, the Society's Watch Tower Bible and Tract Society of Pennsylvania, correct?
A. Yes.

A. REINMUELLER

Q. "To make all reports directly to the Society at the address shown on the following page, attention legal department."

Did I read that right?

A. Yes.

Q. "The address on the following page is Watch Tower Pennsylvania."

Is that correct?

A. Yes.

Q. It says, "Attention legal department," correct?

A. Yes.

Q. So once again, somebody is being instructed to send the notice of a lawsuit to Watch Tower Pennsylvania, attention the legal department, correct?

A. That's the direction given here.

Q. The all-capped section in the middle of the page that starts with "If you're being sued," do you see that?

A. Yes.

Q. And it gives four instructions. Do you see that below that heading?

A. REINMUELLER

A. Yes.

Q. It gives you the instructions, "do not discuss it with who is suing you or threatening to sue you," correct?

A. Correct.

Q. "Don't talk to the media," correct?

A. Correct.

MR. SCHNACK: Are you going to tie this to California at some point?

Q. And other instructions, correct?

A. Right.

Q. It goes on and says, "Appoint an elder" below that if you have a property loss. Do you see that?

A. Yes.

MR. SCHNACK: Greg, are you going to read most of this into the record? I'm trying to save you some time here.

Q. You mentioned earlier, Mr. Reinmueller, that there are circuit overseers in California; is that correct?

A. That's correct.

A. REINMUELLER

Q. There is up to 100 of them, correct?

A. Yes.

Q. And this particular document is that has that cover memorandum on it, do you have any reason to believe that it wasn't sent to every California circuit overseer?

A. No, I have no reason to believe that.

Q. So it's your expectation that it was, correct?

A. Yes.

Q. And again, the cover memo on the front is from Watch Tower Pennsylvania; is that correct? The office of the secretary and treasurer?

A. Yes, correct.

Q. Do you have any reason to believe that this particular document was distributed to every congregation in California that existed in 1987?

A. The instructions were that it only pertains to congregations enrolled in

A. REINMUELLER

the insurance arrangement, which leads me to believe that there were some congregations that were not. So I can't say that every congregation in California received it.

Q. It probably went to every one of them, and the people didn't get enrolled in the program just discarded it; is that correct?

A. I can't confirm that.

Q. With respect to the congregations that participated in Watch Tower Pennsylvania's insurance programs in the mid '80s, do you have a list of how many congregations that was?

A. That list wouldn't exist anymore. Not from the mid '80s. We just have current.

Q. But is it your testimony that this document went to every congregation in California who was enrolled in that insurance program?

A. Likely, that would be the case.

Q. On page four of that attachment

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in the middle of the page, it instructs that if you have an injury or liability claim, to do the following things. Do you see that?

A. Yes.

Q. Now, these are instructions that Watch Tower Pennsylvania expected to be followed if there was an injury or liability claim in the congregation, correct?

A. Yes, that's correct.

Q. And Watch Tower Pennsylvania had the authority to issue these instructions, correct?

A. Yes, to all those who were enrolled in this program. Certainly.

Q. And any California congregation that received these instructions understood them to be authoritative as it relates to these matters, correct?

A. If they participated in these matters, they viewed them as authoritative.

Q. If you would, turn to page five.

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Do you see the section Renewing and Paying for Your Insurance?

A. Yes.

Q. Do you see where it mentions that on October 30, you will receive an invoice for your insurance.

A. Yes.

Q. And what to do when you receive the invoice?

A. Yes.

Q. Again, those are instructions, correct?

A. Correct.

Q. It says "invoice" and not "voluntary donation," correct?

A. That's correct.

Q. Actually, paragraph three, it says to "Keep in mind that the Society pays your premiums in advance and waits for reimbursement from congregations." Doesn't it?

A. That's correct.

Q. So Watch Tower Pennsylvania would go and purchase these levels of

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insurance and simply send premium notices to the congregations, correct?

A. That's correct.

Q. And Watch Tower Pennsylvania would front all of the money and then collect if from the congregations that were enrolled in the program, correct?

A. That's correct.

Q. On the next page, do you see the item number two listing who's covered by the insurance?

A. I am not sure I'm following you. We're on page six?

Q. Yes. Do you see the reference under paragraph two that the insurance covers claims against elders and ministerial servants?

A. Yes.

Q. That would include elders and ministerial servants in California congregations that were enrolled in the program, correct?

A. Yes.

THE VIDEOGRAPHER: We're going

A. REINMUELLER

off the record at 4:13 p.m.

[A recess was taken.]

THE VIDEOGRAPHER: We're going back on the record. The time is now 4:19 p.m.

MR. LOVE: Mark these as Exhibits 36 and 37.

(Whereupon, the above mentioned document were marked Exhibits 36 and 37 for identification.)

Q. I'll hand you what I marked as Exhibits 36 and 37 (handing). I've clipped together what I understand to be some documents that relate to an insurance purchase for the period of October 1, 1990 through October 1, 1991.

Are you familiar with this type of document?

A. Yes.

Q. Does it appear to be a true and correct copy of some of the insurance documents for that period?

A. Yes, they do.

Q. Who is Mr. Dan Blackwood?

A. REINMUELLER

A. He was a former volunteer in our office.
Q. Which office is that?
A. The treasurer's office.
Q. In February of 1993, was he there?
A. Yes.
Q. Do you see the policy number, GL, and then a policy identification?
A. Yes, I do.
Q. I just want to point that out to you that as we go through the different pages, the same policy number will appear. So we're talking about the same transaction. All right?
A. Okay.
Q. If you turn to the second page of the document, do you recognize that as being a declaration page from a commercial general liability insurance policy?
A. Yes, I do.
Q. If you would, turn over two more pages where it says some of the binding instructions. Do you see that?

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A. Yes.
Q. Do you see the name of the insured listed there, Watch Tower Bible and Tract Society of Pennsylvania, Inc.?
A. Yes.
Q. And then it lists their address, correct?
A. Correct.
Q. Do you see right above that where it says page "one of four"?
A. Yes.
Q. In flipping through this, I'll represent to you that I have pages one --
MR. SCHNACK: Greg, what page are you on where it says Watch Tower Bible and Tract Society of Pennsylvania? I'm just trying to follow along.
MR. LOVE: Your number 47 at the bottom.
MR. SCHNACK: Thank you. I was a page ahead of that.
Q. Do you see that it indicates that this should be a four-page document?

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A. Yes.
Q. Do you see that page three is missing?
A. Yes.
Q. Back to the first page of that four-page set, do you see where it references $1 million per occurrence and $3 million aggregate?
A. Yes.
Q. Do you recognize this policy period as being well into what you testified as being the Kingdom Hall Assistance Arrangement period?
A. Yes.
Q. Is it true that Watch Tower Pennsylvania was purchasing commercial general liability insurance, in addition to providing Kingdom Hall Assistance Arrangement benefits?
A. Yes, but that was part of the strategy initially when the Arrangement was set up.
Q. Prior to the strategy, Watch Tower Pennsylvania had been purchasing

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policies similar to the one we're looking at for several years prior; had it not?
A. Yes.
Q. In fact, that 1987 document that we were looking at just a moment ago, which was Exhibit 35, was referencing a insurance policy similar to this one?
A. Yes. That is accurate.
Q. If you would, turn to Exhibit 37. There's the blue sticker that I put on there. What is the title of that document?
A. Commercial umbrella declarations.
Q. Do you see that it's for the same period of time under item two?
A. Yes.
Q. If you would, turn the page where it lists a schedule of underlying insurance.
A. Yes.
Q. Do you see the commercial general liability with National Union Fire listed there?

A. REINMUELLER

A. Yes.
Q. For the same time periods, correct?
A. Correct.
Q. And this particular listing of insurance is the different levels and layers of insurance being purchased by Watch Tower Pennsylvania, correct?
A. Yes.
Q. One of those policies is an automobile liability policy; is that correct?
A. Yes.
Q. Who is covered by this particular policy?
A. The automobile liability?
Q. Yes. In 1991?
A. It would be the fleet of vehicles owned and operated primarily by -- in 1991 -- by the Watchtower Bible and Tract Society of New York.
Q. Would that cover the traveling overseers?
A. No.

A. REINMUELLER

Q. Is there any insurance provided by Watch Tower Pennsylvania for the traveling overseers?
A. At the present time, their vehicles are being insured through a joint program of automobile insurance.
Q. Is that program administered by Watch Tower Pennsylvania?
A. No, it is not.
Q. During 1991, were the traveling overseers insured for their vehicles?
A. I am sure they were insured, yes.
Q. Were they given the opportunity to be insured through a program administered by Watch Tower of Pennsylvania?
A. That, I am not certain.
Q. Who would be?
A. We have to go back to the records, probably.
Q. And those are records that are available to you?
A. Yes.

A. REINMUELLER

Q. When I say "traveling overseer," that is a district overseer and a circuit overseer, correct?
A. Yes.
Q. And there are -- they are referred to as traveling overseers, even if they are in California, correct?
A. Yes, that's correct.
Q. What is your understanding as to who insured district and circuit overseers between 1970 and, say, 2000?
A. Up until 1989, travelling overseers had personal arrangements for their own vehicles. Sometimes they received assistance from local congregations or circuits, but there was no program to provide them any assistance with their vehicles for their insurance.
Q. Going back to that page one of four in Exhibit 36, do you see the section entitled Self-Insured Retention?
A. Yes.
Q. It mentions that the SIR -- the self-insured retention -- to be handled by

A. REINMUELLER

GAB. What does that mean?
A. If I recall correctly, a third-party claims administrator.
Q. Like a Crawford & Company?
A. I believe so.
MR. SCHNACK: GAB is Gallagher and Bassett.
Q. The next page, two of four, it lists in the bottom of the document the extensions of coverage. Do you see that?
A. Yes.
Q. Do you see that "Item A indicates the person's insured provision is amended to include any elder other ministerial servant designated as such by the named insured."
Did I raid that right?
A. Yes.
Q. You understand what an elder and ministerial servant is, don't you?
A. Yes.
Q. Do you see that it indicates the elders and ministerial servants as designated as such by the name insured?

A. REINMUELLER
The named insured is Watch Tower Pennsylvania; is that correct?
A. That is correct.
Q. Now, this goes on, picks up on the following page, with number nine.
Do you know who else and what else was insured under this policy in items two through eight?
A. I'm not familiar with particulars of this particular year of coverage.
Q. Now, a circuit overseer in California in 1991, was that person also an elder?
A. Yes.
Q. And district overseers in California in 1991, they were also elders as well?
A. Yes.
Q. So under this policy, wouldn't you agree with me that it appears as if circuit overseers and district overseers in California would be covered by this policy?

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A. For the coverages specifically named in this policy, yes, that would be true.
Q. And those coverages being commercial general liability on this particular page?
A. On this particular page, I believe the extension was for clergy counseling liability.
Q. But in terms of the covered individual, it would include circuit overseers and district overseers in California; is that correct?
MR. SCHNACK: I'll object. It's been asked and answered.
Go ahead.
A. For this particular coverage, clergy counseling, yes.
Q. The circuit overseers don't get the same letters that congregations do to participate in this insurance program, do they?
A. Generally, circuit overseers would be copied on any correspondence

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going to bodies of elders.
Q. Do circuit overseers get notices of premises that they have to pay for their individual coverage?
A. It depends -- it would depend on the type of coverage and on the year and the program. I can't answer you generally over a period of time of 30 years.
Q. I just want to talk about this particular policy.
A. This particular year, this particular coverage, would they have received any --
Q. Were district overseers and district overseers asked to contribute, to pay for this policy?
A. I can't answer authoritatively, but I would expect not.
Q. And that expectation of circuit overseers and district overseers in California not paying for part of the policy would be true for the years 1970 through what year?
MR. SCHNACK: I'm not

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understanding the question. When you say "this policy," what --
MR. LOVE: I've asked him about this policy, and he's given me an answer. Now I'm just trying to -- I think I understand his answer, that if he were to receive the exact same documents for 1990 or 1989, his answer would be the same, that they are insureds, but you would expect that they not be contributed personally with respect to paying the premium.
MR. SCHNACK: With respect to the clergy counselling coverage?
MR. LOVE: Certainly, or whatever other coverage is provided that was not given to me as listed.
A. The difficulty is that the types of coverages and the types of programs changed dramatically from the years in question.
I can't give you a blanket answer for all of those years without analyzing specifically what types of

A. REINMUELLER

programs were in place year by year.

Q. Neither can I, Mr. Reinmueller. I'm doing the best I can with a little bit of documents. I apologize for not having more information available to ask you those questions.

With respect to those changes in programs, how many different changes have there been from 1970 to the present?

A. I wouldn't be able to wager a number, but I know that the programs have changed fairly from 1970 to the present. They've changed quite significantly.

Q. Starting with 1970, what is the first change that you're familiar with?

A. I couldn't give you a year-by-year or decade-by-decade analysis.

Q. Can you give me any more information, other than the fact that the Kingdom Hall Assistance Arrangement was brought on around 1989?

A. In what are you interested specifically?

Q. I'm interested in knowing what

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contract Watch Tower Pennsylvania had in the State of California relative to insurance provision for anybody associated with the organization in California.

A. Well, the Kingdom Hall Assistance Arrangement does provide coverage to all of the congregations there.

Q. We'll get to Kingdom Hall Assistance Arrangement.

A. Okay.

Q. Is there any other program change or other any in way insurance was handled in California between 1970 and 2003?

MR. SCHNACK: I am not clear on what you mean. Program change or insurance? It sound like you're mixing apples and oranges. Maybe it's late in the day.

Q. You've been designated as the person with most knowledge about Watch Tower Pennsylvania's contacts in California, correct?

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MR. SCHNACK: With respect to the issues in the notice of deposition.

Q. One of those issues relates to Kingdom Hall Assistance Arrangement, correct?

A. Correct.

Q. And that is an insurance program, correct?

A. Correct.

Q. Are there any other insurance programs that have been in effect in California, besides the Kingdom Hall Assistance Arrangement and the arrangement similar to what we're describing or discussing in this policy?

A. Not to my knowledge.

Q. Turn to the very last page of Exhibit 36, entitled "Endorsement" at the top. Do you see that?

A. Yes.

Q. Do you see at the bottom it says "page one of four"?

A. Yes.

A. REINMUELLER

Q. Do you notice like I have that there is no page two, three, or four?

A. Yes, I notice that.

Q. Do you see item number two, definition of insured?

A. Yes.

Q. That says at the very bottom, insured, and it also includes the following, and there is a colon?

A. Yes.

Q. There is nothing listed thereafter, correct?

A. Correct.

Q. Do you have any copies of insurance policies like this in your office?

A. Yes, we do.

Q. For the person to have been able to produce this to me, they would have had to have gotten this policy out of your office, correct?

A. Probably so, yes.

Q. Are there documents like this for other time periods, besides 1990 to

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1991?

A. Yes, there would be.

Q. And those policies would have covered people and congregations in California, correct?

A. Congregations certainly, yes.

Q. Well, we saw the elders are covered, didn't we?

A. Yes.

Q. And ministerial servants, correct?

A. During certain periods, yes.

Q. We got those in California, correct?

A. Yes.

Q. How far back do your records go of insurance policies and levels of coverage?

A. I'm not sure specifically on the year, but evidently, at least back to the early '90s.

Q. You mentioned --

MR. LOVE: Strike that. Mark this as 38.

A. REINMUELLER

(Whereupon, the above mentioned document was marked Exhibit 38 for identification.)

Q. I'm handing you what's been marked as Deposition Exhibit -- what is it, 38?

MR. SCHNACK: 38.

Q. That document is also something sent by Watch Tower Bible and Tract Society of Pennsylvania?

A. Correct.

Q. And it indicates that it was sent to a congregation in Texas, correct?

A. That's correct.

Q. But is this also a form document that would have also something similar to it have been sent to California congregations?

A. To all those enrolled in the insurance program.

Q. And we don't know how many congregations were enrolled in the insurance program for any period of time back in the '70s or '80s, do we?

A. REINMUELLER

A. That is correct. We do not know.

Q. What is the title of this document?

A. Insurance invoice.

Q. It's dated February 1991; is it not?

A. Yes.

Q. And it also indicates that coverage is automatically renewed, correct?

A. Correct.

Q. It indicates or references at the bottom that it's for that same coverage date from the insurance policy we just looked at, correct?

A. Correct.

Q. So is it safe for me to assume that Watch Tower Pennsylvania was purchasing layers of insurance that covered different people in entities for different things, correct?

A. That's correct.

Q. And that they would turn around

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then, and Watch Tower Pennsylvania would send out letters to the congregations that were enrolled in the program sending them an invoice for their portion of the premium payment, correct?

A. Correct.

Q. And those letters would have been directed to the participating congregations in California; is that correct?

A. Correct.

Q. Again, does this sheet anywhere say "voluntary donation" on it?

A. No, it does not.

MR. LOVE: Please mark this as 39.

(Whereupon, the above mentioned document was marked Exhibit 39 for identification.)

Q. This is Exhibit 39. Do you recognize that as a letter sent from Watch Tower Pennsylvania?

A. Yes.

Q. Dated November 1, 1981?

A. REINMUELLER

A. Yes.
Q. It looks like it was sent to everybody but told to only read it if you're enrolled in the program or the arrangement. Is that fair?
A. That appears to be correct.
Q. So in all likelihood, it was sent to all California congregations with some of those congregations being participants in the Society's arrangement, correct?
A. That appears correct.
Q. Dated 1981, right?
A. Yes.
Q. Far precedes the Kingdom Hall Assistance Arrangement, correct?
A. Correct.
Q. And this particular insurance arrangement was being administered by Watch Tower Pennsylvania, correct?
A. Yes, correct.
Q. It discusses a new type of coverage being added. Do you see that?
A. Yes.

A. REINMUELLER

Q. It makes me assume that there was an old type of coverage that preceded this 1981 letter; is that fair?
A. Yes.
Q. Do you know how far back Watch Tower's administration of an insurance arrangement for a congregation in California goes?
A. No.
Q. It precedes 1981, doesn't it?
A. It does.
Q. Is there anybody who would know the answer to that question better than you?
A. Probably not, unless there's some records still available somewhere, but I -- probably not.
Q. Under the section "What this insurance covers," it references an insurance manual.
Are you familiar with an insurance manual that was in the existence in the 1980's?
A. Yes.

A. REINMUELLER

Q. Do you have a copy of one?
A. I haven't been able to locate one, no.
Q. Are there insurance manuals that cover issues presently?
A. There are general instructions, but at the present time, there's no -- nothing I would refer to as a manual.
Q. Who creates those general instructions?
A. The treasurer's office, the risk management desk.
Q. And would that be directed under a letterhead of Watch Tower Pennsylvania?
A. As I said, it's part of the treasurer's office that operates through the Watchtower of New York, and provides services, such as the one communicating with the Kingdom Hall Assistance Arrangement.
It may communicate on Pennsylvania letterhead for that purpose, but it provides -- the risk management is part of the treasurer's office in New

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York.
Q. Because, I mean, I've received a fair amount of documentation in responses to request about the Kingdom Hall Assistance Arrangement for a length of time. I have yet to see a document that addresses instructions regarding Kingdom Hall Assistance Arrangement from Watchtower New York.
Are you saying that there are things like that?
A. No, because the Kingdom Hall Assistance Arrangement is a fund in Pennsylvania corporation, so communication about it is generally made on the Pennsylvania letterhead.
Q. If you would, look at the very bottom, the PS, on the second page. It says, "This coverage also applies to traveling overseers."
Do you see that?
A. Yes.
Q. Do you know what that means? Was it this new coverage or the old

A. REINMUELLER

coverage? What coverage applied to traveling overseers?

A. It's my understanding that for a time, this coverage for injury for volunteer workers was in place through this Alan Ross Insurance Agency, and evidently, it also applied to traveling overseers and special pioneers at the time that it was in force.

Q. And there are traveling overseers and special pioneers in California, correct?

A. Yes.

Q. So that particular coverage protected circuit overseers, district overseers, and special pioneers in California, correct?

A. It would appear to be the case, yes.

Q. There's a paragraph right above that that starts "This coverage." Do you see that?

A. Yes.

Q. It says, "This coverage is being

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provided at no extra charge."

Do you see that?

A. Yes.

Q. At this time, do you have any reason to believe that Watch Tower Pennsylvania was not sending invoices similar to the one we just looked at in Exhibit 37 -38- to the congregations in the United States?

A. No. Evidently -- I would expect that they were sending invoices at this time.

Q. And that would included to the congregations in California, correct?

A. Yes.

Q. And even though they probably didn't get an invoice, the coverage extended to district overseers and circuit overseers?

A. Evidently.

MR. LOVE: Mark this as 40.

(Whereupon, the above mentioned document was marked Exhibit 40 for identification.)

A. REINMUELLER

Q. I'm handing you what I marked as Exhibit 40. It, too, is a letter from Watch Tower Pennsylvania, correct?

A. Yes.

Q. This one is addressed to the bodies of elders who are insured through the Society or its arrangement; is that correct?

A. Yes.

Q. Dated 1987, correct?

A. Yes.

Q. And the reference on that is the 1987 annual insurance billing, correct?

A. Correct.

Q. And it references the enclosure of an invoice for insurance. Do you see that?

A. Yes.

Q. And it covers a period of October 1, 1987 to October 1, 1988. Correct?

A. Yes.

Q. Do you have any reason to believe that there weren't California

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participants participating in the Society's insurance program in 1987?

A. No, I have no reason to believe that.

Q. Is October 1 the beginning of a fiscal year for the Jehovah's Witnesses Organization?

A. No, it is not.

Q. Is there anything special about that particular time period?

A. It appears to have been for many years just a convenient first time for the insurance policy renewal.

Q. Was Watch Tower Pennsylvania have a fiscal year?

A. Yes.

Q. What is the date that it begins?

A. It begins in September and ends on August 31.

Q. Do you see in the second paragraph reference to, again, that Watch Tower Pennsylvania paid the premiums in advance?

A. Yes.

A. REINMUELLER

Q. It doesn't say "voluntary donations," does it?

A. Sorry?

Q. It doesn't say "voluntary donations," does it?

A. With respect to whom?

Q. With respect to paying a premium?

A. No, it does not.

Q. Of course, it references the fact that they are enclosing a memorandum entitled Key Facts About Kingdom Hall Insurance, correct?

A. Yes.

Q. Earlier, we looked at a document entitled Key Facts About Congregation Insurance.

Is it possible that those are the same things?

A. It's likely that they are similar in form, substance.

Q. Are you familiar with the document called Key Facts About Kingdom Hall Insurance?

A. REINMUELLER

A. Those documents don't exist anymore. Since it became the Kingdom Hall Assistance Arrangement has been en effect, it's been referred to in Key Facts in the Kingdom Hall Assistance Arrangement.

Q. So all of those documents of prior arrangements were destroyed?

A. I am sure they were.

Q. Where did these come from?

A. The letters?

Q. That we're looking at?

A. I am not sure.

MR. LOVE: Mark this as 41.

(Whereupon, the above mentioned document was marked Exhibit 41 for identification.)

Q. I've marked Exhibit 41.

Do you recognize that also as a letter on Watch Tower Pennsylvania's letterhead?

A. Yes.

Q. The fact that the next document is so similar, I'll try to ask you questions about those at the same time.

A. REINMUELLER

MR. LOVE: Please mark this as 42.

(Whereupon, the above mentioned document was marked Exhibit 42 for identification.)

Q. Do you recognize the first document, the letter of Watch Tower Bible and Tract Society of Pennsylvania to the bodies of elders?

A. Yes.

Q. And that would include the bodies of elders in California, correct?

A. Likely so.

Q. And it doesn't say those elders that have insurance arrangements, correct?

A. That's correct.

Q. Now, you mentioned the fact that the Kingdom Hall program involved insuring all of the congregations. Did I understand you right?

A. Could you rephrase that question again?

Q. Sure. My understanding of your testimony is that the Kingdom Hall

A. REINMUELLER

Assistance Arrangement has only so many congregations contributing, but it's to the benefit of all congregations.

A. That is true. The Kingdom Hall Assistance Arrangement.

Q. Was that not true with respect to the insurance arrangement?

A. It was not true with respect to the insurance arrangement.

Q. On Exhibit 36 that we looked at earlier, do you see anything in that document which narrows the coverage to particular participating congregations?

A. I don't see that here, but it's my understanding that a schedule of congregations had to be submitted to the insurer under the programs that we had in effect before the Kingdom Hall Assistance Arrangement.

Q. Had you ever seen any one of those lists of the participating congregations?

A. Yes, I had. Years ago.

Q. Have you seen one lately?

A. REINMUELLER

A. We don't need to do that anymore, because all of our congregations are covered.

Q. So you don't have any records relating to congregations that were particularly covered or not covered by the umbrella policy and the CGL policy?

A. Prior to -- I mean, as of the dates we're looking at here, I don't believe we have those records anymore.

Q. So it's your testimony that the Kingdom Hall Assistance Arrangement is available to any congregation with a claim, but it's only funded by participating congregations?

A. Any congregation is welcomed to contribute towards that fund, but all of them are -- benefits of the program are available to every congregation.

Q. Would the benefits of the program also extend to circuit overseers and district overseers in California?

A. Of the Kingdom hall assistance arrangement? Yes, in certain respects.

A. REINMUELLER

Q. Both the letters 41 and 42 originate from the secretary's office and treasurer, correct?

A. Yes.

Q. And that was either Grant Suiter or Lyman Swingle, correct?

A. Yes.

Q. Both of these relate to an annual inspection of your Kingdom Hall, correct?

A. Correct.

Q. In the first letter, isn't it true that the elders are being instructed to inspect the roof of the Kingdom Hall?

A. Yes.

Q. Watch Tower Pennsylvania even provides a roof inspection checklist, correct?

A. Yes.

Q. And that, too, is on Watch Tower Pennsylvania letterhead, correct?

A. That's correct.

Q. Now, these elders that are receiving these instructions regarding

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inspection of the Kingdom Hall recognize Watch Tower Pennsylvania's authority to give them these instructions, correct?

A. Yes. I would say they review this kind of instruction as being helpful advice to help them fulfill the responsibilities towards their congregates' meeting place. I don't feel or view it as it as being authoritative instruction that you say they had to follow.

Q. Isn't it true on the next page it talks about the circuit overseer is going to make sure that you inspected the roof?

A. I think the particular expression that says, "We want you to help the brothers."

Q. Read along with me on the paragraph that is right after the number two. It starts with "The."

"The circuit overseer will check with you to verify that the inspection was made."

A. REINMUELLER

Did I read that right?

A. Yes.

Q. So Watch Tower Pennsylvania is going to rely upon the circuit overseer to see to it that that inspection of the roof is made, correct?

A. To see whether or not it has been made, yes.

Q. And there are instructions to the bottom to the circuit and district overseers, correct?

A. Correct.

Q. And it says, "During your next visit, please ask if the inspection has been completed"?

A. Yes.

Q. And this is then sent to the district and circuit overseers in California, correct?

A. Correct.

Q. And they would be responsible for doing that as it relates to the congregations within the circuit overseer's circuit --

A. REINMUELLER
MR. SCHNACK: I want to object to the form of the question. Finish it first.
MR. LOVE: I don't know where I was in my question now.
MR. SCHNACK: I apologize. I thought you took a breath, and I thought you were done.
Q. With respect to the instruction given to the district and circuit overseers, they would relate to their respective jurisdictions, correct?
A. The circuit and district overseers would follow through on this encouragement in the congregation to which they are signed.
MR. SCHNACK: You avoided the objection. See?
Q. The purpose is given for this insurance in the bottom of the second paragraph on the first page. Do you see that?
A. Yes.
Q. The purposes is to reduce losses

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and to lower insurance premiums. Correct?
A. Yes.
Q. And, of course, Watch Tower Pennsylvania is fronting the money for those insurance premises, correct?
A. Yes.
Q. So Watch Tower Pennsylvania is looking for a financial benefit from these particular instructions, correct?
A. I don't believe that's correct.
Q. Let's look at Exhibit 42. This is the letter instructing an inspection relating to security, correct?
A. Yes, correct.
Q. And again, this predates the creation of the Kingdom Hall Assistance Arrangement, right?
A. Yes.
Q. Again, the second paragraph to the bottom in the second line, "The purpose of the letter again was to keep insurance costs at a minimum."
Do you see that?
A. Yes.

A. REINMUELLER
Q. Like the other letter, it mentions that "The circuit overseer will verify that you make this inspection," correct?
A. That's correct.
Q. And there's also a PS to the circuit overseers to be sure to do that, right?
A. Yes.
Q. This would have been a letter that went to all the bodies of elders in California, correct?
A. Yes.
Q. Regardless of whether they were participants in the insurance program, right?
A. It appears that way.
Q. And it would have gone to all the circuit overseers in California, correct?
[Continued on the next page to allow for signature line and jurat.]

A. REINMUELLER
A. Yes.
MR. LOVE: Let's stop for the day here. I'm at a stopping place.
THE VIDEOGRAPHER: This ends our deposition for today at 5:02 p.m. on August 25, 2004. We're going off the record at this time.
[TIME NOTED: 5:02 p.m.]

_____
ALEXANDER REINMUELLER

_____
Subscribed and sworn to before me this _____ day of _____, 2004.

_____
Notary Public

SUPERIOR COURT CALIFORNIA
COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

-against-

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

Defendants.

August 26, 2004
8:35 a.m.
333 Adams Street
Brooklyn, New York

CONTINUED DEPOSITION
of ALEXANDER REINMUELLER, a Witness appearing on behalf of one of the Defendants herein, held at the above-noted time and place before Brian Brenner, a Shorthand Reporter and Notary Public of the State of New York, pursuant to Court Order, the Provisions of the CPLR pertaining thereto, and stipulations between counsel.

APPEARANCES:

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ALSO PRESENT
Mark Grady
Videographer
Benjamin Reporting

Mario Moreno, Esq.
Watchtower Legal Department

* * *

STIPULATIONS

IT IS HEREBY STIPULATED, by and between the attorneys for the respective parties hereto, that:

All rights provided by the C.P.L.R., including the right to object to any question, except as to form, or to move to strike any testimony at this examination is reserved; and in addition, the failure to object to any question or to move to strike any testimony at this examination shall not be a bar or waiver to make such motion at, and is reserved to, the trial of this action.

This deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this examination was begun, but the failure to do so or to return the original of this deposition to counsel, shall not be deemed a waiver of the rights provided by Rule 3116, C.P.L.R., and shall be controlled thereby. The filing of the original of this deposition is waived.

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IT IS FURTHER STIPULATED, a copy of this examination shall be furnished to the attorney for the witness being examined without charge.

* * *

ALEXANDER REINMUELLER, the Witness herein, having first been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. LOVE:

Q. Please state your name for the record.

A. Alexander Reinmueller.

Q. What is your address?

A. 25 Columbia Heights, Brooklyn, New York 11201.

THE VIDEOGRAPHER: We're on the record. The time is 8:40 a.m., and we begin tape number one in the continued deposition of Alex Reinmueller.

MR. LOVE: Mark this as Exhibit

A. REINMUELLER

43.

(Whereupon, the above mentioned document was marked Exhibit 43 for identification.)

Q. Mr. Reinmueller, I want to stay on the topic of insurance-related things. I'll hand you what was marked as Exhibit 43.

Do you recognize that as a document written by Watch Tower Pennsylvania?

A. Yes, I do.

Q. And does it appear to be a true and correct copy of a letter written by Watch Tower Pennsylvania on October 1, 1995 relating to the Kingdom Hall Assistance Arrangement?

A. It does.

Q. At the time the Kingdom Hall Assistance Arrangement was created, isn't it true that Watch Tower Pennsylvania was still purchasing commercial insurance?

A. Yes, that's true.

Q. And in that commercial insurance

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that Watch Tower Pennsylvania was purchasing, there was a self-insured retention amount, correct?

A. Correct.

Q. And it was a substantial amount?

A. That's correct.

Q. So am I understanding this correctly that the Kingdom Hall Assistance Arrangement and the commercial insurance worked together to protect the Society's interests?

A. That's the case since the inception of the Kingdom Hall Assistance Arrangement. That would be accurate.

Q. So as far back to at least 1980, which is what our records show, there has been an insurance provision created by Watch Tower Pennsylvania, and Kingdom Hall Assistance Arrangement simply became a part of that in or about 1989; is that correct?

A. I would characterize it slightly differently, that the Kingdom Hall Assistance Arrangement really was an

A. REINMUELLER

expansion and an adjustment in our arrangements with the congregations to shift away from strictly purchasing commercial insurance for the congregations and switching over to providing a broader assistance arrangement that is now the Kingdom Hall Assistance Arrangement.

Q. It was far more flexible, wasn't it?

A. The Kingdom Hall Assistance Arrangement?

Q. Yes.

A. Yes.

Q. And it allowed far more ability to resolve issues that came up, correct?

A. Yes, and it also no longer required -- it was not just purchasing insurance and passing along the costs to the congregations, but rather, now it was an arrangement provided for all congregations, regardless of whether they contributed to the arrangement or not.

Q. And not just to congregations, but traveling overseers, assemblies, and

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different other Jehovah's Witnesses' functions, correct?

A. Yes, that's correct.

Q. And in the beginning, that was an arrangement that was administered by Watch Tower Pennsylvania, correct?

A. The Kingdom Hall Assistance Arrangement?

Q. Yes.

A. Yes, that's correct.

Q. In the October 1, 1995 document which I've labeled as Exhibit 43, if you would, turn to the second page of the document, under the "What is covered by the KHAA," do you see a list there?

A. Yes, I do.

Q. There is a number of property damage items listed, correct?

A. Right.

Q. And also is an arrangement that covers personal injuries and accidents, correct?

A. Yes.

Q. On the third page of the

A. REINMUELLER

document, if you turn with me, do you see a section in the middle of the page that claims against elders and ministerial servants performing assigned work on behalf of the congregation?

A. Yes.

Q. Do you see that as an item listed under included matters covered by the Kingdom Hall Assistance Arrangement?

A. Yes.

Q. So that doesn't just say counselling or clergy counselling, does it?

A. No, it does not.

Q. If you would, turn to page ten. Do you see there a list of instructions from Watch Tower Pennsylvania about what to do if there is an incident or an accident?

A. Yes.

Q. Would you agree that in the event there was an accident or an incident that elders are required to follow these instructions?

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A. Yes.
Q. If you would, turn the page again. Turn to the final instructions given under accidents resulting in bodily injuries, number nine, do you see that?
A. Yes.
Q. Do you see that it mentions that if there is any correspondence or inquiry coming from an attorney, you could contact the branch immediately?
A. Yes.
Q. That would include the United States, correct?
A. Yes.
MR. LOVE: Mark this as Exhibit 44.
(Whereupon, the above mentioned document was marked Exhibit 44 for identification.)
Q. Mr. Reinmueller, I want to hand you what was marked as Exhibit 44 (handing).
Do you recognize that document?
A. Yes.

A. REINMUELLER

Q. Do you consider it a true and correct copy of a letter from Watch Tower Pennsylvania with respect to Kingdom Hall Assistance Arrangement?
A. Yes.
Q. Do you see that it's dated September 1, 1998?
A. That's correct.
Q. With respect to both exhibits, 43 and 44, isn't it true that those particular documents would have been distributed to all of the congregations in California?
A. Yes, that's true.
Q. Regardless of whether they contributed to the arrangement, correct?
A. Yes, that's correct.
Q. Do you see the office of the secretary and treasurer underneath the letterhead?
A. Yes, I do.
Q. Do you also see the identification of a risk management office?

A. REINMUELLER

A. Yes.
Q. And that is under the Watch Tower Pennsylvania letterhead, correct?
A. Yes, that's correct.
Q. The last sentence in that first paragraph reads or indicates that: "The fund is used to purchase commercial excess insurance to protect congregations and the Society."
Do you see that?
A. Yes, I do.
Q. And the Society includes any part of the Jehovah's Witnesses Organization, correct?
A. I'm not sure I would characterize that expression. I believe in this document -- it's more related to the Watch Tower Pennsylvania.
Q. So your understanding of that particular phrase is, is that the insurance is purchased to protect the congregations and Watch Tower Pennsylvania?
A. I believe that is correct, yes.

A. REINMUELLER

Q. And those monies that are contributed to the Kingdom Hall Assistance Arrangement in part come from California, correct?
A. Yes, that's correct.
Q. Some of those contributions then from California are used to purchase commercial excess insurance to protect in part Watch Tower Pennsylvania; is that correct?
A. Yes, that's correct.
Q. Do you see the heading "How do we participate in the Kingdom Hall Assistance Arrangement"?
A. Yes.
Q. Do you see there that it says, "In here, you will receive a letter suggesting a contribution amount"?
A. Yes.
Q. Does it say there --
MR. LOVE: Strike that.
Mark these as Exhibits 45 and 46 and 47.
(Whereupon, the above mentioned

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documents were marked as Exhibits 45, 46, and 47 for identification.)

Q. I'll hand you what I've marked as Exhibits 45, 46, and 47. Take a moment to look over those (handing).

Do you recognize all of those as being letters from Watch Tower Pennsylvania?

A. Yes.

Q. And do they appear to be true and correct copies?

A. Yes, they do.

Q. And do you see that they range from the years 1988, 1989, and 1991?

A. Correct.

Q. They're all essentially communicating the same thing, aren't they?

A. They appear to be.

Q. The Watch Tower Pennsylvania is sending you the remittance slips and the envelopes for which to remit money back to the Society Watch Tower Pennsylvania; is that correct?

A. Yes, that's correct.

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Q. In connection with payments for certain services, correct?

A. Yes, correct.

Q. Is it true, Mr. Reinmueller, that Watch Tower Pennsylvania is the entity that determines how much money the congregations needs to contribute?

A. No, that is not true.

Q. That's never been true?

A. Certainly not in an expansive -- I am not sure what your term includes. You said -- you didn't -- you didn't limit it to anything specific. In what area?

Q. With respect to Kingdom Hall Assistance Arrangement, isn't it true that Watch Tower Pennsylvania determines the amount the congregation should contribute?

A. Suggests an amount that they should contribute to the Kingdom Hall Assistance Arrangement.

MR. LOVE: Mark this as Exhibit 48.

(Whereupon, the above mentioned document was marked Exhibit 48 for

A. REINMUELLER

identification.)

Q. I'll hand you Exhibit 48 (handing).

Is that a true and correct copy of a letter from Watch Tower Pennsylvania to all of the United States, including California?

A. Yes, it appears to be.

Q. It's dated October 12, 2003, correct?

A. Yes.

Q. And a letter goes out like this every year to the congregations, correct?

A. Generally.

Q. Again, the first paragraph indicates that the purpose of the Kingdom Hall Assistance Arrangement is to use designated funds to pay for damages and injuries, correct?

A. Yes.

Q. In the second paragraph, it indicates that Watch Tower Pennsylvania suggests each contribution again contribute $4.50 per publisher, correct?

A. REINMUELLER

A. Yes, that's correct.

Q. And a publisher is a member, correct?

A. Yes, that's correct.

Q. So they're being told to add up the number of people in their congregation, multiply that by $4.50, divide that by twelve, and pay that amount monthly, correct?

A. That is the suggestion.

Q. Or that they can make it all in one lump sum, correct?

A. That's correct.

Q. And this is a letter that is provided to the congregations in California, correct?

A. Yes, that's correct.

Q. And contributions were, in fact, received from the congregations in California, correct?

A. From many of the congregations, that's correct.

Q. From the program's inception, correct?

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A. Yes, I believe that's correct.

MR. LOVE: Mark this as Exhibit 49.

(Whereupon, the above mentioned document was marked Exhibit 49 for identification.)

Q. I'll hand you what was marked as Exhibit 49 (handing).

I'll ask you, can you describe to me what that document is?

A. This is a document which summarizes the amounts paid under the Kingdom Hall Assistance Arrangement to -- for various claims submitted by congregations in California from as far back as our records go.

Q. Your records go back how far, 1997?

A. 1996, I believe, in this case.

Q. Are you the one who prepared this particular document?

A. No, I'm not.

Q. Do you know how this particular document was prepared?

A. REINMUELLER

A. Yes, I do.

Q. Describe that to me, please.

A. It was a report out of the program that is used to track correspondence with respect to various claims made under the Kingdom Hall Assistance Arrangement.

Q. So this is a document that is prepared from a database, correct?

A. That's correct.

Q. And you could search it by different fields, correct?

A. Yes, that's correct.

Q. And you could create your own document just by entering the type of field you want it to provide to you?

A. Yes, that's correct.

Q. So in the category where it says "reimbursing," normally, it would list a name there?

A. Yes. That would be a name of the congregation that submitted the claim.

Q. In Exhibits 43 and 44, there is instruction provided for how to file a

A. REINMUELLER

claim. Are you familiar with that process?

A. Yes, in general I am.

Q. Would it be your testimony that all of the claims paid listed in Exhibit 49, that there were claims submitted? Would these have followed the process?

A. Yes, I would expect that to be true.

Q. And that process would include what?

A. We would receive report of an injury or a property loss, either by telephone or in writing, and then the congregation would be contacted, and it would be determined how -- what assistance would be needed.

Q. Congregation would be contacted by whom?

A. By someone in the risk management office of the treasurer's office.

Q. Which is Watch Tower Pennsylvania, correct?

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A. Again, Watch Tower Pennsylvania is a client of the treasurer's office, but the treasurer's office is a department in Watchtower of New York.

Q. Before the creation of the risk management office, who would contact the congregations?

A. The treasurer's office.

Q. And that is Watch Tower Pennsylvania --

A. The insurance desk in the treasurer's office.

Q. And that was Watch Tower Pennsylvania; is that correct?

A. No. That would be New York.

Q. Didn't we see a document earlier that described Watch Tower Pennsylvania, attention insurance desk?

A. Yes, that is true, but that directs it inside -- since it's the same office, it directs it to the proper desk.

Q. But the direction was to contact Watch Tower Pennsylvania; was it not?

A. Yes. That's what it said.

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Q. Attention insurance desk, correct?

A. Correct.

Q. When was the risk management office created?

A. The insurance desk, as you've seen in all the documentation, has existed as long as the Society was providing insurance. The name was changed to risk management sometime in the early to mid '90s.

Q. Was it in 1998?

A. I'm not exactly sure of the year that the terminology changed.

Q. Would you compare 43 and 44 which are key facts about the Kingdom Hall Assistance Arrangement, Exhibit 44 says to replace the 1995 document, correct?

A. Correct.

Q. Is it true that the 1998 document is the first one that mentions a risk management office?

A. Of these two documents, yes, that's true.

A. REINMUELLER

Q. And if there would have been a risk management office, don't you think it would appear in the 1995 key facts document?

A. Not necessarily. Just knowing practice...

Q. If somebody contacts the congregation after a claim is made --

A. Yes.

Q. -- and prior to the risk management office, you said that was the insurance desk, right?

A. Yes.

Q. And then in some period of time, that became the risk management office, correct?

A. Or a risk management desk, more appropriately.

Q. And what would be the purpose of their contacting the congregation?

A. To determine what assistance is required.

Q. And what would the insurance desk do to investigate that particular

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claim?

A. It would depend on the nature of the claim. In many cases, the local elders would be asked to, perhaps, provide a report on the circumstances of the injury or loss and any need for financial or other restitution or assistance.

Q. And then somebody at the insurance desk would evaluate it, process it, and determine what to do?

A. As long as the claim would be something that would be handled under our self-insured retention.

If it involved something that we had commercial insurance coverage for, then it would be turned over to a third-party administrator to process the claim.

Q. Or to make sure if there's any amount that may be above your self-insured retention, then the insurance company itself is potentially liable, correct?

A. Yes, that's correct.

Q. The self-insurance retention is

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pretty high?

A. Yes.

Q. So Watch Tower Pennsylvania would administer that self-insured portion, and then ultimately use the commercial general liability insurance if it was above that amount, correct?

A. Yes, that's correct.

Q. So the Kingdom Hall Assistance Arrangement acted as that self-insured retention in those areas that involved a claim that triggered insurance, correct?

A. Yes, and goes beyond, but that's -- it would -- with respect to the self-insured retention, yes.

Q. So there is one claim in here that is in the amount of, I think, $143,000. That is on the very last page in the -- in the middle of the page, involving mold in a congregation Kingdom Hall, I assume?

A. Yes. That would like likely.

Q. Is that $142,256 paid out of the Kingdom Hall Assistance Arrangement?

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A. Yes. That would be the case.
Q. In the event a claim is submitted, it wasn't simply something you could identify the cost and pay it, but involved an on-going investigation, we have seen instructions in the key facts documents that talk about not talking to a lawyer, not talking to the media, not providing any liability type of statements. Do you recall that?
A. Yes.
Q. In the event there was an on-going process of an investigation or a claim, who, if at all, would be involved in the organization in that respect?
A. Well, the risk management desk would be taking the lead in working with either our third-party administrator and any legal counsel that they would appoint.
Q. So that could be the legal department at the Jehovah's Witness Organization, or it could be legal counsel local, correct?
A. That's correct.

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Q. And it would be handled by the insurance desk, correct?
A. Yes, that's correct.
Q. Do you know what bank the Kingdom Hall assistance funds are kept in?
A. Yes, I do.
Q. What bank is that?
MR. SCHNACK: Go ahead.
A. It's the Merrill Lynch Bank.
Q. The New York branch of that bank?
A. Yes, a New York bank.
Q. Any other banks?
A. During the period of time we're talking about here?
Q. Yes. From 1970 to 2003?
MR. SCHNACK: You're talking about the Kingdom Hall Assistance Arrangement?
MR. LOVE: Right.
MR. SCHNACK: Well, that wasn't in assistance that long.
Q. Insurance then?
MR. SCHNACK: What is the

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relevance of the other banks it was represent in with respect to California?
MR. LOVE: I want to know about the minimum contact, if there's anything that has to do with California.
MR. SCHNACK: If there are any banks in California, go ahead and respond.
A. No, there were no banks in California.
Q. Since the creation of the Kingdom Hall Assistance Arrangement, what banks has it used--
MR. SCHNACK: Again, I'll have him answer with respect to any California banks.
MR. LOVE: Now I'm asking for any banks, and I need you to instruct him not to answer if you want him to not answer.
MR. SCHNACK: I'm not going to instruct him not to answer. I'll tell

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him to limit his answer to California banks.
Q. My question to you is: What banks has the Kingdom Hall Assistance Arrangement Fund been kept in since its inception?
MR. SCHNACK: I'll object that it's outside the scope of the deposition, but I'll allow him to answer with respect to any California banks.
A. There were no California banks involved.
Q. Are you simply refusing to answer my question about the names of the banks?
A. Yes.
MR. SCHNACK: And that is based on my objection, that it's improper under the scope of this limited deposition as ordered by the Napa County Court.
Q. Mr. Reinmueller, the Kingdom Hall Assistance Arrangement, does it

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potentially pay claims that involve elder misconduct?
A. Yes.
Q. What elder misconduct is not covered? Can you think of any?
MR. SCHNACK: I'll object to the question. How is this related to California?
MR. LOVE: I just want to know about how the Kingdom Hall Assistance Arrangement works.
MR. SCHNACK: Again, can you --
MR. LOVE: I've got a hand --
MR. SCHNACK: Hold on. Let me finish my comment. How does this relate to the contact with California?
MR. LOVE: All the claims that I'm holding in my hand, you provided me in Exhibit 49 are claims made and paid in California. I want to ask him about that.
MR. SCHNACK: How does it relate? We've admitted there were claims paid in California? How is

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this line of questioning going to further the issue of new contacts --
MR. LOVE: Because I want to ask him about the process in which these particular claims in California were paid, who, if anyone, was involved, and how it works.
MR. SCHNACK: Your question didn't involve the process.
MR. LOVE: I'm going to ask the questions to get to the process, but I need to ask my predicate questions first.
MR. SCHNACK: You could ask then, but I'll object and direct him not to answer. Again, this is outside the scope of the deposition.
MR. LOVE: I understand.
Would you read back my question, please?
[Whereupon, the requested portion of the record was read back by the Court Reporter.]
MR. SCHNACK: Again, I'll object

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to the question. It's outside the scope of this deposition. Unless you tie this to California contacts, I'll instruct the witness not to answer.
Q. You heard my question, right?
A. Yes.
Q. Are you refusing to answer my question?
MR. SCHNACK: He's refusing to answer based on my instruction that this is outside the scope of this deposition.
A. Yes, that's...
Q. On page 265 of that exhibit --
MR. SCHNACK: Refer to the Bates number.
MR. LOVE: I am.
Q. There is a little number on the very left-hand side of the page. Do you see them right here (indicating)?
A. Okay, um-hmm.
Q. There is a list of types of claims listed there. Do you see that?
A. Sorry, 256 or 265?

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Q. 265?
A. Your question again?
Q. Do you see that on that page, there is a whole list of types of claims?
A. Yes.
Q. In fact, this document is full of different types of claims that the Kingdom Hall Assistance Arrangement has paid in California, correct?
A. That's correct.
Q. Do you see in the middle of the page an item "elder misconduct"?
A. Yes.
Q. Do you have any idea what kind of elder misconduct that was?
A. No, I don't.
Q. Do you see that this says the Red Bluff Congregation California?
A. Yes, I see that.
Q. Do you have any understanding as to whether or not the Red Bluff Congregation contributed funds to the Kingdom Hall Assistance Arrangement?
A. I cannot say specifically

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whether they have or not.
Q. Do you have records that would allow you to determine that?
A. Yes, we do.
Q. And are those in your office?
A. Yes.
Q. Before processing this claim, for example, what communication would have taken place from the congregation and then from Watch Tower Pennsylvania's insurance desk back to the congregation?
A. The congregation likely would have contacted the risk management desk with particulars of the situation, and the risk management desk would have communicated back to determine what assistance would be needed.
Q. How many people are available to answer that phone at the insurance desk?
A. There are, um, five that would answer the phones.
Q. Has a always been a handful, like five, or less?
A. Probably less. Five is probably

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the most we've had.
Q. Is there a high turnover at the desk, or has it been pretty much the same people?
A. There has been a considerable turnover through the years.
Q. Would there be records to determine who could have processed this particular elder misconduct claim at the legal -- at the insurance desk?
A. I'm not certain.
Q. If I wanted to know more about that particular elder misconduct, what records exist?
A. Likely would be the computer database records what we're looking at here, which would be the payment. There'd likely be a file of the correspondence with the congregation. From 1989, I'm not certain whether that file still exists, if the file is complete. I couldn't say that specific file still exists, but likely in a typical case, there would be a file with the correspondence.

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Q. And where would that file be kept?
A. In our office.
Q. That is a file that you would have access to if you were asked to access it?
A. Yes.
Q. Are you familiar with any claim ever being paid out of the Kingdom Hall Assistance Arrangement in California for child sexual abuse?
A. I am not personally aware.
Q. Do you know whether or not child sexual abuse is a claim that the Kingdom Hall Assistance Arrangement is available to cover?
A. Yes. I believe if there was a claim, that Kingdom Hall Assistance Arrangement would be available to cover.
Q. And that would be true in California, correct?
A. Yes.
Q. Do you have any idea whether this particular elder misconduct was child

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sexual abuse?
A. I do not.
Q. Before this amount of $50,000 was paid, what information or processing went into deciding that that would be the appropriate amount?
MR. SCHNACK: He's already testified he's not aware of it. Are you asking him in general terms what might happen?
Q. I'm just asking what that process might look like.
A. This particular case?
Q. In a case such as this?
MR. SCHNACK: He's asking in general terms.
A. In general terms, there would be communication with the congregation. There would be communication with legal counsel. Depending on the circumstances, there may also be communication with a higher-up. Immediate oversite, before making a final decision.
Q. When injury in California, and

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there is a number of them listed on this document, involves someone who was not a Jehovah's Witness, would there customarily be a settlement agreement or release document created?

A. Customarily, if there is a settlement agreement, there would be a release document executed.

Q. And who would prepare that document?

A. The legal counsel appointed to work on that particular file.

Q. Would there potentially be a legal counsel in the legal department or a legal counsel appointed in California?

A. That's correct.

Q. And would a copy of that settlement agreement, if one were created, be kept in the file in your office?

A. Yes. I believe that would be the case.

Q. And it would be fair for me to assume that if your file contained a settlement agreement, it would also

A. REINMUELLER

contain the rest of the correspondence that was involved in that claim being processed?

A. Yes, as I've already indicated.

Q. So with respect to this particular elder misconduct claim that was paid, if, in fact, Red Bluff Congregation was not a participant in the Kingdom Hall Assistance Arrangement, then the monies being paid to resolve this particular claim would have been contributions from other congregations, correct?

A. That's correct.

Q. Administered by Watch Tower Pennsylvania, correct?

A. Yes.

Q. Do you know of any legal or other requirement that Watch Tower Pennsylvania provide insurance coverage to elders, circuit overseers, or district overseers in California?

A. I'm sorry. I am not sure I fully understand your question. Are we legally required to provide such? Is that

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your question?

Q. Yes.

A. I'm not aware of that.

Q. So Watch Tower Pennsylvania's decision to provide or extend insurance coverage to people in California is a voluntary choice, correct?

A. As I said, I am not aware one way or another whether there are legal requirements.

Q. So from the creation of the Kingdom Hall Assistance Arrangement, isn't it true that elders, circuit overseers, district overseers, Kingdom Halls, and Assembly Halls in California have all been protected by a Watch Tower Pennsylvania insurance program?

A. To varying degrees, that's correct.

Q. And part of the money used to provide that insurance coverage comes from congregations in California, correct?

A. Yes, that's correct.

Q. We have seen in Exhibit 49 a

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substantial amount of that money has been used by Watch Tower Pennsylvania to pay claims in California, correct?

A. I don't know if I would characterize it as substantial, but yes.

Q. Now, with respect to investigating a potential claim out of California, isn't it true that Watch Tower Pennsylvania relies upon elders and circuit overseers to investigate and provide them information before processing that claim?

A. I'm sorry. Could you rephrase that question again?

Q. Let me try to break it down. For Watch Tower Pennsylvania to issue a check to pay a claim in California, they have to satisfy themselves that that is an actual claim that needs to be paid, correct?

A. Correct.

Q. And they rely upon elders and circuit overseers to give them the information to make those decisions,

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correct?

A. The local congregation elders would -- or at least some of them -- would be involved in those investigations. It would be highly unlikely for a circuit or district overseer to be involved in such.

Q. Let me ask you a better question, then.

Isn't it true before Watch Tower Pennsylvania pays a claim in California, that they would we rely upon information and investigation from elders before doing that?

A. Local congregation would appoint one or more elders to be a contact, and they would be involved in an investigation.

There may, of course, be others that are hired or involved either by Watch Tower Pennsylvania or by the third-party administrator of our claims to investigate claims.

So the local elders would be involved in all cases, but others may well

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involved in such an investigation.

Q. Let me ask you a better question. Isn't it true that at a minimum, at least a few appointed elders from a congregation would be involved in providing investigation and information to Watch Tower Pennsylvania before they pay a claim in California?

A. Certainly. The ones that are submitting the claim would be involved.

Q. And if Watch Tower Pennsylvania decided it needed more information or more participation, it can appoint or instruct more elders to be involved, correct?

A. Or others.

Q. But it could include more elders, correct?

A. It could potentially.

Q. Tell me all of the ways which the California congregation would have been made aware of the existence of the Kingdom Hall Assistance Arrangement.

A. I believe we've looked at most of the correspondence that would have gone

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to congregations in the various exhibits that we've examined here. That would have been the only way that we would have been made aware.

Q. Would they also be given information at Kingdom Ministry Schools or assemblies?

A. Not at assemblies. At Kingdom Ministry Schools, I'm not aware that in all the years that I've been an elder that that subject was ever discussed.

Q. So the primary away that you're familiar with the Watch Tower Pennsylvania, it communicates to the California congregations about the Kingdom Hall Assistance Arrangement would be through writing and written documents, correct?

A. That's correct.

Q. And any of these that we've seen today?

A. That's correct.

Q. And all of those have had Watch Tower Pennsylvania letterhead, correct?

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A. Yes.

Q. Wouldn't you agree with me that Watch Tower Pennsylvania intended for the California congregations to be recipients of the information about the Kingdom Hall Assistance Arrangement?

A. Yes, that's correct.

Q. Watch Tower Pennsylvania's receiving contributions not only from California, but all over the country, correct?

A. Yes.

Q. In connection with the Kingdom Hall Assistance Arrangement, correct?

A. Yes, that's correct.

Q. And every year, they're paying out sums of money in claims, correct?

A. Yes.

Q. Who would be able to tell me whether or not the Kingdom Hall Assistance Arrangement operates at a surplus or a deficit?

A. I would.

Q. Does the Kingdom Hall Assistance

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Arrangement operate at a surplus or a deficit?
MR. SCHNACK: Again, I'll instruct him not to answer this question, as it's outside the scope of this deposition. We've already discussed the parameters of it.
MR. LOVE: The reason why I want that answer to the question is, I want to know whether or not the congregations in California are contributing money to a way in which Watch Tower Pennsylvania profits.
MR. SCHNACK: I'm going to instruct him not to answer. I don't think it's relevant.
Q. Are you going to answer my question?
A. No.
MR. LOVE: Mark these as Exhibits 50 and 51.
(Whereupon, the above mentioned documents were marked Exhibit 50 and 51 for identification.)

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Q. I now want to go back and hand you two exhibits, numbers 50 and 51.
Again, I don't have copies of these. I believe you mentioned to me earlier that these relate to Kingdom Hall loan processing.
MR. SCHNACK: Can I get the Bates numbers from the bottom so we could keep track? Exhibit 51 is what?
THE WITNESS: Exhibit 51 is 399 and 400.
MR. SCHNACK: Okay.
THE WITNESS: And Exhibit 50 is 395, 396, 397, and 398.
Q. Exhibit 50, do you see that that appears to be a form letter sent to congregations seeking Kingdom Hall loan simply about a process of accumulating a document in connection with that loan?
A. Yes, I do.
Q. And that would have been a type of letter that would have been sent to the congregations in California who were attempting to obtain a Kingdom Hall loan,

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correct?
A. Yes, that's correct.
Q. And that would be a letter sent by Watch Tower Pennsylvania, correct?
A. Correct.
Q. Now, Exhibit 51 is a form promissory note, correct?
A. Yes.
Q. Do you see a date on that form at the very bottom left-hand side?
A. Both forms are dated October 2001.
Q. So is it safe for me to assume that that document was at least updated in 2001?
A. Yes.
Q. But is it also safe for me to assume that there would have been a predecessor form that would have been used in prior years?
A. Yes.
Q. And that document was created by Watch Tower Pennsylvania?
A. Yes.

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Q. And provided to the congregations in California that are desiring a Kingdom Hall loan?
A. That's correct.
Q. I want you to look at Exhibit 29 with me. Do you see that that's a March 15, 1990 Watchtower?
A. Yes.
Q. Earlier, we talked about the fact that Watch Tower Pennsylvania holds the copyrights to several things, correct?
A. Yes.
Q. In terms of publications?
A. Yes.
Q. And I believe that you agreed that Watch Tower Pennsylvania holds the copyrights to the Society's books, magazines, pamphlets, and things like that, but I think that you mentioned that they did not hold the copyright to Our Kingdom Ministry. Did I understand that correctly?
A. Yes.
Q. I want you to look with me on

EXHIBIT C

EXHIBIT 39

EXHIBIT C

Watch Tower Bible and Tract Society of Pennsylvania

Current Directors

10/5/00-present	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer

EXHIBIT 40

Watch Tower Bible and Tract Society of Pennsylvania

Former Directors

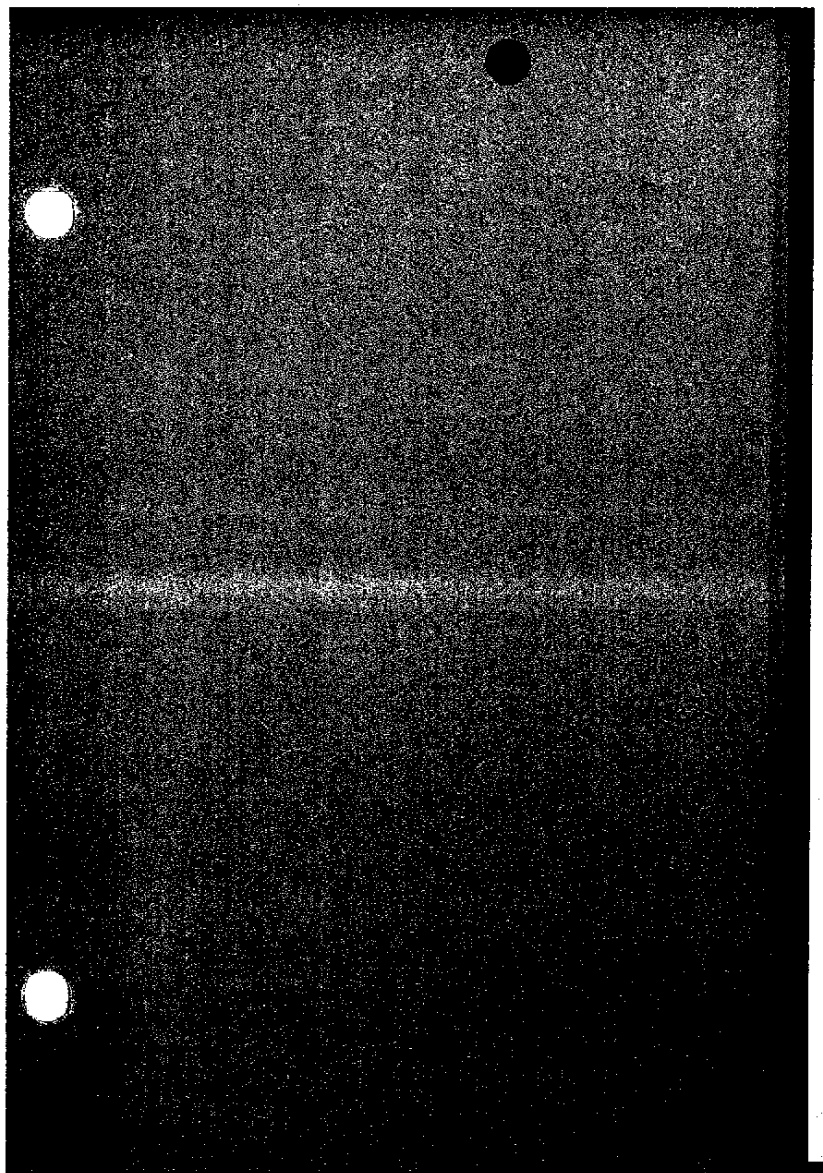
1970	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
1973-1974	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
	W. K. Jackson	Director
1975	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1976	N. H. Knorr	President
	F. W. Franz	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1977-81	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
1982-83	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director

1984-92	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1993-95	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1996-10/5/2000	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer

EXHIBIT 54

ORGANIZED TO ACCOMPLISH OUR MINISTRY

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WATCHTOWER BIBLE AND TRACT SOCIETY
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Organized to Accomplish Our Ministry
English (om-E)

Made in the United States of America

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and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12:42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43:10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

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up of dedicated, baptized Christians and is exclusively devoted to advancing the interests of true worship in the earth. The Watch Tower Society has extended its works worldwide, establishing branch offices in various countries. Also, in compliance with local governmental regulations, a number of other religious societies have been legally formed, such as the Watchtower Bible and Tract Society of New York, Inc. (1909) and the International Bible Students Association in London, England (1914). All these legal instrumentalities cooperate with one another. These and other legal corporations are used by the modern-day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news worldwide and to care for the spiritual needs of the entire congregation of God in all parts of the earth.

STRUCTURE UNDER BRANCH ORGANIZATION

Whenever a branch office is established, a Branch Committee of three or more elders is appointed to care for the various responsibilities involved in looking after the work in the country or countries under the jurisdiction of that particular branch. One member of the committee serves as the coordinator of the Branch Committee.

Local congregations under each branch organization are arranged into circuits and a number of circuits make up a district. Circuits and districts may be of various sizes depending on geographical and language considerations, as well as the number of congregations within the area assigned to a branch. A circuit overseer is appointed to serve the congregations in each circuit. District overseers visit the different circuits, serve at circuit assemblies and spend some time serving

EXHIBIT 58

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	03/04/1997	088527	$1,055.50	03/06/1997		12/10/19
	12/03/2001	401757	$10,980.65	12/04/2001		10/01/20
	10/17/2001	401678	$10,448.09	10/24/2001		
	07/27/1998	89656	$2,195.00	07/28/1998		01/30/19
	01/29/1999	400128	$21,731.99	02/02/1999		
	06/30/1999	400368	$93.75	07/01/1999		12/23/19
	01/10/2000	400713	$1,026.54	01/14/2000		12/23/19
	07/21/2000	401008	$41.00	07/25/2000		12/23/19
	08/09/2001	401590	$493.60	08/14/2001		06/30/20
	09/05/2001	401619	$259.00	09/10/2001		06/30/20
	03/09/1998	89394	$798.67	03/10/1998		01/11/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/21/1997	88506	$246.30	02/25/1997		01/02/19
	01/20/2003	402430	$2,136.00	01/27/2003		12/22/20
	02/24/2003	402527	$2,136.00	02/27/2003		12/22/20
	03/31/2003	402624	$2,136.00	04/01/2003		12/22/20

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	09/22/2001	401643	$500.00	09/25/2001		05/06/20
	09/05/2002	ACH	$175.00	09/05/2002		
	10/11/2002	ACH-2000181	$1,132.25	10/16/2002		

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	10/04/1999	400529	$300.00	10/08/1999		08/17/19
	10/08/1999	400539	$234.00	10/12/1999		08/17/19
	10/26/1999	400568	$41.00	10/28/1999		08/17/19
	12/07/1999	400664	$568.00	12/09/1999		08/17/19
	03/16/2000	400831	$5,625.00	03/21/2000		08/17/19
	01/17/2002	401846	$355.28	01/28/2002		08/10/20
	05/04/2001	401439	$700.00	05/09/2001		04/08/20
	03/17/1999	400204	$179.88	03/18/1999		10/01/19
	05/21/1999	400307	$3,225.00	05/25/1999		10/01/19
	09/29/1999	400515	$1,881.00	09/30/1999		10/01/19
	10/27/1999	400565	$1,531.00	10/28/1999		10/01/19
	12/24/1999	400688	$941.75	12/28/1999		10/01/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/18/2000	400771	$15,000.00	02/22/2000		10/01/19
	02/21/2000	400780	$1,675.00	02/24/2000		10/01/19
	03/22/2000	400844	$1,375.00	03/28/2000		10/01/19
	03/22/2000	400844	$881.00	03/28/2000		10/01/19
	04/19/2000	400881	$2,281.00	04/25/2000		10/01/19
	04/19/2000	400881	$819.00	04/25/2000		10/01/19
	02/05/1998	89351	$420.00	02/11/1998		10/01/19
	08/26/1998	89372	$145.00	08/28/1998		10/01/19
	06/09/1998	89574	$1,550.75	06/12/1998		10/01/19
	10/21/1998	89849	$700.00	10/27/1998		10/01/19
	12/01/1998	400022	$570.00	12/03/1998		03/15/19
	02/12/1999	400160	$15.50	02/16/1999		03/15/19
	05/07/1999	400280	$68.07	05/11/1999		03/15/19
	04/22/1997	88648	$3,775.50	04/24/1997		03/15/19
	07/16/1997	88846	$712.00	07/17/1997		03/15/19
	09/17/1997	89003	$525.34	09/18/1997		03/15/19
	11/26/1997	89169	$556.25	11/27/1997		03/15/19
	11/26/1997	89173	$498.00	11/27/1997		03/15/19
	11/26/1997	89174	$230.00	11/27/1997		03/15/19
	12/02/1997	89195	$125.00	12/04/1997		03/15/19
	12/12/1997	89222	$630.00	12/16/1997		03/15/19
	12/12/1997	89223	$164.40	12/16/1997		03/15/19
	01/28/1998	89332	$85.00	01/29/1998		03/15/19
	05/04/1998	89512	$110.00	05/06/1998		03/15/19
	05/13/1998	89521	$75.00	05/15/1998		03/15/19
	06/05/1998	89566	$75.00	06/10/1998		03/15/19
	07/24/1998	89661	$1,505.00	07/28/1998		03/15/19
	07/24/1998	89662	$7,545.75	07/28/1998		03/15/19
	09/01/1998	89754	$95.00	09/04/1998		03/15/19
	09/22/1998	89796	$29.75	09/24/1998		03/15/19
	10/19/1998	89835	$80.00	10/20/1998		03/15/19
	12/08/2000	401176	$1,171.34	12/12/2000		11/14/20
	01/03/2003	ACH 2000220	$2,000.00	01/13/2003		08/12/20
	01/03/2003	ACH-2000218	$75.00	01/08/2003		08/12/20

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	09/27/2001	2129	-$464.66	09/27/2001		03/15/20
	04/16/2001	401403	$1,672.00	04/17/2001		03/15/20
	01/09/2003	ACH 2000220	$9,620.69	01/13/2003		08/16/20
	01/30/2003	0	-$9,620.69	02/03/2003		08/16/20
	01/09/2003	ACH 2000222	$9,620.69	01/29/2003		08/16/20
	01/07/1999	400091	$80.00	01/12/1999		03/27/19
	03/02/1999	400187	$210.00	03/04/1999		03/27/19
	03/02/1999	400188	$498.34	03/04/1999		03/27/19
	11/25/1999	400636	$125.00	11/30/1999		03/27/19
	02/22/2000	400779	$25,000.00	02/24/2000		03/27/19
	06/30/2000	400987	$84.05	07/05/2000		03/27/19
	04/22/1997	88649	$180.00	04/24/1997		03/27/19
	04/22/1997	88650	$755.60	04/24/1997		03/27/19
	05/21/1997	88712	$577.13	05/22/1997		03/27/19
	04/22/1997	88713	$60.00	05/22/1997		03/27/19
	05/21/1997	88714	$226.00	05/22/1997		03/27/19
	07/16/1997	88838	$225.00	07/17/1997		03/27/19
	07/16/1997	88841	$361.00	07/17/1997		03/27/19
	07/16/1997	88848	$40.00	07/17/1997		03/27/19
	08/18/1997	88937	$465.00	08/21/1997		03/27/19
	10/08/1997	89050	$149.00	10/09/1997		03/27/19
	06/29/1998	89603	$125.00	07/03/1998		03/27/19
	07/24/1998	89658	$1,069.20	07/28/1998		03/27/19
	07/24/1998	89663	$960.00	07/28/1998		03/27/19
	09/04/1998	89760	$305.00	09/08/1998		03/27/19
	06/23/1998	89561	$569.33	06/25/1998		04/13/19
	01/04/1997	062245	$1,880.06	01/07/1997		12/01/19
	02/21/1997	088504	$1,008.15	02/25/1997		12/24/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	07/16/2002	ACH 2000000	$1,551.61	07/18/2002		05/06/20
	05/24/1996	58868	$1,186.20	05/23/1996		03/01/19
	02/18/1999	400176	$750.00	02/23/1999		11/05/19
	10/28/1999	400579	$350.00	11/02/1999		11/05/19
	03/04/2000	400792	$1,312.75	03/07/2000		12/01/19
	02/24/1997	088510	$1,235.00	02/27/1997		12/07/19
	03/31/1999	400230	$5,891.00	04/01/1999		01/13/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	06/01/2002	402011	$4,882.13	06/05/2002		01/24/20
	09/05/2002	ACH	$333.00	09/05/2002		
	09/11/2002	ACH- 2000167	$1,476.50	09/12/2002		
	09/11/2002	ACH- 2000167	$1,124.00	09/12/2002		
	10/11/2002	ACH-2000181	$25.00	10/16/2002		
	11/04/2002	ACH-2000189	$50.00	11/06/2002		
	01/03/2003	ACH-2000218	-$25.00	01/08/2003		
	12/30/1998	400064	$5,051.37	12/31/1998		12/05/19
	05/23/1997	88716	$6.00	05/27/1997		09/01/19
	07/30/1997	88874	$8,500.00	07/31/1997		09/01/19
	10/15/1997	89065	$160.00	10/17/1997		08/01/19
	02/13/2003	1	$114.46			10/19/20
	06/16/2003	402769	$462.20	06/19/2003		10/19/20
	10/05/1998	89813	$400.00	10/08/1998		02/12/19
	02/06/2001	401276	$535.00	02/09/2001		12/02/20
	02/06/2001	401277	$248.00	02/09/2001		12/02/20
	02/06/2001	401278	$30.00	02/09/2001		12/02/20
	06/26/2002	500409	$1,646.30	06/27/2002		04/03/20
	09/05/2002	ACH	$1,100.00	09/05/2002		04/03/20
	09/11/2002	402116	$33,086.39	09/12/2002		04/03/20
	10/09/2002	ACH-2000181	$361.00	10/16/2002		04/03/20
	10/09/2002	ACH-2000181	$25,260.00	10/16/2002		04/03/20
	10/09/2002	ACH-2000181	$10,691.30	10/16/2002		04/03/20
	10/11/2002	ACH-2000181	$575.00	10/16/2002		04/03/20
	11/04/2002	ACH-2000189	$850.00	11/06/2002		04/03/20
	11/22/2002	402298	$23,613.50	11/26/2002		04/03/20
	11/22/2002	402298	$23,189.25	11/26/2002		04/03/20
	11/25/2002	ACH - 200019	$4,695.65	11/27/2002		04/03/20
	12/06/2002	ACH - 200020	$200.00	12/11/2002		04/03/20

WTPA 00256

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	01/03/2003	ACH-2000218	-$575.00	01/08/2003		04/03/20
	01/03/2003	ACH-2000218	$200.00	01/08/2003		04/03/20
	01/24/2003	ACH - 200022	$1,433.75	01/29/2003		04/03/20
	01/24/2003	402457	$10,590.05	01/29/2003		04/03/20
	02/07/2003	ACH - 200023	$450.00	02/12/2003		04/03/20
	02/10/2003	ACH - 200023	$2,150.70	02/12/2003		04/03/20
	03/07/2003	ACH - 200024	$225.00	03/13/2003		04/03/20
	05/04/2001	401440	$498.01	05/09/2001		01/10/20
	04/04/1998	3005	-$990.46	03/19/1998		02/02/19
	02/19/1998	89380	$6,337.00	02/27/1998		02/02/19
	08/12/1996	059116	$498.61	08/15/1996		07/02/19

WTPA 00257

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	04/09/1996	058767	$1,166.16	04/16/1996		02/01/19
	09/17/1996	59262	$1,260.00	09/19/1996		05/21/19
	12/01/1999	400655	$11,000.00	12/07/1999		04/30/19
	12/29/1999	400691	$3,331.86	12/30/1999		04/30/19
	09/05/2002	ACH	$375.00	09/05/2002		
	09/11/2002	ACH- 2000167	$1,093.63	09/12/2002		
	12/23/2002	ACH 2000209	$938.38	12/27/2002		
	05/29/2000	400942	$1,020.16	06/01/2000		04/24/20

WTPA 00258

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/20/2001	401298	$6.00	02/23/2001		12/22/20
	03/22/2001	401371	$3,000.00	03/29/2001		12/22/20
	03/22/2001	401371	$94.80	03/29/2001		12/22/20
	05/05/2001	401441	$1,721.51	05/09/2001		12/22/20
	03/15/2002	401908	$1,654.18	03/19/2002		12/22/20
	12/21/1998	400056	$210.00	12/24/1998		12/05/19
	01/13/1999	400100	$172.00	01/15/1999		12/05/19
	01/13/1999	400102	$361.00	01/15/1999		12/05/19
	11/24/1998	400015	$925.00	11/26/1998		04/27/19
	01/03/2003	ACH-2000218	$125.00	01/08/2003		12/28/20
	01/24/2003	ACH - 200022	$4,219.51	01/29/2003		12/28/20
	02/06/2003	ACH - 200023	$700.00	02/12/2003		12/28/20
	03/07/2003	ACH - 200024	$575.00	03/13/2003		12/28/20
	10/05/1999	400525	$545.93	10/08/1999		07/04/19
	08/11/1999	400436	$155,000.0	08/12/1999		08/22/19
	09/30/1998	89805	$836.00	10/06/1998		08/22/19
	04/04/1996	19827	$50,000.00	02/14/1996		01/01/19
	11/12/1996	247183	$260.99	11/15/1996		02/19/19

WTPA 00259

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident

WTPA 00260

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	08/21/2002	500499	$500.00	08/27/2002		08/06/20
	07/16/1997	88842	$290.92	07/17/1997		03/07/19
	10/18/2001	401683	$6,739.60	10/24/2001		09/22/20
	10/31/2001	401699	$39.00	11/01/2001		09/22/20
	12/19/2001	401793	$70.00	12/20/2001		09/22/20
	01/04/2002	401826	$1,120.00	01/10/2001		09/22/20
	01/16/2002	401833	$345.00	01/17/2002		09/22/20
	03/20/2002	401918	$1,563.00	03/21/2002		09/22/20
	07/09/2002	500431	$137.72	07/11/2002		09/22/20
	04/10/2001	401400	$1,629.00	04/12/2001		01/24/20
	08/30/2001	401620	$575.00	09/10/2001		01/24/20

WTPA 00261

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	05/05/1997	88681	$255.00	05/08/1997		03/23/19
	05/27/1997	88723	$472.81	05/29/1997		03/23/19
	09/18/2000	401084	$1,600.00	09/22/2000		07/14/20
	03/20/2000	400838	$11,750.00	03/23/2000		12/28/19
	06/30/1999	400372	$350.00	07/01/1999		04/10/19
	11/22/1999	400621	$234.47	11/24/1999		04/10/19
	11/10/2000	401149	$2,624.75	11/14/2000		10/11/20
	02/18/1998	89373	$10,080.91	02/20/1998		01/01/19
	09/05/2002	ACH	$50.00	09/05/2002		
	08/24/2001	401610	$1,751.28	08/28/2001		07/13/20
	08/24/2001	401611	$563.00	08/28/2001		07/13/20
	09/04/2001	401623	$529.00	09/10/2001		07/13/20
	10/02/2001	401657	$94.00	10/05/2001		07/13/20

WTPA 00262

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	03/01/2001	401319	$1,848.49	03/07/2001		01/29/20
	11/06/2001	401713	$2,125.00	11/08/2001		05/30/20
	05/05/2003	ACH-2000270	$100.00	05/07/2003		01/01/20
	02/07/2003	ACH - 200023	$325.00	02/12/2003		01/01/20

WTPA 00263

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/24/2003	ACH - 200023	$2,996.30	02/27/2003		01/01/20
	03/07/2003	ACH - 200024	$375.00	03/13/2003		01/01/20
	01/16/2002	401833	$168.00	01/17/2002		04/10/20
	03/15/2002	401909	$365.69	03/19/2002		05/12/20
	07/09/2002	500430	$385.52	07/11/2002		05/12/20
	07/12/1999	1478	-$998.39	07/09/1999		02/07/19
	02/16/1999	400164	$3,030.00	02/18/1999		02/07/19
	03/30/2000	400862	$1,633.99	04/04/2000		10/30/19
	09/11/2002	402129	$2,500.00	09/18/2002		11/11/20
	03/22/2001	401371	$6.00	03/29/2001		11/24/20
	04/27/2001	401427	$795.00	05/01/2001		11/24/20
	07/24/2001	401573	$115.00	07/27/2001		11/24/20
	02/15/2002	ACH - 200000	$115.00	02/19/2002		11/24/20
	12/24/2001	ACH - 200005	$1,312.81	12/27/2001		11/24/20

WTPA 00264

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Termites / Mold / Asbestos		Arden - Sacremento, CA (21170)			$10,448.	$0.00
	Broke into the shed of KH.		Bayview San Francisco, CA (130930)			$21,731.	$0.00
	Pipe burst flooding KH		Dumas, TX (129866)			$3,135.5	$0.00
	Mold		East - Sacramento, CA			$1,307.2	$0.00
	Mold		Las Plumas - Oroville CA # 20164			$3,008.5	$0.00
	Mold		Northgate - Sacramento CA # 21261			$2,407.0	$0.00
			Vasona Park - Santa Cruz CA			$50.00	$0.00
	Elder misconduct	01/01/1989	Red Bluff Cong, CA	$50,000.	$0.00		
	Vehicle collision at stop sign	07/01/1994	Mira Loma Assembly Hall	$36,738.	$0.00		
	Windstorm damaged roof	02/01/1996	North Red Bluff CA (20727)			$1,166.1	$0.00
	Fell on driveway	02/19/1996	Reseda CA Cong	$10,000.	$0.00		
	Tripped over bookbag	03/01/1996	Green Haven Cong Sacramento CA	$1,200.0	$0.00		
	Fell on wheelchair ramp	05/21/1996	North Spanish Cong, Turlock, CA	$0.00	$0.00		

WTPA 00265

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Fall on steps	06/28/1996	Fort Worth Convention	$600.00	$0.00		
	Stolen Lawnmower and trimmer	07/02/1996	Merced, CA East (19067)			$498.61	$0.00
	Fall on stairs	09/01/1996	Long Beach Convention	$8,500.0	$0.00		
	Burglar stole sound equipment	12/01/1996	English-Marina, CA (18960)			$1,880.0	$0.00
	trees fell into creek	12/10/1996	Aptos, CA (13433)			$5,000.0	$0.00
	KH broken into	12/24/1996	English-Marina, CA (18960)				
	KH flooded other property	01/01/1997	Tahoe City, CA (16592)	$0.00	$0.00	$4,433.0	$0.00
						$620.00	$0.00
						$807.00	$0.00
						$440.00	$0.00
						$280.00	$0.00
	Slip & fall	01/02/1997	Central Cong, Ventura, CA	$246.00	$0.00		
	Lost balance & fell	03/07/1997	Serramonte Spanish Cong, Daly City, CA	$291.00	$0.00		
	Fall from ladder	03/15/1997	Encino Cong, Los Angeles, CA	$17,470.	$0.00		
	Chair section collapsed	03/23/1997	Spanish Cong, Heber, CA	$727.00	$0.00		
	Fall through sheetrock ceiling	03/27/1997	English Cong, Carpenteria CA	$31,495.	$0.00		
	Lost balance and fell	04/27/1997	Point Arena Cong, CA	$0.00	$0.00		

WTPA 00266

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Burglary	06/15/1997	Santee, CA (22947)			$4,204.8	$0.00
	Trip & fall over barricade	08/01/1997	Long Beach Convention	$160.00	$0.00		
	Unlawful tree trimming	10/01/1997	Encino Cong, CA	$28,674.	$0.00		
	Windstorm tree on roof	12/07/1997	La Canada, CA (16600)			$1,235.0	$0.00
	Heart attack	01/11/1998	Central Cong, Huntington Beach, CA	$798.67	$0.00		
	Slip & fall in mud	01/30/1998	Artesia Congregation, CA	$2,195.0	$0.00		
	Windstorm tore off part of roof.	02/02/1998	McFarland Spanish CA (19034)			$5,346.5	$0.00
	Cut leg on broken glass tubing	02/12/1998	Manhattan Beach Cong, CA	$400.00	$0.00		
	Burglary	04/13/1998	English, Gridley, CA (16121)			$569.33	$0.00
	Fall from ladder	08/22/1998	Ramona Cong, CA	$155.83	$0.00		

WTPA 00267

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Hit by protruding pipe	11/05/1998	Hollywood Cong, Los Angeles, CA	$1,100.0	$0.00		
	Flooded w/ sewage on several occasions.	12/05/1998	Las Plumas Oroville, CA (20164)			$5,051.3	$0.00
	Struck by falling ladder	12/05/1998	Pearland Cong, Palmdale, CA	$6,743.0	$0.00		
	Slip & fall on ice	12/23/1998	Bear Creek Cong, Murrieta, CA	$1,161.0	$0.00		
	Fall in parking lot	01/13/1999	Laguna Beach Cong, CA	$5,891.0	$0.00		
	Vandals became theives	02/07/1999	West, Barstow, CA (13847)			$3,030.0	$0.00
	Moving heavy equipment	04/10/1999	Sycamore Creek Cong, Vista, CA	$585.00	$0.00		
	KH infected w/ mold	04/30/1999	North, Sacramento, CA (21253)			$14,331.	$0.00
	Slip & fall on tile floor	07/04/1999	Prunedale Cong, Salinas, CA	$546.00	$0.00		
	Trip & fall over chairs	08/17/1999	East Cong, Lynwood, CA	$6,768.0	$0.00		

WTPA 00268

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Fall from roof	10/30/1999	Willow Creek Cong, CA	$1,634.0	$0.00		
	Rusted gate caused dmg. to car	12/01/1999	Hollywood Congregation, Los Angeles CA (17889)	$0.00	$0.00	$1,312.7	$0.00
	Cut self with hedge trimmer	12/24/1999	North Cong, Chino, CA	$792.00	$0.00		
	Water damage	12/28/1999	Sunland, Los Angeles, CA (18432)			$11,750.	$0.00
	Defective KH gate closed on car	04/24/2000	Northgate, CA (21261)	$0.00	$0.00	$1,020.1	$0.00
	Gate fell onto child	07/14/2000	Spanish Cong, Roseville, CA	$1,600.0	$0.00		
	Mold, termites	10/01/2000	Arden - Sacramento (21170)			$10,980.	$9,100.00
	3 AC units stolen	10/11/2000	Sylvan Park, Redlands, CA (20750)			$2,624.7	$0.00
	Stolen sound equipment	11/14/2000	English - Adelanto, CA (104133)			$1,171.3	$0.00
	#Trip & fall on entrance mat	11/24/2000	Woodley Spanish, Los Angeles, CA	$2,228.8	$0.00		

WTPA 00269

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Finger caught in door	12/02/2000	Mar Vista Congregation, Los Angeles, CA	$850.00	$0.00		
	Alleged beating at KH	12/22/2000	Parkside Cong, Lompoc, CA	$6,476.0	$0.00		
	Auto hit fence.	01/10/2001	Marina, Vallejo, CA (23583)			$498.01	$0.00
	Trip & fall over briefcase	01/24/2001	South Cong, Norwalk, CA	$2,204.0	$0.00		
	Burglary	01/29/2001	Weaverville, CA (130757)			$1,848.4	$0.00
	Stepped into sprinkler hole	04/08/2001	Elsie Spanish - Sacramento, CA	$700.00	$0.00		
	Trip & fall on mat	04/10/2001	West Cong, Garden Grove, CA	$168.00	$0.00		
	Wrought iron gate stolen	05/06/2001	East - Palmdale, CA (20180)			$500.00	$0.00
	Jumping off backhoe	05/12/2001	West Congregation - Ukiah, CA (23762)	$366.00	$0.00		
	Car hit KH wall/fence	05/30/2001	West - Barstow, CA (13847)			$2,125.0	$0.00
LeBeau, Jeremiah David - Hand injury	Cut by metal binding	06/30/2001	Central - Santa Barbara, CA (22640)	$752.00	$0.00		
Peraza, Rosie - Dislocated elbow	Trip over curb stop in parking lot	07/13/2001	Villa Bonita Spanish, CA (111336)	$3,000.0	$0.00		
Ward, Jeffrey - Back injury	Fall from roof	08/10/2001	East Cong, Ukiah, CA	$355.00	$0.00		

WTPA 00270

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Cement propelled into eye	09/22/2001	Shadow Ridge, Vista, CA (23986)	$10,000.	$0.00		
	Slip and fall on ramp	11/11/2001	Woodland Hills Convention Center, CA	$2,500.0	$0.00		
	Trip & fall on tile floor	01/24/2002	Lake Earl, Crescent City, CA (101949)	$4,882.1	$0.00		
	Mold	04/03/2002	Marina - Vallejo, CA #23853			$142,256	$0.00
	Water damage	05/06/2002	Grandview - La Puente, CA (16899)			$1,551.6	$0.00
	Wind storm causes tree to fall on fence	08/06/2002	Seabright Congregation	$500.00	$500.00		
	Water damage - Urinal overflowed causing dmg.	08/12/2002	English - Greenfield, CA # 16097			$2,075.0	$0.00
	Water damage	08/16/2002	English - Solvang, CA (23176)			$9,620.6	$0.00
	Mold	12/28/2002	Port Hueneme - Oxnard CA # 20123			$5,619.5	$0.00
	Mold	01/01/2003	West - Santa Rosa, CA #22939			$3,696.3	$0.00

WTPA 00271

EXHIBIT 59

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Entity Details

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- Old Name Search
- Orphan Search

Basic Entity Information

Entity Type	PENNSYLVANIA NON-STOCK NON-PROFIT CORPORATION		
Entity Name	WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA		
Entity No.	381206		
Filing Date	10/07/1955	**Letter of Consent**	No
Address	1630 SPRING RUN RD EXTENSION		
	CORAOPOLIS Pennsylvania USA 15108		
County	Allegheny	**Jurisdiction**	PA
Purpose	BROAD		
Limited Authority	No		

Corporate Officers

Updated Date	10/07/1955
President	UNKNOWN
Secretary	-
Treasurer	-
Vice-President	-

Instrument History

Doc Type	Microfilm#	Micro# Start	Micro# End	Filing Date	Comme
ARTICLES OF AMENDMENT-NONPROFIT	2000091	551	556	12/04/2000	RE
ARTICLES OF AMENDMENT-NONPROFIT	9980	233	240	11/04/1999	PR
ARTICLES OF AMENDMENT-NONPROFIT	9473	350	352	11/22/1994	PR
ARTICLES OF AMENDMENT-NONPROFIT	8874	490	492	10/07/1988	ART MEMB
CHANGE OF					

WTPA 00272

REGISTERED OFFICE	8835	70	70	05/09/1988	-
ARTICLES OF AMENDMENT-NONPROFIT	8772	1963	1967	12/02/1987	OFFICE DIRECT
STATEMENT OR CERT. OF SUMMARY OF RECORD	7528	1464	1511	08/11/1975	NCF WAT TOW BIBI AN TRA SOCI
NAME REGISTRATION	5529	1055	0	10/07/1955	-

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WTPA 00273

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

THE CORPORATION BUREAU IS HAPPY TO SEND YOU YOUR FILED DOCUMENT. PLEASE NOTE THE FILE DATE AND THE SIGNATURE OF THE SECRETARY OF THE COMMONWEALTH. THE CORPORATION BUREAU IS HERE TO SERVE YOU AND WANTS TO THANK YOU FOR DOING BUSINESS IN PENNSYLVANIA. IF YOU HAVE ANY QUESTIONS PERTAINING TO THE CORPORATION BUREAU, CALL (717) 787-1057.

ENTITIES THAT ARE CHARITIES AND SOLICIT FUNDS SHOULD CONTACT THE BUREAU OF CHARITABLE ORGANIZATIONS FOR REGISTRATION REQUIREMENTS AT DEPARTMENT OF STATE, BUREAU OF CHARITABLE ORGANIZATIONS, SUITE 300 124 PINE STREET, HARRISBURG, PENNSYLVANIA 17101 (717) 783-1720 OR 1-800-732-0999 WITHIN PENNSYLVANIA.

ENTITY NUMBER: 0381206

MICROFILM NUMBER: 2000091

0551-0556

R D MOAKE
WATCH TOWER
100 WATCHTOWER DR
PATTERSON NY 12563-9204

[redacted]

WTPA 00274

ARTICLES OF AMENDMENT-DOMESTIC NONPROFIT CORPORATION

DSCB:15-5915 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 5915 (relating to articles of amendment), the undersigned nonprofit corporation, desiring to amend its articles, hereby states that:

1. The **name** of the corporation is: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. The (a) **address** of this corporation's current registered office in this Commonwealth or (b) **name** of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

   (a) 1630 Spring Run Road Extension, Coraopolis PA 15108 Allegheny
   Number and Street City State Zip County

   (b) c/o: _____
   Name of Commercial Registered Office Provider County

   For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The **statute** by or under which it was incorporated is: "An Act to Provide for the Incorporation and Regulation of Certain Corporations" 29 April 1874

4. The **date** of its incorporation is: December 15, 1884

5. **(Check, and if appropriate complete, one of the following):**

   X The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

   ___ The amendment shall be effective on: _____ at _____
   Date Hour

6. **(Check one of the following):**

   X The amendment was adopted by the members (or shareholders) pursuant to 15 Pa.C.S. § 5914(a).

   ___ The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 5914(b).

7. **(Check, and if appropriate complete, one of the following):**

   ___ The amendment adopted by the corporation, set forth in full, is as follows:

   _____

   _____

   _____

   _____

   X The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

2000

WTPA 00275

__A__ The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer thereof this 24th day of November, 2000.

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
(Name of Corporation)

BY: _____
(Signature)

TITLE: R. E. Abrahamson, Secretary and Treasurer

WTPA 00276

RESOLVED, that Article Second of the Amended and Restated Charter be amended such that, as amended, Article Second shall read as follows:

SECOND

The purposes of the corporation are religious, educational, and charitable, including to act as the servant and legal entity for the religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

RESOLVED, that Article Eighth of the Amended and Restated Charter be amended by replacing "Article II" with the words "ARTICLE SECOND."

[redacted]

WTPA 00277

supersede the original Articles and all amendments thereto and that, as restated, the Amended and Restated Charter shall read as follows:

AMENDED AND RESTATED CHARTER
WATCH TOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA
A Nonprofit Corporation

Date of original incorporation December 15, 1884, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved on the twenty-ninth day of April, *Anno Domini,* one thousand and eight hundred and seventy-four, and its supplements.

FIRST

The name of the corporation is Watch Tower Bible and Tract Society of Pennsylvania.

SECOND

The purposes of the corporation are religious, educational, and charitable, including to: act as the servant and legal entity for the worldwide religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, Word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the

WTPA 00278

Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or m[redacted] religious orders of special ministers [redacted]ehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors shall deem appropriate in harmony with these purposes.

THIRD

The location of its registered office is 1630 Spring Run Road Extension, Corapolis, Pennsylvania 15108.

FOURTH

The corporation is to exist perpetually.

FIFTH

The corporation is organized on a nonstock basis. The corporation is one that does not contemplate pecuniary gain or profit, incidental or otherwise.

SIXTH

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

SEVENTH

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The corporation shall have the powers and authority granted by law, specifically including the power to sell, lease, encumber, and otherwise convey interests in its real and personal property and the power to borrow money.

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No part of [redacted] net earnings of the corporation shall [redacted]ure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in ARTICLE SECOND hereof. The corporation is not an employer. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any political party or in opposition to any candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

NINTH

Upon winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the Watchtower Bible and Tract Society of New York, Inc. If the Watchtower Bible and Tract Society of New York, Inc., is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

WTPA 00280

9980- 233

Microfilm Number

Filed with the Department of State on

NOV 0 4 1999

Entity Number 381206

Secretary of the Commonwealth

ARTICLES OF AMENDMENT-DOMESTIC NONPROFIT CORPORATION

DSCB:15-5915 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 5915 (relating to articles of amendment), the undersigned nonprofit corporation, desiring to amend its articles, hereby states that:

1. The **name** of the corporation is: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. The (a) **address** of this corporation's current registered office in this Commonwealth or (b) **name** of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a)

Number and Street	City	State	Zip	County
1630 Spring Run Rd. Extension	Coraopolis	PA	15108	Allegheny

(b) c/o:

Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The **statute** by or under which it was incorporated is: "An Act to Provide for the Incorporation and Regulation of Certain Corporations" 29 April 1874

4. The **date** of its incorporation is: December 15, 1884

5. **(Check, and if appropriate complete, one of the following):**

_X_ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

___ The amendment shall be effective on: _____ at
Date Hour

6. **(Check one of the following):**

_X_ The amendment was adopted by the members (or shareholders) pursuant to 15 Pa.C.S. § 5914(a).

____ The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 5914(b).

7. **(Check, and if appropriate complete, one of the following):**

____ The amendment adopted by the corporation, set forth in full, is as follows:

PA DEPT. OF STATE

WTPA 00281

NOV 0 4 1999

9980- 234

X The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

DSCB:15-5915 (Rev 90)-2

8. **(Check, if the amendment restates the Articles):**

X The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer thereof this 22 day of October, 1999.

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA (Name of Corporation)

BY: (Signature)

L.A. SWINGLE, Secretary Treasurer

TITLE:

DSCB:15-5915 (Rev 90)-3

Department of State
Corporation Bureau
P.O. Box 8722
Harrisburg, PA 17105-8722

Instructions for Completion of Form:

A. One original of this form is required. The form shall be completed in black or blue-black ink in order to permit reproduction. The filing fee for this form is $52 made payable to the Department of State. PLEASE NOTE: A separate check is required for each form submitted.

B. Under 15 Pa.C.S. § 135(c) (relating to addresses) an actual street or rural route box number must be used as an address, and the Department of State is required to refuse to receive or file any document that sets forth only a post office box address.

C. The following, in addition to the filing fee, shall accompany this form:

(1) One copy of a completed form DSCB:15-134B (Docketing Statement-Changes).

WTPA 00282

EXHIBIT A

RESOLVED, that Article Second of the Amended and Restated Charter be amended such that, as amended, Article Second shall read as follows:

SECOND

The purposes of the corporation are religious, educational, and charitable, including to: act as the servant and legal entity for the worldwide religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors shall deem appropriate in harmony with these purposes.

RESOLVED, that Articles Fifth through Ninth, inclusive, of the Amended and Restated Charter be amended such that, as amended, Article Fifth through Ninth shall read as follows:

FIFTH

The corporation is organized on a nonstock basis. The corporation is one that does not contemplate pecuniary gain or profit, incidental or otherwise.

SIXTH

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

SEVENTH

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The corporation shall have the powers and authority granted by law, specifically including the power to sell, lease, encumber, and otherwise convey interests in its real and personal property and the power to borrow money.

EIGHTH

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof. The corporation is not an employer. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any political party or in opposition to any candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

NINTH

Upon winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the Watchtower Bible and Tract Society of New York, Inc. If the Watchtower Bible and Tract Society of New York, Inc., is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

RESOLVED, that Articles Tenth and Eleventh of the Amended and Restated Charter be repealed in their entirety.

RESOLVED, that the Amended and Restated Charter be restated in its entirety to supersede the original Articles and all amendments thereto and that, as restated, the Amended and Restated Charter shall read as follows:

AMENDED AND RESTATED CHARTER
WATCH TOWER BIBLE AND TRACT
SOCIETY OF PENNSYLVANIA
A Nonprofit Corporation

Date of original incorporation December 15, 1884, under the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations," approved on the twenty-ninth day of April, *Anno Domini,* one thousand and eight hundred and seventy-four, and its supplements.

FIRST

The name of the corporation is Watch Tower Bible and Tract Society of Pennsylvania.

SECOND

The purposes of the corporation are religious, educational, and charitable, including to: act as the servant and legal entity for the worldwide religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, word, and supremacy of Almighty God, JEHOVAH (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors shall deem appropriate in harmony with these purposes.

THIRD

The location of its registered office is 1630 Spring Run Road Extension, Corapolis, Pennsylvania 15108.

FOURTH

The corporation is to exist perpetually.

FIFTH

The corporation is organized on a nonstock basis. The corporation is one that does not contemplate pecuniary gain or profit, incidental or otherwise.

SIXTH

The corporation shall have members. The number of members, members' qualifications, the manner of electing members, and other matters pertaining to members shall be as provided in the bylaws.

SEVENTH

The business and affairs of the corporation shall be managed by and under the direction of the Board of Directors. The corporation shall have the powers and authority granted by law, specifically including the power to sell, lease, encumber, and otherwise convey interests in its real and personal property and the power to borrow money.

EIGHTH

No part of the net earnings of the corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article II hereof. The corporation is not an employer. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any political party or in opposition to any candidate for public office. (John 15:19; 17:16) Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code or (b) by a corporation contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

NINTH

Upon winding up and dissolution of the corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be transferred to the Watchtower Bible and Tract Society of New York, Inc. If the Watchtower Bible and Tract Society of New York, Inc., is not then in existence and a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code, then the remaining assets shall be distributed to any organization designated by the Governing Body of Jehovah's Witnesses that is organized and operated exclusively for religious, educational, and/or charitable purposes and is a corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding section of any future federal tax code.

licrofilm Number 9713 330

Filed with the Department of State on NOV 2 2 1994

ntity Number 381204

Secretary of the Commonwealth CA

ARTICLES OF AMENDMENT-DOMESTIC NONPROFIT CORPORATION

DSCB:15-5915 (Rev 90)

In compliance with the requirements of 15 Pa.C.S. § 5915 (relating to articles of amendment), the undersigned nonprofit orporation, desiring to amend its articles, hereby states that:

. The name of the corporation is:

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

. The (a) address of this corporation's current registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) 1630 SPRING RUN ROAD EXTENSION, CORAOPOLIS, PA 15108 ALLEGHENY

Number and Street | City | State | Zip | County

(b) c/o:

Name of Commercial Registered Office Provider | County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

. The statute by or under which it was incorporated is: "An Act to Provide for the Incorporation an
egulation of Certain Corporations" 29 April 1874

he date of its incorporation is: December 15, 1884

(Check, and if appropriate complete, one of the following):

X The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

___ The amendment shall be effective on: _____ at _____

Date | Hour

(Check one of the following):

X The amendment was adopted by the members (or shareholders) pursuant to 15 Pa.C.S. § 5914(a).

___ The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. § 5914(b).

(Check, and if appropriate complete, one of the following):

___ The amendment adopted by the corporation, set forth in full, is as follows:

X The amendment adopted by the corporation is set forth in full in Exhibit A attached hereto and made a part hereof.

PA DEPT. OF STATE

NOV 2 2 1994

WTPA 00289

94/5-351

. **(Check, if the amendment restates the Articles):**

☐ The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly uthorized officer thereof this 16 day of November, 1994.

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
(Name of Corporation)

BY: L.A. Swingle
L.A. Swingle (Signature)

TITLE: Secretary and Treasurer

WTPA 00290

AMENDMENTS TO CHARTER OF WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

OLD ARTICLE VI

The current officers of the Pennsylvania corporation are as follows:

F. W. Franz	President	New York, NY
W. L. Barry	Vice President	New York, NY
M. G. Henschel	Vice President	New York, NY
L. A. Swingle	Secretary and Treasurer	New York, NY
J. E. Barr	Assistant Secretary-Treasurer	New York, NY
J. C. Booth	Assistant Secretary-Treasurer	New York, NY
T. Jaracz	Assistant Secretary-Treasurer	New York, NY

NEW ARTICLE VI

The current officers of the Pennsylvania corporation are as follows:

M. G. Henschel	President	New York, NY
W. L. Barry	Vice President	New York, NY
T. Jaracz	Vice President	New York, NY
L. A. Swingle	Secretary and Treasurer	New York, NY
J. E. Barr	Assistant Secretary-Treasurer	New York, NY
J. C. Booth	Assistant Secretary-Treasurer	New York, NY
D. Sydlik	Assistant Secretary-Treasurer	New York, NY

NEW ARTICLE XI

In the event of the dissolution of this corporation, the assets thereof shall not inure to the benefit of any individual, whether director, officer or member of this corporation, but upon any such dissolution, the assets of this corporation shall only be transferred to WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a nonprofit corporation, organized and operated exclusively for religious and charitable purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. If WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., is not then in existence and exempt under Section 501(c)(3), then said assets shall be distributed by the Governing Body of Jehovah's Witnesses to another organization which is organized and operated exclusively for religious purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. In any event, the assets of this corporation are irrevocably dedicated to its stated religious purposes. No part of its net income will inure to the benefit of any member, director or officer of the corporation or any private individual; it will not, as a substantial part of its activities, attempt to influence legislation; it will not participate to any extent in a political campaign for or against any candidate for public office.

EXHIBIT A

WTPA 00291

APPLICANT'S ACC'T NO.

DSCB 15-7905 (Rev. 11/18/87)

Filing Fee: $40

Articles of Amendment — Domestic Nonprofit Corporation

8874 490

(Line for numbering)

38126

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU
308 NORTH OFFICE BUILDING
HARRISBURG, PA 17120-0029

Filed this OCT 07 1996 day of _____ 19____
Commonwealth of Pennsylvania
Department of State

Secretary of the Commonwealth

(Box for Certification)

In compliance with the requirements of 15 Pa. S. §7905 (relating to articles of amendment), the undersigned nonprofit corporation, desiring to amend its Articles, does hereby certify that:

1. The name of the corporation is:

   WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. The address of its registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Department):

   1630 Spring Run Road Extension
   (NUMBER) (STREET)

   Coraopolis Pennsylvania 15108
   (CITY) (ZIP CODE)

3. The statute by or under which it was incorporated is:

   "An Act to Provide for the Incorporation and Regulation of Certain Corporations" 29 April 1874

4. The date of its incorporation is December 15, 1884

5. (Check, and if appropriate, complete one of the following):

   ☒ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

   ☐ The amendment shall be effective on:

   _____ at _____
   (DATE) (HOUR)

6. (Check one of the following):

   ☐ The amendment was adopted by the members pursuant to 15 Pa. S §7904(a).

   ☒ The amendment was adopted by the board of directors pursuant to 15 Pa. S. §7904(b).

7. The amendment adopted by the corporation set forth in full is as follows:

   Please see attached sheet.

WTPA 00292

88 OCT -7 AM 9:31

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer to be hereunto affixed this 23rd day of September, 19 88

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
(NAME OF CORPORATION)

By: M. G. Henschel (SIGNATURE)
M. G. HENSCHEL
VICE PRESIDENT
(TITLE PRESIDENT VICE PRESIDENT ETC.)

Attest: L. A. Swingle (SIGNATURE)
L. A. SWINGLE
SECRETARY AND TREASURER
(TITLE SECRETARY ASSISTANT SECRETARY ETC.)

(CORPORATE SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM:

A. Any necessary copies of Form DSCB: 17.2 (Consent to Appropriation of Name) or Form DSCB:17.3 (Consent to Use of Similar Name) shall accompany Articles of Amendment effecting a change of name.

B. Any necessary governmental approvals shall accompany this form.

C. If the action was authorized by a body other than the board of directors Paragraph 6 should be modified accordingly.

D. 15 Pa. S. §7906(c) requires that the corporation shall advertise its intention to file or the filing of Articles of Amendement. Proofs of publication of such advertising should not be delivered to the Department but should be filed with the minutes of the corporation.

REVISIONS TO PENNSYLVANIA CHARTER

OLD ARTICLE V, PARAGRAPH THREE

Membership at any one time shall be not more than 500 and not less than 300, including approximately seven residents of each of the 50 states of the United States of America on their becoming members.

NEW ARTICLE V, PARAGRAPH THREE

Membership at any one time shall be not more than 500 and not less than 300.

DSCB-307

CHANGE OF REGISTERED OFFICE

Commonwealth of Pennsylvania
Department of State-Corporation Bureau
308 North Office Bldg. Harrisburg, PA 17120

Please indicate (check one) type corporation
- ☐ Domestic Business Corporation
- ☐ Foreign Business Corporation
- ☒ Domestic Non-Profit Corporation
- ☐ Foreign Non-Profit Corporation

FEE
$40.00

1. Name of Corporation

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. Address of its present registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Dept).

(number)	(street)	(city)	(state)	(zip code)	(county)
4100	Bigelow Boulevard	Pittsburgh	Pennsylvania	15213	Allegheny

3. Address to which the registered office in this Commonwealth is to be changed:

(number)	(street)	(city)	(state)	(zip code)	(county)
1630	Spring Run Rd. Extension,	Coraopolis,	Pennsylvania	15108	Allegheny

4. (Check, and if appropriate, complete one of the following):
   - ☒ Such change was authorized by resolution duly adopted by the Board of Directors of the corporation. (02)
   - ☐ The procedure whereby such change was authorized was:

IN TESTIMONY WHEREOF, the undersigned corporation has caused this statement to be signed by a duly authorized officer, and its corporate seal, duly attested by another such officer, to be hereunto affixed, this 27th day of April, 19 88.

(Corporate Seal)

Watch Tower Bible and Tract Society of Pennsylvania
(Name of Corporation)

BY: W G Henschel
(Signature)

Vice President
(Title: ~~President~~, Vice-President, etc.)

ATTEST: A Arnold
(Signature)

Secretary
(Title: Secretary, ~~Assistant Secretary~~, etc.)

—FOR OFFICE USE ONLY—

030 FILED	002 CODE	003 REV BOX	SEQUENTIAL NO.	100 MICROFILM NUMBER	
MAY 09 1988			56131	8835 70	
	REVIEWED BY	004 ICC	AMOUNT	001 CORPORATION NUMBER	
	DATE APPROVED		$ 40	391206	
	DATE REJECTED	CERTIFY TO ☐ REV ☐ L&I ☐ OTHER	INPUT BY	LOG IN	LOG IN (REFILE)
	MAILED BY DATE		VERIFIED BY	LOG OUT	LOG OUT (REFILE)

SECRETARY OF THE COMMONWEALTH
DEPARTMENT OF STATE
COMMONWEALTH OF PENNSYLVANIA

WTPA 00295

Commonwealth of Pennsylvania
Department of State
Harrisburg, PA 17120
(717) 787-1978

Robert P. Casey
Governor

James J. Haggerty
Secretary of the Commonwealth

Charles A. Ottaviano
Director, Corporation Bureau

PROCEDURE FOR CHANGING REGISTERED OFFICE

The Pennsylvania Department of State is the granting authority for all corporations and is the storehouse for those papers and other related corporation papers. In order to change the registered office of a business in Pennsylvania:

1. Prepare the change of registered office form, as prescribed in the appropriate law, and exemplified in the form BCL-307 - Change of Registered Office.

2. Send the following documents to the Secretary of the Commonwealth at Room 308, North Office Building, Harrisburg, PA 17120, either by mail or in person:

   a. Change of Registered Office Form BCL-307.
   b. $40 check, draft or money order payable to the Secretry of the Commonwealth in payment of the filing fee.

3. The secretary of the Commonwealth will review, microfilm and return the original Change of Registered Office.

4. Please note: in reference to line 3, a Post Office Box is **not** acceptable.

WTPA 00296

DSCB-307

CHANGE OF REGISTERED OFFICE

Commonwealth of Pennsylvania
Department of State-Corporation Bureau
308 North Office Bldg. Harrisburg, PA 17120

Please indicate (check one) type corporation
- ☐ Domestic Business Corporation
- ☐ Foreign Business Corporation
- ☒ Domestic Non-Profit Corporation
- ☐ Foreign Non-Profit Corporation

FEE $40.00

1. Name of Corporation

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. Address of its present registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Dept).

(number)	(street)	(city)	(state)	(zip code)	(county)
4100	Bigelow Boulevard	Pittsburgh	Pennsylvania	15213	Allegheny

3. Address to which the registered office in this Commonwealth is to be changed:

(number)	(street)	(city)	(state)	(zip code)	(county)
1630	Spring Run Rd. Extension	Coraopolis	Pennsylvania	15108	Allegheny

4. (Check, and if appropriate, complete one of the following):
- ☒ Such change was authorized by resolution duly adopted by the Board of Directors of the corporation. (02)
- ☐ The procedure whereby such change was authorized was:

IN TESTIMONY WHEREOF, the undersigned corporation has caused this statement to be signed by a duly authorized officer, and its corporate seal, duly attested by another such officer, to be hereunto affixed, this 27th day of April, 19 88.

(Corporate Seal)

Watch Tower Bible and Tract Society of Pennsylvania
(Name of Corporation)

BY: M G Henschel
(Signature)

Vice President
(Title: ~~President~~ Vice-President, etc.)

ATTEST: A Irving Lo
(Signature)

Secretary
(Title: Secretary, ~~Assistant Secretary~~, etc.)

—FOR OFFICE USE ONLY—

030 FILED	002 CODE	003 REV BOX	SEQUENTIAL NO.	100 MICROFILM NUMBER	
MAY 09 1988			56131	8835 70	
	REVIEWED BY	004 ICC	AMOUNT	001 CORPORATION NUMBER	
	DATE APPROVED		$ 40	381206	
	DATE REJECTED	CERTIFY TO ☐ REV ☐ L & I ☐ OTHER	INPUT BY	LOG IN	LOG IN (REFILE)
	MAILED BY DATE		VERIFIED BY	LOG OUT	LOG OUT (REFILE)

John J Wagner

SECRETARY OF THE COMMONWEALTH
DEPARTMENT OF STATE
COMMONWEALTH OF PENNSYLVANIA

WTPA 00297

Commonwealth of Pennsylvania
Department of State
Harrisburg, PA 17120
(717) 787-1978

Robert P. Casey
Governor

James J. Haggerty
Secretary of the Commonwealth

Charles A. Ottaviano
Director, Corporation Bureau

PROCEDURE FOR CHANGING REGISTERED OFFICE

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WTPA 00298

413

APPLICANT'S ACCT NO

DSCB 15-7905 (Rev 11-72)

Filing Fee: $40
AR-81

Articles of Amendment—
Domestic Nonprofit Corporation

87721963

(Line for numbering)

381208

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU

Filed this DEC 2 1987 day of 19

Commonwealth of Pennsylvania
Department of State

John J. Lacey

Secretary of the Commonwealth

(Box for Certification)

In compliance with the requirements of 15 Pa. S. §7905 (relating to articles of amendment), the undersigned nonprofit corporation, desiring to amend its Articles, does hereby certify that:

1. The name of the corporation is:

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

2. The address of its registered office in this Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Department):

4100 Bigelow Boulevard
(NUMBER) (STREET)

Pittsburgh, Pennsylvania 15213
(CITY) (ZIP CODE)

3. The statute by or under which it was incorporated is:

"An Act to Provide for the Incorporation and Regulation of Certain Corporations"-29 April 18

4. The date of its incorporation is: December 15, 1884

5. (Check, and if appropriate, complete one of the following):

☒ The amendment shall be effective upon filing these Articles of Amendment in the Department of State.

☐ The amendment shall be effective on:

_____ (DATE) at _____ (HOUR)

6. (Check one of the following):

☐ The amendment was adopted by the members pursuant to 15 Pa. S. §7904(a).

☒ The amendment was adopted by the board of directors pursuant to 15 Pa. S. §7904(b).

7. The amendment adopted by the corporation, set forth in full, is as follows:

See Attachment Containing Revision of Articles VI and VIII.

WTPA 00299

DS( )5-7905 (Rev. 11-72)-2

87721964

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer and its corporate seal, duly attested by another such officer, to be hereunto affixed this 25th day of November, 19 87.

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
(NAME OF CORPORATION)

By: M G Henschel
(SIGNATURE)

M. G. HENSCHEL--VICE PRESIDENT
(TITLE PRESIDENT VICE PRESIDENT ETC.)

Attest: L A Swingle
(SIGNATURE)

L. A. SWINGLE--SECRETARY & TREASURER
(TITLE SECRETARY, ASSISTANT SECRETARY, ETC.)

(CORPORATE SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM:

A. Any necessary copies of Form DSCB:17.2 (Consent to Appropriation of Name) or Form DSCB:17.3 (Consent to Use of Similar Name) shall accompany Articles of Amendment effecting a change of name.

B. Any necessary governmental approvals shall accompany this form.

C. If the action was authorized by a body other than the board of directors Paragraph 6 should be modified accordingly.

D. 15 Pa. S. §7906(c) requires that the corporation shall advertise its intention to file or the filing of Articles of Amendment. Proofs of publication of such advertising should not be delivered to the Department, but should be filed with the minutes of the corporation.

DEPT OF STATE
87 DEC -2 AM 9:34
RECEIVED

WTPA 00300

87721965

REVISIONS TO PENNSYLVANIA CHARTER

OLD ARTICLE VI:

The corporation is to be managed by a Board of Directors consisting of seven members, and the names and residences of those already chosen Directors are as follows:

President,	Charles T. Russell, Allegheny City, Penna.
Vice Pres.,	William I. Mann, Benwood, W. Va.
Secy. & Treas.,	Maria F. Russell, Allegheny City, Penna.
	Wm. C. McMillan, Latrobe, Penna.
	Simon O. Blunden, New York City, New York
	J. B. Adamson, Allegheny City, Penna.
	Joseph F. Smith, Pittsburgh, Penna.

NEW ARTICLE VI:

The current officers of the Pennsylvania corporation are as follows:

F. W. Franz	President	New York, NY.
W. L. Barry	Vice President	New York, NY.
M. G. Henschel	Vice President	New York, NY.
L. A. Swingle	Secretary and Treasurer	New York, NY.
J. E. Barr	Assistant Secretary-Treasurer	New York, NY.
J. C. Booth	Assistant Secretary-Treasurer	New York, NY.
T. Jaracz	Assistant Secretary-Treasurer	New York, NY.

OLD ARTICLE VIII:

Directors shall be elected by the members at an annual meeting and hold office until successors qualify. At the annual meeting next held after this amendment to the articles of incorporation there shall be an election by ballot for seven directors of the Society, two of whom shall be elected for a term of one year, two for two years and three for three years. At each annual meeting thereafter a number of directors equal to that of those whose terms have expired shall be elected for the term of three years. At expiration of the said term of three years, any director may be re-elected. Directors shall be selected from the membership of the Society.

Officers of the Society, chosen from among members of the Board of Directors, shall be a President (who shall preside at the meetings of the Board of Directors), a Vice President (who shall preside in the absence of the President) and a Secretary and a Treasurer. At the option of the Board of Directors the Secretary also may hold the office of Treasurer. The Board of Directors shall elect officers, who shall hold office for a term of one year, or until successors qualify. Meetings for election of officers shall be held annually at a time and place fixed by the by-laws.

Vacancies in any office or the Board occasioned by death, resignation or removal shall be filled by vote of a majority of the remaining members of the Board, who shall meet for that purpose within thirty days from the time when such vacancy or vacancies shall occur. If the Board fails to fill such vacancy or vacancies in the time and manner above provided, then the President, or if the office of the President be vacant, then the Vice-President, performing the duties of President, shall fill such vacancy or vacancies by appointing the person or persons who shall hold office until the next annual meeting when such vacancy or vacancies shall be filled by election.

Officers may be removed from office upon a vote of a majority of all the directors. Directors may be removed from the Board upon a vote of two-thirds of the members of the Society.

NEW ARTICLE VIII:

Directors shall be elected by the members at an annual meeting and hold office until successors qualify. At the annual meeting next held after this amendment to the articles of incorporation there shall be an election by ballot for seven directors of the Society, two of whom shall be elected for a term of one year, two for two years and three for three years. At each annual meeting thereafter, a number of directors equal to that of those whose terms have expired shall be elected for the term of three years. At expiration of the said term of three years, any director may be re-elected. Directors shall be selected from the membership of the Society.

Officers of the Society, chosen from among members of the Board of Directors, shall be a President (who shall preside at the meetings of the Board of Directors), one or more Vice Presidents (any one of whom shall preside in the absence of the President), and a Secretary and a Treasurer, and the Society may have such other officers and assistant officers as it shall authorize from time to time. At the option of the Board of Directors the Secretary also may hold the office of Treasurer. The Board of Directors shall elect officers, who shall hold office for a term of one year, or until successors qualify. Meetings for election of officers shall be held annually at a time and place fixed by the by-laws.

Vacancies in any office or the Board occasioned by death, resignation or removal shall be filled by vote of a majority of the remaining members of the Board, who shall meet for that purpose within thirty days from the time when such vacancy or vacancies shall occur. If the Board fails to fill such vacancy or vacancies in the time and manner above provided, then the President, or if the office of the President be vacant, then the Vice-President, performing the duties of President, shall fill such vacancy or vacancies by appointing the person or persons who shall hold office

until the next annual meeting when such vacancy or vacancies shall be filled by election.

Officers may be removed from office upon a vote of a majority of all the directors. Directors may be removed from the Board upon a vote of two-thirds of the members of the Society.

CERTIFICATE OF INCORPORATION

OF

WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

DEPARTMENT OF STATE

INCORPORATION BUREAU

In compliance with the requirements of Section 402 of the Pennsylvania Nonprofit Corporation Law of 1988, as amended, the undersigned, desiring to incorporate a nonprofit corporation under the provisions of the said Nonprofit Corporation Law of 1988, as amended, hereby certifies that:

1. The name of the corporation is:

Watch Tower Bible and Tract Society of Pennsylvania

2. The location of its registered office in the Commonwealth is (the Department of State is hereby authorized to correct the following statement to conform to the records of the Department):

4100 Ellsworth Boulevard
(NUMBER)

Pittsburgh, Pennsylvania 15213
(CITY) (STATE) (ZIP CODE)

3. The corporation is incorporated under the Act of May 29, 1874, P.L. 230, providing for the Incorporation and Regulation of certain Corporations, approved April 29, 1874, and its supplements.

4. The corporation was originally incorporated on Dec. 13, 1884 under the following name:
(DATE)

Zion's Watch Tower Tract Society

The corporation was incorporated by (Check and complete one of the following):

☐ Special law (set forth in Paragraph 3 above)

☐ Decree of _____
(NAME OF COURT)

entered on _____
(DATE)

☐ Letters patent duly granted on _____
(DATE)

☒ Filing of Charter and Certificate of Incorporation
(ARTICLES OF INCORPORATION, ASSOCIATION, ETC.)

in the Court of Common Pleas No. 1 of Allegheny County
(NAME OF DEPARTMENT OF STATE OR OTHER PUBLIC OFFICE)

5. The original Articles were recorded on Dec. 15, 1884 in the following place:
(DATE)

Office for recording Deeds, etc., Allegheny County

6. (Check and if appropriate complete one of the following):

☐ This certificate is being delivered to the Department of State contemporaneously with amended and restated Articles of the corporation filed under the NPCL.

WTPA 00304

Change of name [illegible]
Amendment to Charter recorded 7/27/76 Vol. [illegible] pg. [illegible]
Change of name recorded Watch Tower Bible and Tract Society of Pennsylvania [illegible]

(Check and complete one of the following)

☐ The corporation has never adopted any name other than its original name.

☒ The name by which the corporation is known other than its original name and its current name and the date on which the said change of name of the corporation became effective are as follows:

NAME	EFFECTIVE DATE OF CHANGE
Watch Tower Bible and Tract Society	September 27, 1896

IN TESTIMONY WHEREOF, the undersigned corporation has caused this certificate to be signed by its duly authorized officer and its corporate seal duly attested by another such officer, to be hereunto affixed this 29th day of August, 1975.

Watch Tower Bible and Tract Society of Pennsylvania
(NAME OF CORPORATION)

By [signature]
(SIGNATURE)

N. H. Knorr, President
(TITLE — PRESIDENT, VICE PRESIDENT, ETC.)

Attest [signature]
(SIGNATURE)

Grant Suiter, Secretary
(TITLE — SECRETARY, ASSISTANT SECRETARY, ETC.)

(CORPORATE SEAL)

INSTRUCTIONS FOR COMPLETION OF FORM

A. Set forth in Paragraph 2 the place or places, including volume and page numbers of their equivalent where the original articles were filed or recorded. This information may be omitted if the first alternate of Paragraph 6 is applicable.

B. The first alternate of Paragraph 6 is applicable to a nonsurviving party to a plan of merger which retains the status of the surviving corporation and to any corporation which is a party to a consolidation.

C. Set forth in the second alternate of Paragraph 6 the place or places, including volume and page numbers or their equivalent, where the documents are filed or recorded, and the date or dates of each such filing or recording.

D. A corporation is required to file this form only once.

WTPA 00305

EXHIBIT A

C H A R T E R

WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

(Formerly Watch Tower Bible and Tract Society
Formerly Zion's Watch Tower Tract Society)

Zion's Watch Tower Tract Society
Charter of

Be it Known, that the subscribers, having associated themselves together for the purpose of the dissemination of Bible Truths in various languages; and being desirous of becoming incorporated agreeably to the provisions of the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of Certain Corporations", approved the twenty-ninth day of April, Anno Domini, one thousand and eight hundred and seventy-four, and its supplements, do hereby declare, set forth and certify that the following are the purposes, objects, articles and conditions of their said association for and upon which they desire to be incorporated:

I. The name of the Corporation shall be Zion's Watch Tower Tract Society.

II. The purpose for which the Corporation is formed is, the dissemination of Bible Truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and by the use of all other lawful

WTPA 00307

means which the Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated.

III. The place where the buisness of the said corporation is to be transacted is the City of Allegheny, in the County of Allegheny, and State of Pennsylvania.

IV. The corporation is to exist perpetually.

V. The names and residences of the subscribers are as follows:

Charles T. Russell	Allegheny City, Pennsylvania
William I. Mann	Benwood, West Virginia
Maria T. Russell	Allegheny City, Pennsylvania
Wm. C. McMillan	Latrobe, Pennsylvania
Simon O. Blunden	New York City, New York
J. B. Adamson	Allegheny City, Pennsylvania
Joseph F. Smith	Pittsburgh, Pennsylvania

The corporation has no captial stock. Each donation of Ten Dollars to the funds of said Corporation shall entitle the contributor, or his assigns, to one non-forfeitable, non-assessable, and non-dividend bearing share, and to one vote for every such share in said Corporation. Certificates of membership, so acquired shall be issued by the Secretary, countersigned by the President, to the persons entitled thereto.

VI. The Corporation is to be managed by a Board of Directors consisting of seven members, and the names and resi-

WTPA 00308

residences of those already chosen Directors are as follows:

President — Charles T. Russell, Allegheny City, Penna.

Vice Pres. — William I. Mann, Kenwood, N. Y.

Sec. & Treas. — Maria F. Russell, Allegheny City, Penna.

Wm. C. McMillan, Latrobe, Penna.

Simon O. Blunden, New York City, N. Y.

J. B. Adamson, Allegheny City, Penna.

Joseph F. Smith, Pittsburgh, Penna.

VII. The said Corporation by its Board of Directors, a majority of whom shall constitute a quorum for the transaction of business, shall have full power and authority to make and enact by-laws, rules, and ordinances, which shall be deemed and taken to be the law of said Corporation, and do any and everything useful for the good government and support of the affairs of the said Corporation; provided that the said by-laws, rules and ordinances, or any of them, shall not be repugnant to this charter, to the constitution and laws of the Commonwealth of Pennsylvania, and the Constitution of the United States.

VIII. The said Corporation shall have as officers a President, who shall preside at the meetings of the Board of Directors, a Vice President, who shall preside in the absence of the President, and a Secretary, who shall also be Treasurer; and these officers shall be chosen from among the members of the Board of Directors annually on the first Saturday of each year, by an election by ballot to be held at the principal office of the Corporation in Allegheny City, Pennsylvania. The

WTPA 00309

members of the Board of Directors shall hold their respective offices for life, unless removed by a two-thirds vote of the share holders; and vacancies in the Board occasioned by death, resignation or removal shall be filled by vote of a majority of the remaining members of the Board, who shall meet for the purpose within twenty days from the time when such vacancy or vacancies shall occur; and in the event of a failure to fill such vacancy, or vacancies, in the manner aforesaid, within thirty days from the time when such vacancy, or vacancies, shall occur, then the said vacancy, or vacancies, shall be filled by the appointment of the President, and the person, or persons, so appointed shall hold his, or their, office, or offices, until the next annual election of officers of the corporation, when such vacancy, or vacancies, shall be filled by election, in the same manner as the President, Vice President, and Secretary and Treasurer are elected. The persons entitled to vote at annual elections of the Corporation, shall be those who hold certificates of membership acquired in the manner aforesaid.

IX. The said Corporation, under the name, style, and title aforesaid, shall have full power and authority to make, have and use a common seal, with such device and inscription as they may deem proper, and the same to alter and renew at their pleasure; and by the name, style and title aforesaid, shall be able in law and equity to sue and be sued, plead and be impleaded in any Court or Courts, before any Judge or Justice of the Peace, in all manner of suits and complaints, pleas, causes,

WTPA 00310

matters and demands whatsoever, and in and every matter or thing therein to do in as full and ample a manner and effectually, as any other person, or persons, bodies politic or corporate within the Commonwealth of Pennsylvania may or can do.

X. The said Corporation, by the name, style and title aforesaid, shall have the right, power, and authority to take, receive and hold in fee simple, or any less estate, all such messages, lots, lands, buildings, tenements, rents, annuities, franchises and hereditaments as may be necessary and proper for its purposes; and to sell, lease, mortgage, or otherwise dispose of the same or any part thereof; and it shall have the same right, power, and authority to take, receive and hold, and to sell, lease or dispose of any and all kinds of personal property and money.

Witness our hands and seals this 12th day of November, A.D. 1884.

Charles T. Russell	[Seal]
Wm. I. Mann	[Seal]
Maria F. Russell	[Seal]
Wm. C. MacMillan	[Seal]
Simon O. Blunden	[Seal]
J. B. Adamson	[Seal]
Jos. F. Smith	[Seal]

WTPA 00311

3175 28 1

Commonwealth of Pennsylvania)
County of Allegheny) SS

Before me, the subscriber, Recorder of Deeds in the County of Allegheny, personally appeared Charles T. Russell, Maria F. Russell and Jos. F. Smith, three of the subscribers to the above and foregoing certificate of Incorporation of the Zion's Watch Tower Tract Society, and in due form of law acknowledged the same to be their act and deed.

Witness my hand and official seal this 12th day of November, A.D. 1884.

Wm. H. Graham [Official Seal]

Recorder

In the Court of Common Pleas No. 1 of Allegheny County, No. September Term, 1884.

And now this 13th day of December 1884, the within Charter and Certificate of Incorporation having been presented to me, a Law Judge of said County, accompanied by due proof of publication of the notice of this application as required by the Act of Assembly and rule of this Court in such case made and provided, I certify that I have examined and perused the said writing and have found the same to be in proper form and within the purposes named in the first class specified in Section second of the Act of General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of Certain Corporations" approved April 29th, 1874, and the supplements thereto, and the same appearing to be lawful and not injurious to the Community, I do hereby on motion of Weir and Garrison, Attorneys for the within named subscribers and their associates, order and direct that

WTPA 00312

the said Zion Watch Tower Tract Society aforesaid be and the same is hereby approved, and that upon the recording of the same and of this order the subscribers thereto and their associates shall be a Corporation by the name of the Zion Watch Tower Tract Society for the purposes and upon the terms therein stated.

E. H. Collier

Asso. Law Judge &c.

From the Record

J. O. Brown

Pro. [Court Seal]

Common Pleas No. 1

Allegheny Co., Penna.

Recorded Dec. 15th 1884.

State of Penna.)
Allegheny Co.) SS.

Recorded in the Office for recording Deeds, &c., in & for said County, in Charter Book, Vol. 9, page 250.

Given under my hand and seal this 15th day of Dec. 1884.

[Official Seal]

Wm. H. Graham

Recorder

WTPA 00313

[AMENDMENT OF 1896]

In re petition for change of name)
of Zion's Watch Tower Tract Society)
to) No. September Term, 1896
Watch Tower Bible and Tract Society)

To the Honorable the Judges of the Court of Common Pleas No. One of Allegheny County:

The petition of Zion's Watch Tower Tract Society, respectfully represents:

That it is an Association incorporated under the laws of the Commonwealth of Pennsylvania, by the Court of Common Pleas No. One(1) of said County, on the 13th day of December, 1884, for the purpose specified in Section Two(2) of its charter which reads as follows:

"II. The purpose for which the Corporation is formed is, the dissemination of Bible Truths in various languages by means of the publication of tracts, pamphlets, papers, and other religious documents and by the use of all other lawful means which its Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated."

That said purpose is embraced within the Corporations of the first class, specified in Section Second, of an Act of the General Assembly of this Commonwealth, entitled "An Act to provide for the incorporation and regulation of certain corporations", approved the 29th day of April, A.D. 1874,

WTPA 00314

That in pursuance of the provisions of the charter of the General Assembly, the said Association is desirous of changing the name, style and title by which it was incorporated, and at a meeting of the said Corporation duly convened, the following change in the name, style and title as set forth in said charter was duly adopted:

"That the name, style and title of said Corporation be changed from "Zion's Watch Tower Tract Society" to "Watch Tower Bible and Tract Society."

In Witness Whereof, the said Zion's Watch Tower Tract Society has hereunto affixed its corporate seal, attested by its President and Secretary, this 8th day of August, A.D. 1896.

Zion's Watch Tower Tract Society

Charles T. Russell [Corporate Seal]
President

Maria F. Russell

Secretary

John K. Ewing

Commonwealth of Pennsylvania)
County of Allegheny) ss.

Be it remembered that on the 11th day of August, 1896, before me, a Notary Public, in and for said County and State, personally came Charles T. Russell, President of said Corporation, and Maria F. Russell, Secretary of said Corpora-

WTPA 00315

tion, who being duly affirmed, did say that they were personally present at the execution of the within petition, and saw the common seal of said Corporation, Zion's Watch Tower Tract Society affixed thereto, and that said seal is the common and corporate seal, and that the foregoing petition was signed, sealed and duly delivered by, as and for the act and deed of said Corporation, for the uses and purposes therein mentioned, and that their signatures thereto are in their own proper handwriting and that the facts set forth in said petition are correct and true as they verily believe.

Charles T. Russell

Maria F. Russell

Affirmed and subscribed before me,
the day and year aforesaid.
Witness my hand and Notarial seal.

John K. Ewing
Notary Public [N. P. Seal]

Interlocutory Decree

And now, to wit August 24th, 1896, the foregoing petition for change of the name, style and title of the charter of Zion's Watch Tower Tract Society, having been duly presented to this Court, in order that the same might be deemed and taken to be part of the charter of the said Corporation, and it appearing that such change in the name, style and title of said Cor-

WTPA 00316

purposes is lawful and beneficial, and does not violate the requirements of the Act of the General Assembly of this Commonwealth, entitled "An Act to provide for the incorporation and regulation of certain Corporations," approved the 29th day of April, 1874, nor with the Constitution of this State, and proof having been produced to this Court showing that notice of the foregoing application has been duly given to the Auditor General of the State of Pennsylvania, it is hereby ordered and decreed that notice of this application shall be given by publication in accordance with the statute in such case made and provided.

By the Court.

Final Decree

And now, to wit September 19, 1896, the within petition for the change of name of the within designated Corporation, having been presented to this Court, accompanied by due proof of publication of notice thereof, and no cause having been shown to the contrary, it is on motion of Charles W. Dahlinger, Esq. ordered and decreed that upon the recording of the same, that the name, style and title of "Zion's Watch Tower Tract Society" be changed to "Watch Tower Bible and Tract Society," and said change shall be deemed and taken to be part of the charter of said Corporation.

By the Court.

Recorded September 22, 1896.

WTPA 00317

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } SS

Recorded on this 22nd day of September A. D. 1896,
in the Recorder's Office of said County in Charter Book, Vol. 22
Page 415 Given under my hand and the Seal of the said Office
the day and year aforesaid.

Geo. M. Von Bonhorst
Recorder.

[Seal]

WTPA 00318

44 JAN 1945 D

ARTICLES OF AMENDMENT
(Officers' Certificate of Amendment to
the Articles of Incorporation of the
WATCH TOWER BIBLE AND TRACT SOCIETY
pursuant to the
Nonprofit Corporation Law of the
Commonwealth of Pennsylvania)

We, the undersigned Nathan H. Knorr and William E. Van Amburgh, being respectively President and Secretary of the WATCH TOWER BIBLE AND TRACT SOCIETY, hereby certify:

FIRST

The name of the corporation is Watch Tower Bible and Tract Society. The location of its registered office is Wabash Building, 410 Liberty Avenue, Pittsburgh, Allegheny County, Pennsylvania.

SECOND

The corporation was formed under the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of certain Corporations", approved April 29, 1874. The articles as applied for were granted on December 13, 1884, and recorded in the office of the Recorder of Deeds of Allegheny County on December 15, 1884, and appear in the Charter Book, Volume 9,

WTPA 00319

page 250 of the records in said office.

THIRD

Certain resolutions for the proposed amendment of the Articles of Incorporation of said Society were duly adopted under and by virtue of an Act of the Assembly of the Commonwealth of Pennsylvania of May 5, 1933 (Public Law 289), known as the "Nonprofit Corporation Law", as amended April 30, 1943 (Public Law 137).

FOURTH

These said resolutions were adopted at a regular annual meeting of the shareholder-members of the Watch Tower Bible and Tract Society held at Pittsburgh, Allegheny County, Pennsylvania, on Monday, October 2, 1944, at 10 o'clock a.m., which time and place of meeting were the time and place required by the by-laws and the Nonprofit Corporation Law of the Commonwealth of Pennsylvania.

FIFTH

There were present at said meeting a quorum and more than a majority of shareholders and voting shares.

SIXTH

All of the shareholding members at said regular annual meeting were duly notified by mailing to each member on or about September 1, 1944 (more than ten days before the date of such meeting) a copy of a written notice describing in detail each of the amendments as hereinafter set forth.

WTPA 00320

SEVENTH

A resolution was offered to said meeting to amend Article II of the Articles of Incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article II of said articles, reading as follows:

"The purpose for which the corporation is formed is, the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and by the use of all other lawful means which its Board of Directors, duly constituted, shall deem expedient for the furtherance of the purpose stated."

be deleted and amended by changing the same to read as follows:

II. The purposes of this Society are: To act as the servant of and the legal world-wide governing agency for that body of Christian persons known as Jehovah's witnesses; to preach the gospel of God's kingdom under Christ Jesus unto all nations as a witness to the name, word and supremacy of Almighty God JEHOVAH; to print and distribute Bibles and to disseminate Bible truths in various languages by means of making and publishing literature containing information and comment explaining Bible truths and prophecy concerning establishment of Jehovah's kingdom under Christ Jesus; to authorize and appoint agents, servants, employees, teachers, instructors, evangelists, missionaries and ministers to go forth to all the world publicly and from house to house to

WTPA 00321

preach Christian and Bible truths to people of all nations by lecture with such persons said literature and by ordained Bible workers thereof; to improve men, women and children mentally and morally by Christian missionary work and by charitable and benevolent instruction of the people on the Bible and incidental scientific, historical and literary subjects; to establish and maintain private Bible schools and classes for gratuitous instruction of men and women in the Bible, Bible literature and Bible history; to teach, train, prepare and equip men and women as ministers, missionaries, evangelists, preachers, teachers and lecturers; to provide and maintain homes, places and buildings for gratuitous housing of such students, lecturers, teachers and ministers; to furnish gratuitously to such students, lecturers, teachers, educators and ministers suitable meals and lodging and to prepare, support, maintain and send out to various parts of the world Christian missionaries, teachers and instructors in the Bible and Bible literature, and for public Christian worship of Almighty God and Christ Jesus; to arrange for and hold local and world-wide assemblies for such worship; to use or operate radio broadcasting stations for preaching this gospel of the kingdom; and to do any and all other lawful things that its Board of Directors shall deem expedient for the purposes stated.

The foregoing resolution for the said amendment of Article II was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted by a vote of more than a majority of said members who voted as a class.

WTPA 00322

The total number of voting shares of shareholder-members of the corporation in good standing at the time of said meeting was 225,305.

The total number of voting shares of shareholder-members appearing in person and by proxy was 225,305.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes.

EIGHTH

A resolution was offered to said meeting to amend Article III of the Articles of Incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article III of said articles, reading as follows:

"The place where the business of the said corporation is to be transacted is the City of Allegheny, in the County of Allegheny, and State of Pennsylvania."

be deleted and amended by changing the same to read as follows:

III. The location and post office address of the registered office of the Society is in the City of Pittsburgh, County of Allegheny, Commonwealth of Pennsylvania.

The foregoing resolution for the said amendment of Article III was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted by a vote of more than a majority of said members

WTPA 00323

The total number of voting shares of shareholder-members of the corporation in good standing at the time of said meeting was 242,266.

The total number of voting shares of shareholder-members appearing in person and by proxy was 225,305.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes.

NINTH

A resolution was offered to said meeting to amend Article V of the articles of incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article V of said articles, reading as follows:

"The names and residences of the subscribers are as follows:

Charles T. Russell,	Allegheny City, Pennsylvania.
William I. Mann,	Benwood, West Virginia.
Maria F. Russell,	Allegheny City, Pennsylvania.
Wm. C. McMillan,	Latrobe, Pennsylvania.
Simon O. Blunden,	New York City, New York.
J. B. Adamson,	Allegheny City, Pennsylvania.
Joseph F. Smith,	Pittsburgh, Pennsylvania.

WTPA 00324

The corporation has no capital stock. Each donation of Ten dollars to the funds of said corporation shall entitle the contributor, or his assigns, to one non-forfeitable, non-assessable, and non-dividend-bearing share, and to one vote for every such share in said corporation. Certificate of membership so acquired shall be issued by the Secretary, countersigned by the President, to the person entitled thereto."

be deleted and amended by changing the same to read as follows:

V. The names and residences of the subscribers are as follows:

Charles T. Russell,	Allegheny City, Pennsylvania.
William I. Mann,	Benwood, West Virginia.
Maria F. Russell,	Allegheny City, Pennsylvania.
Wm. C. McMillan,	Latrobe, Pennsylvania.
Simon O. Blunden,	New York City, New York.
J. B. Adamson,	Allegheny City, Pennsylvania.
Joseph F. Smith,	Pittsburgh, Pennsylvania.

The corporation has no capital stock. It is not operated on a stock-share basis but on a non-stock basis. It does not contemplate pecuniary gain or profit, incidentally or otherwise, to its members, directors or officers. Its members shall be only men who are mature, active and faithful witnesses of Jehovah devoting full time to performance of one or more of its chartered purposes under its direction and by its authority, or such men who are devoting part time as active presiding minist rs or servants of congregations of Jehovah's witnesses.

WTPA 00325

a man who is found to be in harmony with the purposes of the Society and who possesses the above qualifications may be elected as a member upon being nominated by a member, director or officer, or upon written application to the President or Secretary. Such nominee shall be elected upon a finding by the Board of Directors that he possesses the necessary qualifications and by receiving a majority vote of the members present at a meeting of the Board of Directors. Membership shall be evidenced by a certificate bearing the statement that this Society is a nonprofit corporation and the signatures of at least two of its officers.

Membership at any one time shall be not more than 500 and not less than 300, including approximately seven residents of each of the 48 states of the United States of America on their becoming members.

All members shall be of the same class and each shall be entitled to one vote at all meetings of members. Voting may be by proxy when done in the manner provided by the by-laws. No member shall sell, transfer or assign his vote. The right to vote is personal and cannot be conveyed by will or other instrument upon a member's death.

A meeting for electing directors and transaction of other business shall be held annually at a time and place fixed by the by-laws. At such meeting a majority of the members shall constitute a quorum.

Any member may withdraw from the Society after fulfilling all obligations to it by giving written notice of such

WTPA 00326

intention to the Secretary, which notice shall be presented to the Board of Directors by the Secretary at the first meeting after its receipt.

A member may be suspended for a period or expelled for cause upon willfully violating any of the by-laws, reasonable rules, or ordinances of the Society, or upon becoming out of harmony with any of the Society's purposes or any of its work, or for willful conduct prejudicial to the best interests of the Society and contrary to his duties as a member, or upon ceasing to be a full-time servant of the Society or a part-time servant of a congregation of Jehovah's witnesses. Suspension or expulsion shall be by a majority vote of the directors, provided that a statement of the cause therefor shall have been sent by registered mail to the member at his last recorded address at least ten (10) days before a regular or special meeting of the directors; and such statement shall be accompanied by a notice of the time when and place where the Board of Directors will act in the premises, provided that said member shall have been given opportunity to present a defense at the time and place mentioned in such notice. Expulsion of a member forfeits any interest he has or had in and to the Society or any office therein, and cancels the right to participate in any meeting as a member and the right to vote, provided he shall have the right to be heard before expulsion.

The foregoing resolution for the said amendment of Article V was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted

WTPA 00327

by a vote of more than a majority of said members who voted at a called meeting.

The total number of voting shares of shareholder-members of the corporation in good standing at the time of said meeting was 232,266.

The total number of voting shares of shareholder-members appearing at said meeting in person and by proxy was 225,305.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,255 votes.

AGAINST the resolution 47 votes.

TENTH

A resolution was offered to said meeting to amend Article VII of the articles of incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article VII of said articles, reading as follows:

"The said corporation by its Board of Directors, a majority of whom shall constitute a quorum for the transaction of business, shall have full power and authority to make and enact by-laws, rules, and ordinances, which shall be deemed and taken to be the law of said corporation, and do any and everything useful for the good government and support of the

WTPA 00328

affairs of the said corporation; provided that the said by-laws, rules and ordinances, or any of them, shall not be repugnant to this charter, to the constitution and laws of the Commonwealth of Pennsylvania, and the Constitution of the United States" be deleted and amended by changing the same to read as follows:

"VII. The government of the corporation vests in its Board of Directors, a majority of whom shall constitute a quorum for the transaction of business. The directors shall have full power and authority to make, amend and repeal by-laws, rules, and ordinances, which shall be the law of the Society; to disburse funds; to sell, or delegate to its officers authority to sell, real estate and personal property owned by the Society; to borrow money for the Society; to hold meetings at such times and places as may be designated by the Board; to admit members and suspend or expel them; to elect officers and employ agents, all of which powers are in addition to and not in limitation of the powers usually exercised by the directors; and also to devise and carry into execution such other measures as they may deem proper and expedient to promote the objects of the Society and to protect the interests and welfare of its members and to do any and every useful thing for the good government and support of the affairs of the Society.

The foregoing resolution for the said amendment of Article VII was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted by a vote of more than a majority of said members who voted as a class.

The total number of voting shares of shareholder-

WTPA 00329

members of the corporation in good standing at the time of said meeting was 230,206.

The total number of voting shares of shareholder-members attending said meeting in person and by proxy was 225,302.

The total vote upon the foregoing resolution when separately offered and adopted was 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes.

ELEVENTH:

A resolution was offered to said meeting to amend Article VIII of the articles of incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article VIII of said articles, reading as follows:

"The said corporation shall have as officers a President, who shall preside at the meetings of the Board of Directors, a Vice President, who shall preside in the absence of the President, and a Secretary, who shall also be Treasurer; and these officers shall be chosen from among the members of the Board of Directors annually on the first Saturday of each year, by an election by ballot to be held at the principal office of the corporation in Allegheny City, Pennsylvania. The members of the Board of Directors shall hold their respective offices for life, unless removed by a two-thirds vote of the share

WTPA 00330

holders; and vacancies in the Board occasioned by death, resignation or removal shall be filled by vote of a majority of the remaining members of the Board, who shall meet for that purpose within twenty days from the time when such vacancy, or vacancies, shall occur; and in the event of a failure to fill such vacancy or vacancies, in the manner aforesaid, within thirty days from the time when such vacancy, or vacancies, shall occur, then the said vacancy or vacancies shall be filled by the appointment of the President, and the person, or persons so appointed, shall hold his, or their, office, or offices, until the next annual election of officers of the corporation, when such vacancy, or vacancies, shall be filled by election, in the same manner as the President, Vice President, and Secretary and Treasurer are elected. The persons entitled to vote at annual elections of the corporation, shall be those who hold certificates of membership acquired in the manner aforesaid." be deleted and amended by changing the same to read as follows:

VIII. Directors shall be elected by the members at an annual meeting and hold office until successors qualify. At the annual meeting next held after this amendment to the articles of incorporation there shall be an election by ballot for seven directors of the Society, two of whom shall be elected for a term of one year, two for two years and three for three years. At each annual meeting thereafter a number of directors equal to that of those whose terms have expired shall be elected for the term of three years. At expiration of the said term of three years, any director may be reelected. Directors shall be selected from the membership of the Society.

WTPA 00331

Officers of the Society, chosen from among members of the Board of Directors, shall be a President (who shall preside at the meetings of the Board of Directors), a Vice President (who shall preside in the absence of the President), and a Secretary and a Treasurer. At the option of the Board of Directors, the Secretary also may hold the office of Treasurer. The Board of Directors shall elect officers, who shall hold office for a term of one year, or until successors qualify. Meetings for election of officers shall be held annually at a time and place fixed by the by-laws.

Vacancies in any office or the Board occasioned by death, resignation or removal shall be filled by vote of a majority of the remaining members of the Board, who shall meet for that purpose within thirty days from the time when such vacancy or vacancies shall occur. If the Board fails to fill such vacancy or vacancies in the time and manner above provided, then the President, or if the office of the President be vacant, then the Vice President, performing the duties of President, shall fill such vacancy or vacancies by appointing the person or persons who shall hold office until the next annual meeting when such vacancy or vacancies shall be filled by election.

Officers may be removed from office upon a vote of a majority of all the Directors. Directors may be removed from the Board upon a vote of two-thirds of the members of the Society.

The foregoing resolution for the said amendment of Article VIII was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly

WTPA 00332

[illegible] present by proxy more than a majority of said members [illegible] open said meeting.

The total number of voting shares of shareholder members of the corporation in good standing at the time of said meeting was 232,206.

The total number of voting shares of shareholder members appearing at said meeting in person and by proxy was 225,302.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes.

TWELFTH

A resolution was offered to said meeting to amend Article X of the articles of incorporation. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article X of said articles, reading as follows:

"The said corporation, by the name, style, and title aforesaid, shall have the right, power, and authority to take, receive and hold in fee simple, or any less estate, all such messuages, lots, lands, buildings, tenements, rents, annuities, franchises and hereditaments as may be necessary and proper for its purposes; and to sell, lease, mortgage, or otherwise dispose of the same or any part thereof; and it shall have the same right, power, and authority to take, receive and hold, and to sell, lease or dispose of any and all kinds of personal property and money."

WTPA 00333

be deleted, amended by changing the same to read as follows:

X. The said corporation shall have the right, power and authority to take, receive and hold donations and contributions of money and property, bequests and legacies to be used to further the chartered purposes; to receive and hold in fee simple, or any less estate, all such messuages, lots, lands, buildings, tenements, rents, annuities, franchises and hereditaments as may be necessary and proper for its purposes; and to sell, lease, mortgage, or otherwise dispose of the same or any part thereof; and it shall have the same right, power, and authority to take, receive and hold, and to sell, lease or dispose of any and all kinds of personal property and money.

The foregoing resolution for the said amendment of Article X was discussed and considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted by a vote of more than a majority of said members who voted as a class.

The total number of voting shares of shareholder-members of the corporation in good standing at the time of said meeting was 232,266.

The total number of voting shares of shareholder-members appearing at said meeting in person and by proxy was 225,305.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes.

WTPA 00334

THIRTEENTH

A resolution was offered to said meeting to authorize and direct the application to the Court to have each of the foregoing amendments to the articles of incorporation approved by the Court, said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation that

WHEREAS the shareholder-voters, being the members entitled to vote for amendments to the articles of incorporation, have duly adopted Resolutions numbers 2, 3, 4, 5, 6 and 7 for the amendments to the articles of incorporation, and which said Resolutions have been duly adopted by a majority of the members entitled to vote thereon,

NOW THEREFORE the officers of the Watch Tower Bible and Tract Society are hereby directed to prepare the articles of amendment and officers' certificate of amendment to the articles of incorporation, and to certify the copies of each Resolution amending the articles of incorporation, and to file the same with the Prothonotary of the Common Pleas Court and cause to be advertised in the newspapers the necessary notice of the intention to apply to the Common Pleas Court for an order approving the articles of amendment and to take any and all other further steps necessary to effectuate the amendment to the articles of incorporation, pursuant to the resolution herein made at this annual meeting.

WTPA 00335

The foregoing resolution to authorize the application to the Court to have each of the proposed amendments to the articles of incorporation approved by the Court was duly considered and upon being submitted to vote of the members entitled to vote thereon was duly adopted by a vote of more than a majority of said members who voted as a class.

The total number of voting shares of shareholder-members of the corporation in good standing at the time of said meeting was 232,266.

The total number of voting shares of shareholder-members appearing at said meeting in person and by proxy was 225,305.

The total vote upon the foregoing resolution when separately offered and adopted was: 225,302.

FOR the resolution 225,302 votes.

AGAINST the resolution None votes

FOURTEENTH

The total vote by which each of the aforesaid resolutions amending the articles of incorporation and authorizing the application to the Court was adopted is shown above under each of said resolutions. The undersigned officers do hereby certify that the total vote thus shown is true and correct according to the records of said annual meeting; and said officers do hereby further certify that the foregoing copies of said resolutions adopted at the said meeting by the voting shareholders are each, respectively, a true and correct copy of each of said resolutions for the amendment of the articles

WTPA 00336

of Incorporation and for authorizing the application to the Court, as the same was offered to and adopted by the voting shareholders at said meeting and as the said resolutions appear of record in the minutes of said annual meeting.

IN WITNESS WHEREOF the Watch Tower Bible and Tract Society has caused these Articles of Amendment to be signed by its President, and its corporate seal, duly attested by its Secretary, to be hereunto affixed this second day of October 1944.

Attest:

W. E. Van Amburgh,
Secretary

WATCH TOWER BIBLE AND TRACT SOCIETY [Corp.Seal]

By N. H. Knorr,
President

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)
CITY OF PITTSBURGH) SS:

BE IT REMEMBERED that on this second day of October 1944, before me, a Notary Public in and for the County aforesaid, personally appeared NATHAN H. KNORR, President, and WILLIAM E. VAN AMBURGH, Secretary, of the WATCH TOWER BIBLE AND TRACT SOCIETY, the corporation named in and which executed the foregoing Articles of Amendment, who being duly sworn, did depose and say that they were personally present at the execution of the foregoing Articles of Amendment and saw the common or corporate seal of the WATCH TOWER BIBLE AND TRACT SOCIETY affixed thereto;

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that the seal affixed thereto is the common or corporate seal of the corporation; that the foregoing Articles of Amendment were duly signed, sealed and delivered by said ... and ... as the act and deed of the corporation by the authority and by the direction of a majority of the members of the corporation; and that the names of the said NATHAN H. KNORR as President and of WILLIAM E. VAN AMBURGH as Secretary, subscribed thereto are in their proper and respective handwriting.

Sworn to and subscribed before me this 2nd day of October 1944.
A. E. Swanson Notary Public (N.P.Seal)
My commission expires April 1, 1945

Nathan H. Knorr
Wm. E. Van Amburgh

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)
CITY OF PITTSBURGH) SS:
)

NATHAN H. KNORR and WILLIAM E. VAN AMBURGH, being severally and duly sworn, do depose and say, and each for himself deposes and says: That he, the said NATHAN H. KNORR, is the President of the Watch Tower Bible and Tract Society, and he, the said WILLIAM E. VAN AMBURGH, is the Secretary thereof. That they have been duly authorized to execute, apply the corporate seal and file the foregoing articles of amendment to the articles of incorporation of said Society by the affirmative vote cast in person and by proxy of the majority of shareholder-members of said corporation who were entitled to vote on each and all of the resolutions contained in the foregoing articles of amendment, and that such vote was cast at the said annual meeting of said members called for that purpose upon notice

WTPA 00338

given in the time and manner required by law; that each deponent has read the foregoing certificate and that each and every statement of fact therein contained is true and correct.

Subscribed and sworn to before me) Nathan H. Knorr
this 2nd day of October 1944) Wm. E. Van Amburgh
A. E. Swanson, Notary Public (N.P.Seal))
My commission expires April 1, 1945)

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

IN RE
PETITION OF WATCH TOWER BIBLE AND TRACT SOCIETY, for approval of amendment to articles of incorporation) No. 44 January Term, 1945

ORDER OF COURT

And Now, to-wit, this 15 day of February, A.D. 1945, the foregoing petition and application for amendments to the charter of the Watch Tower Bible and Tract Society having been presented in open court and proper proofs of publication of notice having been filed in connection therewith and said petition and articles of amendments having been filed with the Prothonotary of the Court of Common Pleas of Allegheny County, Pennsylvania, as provided by law, and the matter having been referred to Horace Thomas, Jr., Esq., as Master, who has filed his report recommending said application, and the court having

WTPA 00339

considered said application fully, the Master's report and the recommendation favoring and recommending the granting of said application, petition and amendments, and being of the opinion that said petition and articles for the amendments prayed for are lawful and do not conflict with the requirements of the Act of May 5, A.D. 1933, P. L. 289 of the State of Pennsylvania known as the Non-Profit Corporation Act, and the amendments and supplements thereto,

IT IS THEREFORE HEREBY ORDERED AND DECREED that the foregoing articles of amendments of the Watch Tower Bible and Tract Society be and the same are hereby approved and upon the recording of said articles of amendments, together with this Order, with the Recorder of Deeds of Allegheny County, Pennsylvania, the amendments specified in the articles of amendments shall become a part of the original charter of the Watch Tower Bible and Tract Society aforesaid.

BY THE COURT

[Court Seal]

February 27, 1945
From the Record
David B. Roberts, Prothonotary

by E. C. Kvatsak,
Deputy

WTPA 00340

STATE OF PENNSYLVANIA, County of Allegheny, ss:

Recorded in the office for the recording of deeds, &c., in and for the said County, on the 27th day of February, A. D. 1945, in Deed Book, Vol. 70, page 171.

WITNESS my hand and seal of said office, the day and year aforesaid.

Anthony J. Gerard, Recorder [Seal]

WTPA 00341

WATCH TOWER BIBLE AND TRACT SOCIETY

ARTICLES OF AMENDMENT

(Officers' Certificate of Amendment to the Articles of Incorporation of the WATCH TOWER BIBLE AND TRACT SOCIETY pursuant to the Nonprofit Corporation Law of the Commonwealth of Pennsylvania)

We, the undersigned Nathan H. Knorr and Grant Suiter, being respectively President and Secretary of WATCH TOWER BIBLE AND TRACT SOCIETY, hereby certify:

FIRST

The name of the corporation is Watch Tower Bible and Tract Society. The location of its registered office is 4100 Bigelow Boulevard, Pittsburgh 13, Pennsylvania.

SECOND

The corporation was formed under the Act of the General Assembly of the Commonwealth of Pennsylvania, entitled "An Act to provide for the Incorporation and Regulation of Certain Corporations", approved April 29, 1874. The articles as applied for were granted on December 13, 1884, and recorded in the office of the Recorder of Deeds of Allegheny County on December 15, 1884, and appear in the Charter Book, Volume 9, page 250, of the records in said office.

THIRD

Certain resolutions for the proposed amendment of the

WTPA 00342

Articles of Incorporation of said Society were duly adopted under and by virtue of an Act of the Assembly of the Commonwealth of Pennsylvania of May 5, 1933 (Public Law 289) known as the 'Nonprofit Corporation Law', as amended April 29, 1943 (Public Law 179).

FOURTH

These said resolutions were adopted at a regular annual meeting of the members of the Watch Tower Bible and Tract Society held at Pittsburgh, Allegheny County, Pennsylvania, on Saturday, October 1, 1955, at 10 o'clock a.m., which time and place of meeting were the time and place required by the by-laws and the Nonprofit Corporation Law of the Commonwealth of Pennsylvania.

FIFTH

There were present at said meeting a quorum and more than a majority of the members.

SIXTH

All of the members at said regular annual meeting were duly notified by mailing to each member on or about September 1, 1955 (more than ten days before the date of such meeting) a copy of a written notice.

SEVENTH

A resolution was offered to said meeting to amend Article First of the Articles of Amendment to the Articles of Incorporation dated October 2, 1944. Said resolution as offered reads as follows:

BE IT RESOLVED by the members of the Watch Tower Bible

WTPA 00343

and Tract Society, being a majority of the members entitled to vote for amendments to the articles of incorporation, that Article First of the Articles of Amendment to the Articles of Incorporation dated October 2, 1944, reading as follows:

"The name of the corporation is Watch Tower Bible and Tract Society. The location of its registered office is Wabash Building, 410 Liberty Avenue, Pittsburgh, Allegheny County, Pennsylvania."

be deleted and amended by changing the same to read as follows:

"1. The name of the corporation is Watch Tower Bible and Tract Society of Pennsylvania. The location of its registered office is 4100 Bigelow Boulevard, Pittsburgh, 13, Pennsylvania."

The foregoing resolution for said amendment of Article First of the Articles of Amendment to the Articles of Incorporation was discussed and considered and, upon being submitted to vote to the members entitled to vote thereon, it was duly adopted by more than a majority of said members who voted as a class.

The total number of members entitled to vote and who are in good standing at the time of said meeting was 472.

The total number of votes appearing at said meeting in person and by proxy was 455.

The total vote upon the foregoing resolution when offered and adopted was 455.

FOR the resolution 455 votes.

AGAINST the resolution none votes.

WTPA 00344

EIGHTH

A resolution was offered to said meeting to authorize and direct the application to the Court to have the foregoing amendment to the articles of incorporation approved by the Court. Said resolution as offered reads as follows:

BE IT RESOLVED that the members entitled to vote on the foregoing amendment and having adopted said amendment to the Articles of Amendment to the Articles of Incorporation by a majority vote, do hereby authorize and order the President and the Secretary of the Watch Tower Bible and Tract Society to prepare the articles of amendment and officers' certificate of amendment to the articles of incorporation and to prepare and file certified copies of the resolution amending said articles of incorporation with the Prothonotary of the Court of Common Pleas and cause the same to be advertised in the newspapers by giving legal public notice of the intention to apply to the Court of Common Pleas for an order approving the articles of amendment, and thereafter petition the Court of Common Pleas for an order approving the articles of amendment and take any and all further steps to effectuate the amendment to the articles of amendment to the articles of incorporation, pursuant to the resolution herein made at this annual meeting.

The foregoing resolution to authorize and direct the filing of the articles of amendment, advertisement thereof and application to the Court of Common Pleas for an order approving same was discussed and considered and, upon being submitted to the members entitled to vote thereon, was duly adopted by a majority of said members who voted thereon as a class.

WTPA 00345

The total number of members entitled to vote and who are in good standing at the time of said meeting was 472.

The total number of votes appearing at said meeting in person and by proxy was 455.

The total vote upon the foregoing resolution when offered and adopted was 455.

FOR the resolution 455 votes.

AGAINST the resolution none votes.

NINTH

The total vote by which each of the aforesaid resolutions amending the articles of incorporation and authorizing the application to the Court was adopted is shown above under each of said resolutions. The undersigned officers do hereby certify that the total vote thus shown is true and correct according to the records of said annual meeting; and said officers do hereby further certify that the foregoing copies of said resolutions adopted at the said meeting by the members are each, respectively, a true and correct copy of each of said resolutions for the amendments of the articles of incorporation and for authorizing the application to the Court, as the same was offered to and adopted by the members at said meeting and as the said resolutions appear of record in the minutes of said annual meeting.

IN WITNESS WHEREOF the Watch Tower Bible and Tract Society has caused these Articles of Amendment to be signed by its President, and its corporate seal, duly attested by its

WTPA 00346

Secretary, to be hereunto affixed this eighteenth day of October, 1955.

ATTEST: WATCH TOWER BIBLE AND TRACT SOCIETY
(Corp. Seal)

Grant Suiter — By Nathan H. Knorr

Secretary — President

STATE OF NEW YORK)
) SS.:
COUNTY OF KINGS)

BE IT REMEMBERED that on this eighteenth day of October, 1955, before me a Notary Public in and for the County aforesaid, personally appeared NATHAN H. KNORR, President, and GRANT SUITER, Secretary, of the WATCH TOWER BIBLE AND TRACT SOCIETY, the corporation named in and which executed the foregoing Articles of Amendment, who being duly sworn, did depose and say that they were personally present at the execution of the foregoing Articles of Amendment and saw the common or corporate seal of the WATCH TOWER BIBLE AND TRACT SOCIETY affixed thereto; that the seal affixed thereto is the common or corporate seal of the corporation; that the foregoing Articles of Amendment were duly signed, sealed and delivered by and as and for the act and deed of the corporation by the authority and at the direction of a majority of the members of the corporation; and that the names of the said NATHAN H. KNORR as President and of GRANT SUITER as Secretary, subscribed thereto are in their proper and respective handwriting.

SWORN to and subscribed before me
this 18th day of October, 1955.
William K. Jackson, (N. P. Seal)
Notary Public, State of New York
No. 24-1939100
Qualified in Kings County
Commission expires March 30, 1957

Nathan H. Knorr
Grant Suiter

WTPA 00347

STATE OF NEW YORK)
COUNTY OF KINGS) SS.:
)

NATHAN H. KNORR and GRANT SUITER, being severally and duly sworn, do depose and say, and each for himself deposes and says, That he the said NATHAN H. KNORR, is the President of the Watch Tower Bible and Tract Society, and he, the said GRANT SUITER, is the Secretary thereof. That they have been duly authorized to execute, apply the corporate seal and file the foregoing articles of amendment to the articles of incorporation of said Society by the affirmative vote cast in person and by proxy of the majority of the members of said corporation who were entitled to vote on each and all of the resolutions contained in the foregoing articles of amendment, and that such vote was cast at the said annual meeting of said members called upon notice given in the time and manner required by law; that each deponent has read the foregoing certificate and that each and every statement of fact therein contained is true and correct.

SUBSCRIBED and sworn to before me this 18th day of October, 1955.
William K. Jackson, (N. P. Seal)
Notary Public, State of New York
No. 24-1939100
Qualified in Kings County
Commission expires March 30, 1957

Nathan H. Knorr
Grant Suiter

STATE OF NEW YORK)
COUNTY OF KINGS) SS.:
)

I, FRANCIS J. SINNOTT, Clerk of the County of Kings and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, DO HEREBY CERTIFY, That William K. Jackson whose name is subscribed to the deposition, certificate of acknowledgment or proof of the annexed instrument, was at the time of taking the same a NOTARY PUBLIC in and for the State of

WTPA 00348

New York, duly commissioned and sworn and qualified to act as such throughout the State of New York, that pursuant to law, commission or certificate of his appointment and qualifications and his autograph signature have been filed in my office; that as such Notary Public he was duly authorized by the laws of the State of New York to administer oaths and affirmations, to receive and certify the acknowledgment or proof of deeds, mortgages, powers of attorney and other written instruments for lands, tenements and hereditaments to be read in evidence or recorded in this State, to protest notes and to take and certify affidavits and depositions; and that I am well acquainted with the handwriting of such Notary Public, or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and believe that the signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County this 21st day of October, 1955.

Francis J. Sinnott [Court Seal]
Clerk

COMMONWEALTH OF PENNSYLVANIA 924 JAN 1956 D
DEPARTMENT OF STATE

HARRISBURG October 7, 1955

I DO HEREBY CERTIFY, That the new name Watch Tower Bible and Tract Society of Pennsylvania being available for use by a nonprofit corporation, was this day duly registered in this office in accordance with the provisions of Article VII of the Nonprofit Corporation Law, approved the fifth day of May, A.D. 1933,

WTPA 00349

P. L. 289, as amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the Department of State to be affixed the day and year above written.

James A. Finnegan, (Secretary's Seal)

Secretary of the Commonwealth

JEG

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

In re Petition of WATCH TOWER BIBLE AND TRACT SOCIETY, for approval of amendment to articles of incorporation	)	No. 924 January Term, 1956

DECREE

AND NOW, this 31 day of October A.D. 1955, an application for the amendment of its charter and the Articles of Amendment of the WATCH TOWER BIBLE AND TRACT SOCIETY under the "Nonprofit Corporation Law" approved May 5, 1933 as amended, having been presented for approval to me, a law judge of the said County, accompanied by proof of the publication of notice of said application, a certified copy of the resolution authorizing the proposed amendment and a certificate of registration from the Department of State of the proposed new corporate name, I do hereby certify that I have considered and examined the said instruments and that I find them to be in the proper form within the provisions and requirements of the Act of the General Assembly of

WTPA 00350

The Commonwealth of Pennsylvania, known as the "Nonprofit Corporation Law" approved May 5, 1933 as amended; and that the proposed amendment appears to be lawful, will be beneficial and not injurious to the community, and does not conflict with the requirements of the said Act. It is, therefore, ordered and decreed that the Articles of Amendment of the WATCH TOWER BIBLE AND TRACT SOCIETY be and the same are hereby approved and upon the recording of the said Articles of Amendment and this decree, the amendments specified in the Articles of Amendment shall become part of the original Articles of Incorporation and of the original charter.

By the Court
Harry M. Montgomery
JUDGE

[Court Seal]

Nov. 1, 1955
From the Record
David B. Roberts
Prothonotary
by Mawhinney Deputy

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) ss.

Recorded in the office for the recording of Deeds, etc., in and for the said County, on the 1st day of November A.D. 1955, in Charter Book Vol. 75, Page 548. Witness my hand and seal of said Office, the day and year aforesaid.

John J. Exler, Recorder

[Seal]

WTPA 00351

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF WATCH TOWER PENNSYLVANIA'S RESPONSE IN OPPOSITION TO MOTION TO COMPEL DISCOVERY

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs (VIA MESSENGER) Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs (VIA FEDERAL EXPRESS) Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

XXX (BY MESSENGER) I caused such envelope(s) to be hand delivered to the Law Offices of Nolen Saul Brelsford

XXX (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) Love & Norris.

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2005, at Gold River, California.

By Claudia Pohlman

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Attorneys for Plaintiffs

FILED

MAR 1 1 2005

Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

RECEIVED
MAR 1 1 2005
COURT EXECUTIVE OFFICER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' MOTION TO STRIKE IN ALL COORDINATED CASES** Date: April 8, 2005 Time: 9:30 am Dept.: B Trial Date: None

COMES NOW Plaintiffs, CHARISSA W., NICOLE D., TABITHA H., DANIEL WEST, SHANE PENCE, AMBER WEST, JULIANNE WIMBERLEY GUITERREZ, JOSHUA WIMBERLEY, TIM W., KEN L., DANIELLE A., and FRED F., by and through their

attorneys of record, Rudy Nolen, Esq., and William Brelsford., of NOLEN SAUL BRELSFORD, Gregory Love, Esq., of LOVE & NORRIS, and Hartley Hampton, Esq., and Kenneth Fibich, Esq., of FIBICH, HAMPTON, LEEBRON & GARTH, LLP, and oppose the Watchtower Defendants' motion to strike.[1],[2]

I

REFERENCES TO "ECCLESIASTICAL DISCIPLINE" ARE NOT ALLEGED AS A BASIS OF LIABILITY AND MISINTERPRET THE FACTUAL AVERMENTS OF THE COMPLAINT

Watchtower Defendants spent considerable effort arguing that matters of "ecclesiastical discipline" are irrelevant and should be struck from the complaint. Nothing in Plaintiffs' complaints alleges Watchtower Defendants are liable because they improperly "disciplined" the perpetrators who sexually abused Plaintiffs.

The Watchtower Defendants want this Court to believe this case is about the correctness of the Watchtower Defendants' religious tenets and doctrine. This case is about young children who were devastatingly violated by the Watchtower Defendants' appointed agents who used appointed positions of trust and authority within that organization to criminally, sexually abuse children entrusted to the perpetrators' care by the Watchtower Defendants. These cases are also about the Watchtower Defendants' intentional conduct in not only covering up the abuse, but also actively preventing the reporting of this and other instances of abuse within the organization. At the same time, the Watchtower Defendants continued to appoint these particular perpetrator-agents, to positions of trust and authority after the Watchtower Defendants knew of their propensities to use their appointed positions in the organization to sexually abuse innocent children. Finally, it is a case about this nation's and the state of California's compelling state interest

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[1]Plaintiffs' counsel recently learned that in February 2005, Javier C., was shot and killed outside of his residence. His case will likely be dismissed in the near future. Plaintiffs' counsel has also filed motions to withdraw on behalf of Danielle A. and Fred F.

[2]A copy of all the pleadings in this coordinated matter are on file this Court. In the interest of brevity, Plaintiffs' incorporate by reference the complaints and the oppositions to Watchtower Defendants' demurrers filed in the individual cases.

in protecting its children from the crime of sexual abuse through the application of secular laws designed to hold accountable those responsible for such abuse.

Nothing in the First Amendment prohibits this Court from addressing the Watchtower Defendants' knowing appointment and protection of pedophiles who criminally assaulted Plaintiffs after the Watchtower Defendants were on notice that the perpetrators would do just that if they continually appointed to positions of authority over children. Also, the First Amendment does not bar this Court from addressing the Watchtower Defendants' liability for their intentional conduct in coercing the silence of victims and preventing the reporting of abuse, not for religious reasons, but to protect the Watchtower Defendants from liability for their own conduct in knowingly continuing to appoint pedophiles to positions of leadership with authority over children without even taking the minimal step of warning members of the congregations to which they were appointed or reporting the abuse to the proper secular authorities.

None of the cases cited by the Watchtower Defendants in their multiple Memorandum of Points and Authorities on file with Court, address the duty of a religious organization in the context in which Plaintiffs bring their claims. To the contrary, those on point take exception to any argument that the First Amendment bars claims arising out of the criminal abuse of children. Based on all the arguments contained herein, the Watchtower Defendants' motion to strike should be denied in its entirety.

The references to the perpetrators (i.e., Villegas in *Charissa W., et. al.*, and *Tabitha H.*; Harriman in *Ken L.*; Henderson and Heard in *Kimberley, et. al.*, and *Tim W.*,; Silva in *West, et. al.*, etc.) being "members in good standing" are not alleged to argue that because they were held out as "members in good standing," the discipline, or lack thereof, was improper. Instead, such references are alleged to establish the perpetrators were, at all times relevant to when Plaintiffs were sexually abused, held out in a manner that they could be trusted. It further supports all of the legal theories of liability against the Watchtower Defendants. For example, because the perpetrators were held out as a members in good standing and expected to be trusted by other members in the

Organization, Plaintiffs were sexually abused by individuals they were expected to trust. Plaintiffs were never notified of the pedophiles' proclivities to sexually abuse young children and were unable to take steps to protect themselves from the sexual abuse endured. Likewise, Plaintiffs' families were unable to take steps to prevent Plaintiffs from being sexually violated as a young children.

As pled in Plaintiffs' Complaints, the Watchtower Defendants knew the perpetrators were sexual predators, yet continued to hold them out in a manner to be trusted. This conduct serves as a basis for the following causes of action: Negligence, Negligent Appointment, Retention, and Supervision, Gross Negligence and Willful Misconduct, Breach of Fiduciary Duty, Intentional Infliction of Emotional Distress, Fraud - Intentional Misrepresentation, Fraud - Concealment, and Conspiracy.

Plaintiffs refer this Court to the following additional decisions supporting the rights of Plaintiffs to have these claims heard by this Court: *Richelle v. Roman Catholic Archbishops* (2003) 106 Cal.App.4th 257, 612 (A fiduciary duty independent of a claim of seduction exists, and recovery for its breach does not violate the First Amendment if it falls into one of two patterns: "either a minister is alleged to have taken advantage of a woman he is counseling, or **a cleric is said to have sodomized young children under his charge**") (emphasis added); *Amato v. Greenquist* (Ill. App. 1997) 679 N.E.2d 446, 451 (The First Amendment would not bar a claim that a cleric counselor used his position as a spiritual counselor to sexually exploit a counselee. "In the context of spiritual counseling, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused the plaintiff's distress was in fact part of the belief and practices of the religious group....clerics cannot, using the shield of the First Amendment masquerade in the form of marriage counselors and then prey on their counselees."); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, 109 (The First Amendment bar is not absolute and is non-existent where religion is used as an excuse for shielding criminal conduct. "Legislative power to punish subversive or hostile action cannot be doubted. If such action should actually be attempted by a cleric, neither his robe

nor his pulpit would be a defense."); *Sanders v. Casa View Baptist Church* (N.D. Texas 1995) 898 F. Supp. 1169 (The First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by a church member against a minister); *Isely v. Capuchin Province* (E.D. Mich. 1995) 880 F. Supp. 1138 (The First Amendment does not bar a claim for negligent supervision by a student who was a victim of sexual abuse); *Bivin v. Wright* (Ill. App. 1995) 656 N.E.2d 1121 (The First Amendment comes into play only when the church defendant can legitimately allege that the sexual conduct of its minister was part of its religious beliefs or practices or was in any way sanctioned by the church); *F.G. v. MacDonell* (N.J. 1996) 677 A.2d 258 ("When sexual conduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involves 'no impenetrable barrier.'"); *Nutt v. Norwich Roman Catholic Defendants* (D. Conn. 1995) 921 F. Supp. 66 (The Free Exercise Clause of the First Amendment does not bar claims for negligent employment based upon alleged sexual abuse by a priest); *Moses v. Defendants of Colorado* (Colo. 1993) 863 P.2d 310 (The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on the sexual relationship between parishioner and priest); *Destanfano v. Gabrian* (Colo. 1988) 763 P.2d 275 (The First Amendment does not bar a parishioner's claims for breach of fiduciary duty and negligent hiring and supervision grounded on a sexual relationship with church leader); *Alberts v. Devine,* 479 N.E.2d 113 (Mass. 1985); *Smith v. O'Connell* (D.R.I. 1997) 986 F. Supp. 73 (The First Amendment does not bar a minor's claims for negligent supervision against a church for sexual molestation by a priest); *Smith v. Privette* (N.C. 1998) 495 S.E.2d 395 (A claim of negligent retention and supervision against a church arising out of inappropriate sexual acts by minister is not barred by the First Amendment); *Mrozka v. Archdiocese of St. Paul and Minneapolis* (Minn. Ct. App. 1992) 482 N.W. 2d 806 (The First Amendment does not bar imposition of punitive damages against a church based upon priest's sexual abuse of a child); *Konkle v. Henson* (Ind. Ct. App. 1996) 672 N.E. 2d 450 (The First Amendment does not bar claims for negligent hiring and supervision against a church for sexual

molestation); *Byrd v. Faber* (Oh. 1991) 565 N.E.2d 584 (Negligent hiring and supervision claims brought by a sexually abused child are not barred by the First Amendment); *Kenneth R. v. Roman Catholic Defendants of Brooklyn* (1997) 654 N.Y.S.2d 791 (A child's negligent supervision and retention claims against a diocese are not barred by the First Amendment); *Bear Valley Church of Christ v. Dubose* (Colo. 1996) 928 P.2d 1315 (The First Amendment does not bar a child's various tort claims against pastor and church for "pattern of inappropriate touching".); *Bivin v. Wright* (Ill. Ct. App. 1995) 656 N.E.2d 1121; *F.G. v. MacDonell* (N.J. 1997) 696 A.2d 697 (The First Amendment does not bar claim against church for negligent supervision of minister for inappropriate sexual contact); *Martinez v. Primera Assemblea de Dios, Inc.* (Tex. Ct. App. May 15, 1998) No. 05-96-01458, 1998 WL 242412 (The First Amendment does not bar parishioner's negligence claims against a church based upon allegations that church elder sexually assaulted her); *C.J.C. v. Corporation of the Catholic Bishop of Yakima* (Wash. 1999) 985 P.2d 262 (The First Amendment does not bar minor sexual abuse victim from bringing tort claims against a priest and church.); *Doe v. Hartz* (N.D. Iowa 1997) 970 F. Supp. 1375 (The First Amendment did not bar negligent supervision claim against church brought by adult for improper sexual contact by priest.).

Plaintiffs' claims are consistent with those permitted by the above referenced decisions, which consistently found no burdening of First Amendment freedoms, despite the defendants' religious nature. And referencing the ***fact*** that the Watchtower Defendants held their agent-pedophiles out as "members in good standing" does not require this Court to tread on religious doctrine.

II

REFERENCES TO THE WATCHTOWER DEFENDANTS' CONSPIRATORIAL CONDUCT WAS PROPERLY PLED AND NOT PROPERLY SUBJECT TO A MOTION TO STRIKE

While conspiracy may not a separate cause of action, it is a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with tortfeasors a common plan or design in its perpetration. *Applied Equipment Corp., v.*

Litton Saudi Arabia Ltd., (1994) 7 Cal.4th 503, 510-511. A complaint for civil conspiracy states a ***cause of action*** when it alleges the commission of a civil wrong that causes damage. *Okun v. Superior Court* (1981) 29 Cal.3d 442, 454.

Plaintiffs pled facts of the defendants' collective conspiracy. Plaintiffs are unable to indicate which specific individuals engaged in the conspiracy as discovery has yet to occur. Nevertheless, the corporate defendants act through their respective figureheads binding the corporate entities and for pleading purposes, sufficient facts have been pled regarding the conspiracy to overcome this motion to strike and Defendants' demurrer already on file with this Court.

Defendants reference the "agency immunity" rule as an alleged bar to the conspiracy element of Plaintiffs' complaints and argued that unless the parties are pled as separate entities, the conspiracy cause of action cannot survive. Plaintiffs pled each Watchtower Defendant as a separate legal entity. Each entity works together as a single business enterprise, but they are still separate legal entities.

Corporations act through their agents. The conduct of an individual vested with authority by the corporation is binding on the corporation. Here, it is has been alleged and pled that the corporations acted in concert with one another, by and through their agents, to conceal and suppress the nefarious conduct of childhood sexual abuse within their organization in attempt to avoid liability for the corporations collectively.

Conspiracy is a simple theory creating a basis of liability for the conspirators. Contrary to Watchtower Defendants' assertions, facts have been properly pled and are not subject to a motion to strike.

III

PLAINTIFFS PROPERLY PLED NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

Watchtower Defendants would have this Court believe that a claim for negligent appointment, retention and supervision cannot be pled against their corporate entities for

sexual abuse of children committed by their own representatives. However, the case law nationwide holds just the opposite and supports this cause of action.

Plaintiffs alleged the Watchtower Defendants had actual prior notice that their agents repeatedly used appointed positions to sexually abuse children under the Organizations' care. The Watchtower Defendants engaged in intentional conduct to not only conceal this information from Plaintiffs and others, but also to coerce the silence of victims. The Watchtower Defendants further aided and abetted the abuse through an intentional policy of preventing the reporting of child abuse. The Watchtower Defendants engaged in this intentional tortious conspiracy in violation of civil law **not** for any religious reason, but to **protect themselves from liability** for their tortious conduct in appointing and protecting known pedophiles.

Numerous courts in various jurisdictions have found no First Amendment bar to claims for negligent supervision and retention of known child abusers. By way of example, Plaintiffs refers this Court to many of the cases cited above and to the following cases: *Kenneth R. v. Roman Catholic Diocese of Brooklyn* (N.Y. App. Div. 1997) 229 A.D.2d 159, 654 N.Y.S.2d 791 (A church can be held liable for the negligent hiring, retention and supervision of a priest for sexual abuse of children.); *Moses v. Diocese of Colo* (Colo 1993) 863 P.2d 310 (*en banc), cert. denied,* (1994) 511 U.S. 1137; *Bear Valley Church of Christ v. DuBose* (Colo. 1996) 928 P.2d 1315 (Free exercise clause of First Amendment did not protect church from liability for negligent supervision and discipline and minister who sexually abused child in the church.); *Doe v. Dorsey* (Fla.Dist.Ct.App.1996) 683 So.2d 614 ("Just as the state may prevent a church from offering human sacrifices, it may protect its children against injuries caused by pedophiles by authorizing civil damages against a church that knowingly (including should know) creates a situation in which such injuries are likely to occur."); *Konkle v. Henson* (Ind.Ct.App.1996) 672 N.E.2d 450 (First Amendment did not bar action against church and church associations for negligent hiring and retention of minister who sexually abused child.); *Erickson v. Christenson* (1989) 99 Or. App. 104, 977 P.2d 1157. This cause of action should survive this motion to strike.

Other cases similarly do not support a bar to Plaintiff's claims. In fact, both *Doe v. Hartz* (N.D. Iowa) 970 F.Supp 1375, and *Isely v. Capuchin Province* (E.D. Mich 1995) 580 F.Supp. 1138, 1151, expressly deny the First Amendment constitutes a bar to a negligent supervision and retention claim against a religious entity, especially at the pleading stage. (*Isely* dismissed these claims, not as barred by the First Amendment, but because the Wisconsin Supreme Court has never recognized a tort for negligent supervision in any context.)

IV

PLAINTIFFS PROPERLY PLED THE WATCHTOWER DEFENDANTS' FAILURE TO REPORT CLAIMS OF SEXUAL ABUSE TO LAW ENFORCEMENT

The essence of Defendants' motion to strike their failure to report incidents of childhood sexual abuse to law enforcement is premised on their claim that they were not required by law to report childhood sexual abuse by their own appointed agents. The only case where it is alleged that Watchtower Defendants were required to report consistent with Penal Code § 11164, *et. seq.*, is *Daniel West, et. al.,* on behalf of Shane Pence.

The remaining cases allege Watchtower Defendants' failure to report incidents of childhood sexual abuse to law enforcement as a basis of their negligent conduct. This organization **could** have actively proceeded to protect the children entrusted to their care, but **chose** not to act in the best of the children. Instead, they chose to protect pedophiles. Plaintiffs contend the Organization's failures to protect victims of sexual abuse by, including but not limited to, failing to notify law enforcement is negligent conduct. Plaintiffs contend that a reasonably prudent organization, like the Watchtower Defendants, should have notified Plaintiffs, Plaintiffs' families, and law enforcement that pedophiles were sexually abusing children within their Organization. Accordingly, these allegations are properly pled and not subject to a motion to strike.

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III

CONCLUSION

For all of the reasons set forth herein above, set forth in the two Oppositions to the Watchtower Defendants' Demurrers in the *Charissa W., et. al.,* matter on file with this Court and incorporated herein by this reference, and set forth in the rulings issued by this Court, Plaintiffs respectfully request this Court to overrule the Watchtower Defendants' instant Motion to Strike in its entirety.

Dated: March 10, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorney for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On March 10, 2005, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' MOTION TO STRIKE IN ALL COORDINATED CASES,** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On March 10, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

///

///

Greg Love
Kimberlee Norris
LOVE & NORRIS
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Fort Worth, TX 76104

Tommy Fibich, Esq.
Hartley Hampton, Esq.
Mike Leebron, Esq.
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 10, 2005, at Sacramento, California.

Susan Gilbert

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Attorneys for Plaintiffs

FILED
MAR 1 1 2005
Clerk of the Napa Superior Court
By: Dora O. Doherty
Deputy

RECEIVED
MAR 1 1 2005
COURT EXECUTIVE OFFICER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES

Date: April 8, 2005
Time: 9:30 am
Dept.: B
Trial Date: None

COMES NOW Plaintiffs, CHARISSA W., NICOLE D., TABITHA H., DANIEL WEST, SHANE PENCE, AMBER WEST, JULIANNE WIMBERLEY GUITERREZ, JOSHUA

WIMBERLEY, TIM W., KEN L., DANIELLE A., and FRED F., by and through their attorneys of records, Rudy Nolen, Esq., and William Brelsford., of NOLEN SAUL BRELSFORD, Gregory Love, Esq., of LOVE & NORRIS, and Hartley Hampton, Esq., and Kenneth Fibich, Esq., of FIBICH, HAMPTON, LEEBRON & GARTH, LLP, and oppose the Watchtower Defendants demurrers.[1]

I.

INTRODUCTION

Lawsuits have been filed throughout the United States by numerous plaintiffs against Watchtower Defendants based on sexual abuse by appointed agents of Defendants' organization. The coordinated cases before this Court based on similar allegations are:

Charissa W. and Nicole D., *Napa County, Case # 26-22191*

Tabitha H., *Napa County, Case # 26-23929*

Daniel West, Shane Pence, and Amber West*, Yolo County, Case # CV03-1439*

Julianne Wimberley Guiterrez and Joshua Wimberley*, Tehema County, Case # 52598*

Tim W., *Tehema County, Case # 52594*

Ken L., *Placer County, Case # SCV 16600*

Danielle A., *Sonoma County, Case # 234140*

Fred F., *Sonoma County, Case # 234168*

This Court has earlier issued two written opinions responding to the Watchtower Defendants' two demurrers in the *Charissa W. and Nicole D.* matter. (See Exhibits 1 and 2 attached to the Declaration of William Brelsford, Esq.) Judge Warriner of the Yolo County Superior Court issued a ruling to an identical demurrer, which followed the lead of this Court. (See Exhibit 3 attached to the Declaration of William Brelsford, Esq.) Defendants filed demurrers in the above referenced cases, but no rulings were made

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[1]Plaintiffs' counsel recently learned that in February 2005, Javier C., was shot and killed outside of his residence. His case will likely be dismissed in the near future. Plaintiffs' counsel has also filed motions to withdraw on behalf of Danielle A. and Fred F.

because of the Coordination process. Now, the Watchtower Defendants assert in their present demurrer that the legal theories asserted by Plaintiffs are without merit and should be dismissed.

In *Charissa W., et. al.*,the Watchtower Defendants were ordered by this Court to answer Plaintiffs' Second Amended Complaint, which contained the following causes of action:

1) Common Law Negligence;

2) Negligent Appointment, Retention and Supervision;

3) Gross Negligence - Willful Misconduct;

4) Breach of Fiduciary Duty;

5) Fraud, Fraudulent Concealment and Conspiracy.[2]

In *Charissa W.,* Plaintiffs did not assert causes of action against an individual perpetrator because the perpetrator was deceased.

The *Tabitha H.* case is against the identical defendants as *Charissa W., et. al.,* because Tabitha H. was abused by the same perpetrator, in the same Napa congregation. The causes of action pled were:

1) Common Law Negligence;

2) Negligent Appointment, Retention and Supervision;

3) Gross Negligence - Willful Misconduct;

4) Breach of Fiduciary Duty;

5) Intentional Infliction of Emotional Distress;

6) Fraud - Intentional Misrepresentation;

7) Fraud - Concealment;

8) Conspiracy.

With the following exceptions, the causes of action in these two cases are identical: the addition of a cause of action for Intentional Infliction of Emotional Distress and causes

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[2]A copy of all of the pleadings in this coordinated matter are on file with this Court. In the interest of brevity, Plaintiffs' incorporate by reference the complaints and the oppositions to Watchtower Defendants' demurrers filed in all of the individual cases.

of action six, seven and eight were separately pled in *Tabitha H.*, whereas these same theories are combined in a single cause of action, number five, in *Charissa W., et. al.*

The causes of action pled in the remaining cases are:

	D.West	Gutierrez	Tim W.	Ken L.	Danielle A	Fred F.
Sexual Battery	X[3]	X	X	X	X	X
Common Law Negligence	X	X	X	X	X	X
Negligent Appt., Retention & Supervision	X	X	X	X	X	X
Gross Negligence-Willful Misconduct	X	X	X	X	X	X
Breach of Fiduciary Duty	X	X	X	X	X	X
Negligence Per Se & Common Law Negligence Failure to Report Suspected Child Abuse	X[4]					
Fraud-Intentional Misrepresentation	X	X	X	X	X	X
Fraud-Concealment	X	X	X	X	X	X
Conspiracy	X	X	X	X	X	X
Intentional Infliction of Emotional Distress		X	X	X	X	X

In *Daniel West, et. al.*, Plaintiffs intend to amend their complaint to add a cause of action for Intentional Infliction of Emotional Distress and concede Sexual Battery is no longer viable following the dismissal of Defendant Timothy Silva. In *Charissa W., et. al.*, Plaintiffs intend to amend their complaint to add a cause of action for Intentional Infliction of Emotional Distress.

II

ARGUMENT

Plaintiffs will not reiterate the same legal arguments and case law already provided to this Court when it ruled on the Watchtower Defendants' two earlier demurrers on file with this Court in the *Charissa W., et. al.*, matter. Instead, Plaintiffs incorporate the case

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[3]This cause of action was pled against Defendant Timothy Silva only, who was recently dismissed after having filed for bankruptcy. Accordingly, this cause of action may be dismissed.

[4]This cause of action was pled on behalf of Plaintiff Shane Pence only.

law and legal arguments and request the Court take Judicial Notice of those pleadings pursuant to Cal. Evid. § 452. With that in mind, Plaintiffs will respond briefly to arguments raised by the Watchtower Defendants in their instant demurrer.

A. Sexual Battery Cause of Action:

Plaintiffs' sexual battery cause of action in *Julianne Wimberley Guiterrez,et. al., Tim W., Ken L., Danielle A., and Fred F.,* cases are asserted only against the individual perpetrator-defendants. Accordingly, the Watchtower Defendants' argument that the causes of action are subject to demur is without merit and should be overruled.

B. Conspiracy Cause of Action:

While conspiracy is not a separate cause of action, it is a legal theory that imposes liability on persons who, although not actually committing a tort themselves, share with tortfeasors a common plan or design in its perpetration. *Applied Equipment Corp., v. Litton Saudi Arabia Ltd.,* (1994) 7 Cal.4th 503, 510-511. A complaint for civil conspiracy states a ***cause of action*** when it alleges the commission of a civil wrong that causes damage. *Okun v. Superior Court* (1981) 29 Cal.3d 442, 454. Plaintiffs have pled Conspiracy as a separate cause of action, but contend it creates a form of liability for the Watchtower Defendants collectively, premised on their systemic practice of suppressing incidences of childhood sexual abuse suffered by children, including Plaintiffs, in their Organization by their Organization's appointed agents.

C. Fraud Causes of Action:

Plaintiffs have asserted two fraud-based causes of action, one premised on intentional misrepresentation and the other based on concealment.

1. Intentional Misrepresentation: As pointed out by the Watchtower Defendants, the Civil Code defines deceit in one of four ways. The pertinent language is as follows: "The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact (concealment or suppression of fact]." Civ. Code § 1710(3).

2. Concealment: There are four circumstances in which non-disclosure

of or concealment constitutes actionable fraud: (1) when the defendant is a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of materials facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326-336-337

In all cases, Plaintiffs have pled sufficient facts under both fraud-based theories. For example, in *Wimberley, et. al.,* Plaintiffs pled that specific agents and representatives of the Watchtower Defendants' organizations used positions of authority to sexually abuse minors, including Plaintiffs, and that the Watchtower Defendants were notified of and aware of this abuse, but failed to take any reasonable steps to prevent Plaintiffs from being sexually abused. (*Wimberley* Complaint at ¶ 14.) It was further pled that the Governing Body, composed of a group of men, are situated at the top of a chain of command of this hierarchical organization and provide authority for the conduct and activity of all members of the organization. (*Id.* at ¶ 16.) Further, Plaintiffs stated that the leaders of the Watchtower Organization were aware of the wide-reaching problem of sexual abuse within its organization, but failed to implement any measure to protect the children entrusted to its care from acts of sexual abuse and further suppressed information to cover-up these acts of child molestation and hid them from law enforcement to protect the Organization. (*Id.* at ¶ 20.) This same Organization maintained "secret archival files" regarding the acts of sexual abuse committed by its own leaders and agents, yet never disclosed this information it complied to law enforcement, Plaintiffs, or Plaintiffs' families, so that Plaintiffs, their families, and law enforcement could take steps to protect Plaintiffs from abuse. (*Id.*) The Organization as a whole, including all of its leaders from Governing Body members, to Presiding Overseers and Elders in the specifically named congregational defendants had notice that the perpetrators were pedophiles, but suppressed such information from Plaintiffs, despite having an affirmative duty(recognized by this Court in its March 30, 2004 Order to Watchtower Defendants' Second Demurrer) to protect children, including Plaintiffs from sexual abuse at the hands of its appointed

agents. Fraud based on intentional misrepresentation and concealment has been sufficiently pled.

D. Intentional Infliction of Emotional Distress Cause of Action:

This Court has not had an opportunity to render a decision on this cause of action in previous Orders to Defendants' demurrers. This cause of action has been found viable by other Courts in cases of childhood sexual abuse against organizations like the Watchtower Defendants. The elements of Intentional Infliction of Emotional Distress have been properly pled. Plaintiffs allege that the Watchtower Defendants engaged in conduct to prevent Plaintiffs, and others, from reporting conduct of known pedophiles to law enforcement. Plaintiffs' families were not notified of the abuse. This conduct was "directed" at Plaintiffs because they were prevented from seeking help for the abuse they suffered and preventing further acts of abuse. Plaintiffs properly pled that Watchtower Defendants knew of the individual perpetrators' acts of sexually abusing children, including Plaintiffs, but failed to take action to stop further abuse.

Courts have recognized the viability of a claim for Intentional Infliction of Emotional Distress premised on sexual abuse suffered by a child from within an organization similar to the Watchtower Defendants. For example, see: *H.R.B. v. J.L.G.* (Mo. 1995) 913, S.W.2d 92, 98-99 (holding causes of action such as Intentional Infliction of Emotional for childhood sexual abuse is available to a plaintiff); *Erickson v. Christianson* (Or. 1989) 99 Or.App. 104, 108 (holding such a claim viable because the plaintiff alleged existence of a confidential relationship, proof of the allegations of forced sexual encounters would permit a jury to infer that the perpetrators actions exceeded the limits of social toleration, that they were done with the knowledge that they would cause plaintiff grave distress and that they in fact caused plaintiff severe emotional distress).

E. Common Law Negligence, Gross Negligence - Willful Misconduct and Breach of Fiduciary Duty Causes of Action:

This Court has already ruled that these causes of action are properly pled and ordered the Watchtower Defendants to answer these causes of action in *Charissa W., et.*

al. The Watchtower Defendants previously argued these causes of action were barred by the First Amendment, and this Court rejected their argument. Then, the Watchtower Defendants argued that they did not owe a duty to protect Plaintiffs from the sexual abuse they endured within the organizational setting and that no special relationship existed between Plaintiff and the Watchtower Defendants, which this Court also rejected. Now, the Watchtower Defendants assert that these negligence-based causes of action are "conclusory" pled (see Demurrer at Page 10, line 7-18) and that Plaintiffs failed to plead facts supporting the imposition of a duty by the Watchtower to protect children, including Plaintiffs, within its organization from sexual abuse (see Demurrer at page 10, line 15 - page 13, line 15). Again, this Court concluded in its Order dated March 30, 2004 (**Exhibit 2**) that Defendants owed a duty to Plaintiffs to protect them from childhood sexual abuse from appointed agents within its organization.

Plaintiffs have properly pled these causes of action in all of these cases, thereby justifying this Court to follow its previous Order overruling the Watchtower Defendants' demurrer on these grounds.

F. **Negligence Per Se and Common Law Negligence: Failure to Report Suspected Child Abuse:**

This cause of action has been asserted on behalf of Shane Pence, only, in the *Daniel West, et. al.,* matter. As alleged in that complaint, Shane was abused by the perpetrator after January 1, 1997. As of January 1, 1997, Clergy members were added to the list of "mandatory reporters" pursuant to Penal Code § 11165.7(a)(32). Shane alleged that from approximately 1992 through 1997, he was sexually abused by Timothy Silva. (See *West* Amended Complaint at ¶¶ 26 and 57.) Shane also alleged that the Watchtower Defendants had actual and/or constructive knowledge as early as 1987 that Silva, who they appointed to a position of authority, was using his position of authority to sexual abuse children entrusted to their care. (See *West* Amended Complaint at ¶¶ 22 and 57.) The California Child Abuse and Neglect Reporting Act, enumerated in California Penal Code § 11164, *et. seq.,* became effective January 1, 1997, which mandated that

members of the clergy report suspicions of abuse to law enforcement. Shane alleged that the Watchtower Defendants failed to report to law enforcement the abusive and illegal acts of their agent, Silva, both prior to and after Shane was abused. (See *West* Amended Complaint at ¶ 58.)

Shane was abused after Penal Code § 11164, *et. seq.,* was enacted and Defendants failed to report this abuse to law enforcement, despite their mandatory obligation to do so. They failed to uphold their legal duty, which allowed Silva to continue abusing Shane.

"Civil actions lie in favor or crime victims. Violation os a criminal statute embodying a public policy is generally actionable even though no specific civil remedy is provided in the criminal statute." *Angie M. v. Superior Court*, (1995) 37 Cal.App.4th 1217, 1224.

III

CONCLUSION

For all of the reasons set forth herein above, set forth in the two Oppositions to the Watchtower Defendants' Demurrers in the *Charissa W., et. al.,* matter on file with this Court and incorporated herein by this reference, and set forth in the rulings issued by this Court and by the Yolo County Superior Court (attached to the Declaration of William Brelsford, Esq., as Exhibits 1 - 3). Plaintiffs respectfully request this Court to overrule the Watchtower Defendants' instant Demurrer in its entirety.

Dated: March 10, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorney for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On March 10, 2005, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES,** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On March 10, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

///

///

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(*In Pro Per*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 10, 2005, at Sacramento, California.

Susan Gilbert

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Attorneys for Plaintiffs

FILED

MAR 1 1 2005

Clerk of the Napa Superior Court
By: Dora O. Doherty
Deputy

RECEIVED
MAR 1 1 2005
COURT EXECUTIVE OFFICER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF WILLIAM L. BRELSFORD IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES** Date: April 8, 2005 Time: 9:30 am Dept.: B Trial Date: None

I, William Brelsford, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice law before all the Courts of the State of California.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Order on Demurrer and Motion to Quash Service of Summons dated December 17, 2003.

3. Attached hereto as Exhibit 2 is a true and correct copy of the Order on Defendant's Demurrer to Plaintiff's Second Amended Complaint, dated March 30, 2004.

4. Attached hereto as Exhibit 3 is a true and correct coy of the Order After Hearing dated December 29, 2003.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: March 10, 2005

NOLEN SAUL BRELSFORD

William Brelsford

EXHIBIT 1

EXHIBIT 1

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

ENDORSED

DEC 17 2003

Clerk of the Napa Superior Court
By: S. PETTY
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEMURRER AND MOTION TO QUASH SERVICE OF SUMMONS** **Date: November 21, 2003** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants Demur to each cause of action in Plaintiffs' amended complaint and Motion to Quash Service of Summons was regularly scheduled for hearing on November 21, 2003 in the Napa County Superior Court. None of the parties to the

action requested a hearing and the tentative ruling was recorded as stated below.

1) CHURCH DEFENDANTS' DEMURRER TO AMENDED COMPLAINT
TENTATIVE RULING: The Church defendants demur to each cause of action in plaintiffs' amended complaint. The court will overrule the demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12.

Tort Causes of action for Sexual Battery and Respondeat Superior (1st), Common Law Negligence (2nd), Negligent Appointment, Retention and Supervision (3rd), Gross Negligence/Wilful Misconduct (4th), Breach of Fiduciary Duty (5th), Fraud, Fraudulent Concealment and Conspiracy (7th), and Ratification (8th)

First Amendment

The defendants seek to characterize plaintiffs' action as one for clergy malpractice arising out of a counseling relationship, and as such contend that, under the First Amendment, this court may not interject itself into the inner workings of the church. They assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.

Plaintiffs' complaint alleges, generally, that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering sever sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of a Church Elder and about the defendants' failure to take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so.

Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendants' demurrer to plaintiffs' tort claims on the ground that they are barred by the First Amendment is OVERRULED.

Respondeat Superior (1st) and Ratification (8th)

As currently drafted the complaint fails to state facts to support claims against the church defendants on respondeat superior and ratification theories. (Mark K. v. Roman Catholic Archbishop (1998) 67 Cal.App.4th 603, 609; Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478, 1490.) The demurrer to these claims is sustained with leave to amend.

Cause of action for Negligence Per Se and Common Law Negligence (6th) and for Negligent Usurpation of Investigatory Function (10th)

The demurrer to the 6th cause of action is sustained as to the allegations of negligence per se premised upon the California Child Abuse and Neglect Reporting Act, Penal Code § 11164, et seq. This statute did not apply to the clergy during the

time period in question. Accordingly, it cannot support a negligence per se cause of action. The demurrer to the 6th cause of action is sustained with leave to amend to delete the allegations concerning Penal Code section 11164.

The 10th cause of action is premised entirely on Penal Code § 11164. Accordingly, the demurrer to that cause of action is sustained without leave to amend.

Cause of action for Alter Ego and Single Business Enterprise (9th)

"Alter ego" is not a separately cognizable cause of action, rather it is a contract law theory concerning business structures which allows a separate entity to be disregarded and another to be held responsible for the disregarded entities liabilities. Plaintiffs may amend their complaint to state their alter ego allegations generally, but not as a separate cause of action.

Violation of Penal Code sections 182 and 32 (11th and 12th causes of action)

Plaintiffs have presented no authority that allows them to state a private cause of action for asserted Penal Code violations. The demurrers to these causes of action are sustained without leave to amend.

Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

2) WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.'S MOTION TO QUASH SERVICE OF SUMMONS TENTATIVE RULING: Plaintiffs request for leave to conduct discovery is granted. Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. This motion shall be continued to January 21, 2004 at 8:30 in Dept. B.

IT IS ORDERED as follows:

The Court overrules the Defendants' demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12. Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

The Court grants Plaintiffs' request for leave to conduct discovery. Plaintiffs are permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. The motion is continued to January 21, 2004 at 8:30 in Dept. B.

DATED: DEC - 2 2003

W. SCOTT SNOWDEN

Judge of the Superior Court of California,
County of Napa

Approval as to form.

Dated: November 25, 2003

BULLIVANT HOUSER BAILEY

Robert J. Schnack

Dated: November 25, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford

Approval as to form.

Dated: November 25, 2003

BULLIVANT HOUSER BAILEY

Robert J. Schnack

Dated: November 25, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford

BLUEBIRD OFFICE SUPPLIES (888) 477-0700 www.bluebirdonline.com

EXHIBIT 2

EXHIBIT 2

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

ENDORSED

MAR 3 0 2004

Clerk of the Napa Superior Court
By: L. WALKER
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEFENDANT'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** **Date: February 19, 2004** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants demur to each cause of action in Plaintiffs' second amended complaint was regularly scheduled for hearing on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. None of the parties to the action

requested a hearing regarding Defendants' demurrer and the tentative ruling was recorded as stated below.

TENTATIVE RULING: The demurrer is OVERRULED.

Plaintiffs' amended complaint contains causes of action for negligence, negligent appointment, retention and supervision, gross negligence, breach of fiduciary duty, and fraud. Defendants demur to the amended complaint on the ground that plaintiffs have failed to state facts to show that the defendants owed plaintiffs a legal duty of care to support each cause of action. A review of the complaint reveals that plaintiffs have stated facts that, if true, would impose a duty running from defendants to plaintiffs under ordinary negligence principles and under plaintiff's breach of fiduciary duty allegations.

As did the earlier complaint, the Plaintiffs' amended complaint alleges generally that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering severe sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of Edward Villegas, a Church Elder, and about the defendants' failure to provide the plaintiffs and their families with notice or warning regarding the past abuse inflicted by Villegas or take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so. The amended complaint alleges that the Church defendants used the

daycare center run out of the Villegas' home to attract new converts, that plaintiffs' families became new converts and placed their trust and confidence in Villegas and the church, and that Villegas used his position as a Church Elder to gain access to the plaintiffs and to sexually abuse them.

Defendants seek to go outside the complaint's allegations to assert that the day care center where the plaintiffs were allegedly molested was an in-home day care center that was not church-affiliated. The complaint's allegations assert otherwise, and must be accepted as true for purposes of ruling on a demurrer.

Under the reasoning expressed in Juarez v. Boy Scouts of America (2000) 81 Cal.App.4th 377 and other cases cited by plaintiffs, this court concludes that the amended complaint states facts to support all of the asserted causes of action, including the required element of duty. Analyzing the allegations using the factors set down in Rowland v. Christian (1968) 69 Cal.2d 108 and considering the existence of duty imposed by a special relationship, as discussed in Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257, the complaint withstands demurrer.

Defendants shall answer within 20 days.

IT IS ORDERED as follows:

The Court will overrule defendants' demurrer. Defendants shall answer within 20 days.

The Church Defendants' Motion to Quash Service of Summons and Complaint also was heard on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. The Court having issued its Tentative Ruling on Watchtower Bible and Tract Society of Pennsylvania's Motion to Quash Service of Summons as to Watchtower Bible and Tract Society of Pennsylvania ruled on February 18, 2004 as follows:

TENTATIVE RULING: The motion to quash service of summons for lack of personal jurisdiction is GRANTED. On November 21, 2003, this court continued this motion to allow

plaintiffs to conduct discovery into Watch Tower Pennsylvania's contacts with California. Plaintiffs, who have the burden of proof, have submitted no supplemental evidence to support their opposition to defendant's motion. The defendant has submitted supplemental evidence and points and authorities in support of the motion. The court concludes from all of the evidence presented that moving defendant does not have the requisite substantial, continuous and systematic contacts with California to subject it to this State's general jurisdiction. There is also no basis for asserting personal jurisdiction over moving defendant, as none of the defendant's few contacts with this forum are related to the controversy in question. Finally, plaintiffs have provided no evidence to show that this defendant is the alter ego or that principal of other named defendants.

Counsel for Plaintiffs CHARISSA W. and NICOLE D. requested oral argument regarding the Court's ruling on defendant's Motion to Quash. Appearing for Plaintiffs CHARISSA W. and NICOLE D. was William Brelsford, Esq., of NOLEN SAUL BRELSFORD. Appearing for Defendants was Robert Schnack, Esq., of BULLIVANT HOUSER BAILEY, PC.

After oral argument by the parties, the Court having reviewed all pleadings on file with the Court regarding this motion, the Court ruled as follows:

IT IS ORDERED that the Motion to Quash Service of Summons for Lack of Personal Jurisdiction asserted by Watch Tower Bible and Tract Society of Pennsylvania is continued until April 14, 2004 at 8:30 a.m. in Department B to allow Plaintiffs additional time conduct discovery on the minimum contacts, if any, Watch Tower Bible and Tract Society of Pennsylvania has with California.

IT IS SO ORDERED.

Dated: 3/26, 2004

W. SCOTT SNOWDEN
Judge of the Superior Court of California,
County of Napa

Approval as to form.

Dated: February ___, 2004

Robert J. Schnack, Esq., Attorney for Watchtower Defendants

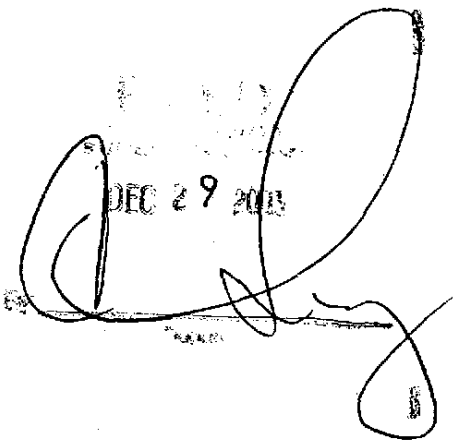
Dated: ~~February~~ March 2, 2004

William L. ~~Brelsford~~, Esq., Attorney for Plaintiffs CHARISSA W. and NICOLE D.

BLUEBIRD (888) 477-0530
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Service Department
Orange, CA 92867

EXHIBIT 3

EXHIBIT 3



SUPERIOR COURT OF CALIFORNIA

COUNTY OF YOLO

Daniel West, et al., Plaintiffs, vs. Watchtower Bible and Tract Society of New York, Inc., et al., Defendants	Case No.: No. CV 03-1439 **ORDER AFTER HEARING** Date: December 4, 2003 Time: 8:30 Dept: 11

The motion to quash of defendants Kingdom Support Services, Religious Order of Jehovah's Witnesses and Watchtower Bible and Tract Society of Pennsylvania and the demurrer of defendants Watchtower Bible Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Kingdom Support Services, Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses and Quincy Congregation of Jehovah's Witnesses were heard at the above-noted place and time. Rudy Nolen and William L. Brelsford, Jr., Attorneys at Law, appeared for the plaintiffs. Robert J. Schnack, Attorney at Law, appeared for the defendants.

Having considered all matters submitted in the pleadings and on oral argument, all admissible evidence, the file in this case and the applicable law, the court now rules as follows:

///

1. The motion of defendants Kingdom Support Services and Religious Order of Jehovah's Witnesses to quash service of the summons and complaint is **GRANTED**;

2. The motion of defendant Watchtower Bible and Tract Society of Pennsylvania to quash service of the summons and complaint is **DENIED WITHOUT PREJUDICE**. The plaintiffs are authorized to conduct limited written discovery regarding the entity's contacts with California. The plaintiffs are not authorized to depose Richard E. Abrahamson;

3. The demurrer to the first cause of action for respondeat superior is **SUSTAINED** without leave to amend. The complaint does not allege that defendant Silva was acting within the scope of his employment when he abused the plaintiffs. (*Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609.) The plaintiffs argue that a respondeat superior theory is available to them because the entity defendants ratified Silva's acts. However, as discussed below, the plaintiffs have not properly pleaded ratification or shown a reasonable possibility of amending to cure the defect. The cause of action for sexual battery remains pending as to defendant Silva;

4. The demurrer to the second cause of action for negligence, third cause of action for negligent appointment, retention and supervision, fourth cause of action for gross negligence with willful misconduct, fifth cause of action for breach of fiduciary duty and seventh cause of action for fraud, fraudulent concealment and conspiracy is **OVERRULED**. Although the complaint does contain some allegations about the practices of the Jehovah's Witness church (see e.g. Paragraph 25), the plaintiffs do not allege that they were vulnerable to Silva because of their religious piety. Such an allegation would bar their complaint under the First Amendment and the opinion in *Richelle L. v. Roman Catholic Archbishop of San*

Francisco (2003) 106 Cal.App.4th 257. It is clear from the complaint that the plaintiffs were vulnerable to Silva because of their youth;

5. The demurrer to the sixth cause of action for negligence per se and common law negligence for failure to report is **SUSTAINED** with leave to amend. The plaintiffs may amend the complaint to either (1) clearly allege that the defendants acquired knowledge or a reasonable suspicion of child abuse after January 1, 1997; or (2) delete the allegations concerning Penal Code §11164;

6. The demurrer to the eighth cause of action for ratification is **SUSTAINED** without leave to amend. "Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done *on his behalf* by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is 'inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it." (*Fretland v. City of Humboldt* (1999) 69 Cal.App.4th 1478, 1490-1491.) The plaintiffs have not shown, and have not shown a reasonable possibility of alleging, that Silva acted "on behalf of" the entity defendants when he molested the plaintiffs;

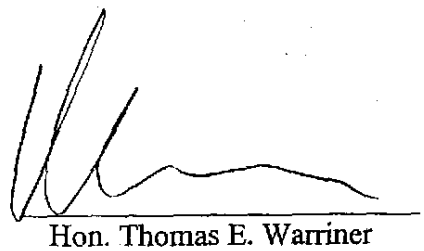
7. The demurrer to the ninth cause of action for alter ego and single business enterprise is **SUSTAINED** without leave to amend. The plaintiffs have conceded that this is not a separate cause of action;

8. The demurrer to the tenth cause of action for negligent usurpation of investigatory function is **SUSTAINED** without leave to amend. The plaintiffs have not cited any authority supporting this cause of action;

///

9. The demurrer to the eleventh and twelfth causes of action for violations of the Penal Code is **SUSTAINED** with leave to amend. The cited code sections do not create private rights of action. However, there is a reasonable possibility that the plaintiffs could amend to allege negligence per se based on violations of the Penal Code sections.

Date: 12/29/03

By: 

Hon. Thomas E. Warriner
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: WEST ET AL VS. WATCHTOWER BIBLE ET AL

CASE NO: CV-CV-03-0001439

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on January 6, 2004 I served true and correct copies of the foregoing ORDER AFTER HEARING FILED 12-29-03 by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

RUDY NOLEN
ATTORNEY AT LAW
350 UNIVERSITY AVENUE, SUITE 280
SACRAMENTO, CA 95825

ROBERT J. SCHNACK
ATTORNEY AT LAW
11335 GOLD EXPRESS DRIVE, SUITE 105
GOLD RIVER, CA 95670

MICHAEL W. JANSEN
ATTORNEY AT LAW
1301 COLLEGE STREET
WOODLAND, CA 95695

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: January 6, 2004

JAMES B. PERRY
COURT EXECUTIVE OFFICER

By: _____
CSANCHEZ, Deputy Clerk

certmail.s (CCM)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On March 10, 2005, I caused the within **DECLARATION OF WILLIAM L. BRELSFORD IN SUPPORT OF PLAINTIFFS' OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES,** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On March 10, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

///

///

Ami 2-28

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
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Kenneth Fibich, Esq., SBN 06952600
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FIBICH, HAMPTON, LEEBRON &
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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB 17 2005

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **PROOF OF SERVICE** Date: April 8, 2005 Time: 9:30 a.m. Dept. B

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento,

California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 4, 2005, I caused the within:

1. **NOTICE OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES;**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES;**
3. **DECLARATION OF WILLIAM BRELSFORD, ESQ. IN SUPPORT OF THE MOTION TO COMPEL DISCOVERY RESPONSES BY WATCHTOWER PENNSYLVANIA;**
4. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO DOCUMENT REQUESTS CONTAINED IN FOURTH AMENDED DEPOSITION NOTICE OF PMK;**
5. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO PMK DEPOSITION AREAS OF INQUIRY;**
6. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES FORM INTERROGATORIES;**
7. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE;**

8. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE; and,**

9. **SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, SET ONE**

the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** – I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_X__ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
Delivered at:
Napa County Superior Court
825 Brown Street
Napa, California

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 4, 2005, at Sacramento, California.

William Brelsford

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB - 4 2005

Clerk of the Napa Superior Court
By: A. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

DECLARATION OF WILLIAM BRELSFORD, ESQ. IN SUPPORT OF THE MOTION TO COMPEL DISCOVERY RESPONSES BY WATCHTOWER PENNSYLVANIA

Date: 4/8/05
Time: 9:30 AM
Dept. 13

Complaint Filed:
Trial Date: None

I, William Brelsford, Jr., declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. Attached hereto as Exhibit A is a true and correct copy of a "meet and confer" letter dated November 15, 2004, sent to Robert Schnack, Esq., counsel for Watch Tower Pennsylvania.

3. Attached as Exhibit B is a true and correct copy of a "meet and confer" letter dated June 1, 2004, to Robert Schnack, Esq., counsel for Watch Tower Pennsylvania.

4. Attached hereto as Exhibit C is a true and correct copy of a "meet and confer" letter dated November 4, 2004, to Robert Schnack, Esq., counsel for Watch Tower Pennsylvania.

5. Attached hereto as Exhibit D is a true and correct copy of Defendant's objection to Fourth Amended Notice of Deposition of the Person Most Knowledgeable. This document also contains Plaintiffs' discovery requests.

6. Attached hereto as Exhibit E is a true and correct copy of Defendant's responses to Plaintiffs' First Set of Special Interrogatories. This document also contains Plaintiffs' discovery requests.

7. Attached hereto as Exhibit F is a true and correct copy of Defendant's responses to Plaintiffs' Request for Production of Documents, Set One. This document also contains Plaintiffs' discovery requests.

8. Attached hereto as Exhibit G is a true and correct copy of Plaintiff's Form Interrogatories to Defendant Watch Tower Pennsylvania and Defendant's responses to Plaintiffs' Form Interrogatories. This document also contains Plaintiffs' discovery requests.

9. Attached hereto as Exhibit H is a true and correct copy of pertinent portions of the deposition testimony of Watch Tower Pennsylvania's designated

Person Most Knowledgeable, Alexander Reinmuller, which was completed August 25 and 26, 2004, at pages 46-49.

10. Attached hereto as Exhibit I is a true and correct copy of pertinent portions of the *Jehovah's Witnesses in the Devine Purpose*, pages 48 and 49.

11. Attached hereto as Exhibit J is a true and correct copy of pertinent portions of the *Organization for Kindgom Preaching and Deciple Making*, pages 3, 10, and 11.

12. Attached hereto as Exhibit K is a true and correct copy of pertinent portions of an article from the January 1, 1997 publication entitled *The Watchtower*, pages 15-16.

13. Attached hereto as Exhibit L is a true and correct copy of pertinent portions of a publication entitled *Your Word is a Lamp to My Foot*, pages 42-45.

14. Attached hereto as Exhibit M is a true and correct copy of pertinent portions of an article dated January 15, 2001 in a publication entitled *The Watchtower*, titled "How the Governing Body Differs from a Legal Corporation", pages 28-31.

15. Attached hereto as Exhibit N is a true and correct copy of an article entitled "Theocratic Organization with which to Move Forward Now", dated December 15, 2001 from a publication entitled *The Watchtower*, at pages 748, and 759-760.

16. Attached hereto as Exhibit O is a true and correct copy of pertinent portions of the March 15, 1990 publication entitled *The Watchtower Announcing Jehovah's Kingdom: What Does Jesus' Death Mean to You*, at pages 18-20.

17. Attached hereto as Exhibit P is a true and correct copy of an affidavit by Watch Tower Pennsylvania President Don Adams dated February 11, 1986.

18. Attached hereto as Exhibit Q is a true and correct copy of pertinent portions of the deposition testimony of Watch Tower Pennsylvania's designated

William L. Brelsford in Support of Motion to Compel

26. Attached hereto as Exhibit Y is a true and correct copy of a letter dated February 5, 1993 regarding a general liability insurance policy with enclosures.

27. Attached hereto as Exhibit Z is a true and correct copy of a Commercial Umbrella Declaration for Insurance Coverage for Watchtower Bible and Tract Society.

28. Attached hereto as Exhibit AA is a true and correct copy of pertinent portions of the deposition testimony of Watch Tower Pennsylvania's designated Person Most Knowledgeable, Alexander Reinmuller, completed August 25 and 26, 2004, at pages 274-277, 282-285, 298-305, and 359-378.

29. Attached hereto as Exhibit BB is a true and correct copy of pertinent portions of the deposition testimony of Watch Tower Pennsylvania's designated Person Most Knowledgeable, Alexander Reinmuller, completed August 25 and 26, 2004, at pages 194-197, and 202-213.

30. Attached hereto as Exhibit CC is a true and correct copy of pertinent portions of the deposition testimony of Watch Tower Pennsylvania's designated Person Most Knowledgeable, Alexander Reinmuller, completed August 25 and 26, 2004, at pages 102-105.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Dated: February 3, 2005

William L. Brelsford

EXHIBIT A

EXHIBIT A

LOVE & NORRIS
ATTORNEYS AT LAW
314 Main Street, Suite 300
Fort Worth, Texas 76102-7423
Telephone 817.335.2800
Facsimile 817.335.2912

Gregory S. Love, Esq.
E-mail gslove@lovenorris.com

Kimberlee D. Norris, Esq.
E-mail kdnorris@lovenorris.com

November 15, 2004

Robert J. Schnack, Esq.
Bullivant, Houser, Bailey
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Dear Bob:

As you know, we had a number of disagreements about the scope of the PMK deposition and the documents that were produced in response to the notice and prior discovery. Notwithstanding our disagreements, we went forward with the deposition of Alex Reinmueller in August of 2004. After taking the opportunity to re-read Mr. Reinmueller's testimony and the case law regarding general and specific jurisdiction in California, it is necessary that we address many of our prior disagreements as well as a few new ones. Please consider this letter my framework for a "meet and confer" discussion.

ORGANIZATIONAL STRUCTURE

Of course, Plaintiffs' expectation of examining the PMK regarding Watch Tower Pennsylvania's structure and its interrelationship with the Governing Body and the other Watchtower Defendants was primary (See Deposition Notice "Subject Matter Nos. 1-3"). Several objections were made in Defendants' Objection to the Fourth Amended Notice; these objections seem to be based on your assertion of The *Serbian* Objection or that the subject matter was outside the relevant scope regarding jurisdiction. For example, you made objections suggesting that questioning Mr. Reinmueller regarding to reporting relationships within the Jehovah's Witnesses organization was inappropriate inquiry into "ecclesiastical structure". I need to challenge that position and request further testimony; I expect that you cannot agree to that. Additionally, Mr. Reinmueller testified that he is NOT the person with the most knowledge about the Watchtower Society's organizational structure (notwithstanding the notice); see Page 49 Lines 49+.

WATCH TOWER PENNSYLVANIA'S CONTACTS IN CALIFORNIA

It is Plaintiffs' position that Watch Tower Pennyslvania exercised continuous and systematic business contacts in California from 1970 (and earlier) to the present by involvement in real estate, insurance and other transactions. You have produced some documentation in response to Plaintiffs' discovery requests and the documents sought in the PMK Deposition

Notice. Several documents and categories of documents have not been produced. I have put together a list below and the deposition references within Mr. Reinmueller's testimony.

1. BRANCH OFFICE PROCEDURE MANUAL (BOP)

This is document was acquired by Plaintiffs OUTSIDE of the production from the Watchtower Defendants. In fact, it was specifically requested (see Plaintiffs' Request for Production – West/West/Pence – Request No. 22). It was not produced but should have been. In fact, we would like every version of the Branch Office Procedure (BOP) Manual from 1970 to 2003. Mr. Reinmueller testified that the BOP Manuals should exist at Watch Tower Pennsylvania's offices [Reinmueller Depo Page 69 Line 19 through Page 71 Line 9].

2. WATCH TOWER PENNSYLVANIA'S GENERAL FUND

Mr. Reinmueller testified about the fact that Watch Tower Pennsylvania is directly involved in the building of Assembly Halls through its "general fund" [Reinmueller Depo Page 81 Line 3 through Page 84 Line 7+]. He testified that Watch Tower Pennsylvania financed the construction of such an Assembly Hall in California which was completed in 2003. I think the documents related to that Assembly Hall and Watch Tower Pennsylvania's general fund should be provided so that Plaintiffs can evaluate this particular "contact" in California.

3. KINGDOM HALL LOANS

Some Documents regarding the Kingdom Hall Loans made by Watch Tower Pennsylvania in California have been produced. There is much, however, that has not been produced. Here is a brief description of documents and document categories that have not been produced that relate to loans made by Watch Tower Pennsylvania to California Congregations:

a. List of CA congregations receiving loans

Page 91 Line 25 – Page 94 Line 4
-Reinmueller reviewed "the number of loans in WTPA records made to CA"
-375 congregations appeared on that list since the 1980s
-there are records that would verify the amounts of the loans
-there are records that would show how much money has come in via those notes

b. Promissory Notes from CA loans

Page 119 Line 8 – Page 121 Line 7
-the Kingdom Hall loans would be documented by a promissory note
-the notes are kept in the treasurer's office
-those records go back to the mid-'80s

c. Deeds of Trust

Page 142 Line 19 – Page 143 Line 4

Page 148 Lines 13-16
-WTPA has copies of the Deeds of Trust
-in the same files as those that contain the documents regarding a loan

d. **Loan Transaction Documentation**

Page 162 Lines 7 – 21
Page 170 Lines 16 – 23
-a complete file of a congregation's Kingdom Hall Loan transaction, would be on computer in the treasurer's office
-applications would be in the respective congregation's active loan file

e. **Interest Income**

Page 181 Line 6 – Page 183 Line 8
-Reinmueller testifies that it is possible to determine the interest income earned from Kingdom Hall loans (at least from 1997 to the present)
-more can be estimated

f. **Financial Statements**

Page 24 Lines 3 – 20
-Accounting Dept prepared Acct Reports/Financial Reports for all corporate entities including WTPA

g. **Additional Corporate Resolutions**

Page 214 Line 3 – Page 218 Line 12
-gap in records produced – Bob Schnack to "inquire"

h. **Statements to Congretations**

Page 160 Line 25 – Page 162 Line 6
-"all property loan payments acknowledged on your WTPA Corp. statement"
-the records are kept on computer

i. **Annual Branch Reports**

Page 155 Line 5 +
-Annual Branch Report of Activities and Financial Status
-deals with Kingdom Hall loans as investments
-"assets on your balance sheet"

4. INSURANCE/KINGDOM HALL ASSISTANCE ARRANGEMENT

Some Documents regarding the Watch Tower Pennsylvania's insurance purchases/administration and the Kingdom Hall Assistance Arrangement (KHAA) in California have been produced by Watch Tower Pennsylvania. There is much, however, that has not been produced. Here is a brief description of document categories that have not been produced that relate to insurance and KHAA:

a. **Insurance Policies**

Page 274 Lines 11 – 24
Page 285 Line 7 +
Page 301 Line 15 – Page 302 Line 22*
-WTPA purchased insurance policies and CA congregations participated
-produced incomplete insurance policies not complete (need complete for all years)
-there are files that contain full policies for years from at least 1990 to present

b. **Insurance Invoices**

Page 283 Lines 5 – 8
-congregations receive insurance invoices from WTPA

c. **Elder Misconduct**

Page 362 Line 12 – Page 368 Line 5
-we need the Red Bluff database and claim file
-we need the files for all Elder Misconduct or abuse claims paid by KHAA in CA

d. **KHAA Surplus/Deficit?**

Page 374 Line 3 – Page 375 Line 20
-does KHAA operate at a surplus or a deficit?
-witness instructed not to answer

5. DONATIONS MADE TO WTPA BY CALIFORNIA

Some Documents regarding the donations made to Watch Tower Pennsylvania from people and/or entities in California have been produced by Watch Tower Pennsylvania. There is much, however, that has not been produced. Here is a brief description of document categories that have not been produced that relate to donations made to Watch Tower Pennsylvania from California:

a. **Donations Instructions**

Page 195 Line 8 – Page 196 Line 18
-more documents that describe where and to whom to make donations

b. **Donations from California**

Page 203 Line 6 – Page 204 Line 14
-there have been many donations from CA
-someone could be tasked with job to determine the amount of donations from CA

c. **Database of California Donations Information**

Page 206 Line 22 – Page 211 Line 9
-database exists that has records of CA donations from 1997 to present
-there are financial statements that exist/were created that describe total donations
-no database that breaks out CA only – can do entire USA

Please give me a call when you have a chance so that we can discuss these and the other issues that I have raised. I would like come to agreement on as many matters as possible prior to our next hearing in Napa.

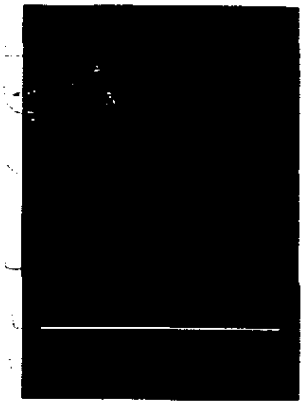
Very truly yours,

GREGORY S. LOVE

GSL/am

EXHIBIT B

EXHIBIT B



350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

June 1, 2004

Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Via Facsimile 916-852-5777

Re: West, et al., v. Watchtower, et al.

Dear Bob:

As you know, we have Richard Abrahamson's deposition set and hearings thereafter on Watch Tower PA's Motion to Quash; however, we still have not received complete written discovery responses from your clients. We want to first outline some of our concerns which we need you to address; if we cannot reach agreement, we need to get before the judge before the Abrahamson deposition and the issue of the Special Appearance is addressed by the Court.

I. INITIAL OBSERVATIONS

a) OBJECTIONS

We have reviewed all of the requests for information submitted by the Plaintiffs in this action (Interrogatories and Requests for Production) and have noticed there is an objection lodged to EVERY ONE of the requests ("Irrelevance" and others). To the extent there is an answer provided, it is always "subject to the above objections". To the extent you are withholding discovery based on these objections, it is necessary for us to challenge those objections. We certainly will disagree on whether most of the requests are relevant; it is our expectation that this information be produced, nonetheless.

With respect to the "vague and ambiguous" objections, it is hardly possible for us to be less vague and ambiguous when we are actually naming the document we would like produced

(See Request Nos. 16, 17, 18 and 22). It is our impression that many of your objections are boilerplate which discourages us from addressing your objections one-by-one for each interrogatory and request for production. If you, in fact, are having trouble answering one or more of our informational requests based on vagueness or ambiguity, let's work these out by phone.

b. SERBIAN EASTERN ORTHODOX DIOCESE v. MILOVOJEVICH

With respect to your objection based on the holding of Serbian Eastern Orthodox Diocese v. Milovojevich, we think your reliance is misplaced. The Serbian Court held that the courts will not decide matters of church governance and the appointment/removal of religious leaders; BUT, the court also held that it is appropriate for the courts to evaluate church hierarchy and internal information. Likewise, we are asking the court to order the production of information that relates to a dispute about secular matters – the abuse of children.

If you are claiming this is a privilege, we need for you to prepare a privilege log with the documents and provide the log and the documents to the Court.

c. RELEVANT TIME PERIODS

Many of your discovery answers provide information that fails to cover the requested time period. For example, your responses to Special Interrogatory Nos. 1 and 2 provide the standard objections, and then go on to provide anemic responses describing Watch Tower PA's function/purpose since April of 2002. Special Interrogatory No. 2 requests "all the changes in your function/purpose within the Jehovah's Witnesses organization since 1970"; NO ANSWER IS PROVIDED. Giving the issues raised in determining general and specific jurisdiction, we need a complete response that covers the time period from 1970 to the present – not just April 2002 to the present. This is particularly necessary given the fact that three of your responses to Plaintiffs' Requests for Production simply say: "see Defendant's response to Special Interrogatory No. 1" (Responses to Request Nos. 5, 6 and 7).

Please review the Requests/Interrogatories so that answers covering the appropriate time periods is provided.

d. VERIFICATION

Mario Moreno appears to be the person who has verified that the answers provided in Watch Tower PA's Answers to Interrogatories are true and correct; if we need additional information or clarification with respect to Watch Tower PA's responses, do we need to depose Mr. Moreno? In what capacity is Mr. Moreno verifying Watch Tower PA's discovery

responses? Is Mr. Moreno part of the Watch Tower PA legal department?

II. SPECIAL INTERROGATORIES

a. INTERROGATORIES 1 AND 2

In your Motion to Quash, you have challenged Plaintiffs' assertions that Watch Tower PA's presence in California is significant and justifies the Court's exercise of general jurisdiction. Plaintiffs are entitled to evaluate Watch Tower PA's business and functions to evaluate its impact in California. Special Interrogatory Nos. 1 and 2 are specific and clear in attempting to gather the information that is needed to respond to Watch Tower PA's Motion to Quash. The Response(s), however, provide virtually no information about Watch Tower PA's function/purpose within the Jehovah's Witnesses organization from 1970 to the present.

Additionally, Plaintiffs need far more information about the KHAA and the Kingdom Hall Building Fund than what is provided; that information also needs to cover the time periods from 1970 to the present.

b. INTERROGATORY NOS. 4 AND 6

Interrogatory No. 4 requests a description of how Watch Tower PA is organized operationally; no information is provided. Plaintiffs understand from your response that you claim to have no subsidiary or parent corporations; however, Plaintiffs still need a thorough description of how Watch Tower PA is organized operationally – how it carries out the functions that should be and are described in your responses to Special Interrogatory Nos. 1 and 2. To the extent you believe Interrogatory No. 4 to have been vague, please consider the above as our attempt to make the informational request clear. Additionally, Plaintiffs need more in your response to Special Interrogatory No. 6 than the names of the corporate officers.

c. INTERROGATORY NOS. 7, 8, 9, 22, 23 AND 24

It is Plaintiffs' position that the relationship between Watch Tower PA and the Governing Body is very important. In anticipation of some of your objections, the Interrogatories were crafted in order to get a description of the relationship between Watch Tower PA and the Governing Body (corporate, organizational and theocratic). No response is given beyond the fact that some of the Governing Body members served as officers and directors of Watch Tower PA prior to October 2000 – this is not enough. We have obtained some of the Jehovah's Witnesses literature which describes corporate, legal, organizational and theocratic relationships between Watch Tower PA and the Governing Body. We expect your client to provide that and much more in response to these Special Interrogatories. We would very much like to take AND FINISH Richard Abrahamson's deposition regarding

Watch Tower PA and its California contacts. Unless we get a more complete response to this and other informational requests, we will not be taking the deposition in the West et al v. Watchtower et al case; we can simply fight about adequate responses, get the additional information and then go and depose.

d. INTERROGATORY NOS. 10 THROUGH 21

It is also Plaintiffs' position that understanding the relationship between Watch Tower PA and the other Defendant corporations/entities (Watchtower NY, Christian Congregation of Jehovah's Witnesses, the Quincy Congregation and the Woodland Congregation) is important. Plaintiffs have attempted to encourage a thorough response by attaching documents that described relationship and being broad enough in language to avoid the word-games. Unfortunately, we got nothing other than objections and simple assertions that "there is no organizational relationship" and "no corporate relationship exists". Someone or some group is orchestrating the Jehovah's Witnesses organization and operations and we have tried to ask those questions with as much precision as possible. Please provide thorough answers.

With respect to the occasional reference to Watch Tower PA lending money to other entities, please thoroughly described what is loaned, how often, how much, under what arrangements, with what documents, who coordinates, what amounts and why. It is especially significant to Plaintiffs that Watch Tower PA is loaning money to the Woodland Congregation and both congregations send money to Watch Tower PA; Plaintiffs need much more information/documents about these transactions. Again, we will wait to take the deposition of Richard Abrahamson until we receive complete responses.

e. INTERROGATORY NOS. 25 THROUGH 34

In order to understand the operations of the Jehovah's Witnesses organization, Plaintiffs have directed specific and clear requests for information regarding Circuit Overseers and District Overseers. It is Plaintiffs' position that Watch Tower PA is intimately familiar with the appointment, removal, training and function of Circuit Overseers and District Overseers; simply stating that Watch Tower does not appoint or remove is insufficient. Watch Tower PA is in a position to provide responsive information and is simply choosing not do so.

f. INTERROGATORY NOS. 35 THROUGH 44 (EXCLUDING NO. 38)

The purpose of Interrogatory Nos. 35 through 44 (though all are different) is to understand the policies, procedures and practices of the Society to allegations of sexual abuse AND to understand the Watch Tower PA's involvement therein. It is very important to understand who authored the child abuse policies, who enforced them and how they are followed, if at all.

Your response to Special Interrogatory No. 35 describes one situation of a California sexual abuse report being brought to the attention of Watch Tower PA; Plaintiffs would like to know much more about this (you can redact the name of the abuser). It is Plaintiffs position that Watch Tower PA's involvement in a California child abuse report is very important for the purposes of general jurisdiction and specific jurisdiction. The fact that several of your responses say: "see response to Interrogatory No. 35" make it necessary for Plaintiffs to learn more about the incident described.

g. INTERROGATORIES 45 THROUGH 50

The purpose of Interrogatory Nos. 45 through 50 is to better understand the existence and use of the sexual abuser database referenced by J. R. Brown and others. In response to these interrogatories, you have provided no responses; instead you simply object and claim that Plaintiffs are not entitled to the information.

It is Plaintiffs' position that the existence of the database and its use by Watch Tower PA in an indication of their specific contacts with California in monitoring the sexual abuse allegations. This is important to Plaintiffs analysis of Watch Tower PA's contacts as it relates to both general and specific jurisdiction. If the database is operated by another Jehovah's Witnesses entity, please identify that entity and how the database is operated separate and apart from Watch Tower PA (if that is the case). Again, the receipt of this information is necessary for Plaintiffs in addressing the matters raised in Watch Tower PA's Motion to Quash. Let us know if we need to seek a hearing before taking the Abrahamson deposition in the West et al v. Watchtower et al case.

III. REQUESTS FOR PRODUCTION

a. REQUEST FOR PRODUCTION NO. 1

In Watch Tower PA's Motion to Quash and its subsequent Replies, Watch Tower PA stresses the position that Watch Tower PA is a separate and distinct corporate entity that keeps its own books and records. Accordingly, Plaintiffs have requested those records in their first request. It is in these records that Plaintiffs expect to find a historical record of Watch Tower PA's business and transactions. It is also in these records that Plaintiffs expect to find additional documentation that will describe the relationship between Watch Tower PA and other Jehovah's Witnesses entities. For example, Plaintiffs have attached hereto a copy of the "Annual Meeting of Pennsylvania Corporation – October 7, 2000" which provides considerable information about the Governing Body, Watch Tower PA the relationship between the two as it relates to carrying out the operations of the Jehovah's Witnesses organization.

Plaintiffs' expect the production of other corporate documentation which is easily accessible

to you and very valuable to Plaintiffs in understanding the Jehovah's Witnesses organization and how Watch Tower PA has operated within the organization from 1970 to the present. With respect to this case, Plaintiffs will need this documentation to do complete an examination of Richard Abrahamson.

b. REQUEST FOR PRODUCTION NO. 2

Plaintiffs have requested documents that describe your hierarchy and personnel from 1970 to the present. Notwithstanding your objections as to vagueness and relevance, it is hard to believe that there are "no responsive documents". You have provided no information regarding the departments, divisions or offices of Watch Tower PA, who is involved therein and to whom they report. We would prefer to not waste time with Richard Abrahamson and others trying to understand the people, positions and their reporting structure at those depositions; please provide the requested documentation.

c. REQUEST FOR PRODUCTION NO. 4

Plaintiffs are attempting to understand the relationship between Watch Tower PA and "other business and corporate entities"; more specifically, any person, organization, corporation or entity that is somehow related to the Jehovah's Witnesses organization. Please supplement with more than what has been provided in your responses to Request Nos. 1 through 3, and Special Interrogatories 1 through 24.

d. REQUEST FOR PRODUCTION NO. 5

Plaintiffs Request for Production No. 5 is neither irrelevant, vague or overbroad; Plaintiffs expect a full and complete production in response to Request No. 5. Plaintiffs have attempted in good faith to attach similar documents to assist you in gathering documents without result. The Jehovah's Witnesses organization (including Watch Tower PA) have published books, magazines and literature describing the relationship between Watch Tower PA and the Governing Body; in fact, Watch Tower PA holds the copyright to most of these published works – please produce.

Watch Tower PA's reference to Watch Tower PA's response to Special Interrogatory No. 1 is inadequate (see above).

e. REQUEST FOR PRODUCTION NOS. 6 AND 7

Plaintiffs Request for Production Nos. 6 and 7 are neither irrelevant, vague or overbroad; Plaintiffs expect a full and complete production in response to Request Nos. 6 and 7. Again, Plaintiffs have attempted in good faith to attach similar documents to assist you in gathering documents without result. The Jehovah's Witnesses organization (including

Watch Tower PA) have published books, magazines and literature describing the relationship between Watch Tower PA and other corporate entities (including Watchtower NY and the Christian Congregation of Jehovah's Witnesses); in fact, Watch Tower PA holds the copyright to most of these published works – please produce.

Watch Tower PA's reference to Watch Tower PA's response to Special Interrogatory No. 1 is inadequate (see above).

f. REQUEST FOR PRODUCTION NOS. 8 AND 9

Plaintiffs recognize that documents (memos and forms) were produced in response to Request Nos. 8 and 9; however, there are no documents produced that were actually used for the California congregations that are at issue in this case (Woodland Congregation and the Quincy Congregation) or any other California congregation. Plaintiff is entitled to all of the documentation that relates to Watch Tower PA's business in or with California; for the purpose of a general jurisdictional analysis, this entitlement is not limited to the Woodland Congregation and the Quincy Congregation. At present, Plaintiffs have received no documentation of actual transactions between Watch Tower PA and any California entity – please produce. Additionally Watch Tower PA has not yet provided the instructional materials/manuals for the congregations' use of the KHAA or the Kingdom Hall Financing Fund. Additionally, Watch Tower PA has not produced the insurance policy under which any of the California congregations are insured (especially the Woodland Congregation and the Quincy Congregations).

g. REQUEST NOS. 10 AND 12

In Request Nos. 10 and 12, Plaintiffs are seeking specific materials relating to child sexual abuse and its reporting. Watch Tower PA has provided no response other than objections to relevance, vagueness, over-breadth and unduly burdensome; Plaintiffs are certainly willing to help you with the vagueness, if the requests are unclear. Also, let us know if you really think Request Nos. 10 and 12 are irrelevant.

With respect to your objection based on Serbian, see above discussion.

h. REQUEST NOS. 11 AND 13

Plaintiffs' position with respect to Watch Tower PA's responses to Request Nos. 11 and 13 is similar to that of Request Nos. 10 and 12, except that it is hard for Plaintiffs to believe that there are no responsive documents. *Pay Attention to Yourselves and All the Flock* is a book to which Watch Tower PA holds the copyright and is specifically responsive to Request Nos. 11 and 13. It is Plaintiffs' position that there are several other documents that are responsive to these requests. It is frustrating to Plaintiffs that Watch Tower PA is

only willing to produce those documents that Plaintiffs demonstrate themselves to already have possession; this needs to stop – please produce all responsive documents.

i. REQUEST NOS. 14 THROUGH 26

In Request Nos. 14 through 26, Plaintiffs have requested very specific categories of documents that are highly relevant in this case; in most of the requests, Plaintiffs have requested a specific publication by its title. Notwithstanding, Watch Tower PA has responded that the requests (among other things) are vague. Please again review the requests and produce the documents.

With respect to your objection based on Serbian, see above discussion.

j. REQUEST NOS. 27 AND 28

Plaintiffs have requested documentation that relates to criminal and civil litigation involving Watch Tower PA. With respect to Request No. 27 (criminal), please indicate whether there are responsive documents that are subject to the objections or whether there simply are no responsive documents.

With respect to Request No. 28 (civil), please provide the documentation regarding those suits. It is clear that Watch Tower PA has been involved in litigation and is willing to use that involvement offensively (use of Abrahamson deposition from the 2001 Florida car wreck case). Plaintiffs are willing at this point to accept a list of all civil litigation in which Watch Tower PA has been involved with a brief description of the case, understanding that Plaintiffs may request additional information thereafter.

k. REQUEST NO. 29 AND 30

In the event you are in possession, custody or control of any documents responsive to Request Nos. 29 or 30, and are withholding documentation based on your assertion of privileges or objections, please provide Plaintiffs with a privilege log of those documents.

l. REQUEST NOS. 31 AND 32

In the event you are in possession, custody or control of any documents responsive to Request Nos. 31 or 32, and are withholding documentation based on your assertion of privileges or objections, please provide Plaintiffs with a privilege log of those documents.

Please contact us after reviewing this letter. It is our understanding that the new deadline, per our earlier agreement, to file a motion to compel is June 4, 2004.

Very truly yours,

NOLEN SAUL BRELSFORD

William Brelsford

Enc.

cc: Greg Love
Diane McGehee

WB/dc

Annual Meeting of Pennsylvania Corporation
October 7, 2000

The Opening Prayer was offered by Br. Steve Lett (Governing Body member)

Chairman's Comments – Br. John Barr (Governing Body member). How grateful we should be to be meeting together. Only Jehovah's Witnesses believe that Jesus is already ruling as King. He has already thrown Satan out of the heavens. Soon he will move further to bring about the doing of God's will. With such firm conviction and such a firm faith in these momentous events unseen to human eyes, all of us do heartily endorse Paul's words of our day's text in 1 Thessalonians 1:5. What has been the result of Jehovah's people declaring the good news with holy spirit and power? Tens of thousands are responding. You will be thrilled to read the 2001 *Yearbook*. Because of a need for an extended session, the additional time normally taken for the election of officers at the Annual Meeting was done at a preliminary meeting with all of the corporation members. Membership as of October 2, 1999, was 317. Three new members were added on May 24 and another 25 were added on June 28. Eight members died or were removed. On October 7, 2000, there were 337 members of the corporation.

HAITI – Br. John Norman – (Branch Committee coordinator). Proverbs 18:10 "The name of Jehovah is a strong tower." When you think of Haiti, you probably think of a land dominated by voodoo. This is true. But this is not a serious problem. The brothers seem to deal with it and leave it alone when they come into the Truth. One witch doctor came into the Truth. He was involved in an accident. Usually people take on voodoo to protect themselves or to hurt others. He lost his leg in the accident. He wondered how this could happen, since he had taken on voodoo. He consulted Protestant churches and other organizations. Then he came into contact with Jehovah's Witnesses. He started to study and learned about time and unforeseen occurrences, and was baptized in August. Others see that their families come into the Truth and are doing well and they wonder why they themselves are not doing so well. So some start to study. A little sister was working with one of the missionaries in service. The missionary said to the householder, "The name of Jehovah is a strong tower." The little sister said spontaneously, "That is true. My family practices voodoo and sometimes I have trouble sleeping. So I pray to Jehovah and then I can sleep." She found that Scripture true.

Haiti went on the donation arrangement and the warehouse arrangement. There were some pessimists, like one brother who said, "Brooklyn won't be able to print literature fast enough." But it is all going well. All of the brothers in the Kingdom Hall now have their own *Watchtower*. They line up after the meeting from the literature counter to the back of the Kingdom Hall to get literature. Literature placements have quadrupled since that arrangement. Contributions have gone up. Brothers are contributing more and also people in the territory are contributing more. There are more Bible studies. In December before the arrangement they had 10-11,000 Bible studies for the 11,000 publishers. They had 18,000 Bible studies in April because of the many auxiliary pioneers. Now they average 16,000 Bible studies. In Haiti whenever the number of Bible studies goes up, a year later the number of publishers goes up. The Governing Body has seen fit to send missionaries to Haiti 2 or 3 weeks ago. It's a young couple who is assigned to the south of the country. 19 years ago Brother Norman went to Haiti. There was a family with a 12-year-old girl. The parents were preparing to move to the United States. Now this young girl is a Gilead graduate. Yes, it's this same sister who arrived as a missionary recently. Now she is teaching her husband Creole. The branch said they will have others teach him Creole, also. Brothers and sisters from Guadeloupe serve here as special pioneers. They don't need a language class so they are effective immediately. In a few weeks, other special pioneers from the Dominican Republic will arrive to serve in the sign-language field. They are just opening up that field. The first publisher was just baptized since starting that field a few months ago.

The branch in Haiti is expanding. Haiti is not a cosmopolitan country, and brothers from Denmark, Germany, Canada, the United States and England have come here to work on the branch. This permits the Haitian brothers and sisters to see the impact of the foreign brothers. Many brothers have come to serve where the need is greater from England, the United States and Canada. They are looking forward to the construction of Kingdom Halls. Society representatives said 50 Kingdom Halls need to be built in the next 5 years. They had 51,000 at the Memorial. There is a great potential. If we can build Kingdom Halls, the Haitians will fill them. Special arrangements were made during the embargo in Haiti when the brothers couldn't get to the ports. The literature for the branch then came from the Dominican Republic. They found out that doing it this way was better. They got their literature quicker. So they left it that way when the embargo ended.

KOREA – Br. Milton Hamilton – (Branch Committee coordinator). Korea has long been described as the most dangerous flashpoint in Northeast Asia, due to the frictions between North Korea and South Korea. In North Korea there are no witnesses. In South Korea there are 87,500 publishers. The landscape has taken on a more tranquil appearance lately, though. North and South Korea marched together in the Olympics under a single banner, and they are reconstructing the railroad between North and South Korea. There are 22 million people in North Korea. This is an untouched territory. Meanwhile South Korea continues to move forward. There is a wonderful spirit of full-time service. It is looked upon as a privilege. They averaged 40% in full-time service during the last service year. That means that 2 out of 5 were in the full-time service. There are 47 million people in South Korea. The territories are covered once a month on the average. There are numerous foreign congregations and groups. The activity in the sign-language field is exceptional. One circuit of 20 congregations has 800 publishers, including children who are not deaf but from infancy have learned sign language. This circuit has 800 Bible studies. Some special pioneers and Ministerial Training School graduates have proved to be a great help. At their District Convention they had something special. The drama was presented on video to the 1,308 in attendance. The video was made at the branch. They really enjoyed being able to see the facial expressions close up and to be able to see the scenes at night.

Regarding Bloodless Medicine, the Public Affairs Office was notified that on a certain day in August the Korean Broadcasting Company had arranged a 10-minute program on bloodless medicine. This would be shown first in Korea and then broadcast a few weeks later on Korean stations in New York, New Jersey and California. The Public Affairs Office notified cooperating doctors in Korea. This had a very positive effect. A sister contacted the Korean Broadcasting Company to order a copy of the video. They told her she must wait a week because of a backlog of orders. She asked who has been ordering it. They told her, "Many doctors."

Regarding the neutrality issue, over 1,400 brothers are incarcerated. They get a 3-year sentence. They are working with the Chairman's Office and the Public Affairs Office to do something for these brothers. The brothers in prison are doing very well spiritually. The prison officials give them trustworthy jobs. One young brother in Bro. Hamilton's congregation is in prison. He says, "Although the routine life was difficult, I was encouraged to be living with the brothers." He missed his first District Convention while he was in prison but heard about it and was encouraged greatly. His father also faced this issue 30 years ago. He visited his son and noticed positive differences in the treatment and accommodations since he was in prison. A sister hired a taxi to take her to another city to a correctional institution to encourage a brother in prison. The taxi driver began asking her very personal questions like, "Are you visiting your boyfriend?" "Did he hurt someone?" "What crime did he commit?" She answered that she was visiting a fellow believer who is much younger than she. He was not her boyfriend and had committed no crime. He is in prison for serving the Sovereign of the Universe. The driver recognized that she was one of Jehovah's Witnesses. He lived near a gymnasium where Jehovah's Witnesses held their conventions each year. He observed them for 10 years. He was

impressed with how polite, quiet and orderly they are. He hoped his children would be that way. When they got to the prison, he refused to accept the fare and said he would wait if she did not stay too long. She was uneasy about his intentions and purposely stayed a long time. But he was still there when she came out. He insisted on taking her back to her city. He again refused to accept the fare. She contacted a local brother and gave him the taxi driver's name and phone number. Then she forgot about it. Three years later her phone rang. The caller said, "I was that taxi driver. I have been baptized for some time now. I have just been appointed a ministerial servant." How happy she was to have had a part! There are 201 at Bethel and 9 missionaries

MEXICO – Br. obert Tracy – (Branch Committee Coordinator). There are 1300 at Bethel. Bethel is the center of activity and the Bethel family tries to apply 1 Peter 1:13. They are braced up for activity. Regarding their Kingdom Hall construction, their slogan is "More, better, and larger Kingdom Halls." In September, 19 Kingdom Halls were dedicated. They have a goal to build 240 more this year and they need over 2,000. In the State of Chiapas which is noted for poor people, many Kingdom Halls are being built. The administrators of a hospital admired the local Kingdom Hall construction. They had thought that their hospital was nice, but they thought that the Kingdom Hall was nicer. They gave the brothers a complete set of first-aid supplies and offered training courses to 3 brothers, which were readily accepted.

The Bethel 4 construction project is a complex of 14 buildings. They have been building since 1983 (17 years). In 1983 they had just 1 building. When the construction is completed, they will have 20 buildings. They are building a 2,700 seat Assembly Hall across the street from Bethel 4. No dedication date has been set but it could be the spring of 2002. They had 190 District Conventions. More and more they can rent halls. In July 1999 they contracted for a huge soccer stadium and had 109,000 in attendance. They find that direct and personal contact with government officials has been the key to success. They have prepared a 16-page brochure in Spanish, *Jehovah's Witnesses in Mexico*. A Bethel brother was able to present this brochure to the newly-elected President of Mexico. He showed real interest in the brochure and promised to read it. A lawyer who is a member of the Committee of Human Rights likes to read the magazines. He enjoys the photos and illustrations and that Jehovah's Witnesses always give answers based on the Bible. Mexico is the warehouse branch for 7 countries of Central America. Literature and magazine orders are shipped from Mexico to these countries. Mexico prints literature in Spanish and magazines in English and Spanish. A few weeks ago the Costa Rica branch ordered 500 of the 9/8/2000 *Awake!* on the Olympics. A sports federation wanted to distribute this magazine to all of their athletes.

There were 331,665 publishers in August. The zealous activity of young publishers is one reason for their increase. Renee was studying to be a lawyer in the university. He found himself in the auditorium when a priest came on the platform. Renee was ready to leave when he heard the priest ask if there were any Jehovah's Witnesses in the audience. He raised his hand and was invited to the platform. The priest asked him why he was a Jehovah's Witness. There were 400 students in attendance who were studying to be architects, engineers and lawyers. Renee gave a fine witness. He said he was one of 6 million persons who with dignity bear the name of the true God, Jehovah. He also explained that he was a third-generation Witness, but is a Jehovah's Witnesses by conviction, not because of tradition. The priest said, "I would like to have just one like him among my followers. I admire these persons for their strong faith and their use of the Bible. They have defended their faith at the cost of their lives in the Nazi concentration camps." There were over 1,655,000 at the Memorial.

SIERRA LEONE – Br. Billie Cowan (Branch Committee coordinator). This is a country of lush green mountains and valleys. For many years it was like this. In April 1991 civil war broke out. Many have been killed or maimed. The missionaries and Bethelites were relocated to Guinea in June 1997. Eight foreign Bethelites and 15 missionaries moved back a year later. In December 1998 during the District Convention right in the middle of the public talk they heard an explosion. Heavy artillery fire from the troops in the city had caused this. In June 1999 the branch chartered a small airplane to transport reports and people from Sierra Leone. Then in August 1999 they moved back to Freetown. James and Susan were taking care of a missionary home. They heard a shot through the door and a voice saying they would be killed if they didn't open up. They opened up the door. The rebel forces could not find the keys to the car. They held James' hand on a piece of plywood. Intending to chop off his hand. Every time they lowered the machete, James could jerk his hand out of the way. The machete marks in the wood are still there. James finally convinced them that he was not hiding his car keys. While the soldiers pillaged the missionary home, James and Susan and others got away. Several months later a peace agreement was signed.

An overall look at the war and the hardships reveals that the brothers' faith and endurance were put to the test and they came out victorious. Two young brothers reported their experience. Paul and Stephen were in rebel-held territory and were arrested and put in a line with 50 young men who were army conscripts. They were told to sing a war song. Paul and Stephen prayed. Upon their arrival at a training center, Paul was asked to serve as a secretary to record the names. He told the commander that he knew where to find strong men. In the meantime Stephen pretended not to know Paul. The commander told Paul that he could take an assistant and find them, so he told Stephen to follow them. Paul preached to the commander about what it means to be an enemy of Jehovah. They were let go. This past May Paul and Stephen fled. They decided to leave 14 others behind. They wanted to go to the branch to get help. The branch was 170 miles away, including a 50-mile walk through rebel-held territory in order to arrive in government-held territory. They had to go through many checkpoints. They prayed and planned in advance. They took magazines and tracts and prepared their own identification cards and covered them in plastic. Paul's had a picture of him reading from the Bible at the platform by candlelight. Stephen's showed him standing under the Kingdom Hall sign, smiling. At the checkpoints, they gave them some tracts and they could go through. When they arrived at the branch, they asked if they could get some food and transportation money to get the others. After a few days rest, Paul went back to get the others, going through the 50 miles through rebel-held territory. They took a different route back and found themselves in an area where the fighting recently was going on. A United Nations official asked Paul if he knew how to shoot a gun. He replied, "I only know how to shoot the Bible at wicked people for salvation." The officer laughed. He left the tract on *Will All People Ever Love One Another?* and the 2/15 *Watchtower* on "Heed the Warning." The group arrived in Freetown safely.

Many people previously indifferent to the message now walk in off the street to attend meetings at the Kingdom Hall. They ask the brothers for literature. The brothers are zealous. There has been a 10% increase in publishers in the 2000 service year. During the severe trials, the publishers averaged 13.9 hours in the service each month. Meeting attendance often exceeds 200%. There were 3,299 at the Memorial, a 40% increase. The brothers in Guinea work under the Sierra Leone branch. There are 34 missionaries and 650 publishers there. They are predominantly Muslim. Things here are not stable. Three missionaries and 2 couples had to flee to the capital city because of fighting and killing close to their assignment. They hope the situation won't escalate. There are 15 Bethelites, 36 missionaries and 3 International Servants in Sierra Leone and Guinea.

SOUTH AFRICA – Br. John Kikot (Branch Committee member) There are 577 at Bethel. Rev. 14:6 – there are many of these in Africa, not only nations, but tribes, tongues and peoples. There were significant developments during the 2000 Service Year. One was that all countries not on the donation arrangement should do so on January 1, 2000. This affected the entire continent of Africa with the supplies of literature and magazines. Previously many did not have their own magazine at meetings, sometimes they had 1 magazine per family. This was due to extreme poverty. This was also the case at the bookstudy. This has had a positive effect on the spirituality of the brothers there. Many more seeds of truth are being planted. There has been a tremendous increase

in literature and magazine placements. There was a new peak of over 70,000 publishers. They have over 78,000 Bible studies. Zambia reported over 117,000 publishers in April, more than 10,000 over the previous peak. Regarding production in the factory, 5½ issues of the magazines are printed each month. *The Watchtower* is being printed in some languages four-fold now. For example, over 40,000 issues of Cibemba were printed previously. Now they print 180,000 issues. There are 80,000 Cibemba-speaking brothers and sisters.

Another development was the arrangement by the Governing Body to assist with building of Kingdom Halls. A Regional Kingdom Hall Office was set up in South Africa to assist all of Africa. They need 8,000 Kingdom Halls in Africa. Some countries do not have even 1 Kingdom Hall. Now hundreds of Kingdom Halls have come up. Instead of meeting in a shack or under a tree, they have a Kingdom Hall. They usually stand out as the most dignified building there. Sometimes after building a Kingdom Hall, the congregation more than doubles the following year. Many letters are sent to the Society. One wrote, "Construction of the Kingdom Hall here has given us a better foothold in the territory. Many have commented that Jehovah's Witnesses have done a miracle." "For the last 2 weeks after building our Kingdom Hall, we came to the Kingdom Hall after field service to marvel at our Kingdom Hall. We just couldn't go home without seeing our Kingdom Hall one more time."

Rev. 14:6 - A vital factor is that it is being declared in all the tongues. This is being done through many Translation Departments. The largest department at the South Africa branch is translation. Over 100 are doing translation into 14 different languages. A few years ago there were very few Tsonga-speaking people taking a stand for the Truth. As more and more publications were translated, more and more people came into the Truth. Thousands today make up the Tsonga circuits and districts. A year ago the *New World Translation* was released in Tsonga. A brother said, "The Rolls Royce has arrived." South Africa is the warehouse branch for most of the countries south of the equator, caring for 400,000 brothers. This involves literature, magazines, building supplies for Assembly Halls and Kingdom Halls and things for the branch. South Africa also sends relief supplies to Angola, Mozambique and Congo. 400 tons are sent each month. Some letters arrived at the branch regarding the *Young People Ask* video. "I thank you on behalf of all of the young people who feel the gratitude that I feel to Jehovah and his earthly organization for such a masterpiece." One 13-year-old wrote, "Thank you for the video. I have only one problem with it – it is too short!"

UKRAINE – Br. John Didur (Branch Committee coordinator). Isaiah foretold that people from all nations would stream to Jehovah's house of worship. As a result of this, Ukraine has a new peak of 112,720, an 8% increase over the previous year. They have had their 46th consecutive peak of pioneers. When the work opened up in 1993 they had 500 pioneers. They had 8,326 in August. There were 10,306 baptized during the last service year. 1,000 were baptized each month during the last 8 years. More than 50,000 publishers have been in the Truth less than 5 years. But we must also remember the brothers and sisters who were faithful during the years of ban and imprisonment. They had 251,953 at the Memorial, twice the number of publishers. They have an average of 70,000 Bible studies. Many enjoy our literature, often asking for it on the street. 50 million magazines were placed during the last 2 years which is the population of the country. At the branch 1,000 letters from interested people asking for more information are received each month. One letter was received from a woman asking that Jehovah's Witnesses call at her home. They found a distraught lady whose husband had died a short time ago. He was a regular reader of *The Watchtower* and *Awake!*. When he became critically ill, he told his wife, "If what I read is correct, we will see each other again in the future. Please have Jehovah's Witnesses call." A model Bible study was started. She started talking to her relatives and a number of them are studying the Bible. Serge wrote in a letter, "Now my life has changed completely through reading your literature. Please help me to find someone to help me. I need faithful friends."

Even those not interested in Bible standards often respect those who do. A brother (before he came into the Truth) was in business with 2 partners. He learned the Truth. Due to the dishonest practices of his partners, he attempted to pay back their debt by selling his possessions. He could pay all but $5,000. He prayed and discussed the matter with the man to whom the money was owed. He said he needed more time. The man said, "If you continue to serve your God, you need not return the funds. But if you stop serving him, you must pay off the entire amount." He started pioneering.

They hope that their branch facilities will be completed by early spring. The Bethelites are scattered throughout the city now and commute to Bethel. The Ukrainian translation team is located in Warsaw, Poland right now but they will return when the branch is completed. The brothers show a good spirit for Kingdom Hall construction. 12,000 different publishers in 2,400 congregations have shared in this work. A group of brothers travelled 2000 kilometers by train on their Saturday off to help to build a Kingdom Hall. Travel time was 36 hours. The fare was 1 months' wage. They were delighted to have a share. Two large cities each have over 45 congregations and no Kingdom Halls. Getting permits is a long and difficult process. The first quick-build Kingdom Hall was built in June. Many thought it was impossible. Many neighbors came to watch. One asked if he could get a job. The brother said that the workers were all Jehovah's Witnesses. The man asked if he might qualify since he reads the Bible daily. 394 attended the Dedication program, including many neighbors who were pleased with the building. There are plans to construct over 400 in the future. The 5th Ministerial Training School begins shortly. 50% of the travelling overseers are graduates of the school. Some serve over 40 congregations. The Ministerial Training School is held on the property of the branch construction. There has always been a classroom available. Many people in the Ukraine still live simple, uncomplicated lives. Families work in their gardens or field. Young boys and girls spend days with their cows in the fields. Entire families walk arm in arm to the meetings. TV, video and sports have not taken over their lives. The people have a love for reading and learning, which has contributed to the increase. There are 107 at Bethel.

GETTING ACQUAINTED WITH CORPORATION MEMBERS –

Interviews by Br. Gerrit Lösch (Governing Body member).

Getting Acquainted – With Br. Erkki Kankaanpää (Finland).

We are happy to be able to interview you today, Br. Kankaanpää. We are not going to tell the audience that you are 76 years old and that you got the truth in 1939, because they would rather learn when and how you started in full-time service. Please tell us about this.

In January 1941 I started the pioneer work. I hoped to work in Bethel. I mentioned this my hope in summer 1941 to one of the traveling overseers but he said to me: "You'd better quit those dreams; you will never be invited to come to Bethel." First I was disappointed, but in November 1941 I got the invitation. I was only 17 years old, but as it was a wartime the older brothers were in prison and due to this circumstance I was invited. As the Society had a small printery I started to get training for the printing work. Now I have been in Bethel about 59 years.

You certainly give us a goal to work toward, Br. Kankaanpää. Did the military exempt Bethelites from military service at that time?

No. In 1942 I was called up for military service but of course I refused. This meant difficulties. In court the judge pronounced a death sentence which, however, turned out to be mere intimidation, for at a later day I was called before the court again to be sentenced to prison for two years. After this prison period I returned back to the Bethel continuing my work in the printery.

Aside from the authorities somebody else succeeded to interrupt your Bethel service. Tell us please how this happened.

In 1946 I got married but with special permission I was able to continue to stay in Bethel for one year to teach other brothers for the printing work. Then, in 1947, I started the circuit work with my wife. It was a new assignment. At that time there in Finland were about 2,000

publishers but still 20 circuits. After the war Finland was very poor and for that reason also living standard was very low. The circuit work was a challenge. Transportation was very limited. In the circuit where we worked there were 20 congregations and little over 100 publishers.

This means an average of 5 publishers per congregation. Now tell us please, what kind of car Bethel provided for you to visit the congregations.

We had no car. We did not even own a bicycle. Very often it was necessary just to walk from congregation to congregation from 10 to 20 kilometers carrying all our belongings. The reason was a very poor public transportation. Very often we slept with the family in the same room. There were many cases but I remember well one of them. The family had 5 members. The Brother was company servant as we called them in that time. They had only a very small house. The house had a small living room which was also the bed room and then it had a small kitchen. My wife and I we were wondering where we will sleep. In the evening the brother said: "Now is time to go to bed and if you, Erkki and Margit, if you will take the bed there in a corner left from the door." Of course we did so. Soon after that the whole family selected their beds. Finally the brother came with the pressure cooker and put it in the middle of the room and lit the gas and that was the only heating instrument in the room. We were a little wondering could we still be alive in the morning because 7 people in the small room and the pressure cooker which used much oxygen. Anyway, the next morning we woke up and we were ready to start field service.

Could you please tell us an interesting experience or two from circuit work at that time?

In one company there were 7 people at the first meeting during my visit and I asked how many of them are baptized and answer was none. Of course we spoke much about the dedication and we collected material about this subject. Then at the next visit I baptized all of them and I am happy to say that all of them were faithful to their death. Now all of them have passed away.

In another case a company servant wrote: "Do not come, -- because we do not need a circuit servant as we can handle the company well without help." Of course I was asking advice about this from the branch office and the answer was: "Rent a room in the boarding house and take personal contact with the brothers." So I did, and it was a very encouraging week for us and for the company or the congregation too.

Then, in 1948 the branch invited you back to Bethel. What privileges followed?

In 1951 my wife and I attended Gilead, however we did not receive a foreign assignment but were sent back to Finland. In 1955 I was appointed to be factory overseer. In 1957 I was appointed to be temporary Branch overseer and continued as such up to 1975 and since 1976 I serve as Coordinator.

In 1939 there were about 500 publishers and now there are over 20,000 publishers. It has been a very happy privilege to work with the headquarters. I can say that Jehovah has blessed my life in many ways. I am glad that I have had the privilege to work under His direction, because everything is coming from Him. All thanks belong to Him.

Getting Acquainted With Br. Isamu Sugiura (Japan)

Brother Sugiura, you were born in Nagoya, in June 1932, as the youngest of four boys. Your mother was a devout believer of Tenrikyo, a Shinto sect, and brought you up in the Shinto religion. You also worshipped the Emperor as a living god. When World War II came to an end in 1945, soon after you entered junior high school. Subsequently you lost interest in Shinto religion. Tell us please, how your interest in religion was renewed...

I learned English both at school and also from an English program on the radio. I thought that maybe I could learn something from Christianity. So, I joined a Bible class conducted by an army chaplain.

As a teenager, I had started working for a piano dealer. One day in April, 1951, when I was on a short business trip, I saw a foreign lady offering magazines on the street in front of Nagoya station. I obtained an English copy of *The Watchtower* and accepted the offer to study the Bible. She was the first Witness I had ever met. She was Sister Grace Gregory, one of the eight American missionaries, who had evacuated from Korea when war broke out. Grace from North Carolina and her sister Gladys, who is a missionary in Tokyo, are both in this audience and I am very happy to be here together with them.

We are happy to hear that. What about the truth caught your attention when you obtained your first *Watchtower* copy?

As I read the *Watchtower* (1/1/1951 issue) on the train, I noticed that the first word in the opening article was *Jehovah*. I had never seen God's name before. The study article was titled, "Theocracy's Increase." So right from the beginning I had my attention focused on Jehovah's name and the expansion of God's organization.

Only a few weeks later Brother Knorr visited Nagoya with Brother Henschel on a zone visit and I was privileged to hear the talks given at a hall in front of Nagoya station. I studied from the booklet *Joy of All the People*. I attended meetings from the beginning and two months later I shared in the house-to-house work with Grace.

In October 1951, about five months after I started studying I attended a circuit assembly held in Osaka. About 300 people attended the assembly, including some 50 missionaries. I was deeply impressed by the international brotherhood. I was baptized at this assembly.

How long have you served in full-time service, Brother Sugiura?

I was enrolled as a pioneer in 1954, and as a special pioneer the following year to serve in Beppu city in Kyushu Island. There were no congregations on the island then, but now there are 22 circuits. I've had the privilege of attending the 29th class of Gilead school in 1957, and also the 38th class for the 10-month course at Brooklyn in 1963.

I enjoyed the traveling work for several years and then I married Junko and continued in the traveling work with her. For the past 25 years we have been blessed to be able to serve at Bethel. Junko serves at graphics department and I, in the translation department. It's been a special privilege to see the growth in Japan, from the small beginning to a large crowd of 220,000 over the past 50 years.

Experience: This happened when I was on the district work in the early 60's. One day, I was traveling from Kyoto to Kure, in a limited express train, which was about 5 hour travel. When the train arrived at Okayama station, about half-way to the destination, I got out of the train to stretch my legs and walked a little toward the rear of the train.

A few minutes later I tried to go back to my seat, but I couldn't locate my seat, so, I came out of the car, and there I saw the front part of the train moving away. What happened was that the train was disconnected in the middle, and the front part of the train went straight but the rear part was to branch off to another direction. So, the rear part was still there in front of my eyes, while the front part of the train had left quietly.

For a moment, I thought I lost all my belongings. I went to the station office and explained what happened, and the clerk assured me that he will take care of everything. I took the next limited express train to go to Kure. I walked a little distance toward the exit. There I saw all my belongings neatly placed. No extra charge or tips were necessary. I appreciated the good service of the national railway. We had a wonderful circuit assembly that weekend.

Getting Acquainted With Br. Franz Muller (South Africa)

Br. Muller, two important things happened in 1928 for which you are very thankful. Tell us please, what they were.

#1: My father got the truth in 1928 and #2: I was born in 1928. So I had the privilege of growing up in the truth. Father was so zealous that he started pioneering right away. But family responsibilities caused him to stop. We did not have a formal family Bible study in those days but because of my father's zeal and love for the truth, all eight children grew up to love the truth. All of them, except my youngest brother who died at an early age, shared in the pioneer work for some years of their lives.

How did you get started in pioneer work, Br. Muller?

During 1944 with World War II being at its height many brothers felt that the end was close, and so our circuit overseer, who was one of the anointed, warned me not to delay in getting into the pioneer work. He said: "You do not want to let Armageddon find you sitting on school benches." I surely did not want that to happen so I quit school

and entered the pioneer work on January 1, 1945 when I was about 17 years old. Two years later I was appointed as a special pioneer, -- then I was called to Bethel in 1948.

In 1950 I had the privilege to go to Gilead. I was sent back to South Africa because foreigners were not allowed into our country. I then had the privilege of serving as a circuit overseer.

So you served as a single circuit overseer, which is a rare species. Did you survive as such for a long time?

By this time I was corresponding with a beautiful young pioneer sister. But we had no intention of getting married this side of Armageddon. We were going to copy the example of John and Eunice, a young couple depicted in the book *Children*, the last book written by Brother Rutherford. According to the book they planned to get married after Armageddon. At that time marriage was frowned upon especially for those in full-time service. The time was too short, the brothers felt, and we had a great preaching work to do. If pioneers talked about getting married the brothers thought there was something wrong with them. But this John and Eunice story did not work for Martie and me. In 1952 we decided to get married. So it was with trepidation that I wrote to Brother Knorr with a copy to the local branch. The local branch was not happy with our decision but said they would await Brother Knorr's reply. When I got Brother Knorr's letter I could not believe my eyes. What an encouraging and sweet letter! Brother Knorr wished me Jehovah's blessing on my forthcoming marriage and encouraged us to stay in the full-time service for then we would have many blessings. I could not believe it; nor could the local branch. I was even given permission to carry on in the circuit work after our marriage. Well, we got married in December, and carried on in the circuit work. At the third congregation we visited, surprising news reached us that explained everything. Brother Knorr himself got married!

Br. Muller, a few years after you got married you were separated from your wife. Why and how did this happen?

After we attended the international convention in New York in 1958 my wife had the privilege of going through Gilead but I had to return to the district work in South Africa since I already had been through Gilead. We were separated for nearly eight months.

Four days after Martie arrived back in South Africa, Brother Knorr also came for a visit and he invited us to Bethel to start there four days later, after winding up convention duties. We gladly accepted. This was in April 1959 and that is where we are still privileged to be.

Four years after having been separated from your wife for so long, Headquarters Office separated you from your wife again. How did this happen?

In 1962 I had the privilege of going through Gilead a second time, this time for the 10-month branch course. My wife could not attend with me and we were again separated, this time for about 11 months. This training stood me in good stead as I was appointed Branch Overseer in 1967 and served as such till 1975 when the Branch Committee arrangement came into being and since then I have had the privilege of serving as coordinator.

Br. Muller, how would you sum up your reflection on your past life?

I have seen the organization in South Africa grow from a small beginning of only about 400 publishers when I started in the ministry as a child till 67,424 now. I served in the Society's offices when we were only 17 Bethelites and we only had a few rented offices and no Bethel home. We now have a beautiful branch complex inhabited by about 550 brothers and sisters of all races in South Africa. How Jehovah made things grow! My wife and I still enjoy our wonderful privilege of Bethel service after 55 and 52 years in full time service respectively. Indeed, our cup is well filled!

Getting Acquainted with Br. Thomas R. Jones (Canada)

Brother Jones, you were born in Hamilton, Ontario in the year 1920. There were seven children in your family, six boys and one girl. You were raised in the Anglican Church for your mother was a sincere Anglican. Father had turned against religion because of the actions of the clergy during World War I. Tell us, please what made your father change his attitude.

In the year 1938 he attended a lecture at Maple Leaf Gardens in the city of Toronto given by Brother Rutherford, entitled "Face The Facts." Father returned home jubilant. He stated, "At last I have heard something that makes sense, -- this is the truth." My father, brother, and I were baptized in the spring of 1939 in Toronto at one of the assemblies.

Br. Jones: When your family embraced the truth was this not the time when the work got banned in Canada?

Yes, in July of 1940 the Canadian government banned Jehovah's Witnesses. Our family was soon embroiled in the flag salute issue as my two youngest brothers were expelled from school. A Society-directed Kingdom School was set up in our home to teach the children. The Society fought this case through the courts and won a victory in the Superior Court of Ontario.

Did you have to face the military issue, Br. Jones?

Yes, soon after I took up pioneering in 1940, I got the call for military service. After refusing, I was arrested and sentenced to one month in prison and two years to an Alternative Service Work Camp. When I was finally freed in 1946 I returned to the pioneer service.

Please, tell us something about your pioneer partner serving with you from 1946 on:

I met an excellent pioneer sister, Flora Nicoll, and we were married at the end of October of 1946. A highlight of our life was the distribution of the pamphlet "Quebec's Burning Hate for God and Christ" at 3:00 a.m. one morning. It was a bitterly cold night but we finished our territory just before sunrise.

In 1948 Flora and I were invited into the circuit work and in 1949 later attended the 13th class of Gilead. Following graduation we did not receive a foreign assignment since we had cases pending from the courts in Quebec that had not been resolved. So we were reassigned to the circuit work, during which I helped with such cases.

In 1956 I was invited into the district work. The years passed quickly and I was invited to the 39th class of Gilead in 1964, which was a 10-month course. This time we got a foreign assignment, namely, to serve in the Chile branch.

Could you please relate an experience to us from your activity in Chile, please?

One of my first Bible studies was with one university student. He was keenly interested in good government and remarked that the only way to get it was not through ballots but with bullets. It developed that he was the leader of the most violent group of young students in the university. However, when he learned that God's Kingdom would clear the earth of all wickedness and establish good government, he wished to study the Bible two times each week. He was baptized within six months.

During the late 1960's there was much political unrest in the country and in 1970 a Marxist government was voted into power September 11, 1973 dawned. Flora and I got up for breakfast with the sound of helicopter gun ships circling. Two planes attacked the Presidential Palace at noon, shooting rockets into it, destroying it. Martial law was declared as the military took over the country.

Was this political unrest the reason you returned to Canada, Br. Jones?

No. In 1975 we decided to return to Canada because Flora became seriously ill. Soon after my faithful companion Flora died from cancer. February 7, 1976 was the saddest day of my life as she passed away.

Thereafter, I was invited to become a member of the Bethel Family and in 1978 was made a member of the Branch Committee. During this time I renewed my acquaintanceship with Sister Estelle Markus and she agreed to marry me. Estelle has a fine record of theocratic service and has been a very loyal companion who exhibits a deep love for Jehovah and his Word. We enjoy our service at the Canadian Bethel where we served for the past 20 years.

Fifty-seven years ago I entered the pioneer service and I can state that life has never been boring but has been filled with wonderful experiences and a joy that can be found no where else. Jehovah God has filled my life with peace and happiness as well as

with meaningful work, thrilling experiences, and wonderful friends.

YEARTEXT – Br. David Splane (Governing Body member). The yeartext for 2001 is Colossians 4:12 "Stand complete and with firm conviction in all the will of God." Think about the setting. Paul was under house arrest in Rome when he wrote the letter to the Colossians. He mentioned Epaphras by name. He had been instrumental in forming the congregation at Colossae and concerned about the brothers. About 60-61 CE he travelled to Rome to discuss matters that affected the congregation with Paul. As a result of the visit, Paul wrote his letter. In verse 12 he says Epaphras had been praying. Not for the whole association of brothers but for the fellow believers in Colossae. He was making 2 requests: that they would stand firm and that they would have firm conviction in all the will of God. We can ask ourselves: What do I personally need to do in order to do this? Let us take a closer look.

What does it mean to "stand complete?" The term used here has the sense of perfect, full-grown or mature. Maturity is something all Christians need. It doesn't come automatically but takes time and effort. Paul wrote to the Ephesians that teachers and shepherds should help the brothers to attain to a full-grown man, maturity. Maturity is something you need to work at. You may need help in reaching it. Here are 2 examples of areas in which we may need to make progress. Suppose you grew up in an area that has prejudice of a people of a certain nationality, race or region. You may have felt the same as your neighbors. But you began to study the Bible. You saw Acts 10:34 and you concluded that God is not partial, so you should not be, either. What will you do now in this regard? Will you make progress? Have you grown in your appreciation of other races and nationalities? Not merely "living and let live" or putting up with them, but truly enjoying the differences that make them unique. Philippians 2:3 If we tend to be critical, to put others down, to focus on their imperfections, we need to focus on others' good qualities. Do you look for good in every brother and sister? Do you look for ways in which they are superior? Take up the matter with Jehovah. Ask him to help you to find areas in which you need to grow. All who become Christians do not remain Christians. Satan didn't stand firm. It happened to one chosen by Jesus Christ. Did the rest of the apostles quit? No. Jehovah chose another man and the work went on. This is not the work of man or the work of men. It is the work of the Almighty God. No one is indispensable and no one can interfere. Let all crafty clergymen and their political allies take note. Paul gave anointed Christians in Corinth this sobering reminder. 1 Corinthians 10:12 The Colossians had to make sure that they were standing. They needed to persist, continuing to make progress. What would help the Colossians to stand complete or to endure? They needed firm conviction. They were surrounded by false teachers and intellectuals. Do worldly philosophies foster conviction? No, they promote doubt. James 1:6 Such a man does not have firm conviction. To counteract the harmful effects, the Colossians needed to focus on Jesus Christ. This is a simple solution – "Focus on Jesus Christ." Colossians 2:6, 7 If they stuck to what they had been taught, they would remain healthy in the faith and the worldly philosophies would hold no appeal to them. They had a heavenly hope. They would have to give up their corruptible body. In view of the hostile attitude of the Romans toward the Christians and the fact that some would get martyrdom, they had to be absolutely convinced that they had the heavenly hope. Is it different for the great crowd today? Unlike the anointed, the other sheep don't view death as inevitable for all. Many will survive the great tribulation but they have never made this prospect a condition for serving the living God.

"In all the will of God" – We hope that this system of things will soon come to an end but if God's will is for it to take a little longer, we humbly bow to Jehovah's will. The other sheep recognize that no strings are attached to their dedication. In God's time he will have a yearning for the work of his hands. We are absolutely convinced that we are living deep in the time of the end and the prospect of never dying is still very real to them. What do we mean by "hope?" When we first learned the Truth about the future, the new system, it all sounded so wonderful. This was an initial hope. It attracted you to the Truth. But hope is something more. Romans 5:3-5 Notice where hope comes in, at the beginning or a little further on? Tribulations, endurance, an approved condition and, finally, hope. We face tribulation and opposition but Romans 5:3 shows we can exult because of the wonderful result, endurance. If we are enduring faithfully, it's because Jehovah is giving us the strength. The fact that we are enduring is proof that we have Jehovah's approval, that we are in an approved condition. 1 Peter 4:14 Your ability to endure through tribulation is proof that the spirit of God is with you. It goes beyond the motive that there will be a new world. Tribulation strengthens our hope. It is more real, more personal. It pervades our every fiber. Let each of us approach Jehovah regularly about our hope, praying with firm conviction. Make mention of our hope in our prayers, talk about the new world. Tell Jehovah how you long for it with full conviction that it will come. Ask Jehovah to develop and broaden your conviction, and pray for your brothers like Epaphras did that their hope will be, too. To those in the audience who have endured a long time: 1 Thessalonians 1:2-5 "endurance due to your hope" Can you imagine that it is possible to please the great God of the universe? The Colossians did so. Our brothers and sisters are doing so. During the coming year, in whatever circumstances we face, we are determined to "stand complete and with firm conviction in all the will of God."

A GOVERNING BODY AS DIFFERENT FROM A LEGAL CORPORATION – Br. Daniel Sydlik (Governing Body member). No doubt you will reflect on this grand information before you go to bed tonight, grateful for being here and for witnessing a milestone in the history of Jehovah's organization. Annual Meetings have been held since January, 1885. In the late 19th century when the gathering of the anointed was underway, the first directors and officers had the heavenly hope and such has almost always been the case since then. There was one notable exception. Hayden Covington, the legal counsel for the Society, and one of the "other sheep", was elected as a director in 1940. In 1942 he was chosen as the Society's Vice-President. He continued in that capacity until 1945, when he stepped aside in order to comply with what seemed like Jehovah's will, that all of the officers, directors and members should be of the anointed. Lyman Swingle replaced Brother Covington as a director and Brother Franz was elected as Vice-President. Why did they believe that? Wasn't the great crowd identified in 1935? At that time the officers and directors were closely identified with the Governing Body, which has always been and still is made up entirely of anointed Christians. The 1944 *Watchtower* first used the term "Governing Body" to describe anointed Christians taking the lead in Jehovah's organization. 1944 was a banner year. On October 2 of that year the Annual Meeting was held in Pittsburgh, Pennsylvania, USA. Some in this audience were present there. They will recall that 6 resolutions were presented which proposed changes in the Society's charter. Voting shares had been based upon monetary contributions. The Third Amendment eliminated that. The report of the Annual Meeting that year stated, "Membership of the Society is limited to not more than 500. Each member is a full-time servant of the Society or a part-time servant of a company of Jehovah's Witnesses and must show the spirit of the Lord." The directors were to be voted into office by individuals who were fully devoted to Jehovah. This would be in full accord with Isaiah 60:17. The reference in this verse to overseers and task assigners refers to improvements in organizational procedures. The 2300 evenings and mornings of Daniel 8:14 also referred to this. After this an important question remained. At that time the Governing Body was closely associated with the Board of Directors, and there was a provision for only 7 directors. Did that mean that the Governing Body would never be enlarged but was limited to 7 spirit-anointed Christians? Since the directors are elected by corporation members, were the corporation members electing members of the Governing Body each year? Are the Directors and officers of the Pennsylvania Corporation and members of the Governing Body one and the same? Or are they different?

These questions were answered at the Annual Meeting held on October 1, 1971. The speaker on that occasion reminded the audience that the Governing Body and "the faithful and discreet slave" started hundreds of years ago at Pentecost 33 CE. The first Governing Body consisted of the 12 apostles and later was evidently enlarged because the Scriptures

speak of the apostles and older men taking the lead. The speaker said, "The Governing Body of the slave class are not appointed by any man. They are appointed by Jehovah and Jesus. Members of the Governing Body are not being voted into office by the membership of any legal corporation." The speaker made a very significant statement when he said, "The Governing Body does not have officers such as the Society's Board of Directors does. It merely has a Chairman.' For many years the President of the Pennsylvania Corporation was also the foremost member of the Governing Body. This would no longer be the case. While not all are equal in ability and experience, the Governing Body would be equal in responsibility. The speaker said, "Any member of the Governing Body can be Chairman. It depends upon the rotation system for chairmanship." Thus the distinction between the spirit-anointed members of the Governing Body and the directors of the Pennsylvania Corporation was clearly drawn. Still the members of the Governing Body continued to serve as officers of the corporation. The following question arises. Is there any Scriptural reason to stick to the view held in 1945, that all of the directors of the Pennsylvania Corporation should be members of the Governing Body?

The Pennsylvania Corporation is not the only legal entity used by Jehovah's Witnesses. There are others. The Watchtower Bible and Tract Society of New York facilitates the work in the United States. Jehovah's blessings are clearly on it, but its directors and members are mainly of the "other sheep." In Britain the Bible Students Association is used. In other lands other legal entities are used. These entities or corporations are controlled by the Governing Body. Indeed their charters are reviewed and approved by the Governing Body. It's beneficial to have these legal entities. The Governing Body has oversight of upwards of 100 different entities. They help us to conform to local laws and regulations. Romans 13:1 They help to distribute printing materials. A large writing staff, translation, graphics and pressroom and people are all needed. Corporations and legal entities are used to provide equipment needed for this work. They also serve as a legal instrument to handle the transactions with regard to property ownership, the use of governmental facilities and relief efforts.

As the oldest and most stable and financially secure of the entities, the Pennsylvania Corporation is significant to the Governing Body in the care of the Master's belongings. Article 2 of the Charter of the Watchtower Bible and Tract Society of Pennsylvania was amended in 1944 to underscore the objectives of this corporation. It is "organized to preach the gospel of God's Kingdom to all the peoples and to make known the 1) Name 2) Word and 3) Supremacy of the Almighty God, Jehovah." The Name: In 1931 Jehovah's Witnesses adopted their new name. Three books were published which highlighted this about the same time, named *Vindication* volumes 1, 2 and 3, which examined Ezekiel's prophecy. The book *Jehovah* was published in 1944 and other publications were published later, such as *Let Your Name Be Sanctified* in 1961 and *The Nations Shall Know That I Am Jehovah*, ten years later. Special mention was made of the *New World Translation*, which restored the Divine Name in every place where it should be. How thankful we are that Jehovah has permitted the Governing Body to use all of the international publishing resources to make The Name known in harmony with Psalm 83:18. The Word: Jehovah's people have upheld it by printing millions of Bible-based publications and the Bible itself. In the early 1900's the Watchtower Society became the sole owners of *The Emphatic Diaglott* by Benjamin Wilson. They also distributed the *King James Version* of the Bible. In 1942 the Society printed the *King James Version* on its own presses. In 1944 the *American Standard Version* of 1901 which featured the Divine Name was printed and widely distributed. In 1972 another Bible that highlighted God's Name was printed, *The Bible In Living English* by Stephen T. Byington. The Watchtower Bible and Tract Society has truly proved to be a Bible society. A wonderful witness is given to the Supremacy of God. When the religious leaders ordered the first-century apostles to stop preaching, they said this: Acts 4:24, 29. Do we not see similar interference today? In many lands false accusations have been levelled against us. This has led to persecution and violence, often spearheaded by the clergy. Jesus forewarned us in Matthew 24:9. Nothing will keep us from fulfilling our commission: The "faithful and discreet slave" take care of the Master's belongings, and these belongings include the "other sheep" as well as facilities at headquarters at Brooklyn, Patterson and Wallkill and at 110 branches. Matthew 24:30 – they will be called to account for the way in which they have used their talents. This does not mean that the "other sheep" cannot be used to care for administrative responsibilities. This leaves the Governing Body more time for other responsibilities.

The Governing Body will continue to make use of the legal entities. These corporations are convenient but not indispensable. If a legal entity is dissolved by a government decree, the work goes on. Even in countries with opposition but no legal entity, the Kingdom work goes on and the good news is preached. No amount of opposition can hinder it. Luke 19:40 As we look to the future, we can be sure that Jehovah will care for the physical and spiritual needs of his people. Zechariah 4:6 We will be able to finish the work Jehovah has given us in this time of the end. Always have plenty to do in the work of the Lord and you know that your labor will not be in vain.

OVERSEERS AND MINISTERIAL SERVANTS THEOCRATICALLY APPOINTED – Br. Theodore Jaracz (Governing Body member). Isaiah foretold that something remarkable would occur in God's due time: Isaiah 60:22. Have these prophetic words been undergoing fulfillment in our day? In the past decade the number of congregations formed has been 2,979 per year or a total of 29,793. From small beginnings in 1879 when there was one congregation in Allegheny, Pennsylvania, settlements flourish in 234 lands. There are over 91,000 congregations worldwide that constitute a mighty nation. This is proof that Jehovah is speeding up the influx of true worshippers before the great tribulation. Caring for 6 million Kingdom proclaimers and 8 million of their associates calls for mature oversight. There are thousands of overseers and ministerial servants in the sud once in the Jersey City Assembly Hall and in the satellite locations. More qualified elders and ministerial servants are needed continually. How are such spiritual men appointed? Not by methods that Christendom employs. Appointments are made according to God's arrangement - the theocratic way. What is involved in such appointments? How are thousands ordained as ministers of the good news? Before submitting to water baptism, they have agreed to serve God unreservedly. They submit to Jehovah's sovereignty. They submit to Jesus as Ransomer and King. They recognize the role of the holy spirit in their lives. 2 Corinthians 3:5 Such ordination comes from Jehovah through his Son, Jesus. They must be led by God's spirit and apply his principles in their lives. Within the congregation certain ones who are already ordained develop to maturity, cultivate the fruitage of the spirit and meet the qualifications to be theocratically appointed. What does this mean, "theocratically appointed"? They are recommended, but not according to human standards by an election or by campaigning. Their qualifications are set out in God's Word. These standards provide the measure of whether a man really qualifies. If he no longer meets the qualifications, the holy spirit acts to remove one from such a position.

A number of factors are involved in making appointments theocratically. Paul reminded the Ephesian elders "they were appointed by holy spirit" in Acts 20:28. How is it that the holy spirit has such an important role to play? Holy spirit inspired the record setting out such qualifications. 1 Tim. 3:1-7 lists the qualifications and also included are the requirements for ministerial servants. There are 16 different requirements. Overseers have a serious responsibility in taking the lead and must be exemplary. Paul could express himself with freeness of speech because he imitated Jehovah. Paul recognized that the requirements were Scriptural and inspired by holy spirit. That's why he emphasized that they were appointed by holy spirit. Holy spirit comes into the picture in another way. They must manifest the operation of holy spirit in their lives by their pattern of everyday living. It affects all aspects of their daily lives. They produce the fruitage of the spirit. Gal. 5:22, 23 Such fruitage is manifest in their dealings with the brothers and the general public. Some may excel in some particular aspect, but their overall pattern of life must show that they are spiritual men and measure up to the requirements. The third factor is that in branch offices and in congregations, those recommending men for appointment have care-

fully examined these qualifications. They are not to be influenced by educational abilities or material advantages. Is he a spiritual man? They pray for God to guide them. Thus their judgment is inspired by what is written in God's Word. How others in the congregation view him is also a factor. Some may already view the brother as one to whom they can turn for advice and help. When recommendations are sent to the Branch Office, they are examined by mature brothers. The Governing Body appoints all members of Branch Committees. Luke 12:8 While the Governing Body directly appoints the Branch Committee, Traveling Overseers and Bethel Elders, they too commission responsible brothers to act for them, such as Paul and Barnabas did in Acts 14:23. Later when Titus was in Crete, Paul wrote Titus 1:5. Then he outlined the requirements. So today the Governing Body indirectly makes appointments through qualified brothers at headquarters and in the branches.

In the first century, appointments were made theocratically. This pattern is followed today. Appointments are made in 51,000 congregations, but not democratically or by some elaborate ritual. Unlike Christendom, Jehovah's Witnesses stick to God's Word. If elements try to interfere, what do we do? Acts 5:29 Being theocratic certainly has proved to be the wise course because it brings divine approval. Some appointments are transmitted by a letter for the Governing Body with a stamp on it. One form letter may appoint more than one brother in the congregation. It is important to note that no legal entity controls the appointment [of elders, ministerial servants, etc.] even though such entity may be used to transmit the information. The whole process is guided by holy spirit. Isaiah 60:17 contains meaningful words. May we all rejoice in the increase.

Announcement – Br. John Barr. The "faithful and discreet slave" has entrusted to it responsibilities higher than those granted to their legal corporations. In the charters are set out matters that are limited in scope. In caring for the interests on the earth, the Governing Body earnestly endeavors to follow the precious truths in the Bible. Ever since its incorporation in 1884, the Watchtower Bible and Tract Society of Pennsylvania has played an important role but it is merely a legal instrument available for use by the "faithful and discreet slave" when necessary. The Governing Body has determined that certain adjustments should be made. Brothers Carey Barber, John Barr, Milton Henschel, Theodore Jaracz, Albert Schroeder, Lyman Swingle and Daniel Sydlik all submitted their resignations as directors of the Pennsylvania Corporation. Members of the corporation accepted these resignations. In their place the following brothers were appointed: Don Adams (President), Robert Wallen (Vice-President), William Malenfant (Vice-President), Richard Abrahamson (Secretary & Treasurer), Danny Bland, Philip Wilcox and John Wisshuk. On October 5, 2000 at a meeting of the directors of the Watchtower Bible and Tract Society of New York, Inc. Brothers R. Abrahamson, D. Adams, H. Dies, M. Henschel and L. Swingle gave their resignation as directors. Appointed as directors of the NY Corporation are Max Larsen (President), George Couch (Vice President), Jerry Grizzle (Vice President), Bob Pevy, Dave Sinclair.

In view of the range of work, 3 new corporations were set up to be directed from headquarters. They are the Christian Congregation of Jehovah's Witnesses, the Religious Order of Jehovah's Witnesses and Kingdom Support Services, Inc. The Christian Congregation of Jehovah's Witnesses will look after the legal aspects of activities in the United States – religious, educational and charitable – as they relate to the congregations. The Religious Order of Jehovah's Witnesses will act as a legal entity for the Religious Order of Jehovah's Witnesses [which includes Bethel volunteers], who in support of Isaiah 6:8 have taken a vow of obedience and poverty. Kingdom Support Services, Inc. will provide engineering support and design of Society projects. It will be the deed holder of all vehicles used at headquarters that are not personal vehicles. Adjustments were made with 3 other legal entities. The Board of Directors of the Watchtower Bible and Tract Society of New Jersey has changed. A Florida corporation holds the title to land in Florida. Several of the brothers resigned and were replaced by other directors. Valley Farms Corporation, which holds title to land in New York, has also made adjustements on the board of directors. All of these serve under the spiritual direction of the Governing Body. We are confident that the formation of these 3 new corporations and adjustments in the others will serve to greatly assist the organization in getting the Kingdom work accomplished.

EXHIBIT C

EXHIBIT C

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November 4, 2004

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Dear Bob:

At present, I am preparing a comprehensive "meet and confer" letter to you regarding a number of things. Before doing so, however, I want to see if we can discuss the discovery matter about which we fundamentally disagree.

Charissa W. Discovery/*Serbian* Objection

In the Charissa W. case, we served discovery to Watch Tower Pennsylvania relative to its special appearance. Additionally, we have noticed and taken the deposition of the "PMK" for Watch Tower Pennsylvania and received your objections to the areas of inquiry and the documents requested. Though we were able to work out some of our difficulties, we have both agreed that there are some matters that simply need to be decided by the Court to give us the parameters for present and future discovery.

Before addressing the requests individually, I want to see if we can reach an agreement as to the applicability of your objections based on Serbian Eastern Orthodox Diocese v. Milivojevich (hereinafter referred to as the "*Serbian* objection").

Where the *Serbian* Objection Appears:

1. PMK Deposition Notice
   Subject Matter Nos.: 1, 2, 3 and 9
   Request for Documents Nos.: 3, 6, 7, 9 and 10

2. Special Interrogatories
   Interrogatory Nos.: 13 through 46

3. Request for Production
   Request Nos.: 38, 44 through 48,

There are a total of 49 inquiries to which the *Serbian* objection has been asserted by Watch Tower Pennsylvania to the Charissa W. special appearance discovery, alone. I anticipate your continued assertion of the *Serbian* objection in future discovery responses.

Serbian Objection

Generally, you have asserted the *Serbian* objection as follows:

> "This line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g. Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Analysis of the _Serbian_ Objection

Watch Tower Pennsylvania relies heavily on the *Serbian* opinion for the proposition that the internal organization of the Watchtower Society is outside the scope of discovery. It is Plaintiffs' position that neither the *Serbian* court nor any court thereafter has supported that position; in fact, it is Plaintiffs' position that the opposite is true.

First, for Serbian to have application, the operative issue would have to be: does this case involve an *intra*-church dispute? It is Plaintiffs' position that it is not.

In General Council on Fin. and Admin. of the United Methodist Church v. Superior Court of California, 439 U.S. 1355, 1372-73 (1978), a case involving the Superior Court of California which held California procedural law may be applied to a religious entity, the United States Supreme Court explained this point:

> There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See Serbian Eastern Orthodox Diocese v. Milivojevich. But this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes. Thus, Serbian Orthodox Diocese and the other cases cited by applicant are not on point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs . . . Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization.

This is not a case that "is an ecclesiastical one about 'discipline, faith, internal organization, or ecclesiastical rule, custom or law,'" but rather a case where this Court must

apply California's generally applicable, neutral tort laws and discovery rules to a religious organization because it involves "purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization." Bell v. Presbyterian Church, 126 F.3d 328, 331 (4th Cir. 1997) (quoting General Council, *supra*, 439 U.S. at 1372-73).

Second, the Napa Court has already determined that neutrally applied principles of law (which should include discovery rules) can be applied in this case without offending the First Amendment and the free exercise clause. In response to the filing of Plaintiffs' Amended Complaint, the Watchtower Defendants filed a demurrer asserting the position that the Napa Court did not have the authority to hear the Charissa W. case. In support of that position, the Watchtower Defendants cited authority (including *Serbian*) that the Napa Court lacked jurisdiction based on the First Amendment and the free exercise clause. The Napa Court, after reviewing the briefing on the issues, held as follows:

> They [defendants] assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.
> ...
> Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendant's demurrer to plaintiffs' claims on the ground that they are barred by the First Amendment is OVERRULED.

It is Plaintiffs' position that the analysis with respect to discovery is the same; Plaintiffs' discovery does not and will not impermissibly entangle the court in intrachurch ecclesiastical affairs.

Conclusion

I am preparing a meet and confer letter that we can use to review the individual discovery requests to determine where we have disagreement. It seems a good use of time to see if our disagreement regarding the *Serbian* objection can be worked out in advance. Let me know if this is a matter about which we can come to agreement or whether this is something about which the Napa Court needs to provide us guidance.

I look forward to hearing from you.

Very truly yours,

Gregory S. Love

GSL/sp

cc Bill Brelsford
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EXHIBIT D

EXHIBIT D

EXHIBIT D

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WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **DEFENDANTS' OBJECTION TO THE FOURTH AMENDED NOTICE OF DEPOSITION OF THE PERSON MOST KNOWLEDGEABLE**

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion challenging personal jurisdiction which is still pending with the Court and, therefore, specially appears herein to object to plaintiffs' CCP §2025(d)(6) notice of deposition *duces tecum* to Watch Tower PA regarding (1) the areas of inquiry of the Watch Tower PA representative, and (2) the documents requested in the notice of PMK deposition, as follows:

OBJECTIONS TO SCOPE OF SUBJECT MATTER INQUIRY

SUBJECT MATTER NO. 1:

Organizational and corporate structure of Watch Tower PA from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 1:

Objection. This request is overly broad as to time and geographic scope. Further, this

line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony relevant to the secular organizational structure of the Watch Tower PA corporation for the time periods of 1970 to 2003.

SUBJECT MATTER NO. 2:

The make up and function of the Governing Body from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 2:

Objection. This request is overly broad as to time and geographic scope. This request is not limited to Watch Tower PA, in that this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in

California during the relevant time period"). Also, because the Governing Body is involved with spiritual and ecclesiastical matters related to the Jehovah's Witnesses religion, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

SUBJECT MATTER NO. 3:

Relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present (including but not limited to the Governing Body, Watchtower New York, Branch Committees, Christian Congregation of Jehovah's Witnesses, California District, California Circuits and California Congregations).

RESPONSE TO SUBJECT MATTER NO. 3:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside

the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to its relationship, if any, with any entity that carried out any activity for Jehovah's Witnesses in California from 1970 to 2003.

SUBJECT MATTER NO. 4:

The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present (including but not limited to amounts collected and amounts paid by the KHAA)

RESPONSE TO SUBJECT MATTER NO. 4:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, furnishing details as to amounts collected and paid by the KHAA is unduly burdensome, an invasion of privacy, harassment, and is not reasonably calculated to lead to discovery of admissible evidence on the issue of whether Watch Tower PA is subject to personal jurisdiction in California.

Subject to and without waiving those objections, the designated representative of Watch

Tower PA will provide testimony as to KHAA and its operation with respect to California in 2003. The KHAA did not come into existence until 1989.

SUBJECT MATTER NO. 5:

The Risk Management Office and its operation from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 5:

Objection. This request is overly broad as to time and geographic scope. This line of questioning is not limited to Watch Tower PA, in that this request seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Risk Management's operations through Watch Tower PA in California, if any, from 1970 to 2003.

SUBJECT MATTER NO. 6:

Kingdom Hall financing in California from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 6:

Objection. This request is overly broad as to time and scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in

California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the Defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing in California from 1970 to 2003.

SUBJECT MATTER NO. 7:

Financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses (assemblies or congregation functions) from 1970 to the present (this category to include but not be limited to Kingdom Halls and Assembly Buildings).

RESPONSE TO SUBJECT MATTER NO. 7:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972

to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses from 1970 to 2003.

SUBJECT MATTER NO. 8:

Financing, leasing and/or ownership of property/real estate in California from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 8:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California from 1970 to 2003.

SUBJECT MATTER NO. 9:

Watch Tower PA's operation as the Service Committee of the Governing Body from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 9:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Service Committee's operations through Watch Tower PA in California, if any, from 1970 to 2003.

SUBJECT MATTER NO. 10:

Watch Tower PA's participation in Gilead Schools from 1970 to the present.

RESPONSE TO SUBJECT MATTER NO. 10:

Objection. This request is overly broad as to time and geographic scope. Further, this

line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to Watch Tower PA's participation in Gilead School activity in California, if any, from 1970 to 2003.

OBJECTIONS TO DOCUMENT REQUESTS

REQUEST NO. 1:

Watch Tower PA's corporate book (which should include lists of officers, directors, organizational meeting minutes, resolutions and changes in organizational function and structure).

RESPONSE TO REQUEST NO. 1:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is

the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has already provided a list of all its directors in its prior response to Plaintiffs' interrogatories. See also Exhibits 39 and 40.

REQUEST NO. 2:

Governmental filings (state and federal) by Watch Tower PA from 1970 to the present.

RESPONSE TO REQUEST NO. 2:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, as well as vague and ambiguous as to what might

be termed a "government filing."

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has not made any "government filings" in California. However for the federal filing of the corporation, see Exhibit 59.

REQUEST NO. 3:

Documents describing the organizational structure and reporting relationships within the Watch Tower PA, specifically, and Watchtower Society, generally (describing how Watch Tower PA fits into the overall organization).

RESPONSE TO REQUEST NO. 3:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 39, 40, and 54.

REQUEST NO. 4:

Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution") from Watch Tower PA to California congregations, forms used in the operation of the KHAA, and claims paid in California.

RESPONSE TO REQUEST NO. 4:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and an invasion of privacy of individuals not parties to this lawsuit, unduly burdensome, and intended for purposes of harassment.

Subject to and without waiving those objections, Watch Tower PA responds as follows: See documents for 1972 to 1985 and 2003, attached hereto as Exhibits 5, 10, 12, 14, 15, 17, 18, 21, 25, 26, 28, 29, 31, 36, 37, 38, 49, 50, 51, 52, and 58. Defendant Watch Tower PA had less than 20 claims in California involving the KHAA for the year 2003 and no claims paid from 1972 to 1985 because the KHAA did not come into existence until 1989.

REQUEST NO. 5:

Documents related to financing Kingdom Halls and other buildings used by or for Jehovah's Witnesses in California from 1970 to the present (including but not limited to the *Instructions for Congregation Accounting* forms and other documents that describe the initiation of the transactions).

RESPONSE TO REQUEST NO. 5:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA presently has about 197 Kingdom Hall loans in California. See also Exhibits 5, 6, 7, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 29, 30, 31, 32, 33, 36, 41, 44, 49, 50, 51, and 52.

REQUEST NO. 6:

Documents provided by Watch Tower PA to any California district office, circuit office, congregation, elder, accounts servant or member from 1970 to the present (including but not limited to the Service Committee for the Governing Body).

RESPONSE TO REQUEST NO. 6:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the Defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 42, 43, 45, 46, 47, 48, 56, and 57.

REQUEST NO. 7:

Documents related to Watch Tower PA's involvement in the application process or presentations at the Gilead School from 1970 to the present.

RESPONSE TO REQUEST NO. 7:

Objection. This request seeks documents and information not reasonably calculated to

lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003, and to California.

Further, this request is overly broad and vague. Also, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 19 and 20.

REQUEST NO. 8:

Documents related to monies received by you from California for any reason from 1970 to the present (including but not limited to donations, payments, premiums, and rental/lease income).

RESPONSE TO REQUEST NO. 8:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be

permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, an invasion of privacy, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA sends letters on a monthly basis to each congregation acknowledging the receipt of donations sent by the congregation to Watch Tower PA. See also Exhibits 1, 5, 7, 10, 11, 12, 13, 14, 15, 22, 25, 26, 29, 30, 36, 37 and 38.

REQUEST NO. 9:

Documents sent or prepared by Watch Tower PA that provide instruction for elders and other congregation leaders in California from 1970 to the present.

RESPONSE TO REQUEST NO. 9:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the

years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this request is overly broad and vague. Further, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 45, 47, 48, and 55.

REQUEST NO. 10:

Documents sent or prepared by Watch Tower PA that provide instruction for district or circuit overseers in California from 1970 to the present.

RESPONSE TO REQUEST NO. 10:

Objection. This request seeks documents and information not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v. Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

This request is overly broad, vague, and unduly burdensome. Further, this request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibits 1, 2, 3, 4, 5, 7, 8, 9, 19, 23, and 24.

DATED: August 11, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Defendant Watch Tower Bible and Tract Society of Pennsylvania

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EXHIBIT E

EXHIBIT E

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 DEFENDANT'S RESPONSE TO PLAINTIFFS' FIRST SET OF SPECIAL INTERROGATORIES

PROPOUNDING PARTY: PLAINTIFFS CHARISSA W. AND NICOLE D.

RESPONDING PARTY: DEFENDANT WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, specially appearing[1]

SET NUMBER: ONE

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Defendant") specially appears, see fn. 1, and provides the following answers to plaintiffs Charissa W. and Nicole D.'s ("Plaintiffs") interrogatories pursuant to CCP Section 2030. In answering these

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower PA specially appears with respect to these responses to plaintiffs' special interrogatories, which by Court order were to be limited to "Watch Tower Pennsylvania's contacts in California during the relevant time period."

interrogatories, you have been furnished with such information as is presently available. This may include hearsay and other forms of evidence that are neither reliable nor admissible. The answers are, in addition, given without prejudice to producing at trial subsequently discovered information or information omitted from the answers as a result of good faith oversight.

PRELIMINARY STATEMENT

These responses are made solely for the purposes of this action. Each answer is subject to all of the appropriate objections (including but not limited to objections concerning incompetence, irrelevance, immateriality, propriety and admissibility) which would require the exclusion of any statement contained herein if an interrogatory were asked of, or if the answer was given by, the witness testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

Without waiving its objections, rights or applicable privileges, defendant specially appears and answers Plaintiff's interrogatories to the extent possible as follows:

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe your function/purpose within the Watchtower Society/Jehovah's Witnesses organization.

RESPONSE TO INTERROGATORY NO. 1:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to, and without waiving those objections, Defendant Watch Tower Bible and Tract Society of

Pennsylvania (Watch Tower PA") responds as follows: Watch Tower PA is a legal non-profit corporation that in the past has communicated the Governing Body's spiritual supervision to Branch Committees of Jehovah's Witnesses throughout the world. Watch Tower PA no longer does so. Watch Tower PA never communicated the Governing Body's spiritual counsel to the U.S. Branch Committee which went into operation in about April 2002. Watch Tower PA is the copyright holder for publications of Jehovah's Witnesses, holds funds donated for the world wide work of Jehovah's Witnesses and to the Kingdom Hall Building Fund, operates the Kingdom Hall Assistance Arrangement, and provides funds to branches and congregations of Jehovah's Witnesses throughout the world who may be in need of such funds.

INTERROGATORY NO. 2:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe all of the changes to your function/purpose since 1970.

RESPONSE TO INTERROGATORY NO. 2:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant refers Plaintiffs to the answer to No. 1 above.

INTERROGATORY NO. 3:

If your answer to Interrogatory No. 2 is in the affirmative, why and when such changes were made.

RESPONSE TO INTERROGATORY NO. 3:

Watch Tower PA here incorporates its objections to No. 1. above. Subject to and without waiving those objections, Defendant responds: Not applicable.

INTERROGATORY NO. 4:

If your answer to Interrogatory No. 2 is in the affirmative, please state who made the changes.

ANSWER TO INTERROGATORY NO. 4:

Watch Tower PA here incorporates its objections to No. 1. above. Subject to and without waiving those objections, Defendant responds: Not applicable.

INTERROGATORY NO. 5:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., are you involved in any way with receiving monies from members, publishers, congregations or any other Watchtower Defendant.

RESPONSE TO INTERROGATORY NO. 5:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Defendant responds: Yes, with respect to publishers and congregations. Generally speaking, Watch Tower PA does not receive monies from the Watchtower Bible and Tract Society of New York, Inc., although on a rare occasion it may. Watch Tower PA may receive monetary donations from its members from time to time, but such donations would not be segregated in any way from any other donation that may be received.

INTERROGATORY NO. 6:

If your answer to the previous interrogatory is in the affirmative, please explain why.

RESPONSE TO INTERROGATORY NO. 6:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of

summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it cannot answer what motivates other persons, congregations, or corporations to contribute money to a religious organization. However, Watch Tower PA receives monies from some congregations that received funds from Watch Tower PA to build a Kingdom Hall. In addition, Watch Tower PA receives money from congregations in the United States on a yearly basis for the Kingdom Hall Assistance Arrangement (KHAA), and Watch Tower PA receives contributions from congregations and individuals in the United States for the worldwide Bible education work of Jehovah's Witnesses.

INTERROGATORY NO. 7:

If your answer to Interrogatory No. 5 is in the affirmative, please explain how monies were received.

RESPONSE TO INTERROGATORY NO. 7:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Cash, checks, and electronic transfers.

INTERROGATORY NO. 8:

If your answer to Interrogatory No. 5 is in the affirmative, please identify the individual who knows the most about your receipt of funds.

RESPONSE TO INTERROGATORY NO. 8:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Defendant responds: Richard A. Abrahamson, Secretary-Treasurer.

INTERROGATORY NO. 9:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., from 1970 to the present, what role have you had in the investment or money management decision making for funds received by the Watchtower Society.

RESPONSE TO INTERROGATORY NO. 9:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has no role in any investment or money management decisions of any other corporation or entity other than itself.

INTERROGATORY NO. 10:

With respect to Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc.,

please identify the people responsible for your policy-making and operations from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 10:

Objection. This interrogatory is overly broad, vague and ambiguous. This interrogatory is overly broad. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA identifies the following persons as current and former directors:

1970	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
1973-74	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
	W. K. Jackson	Director
1975	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1976	N. H. Knorr	President
	F. W. Franz	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1977-81	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President

	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
1982-83	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director
1984-92	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1993-95	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1996-10/5/00	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
10/5/00-present	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. A. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer

INTERROGATORY NO. 11:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please identify all members of your Board of Directors since 1970.

RESPONSE TO INTERROGATORY NO. 11:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 10 above.

INTERROGATORY NO. 12:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please identify all officers of Watch Tower Bible and Tract Society of Pennsylvania since 1970.

RESPONSE TO INTERROGATORY NO. 12:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Water Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 10 above.

INTERROGATORY NO. 13:

Describe the relationship between you and Defendant Jehovah's Witnesses-Napa Congregation (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 13:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 14:

Describe the relationship between you and Defendant Jehovah's Witnesses-Oak Knoll Congregation (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 14:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 15:

Describe the relationship between you and Defendant Watchtower Bible and Tract Society of New York, Inc. (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 15:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal

ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: No legal relationship, because Watchtower NY is a separate legal entity that is neither a parent corporation nor subsidiary of Watch Tower PA.

INTERROGATORY NO. 16:

Describe the relationship between you and Defendant Christian Congregation of Jehovah's Witnesses (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 16:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 17:

Describe the relationship between you and Watchtower Service Department (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 17:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 18:

Describe the relationship between you and Watchtower Legal Department (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 18:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably

calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

INTERROGATORY NO. 19:

Describe the relationship between you and Watchtower Writing Department (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 19:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA holds the copyright to writings published by the Writing Department of Jehovah's Witnesses in the United States.

INTERROGATORY NO. 20:

Describe the relationship between you and Office of Public Information (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 20:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

INTERROGATORY NO. 21:

Describe the relationship between you and Public Affairs Office; and [sic] (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 21:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to

conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: The Public Affairs Office is now known as the Office of Public Information. See also response to No. 20 above.

INTERROGATORY NO. 22:

Please describe the relationship between you and Governing Body (including corporate, organizational and theocratic).

RESPONSE TO INTERROGATORY NO. 22:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: No legal relationship.

INTERROGATORY NO. 23:

Please describe the relationship between the Board of Directors for Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 23:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment

to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Until October 1971, Watch Tower PA's board of directors consisted exclusively of individuals who later became members of the Governing Body. Since about October 2000, no Governing Body member is or has been on the Watch Tower PA board of directors.

INTERROGATORY NO. 24:

Please describe the relationship between the officers of Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 24:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 23 above.

INTERROGATORY NO. 25:

Please describe every way that the Governing Body used the Watch Tower Bible and

Tract Society of Pennsylvania to help carry out the activities of Jehovah's Witnesses in the United States, including but not limited to the State of California, from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 25:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This interrogatory is overly broad, vague, and ambiguous as to what is specifically meant by the phrase "help carry out the activities of Jehovah's Witnesses." Subject to and without waiving those objections, Watch Tower PA responds as follows: Up until about 2001, Watch Tower PA was occasionally "used" to communicate with congregations in California by mail. Watch Tower PA has held, and still holds, copyrights to literature published by Jehovah's Witnesses and used by many publishers in California. See also response to No. 1 above.

INTERROGATORY NO. 26:

Please describe how Watch Tower Bible and Tract Society of Pennsylvania has operated as the Service Committee of the Governing Body from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 26:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from

discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has not operated as the Service Committee of the Governing Body.

INTERROGATORY NO. 27:

Please describe any and all involvement you have had with Kingdom Hall financing from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 27:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has provided money to congregations upon request so that the congregations could build Kingdom Halls.

INTERROGATORY NO. 28:

Please describe any and all involvement you have had with Gilead Schools from 1970 to

the present.

RESPONSE TO INTERROGATORY NO. 28:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has had no legal "involvement" with the Watchtower Bible School of Gilead.

INTERROGATORY NO. 29:

Please describe any and all involvement you have had with Kingdom Hall Assistance Arrangements (KHAA) from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 29:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and

complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has received annual contributions from congregations to fund the KHAA since about 1989 and has managed the funds in KHAA.

INTERROGATORY NO. 30:

Please describe any and all involvement you have had with risk management for California congregations and their respective Kingdom Halls from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 30:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 31:

Please describe your involvement with the purchase and/or financing of Kingdom Halls, generally, and the specific Kingdom Halls used by Defendant Napa Congregation of Jehovah's Witnesses and Defendant Oak Knoll Congregation of Jehovah's Witnesses.

RESPONSE TO INTERROGATORY NO. 31:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's

Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it provides money to congregations of Jehovah's Witnesses upon request in order to financially assist the congregations with building Kingdom Halls of Jehovah's Witnesses. Watch Tower PA was not involved in the purchase or building of the Kingdom Hall used by Defendants Napa and Oak Knoll Congregations of Jehovah's Witnesses and did not provide any monies to those two congregations for that purpose.

INTERROGATORY NO. 32:

Please describe the existence and operation of the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 32:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "describe the existence" of KHAA. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning

Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the KHAA was established in about 1989 to consolidate the insurance needs of congregations Jehovah's Witnesses throughout the United States. Each congregation may contribute to the fund. In turn, those monies are used to purchase a CGL insurance policy for all congregations and to cover certain claims for which there is no insurance.

INTERROGATORY NO. 33:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide all of the functions of the Risk Management Office from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 33:

Objection. This interrogatory is vague and ambiguous. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the Risk Management Office of Watch Tower PA does not operate within the United States, except with respect to KHAA.

INTERROGATORY NO. 34:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide who at the Watch Tower Bible and Tract Society of Pennsylvania oversaw/oversees the Risk Management Office from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 34:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 35:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe how the Society's Risk Management Office administers the KHAA Fund 1970 to the present.

RESPONSE TO INTERROGATORY NO. 35:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 36:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe from 1970 to the present how the Risk Management Office purchases commercial excess insurance to protect congregations from catastrophic loss.

RESPONSE TO INTERROGATORY NO. 36:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 37:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in seeking contributions for the Kingdom Hall Assistance Arrangement from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 37:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See

Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that Watch Tower PA informs congregations of Jehovah's Witnesses in the United States once each year of the need to support the KHAA and suggests to them a dollar amount per publisher in each congregation that they may wish to contribute toward the fund.

INTERROGATORY NO. 38:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in construction of new Kingdom Halls from 1970 to present.

RESPONSE TO INTERROGATORY NO. 38:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 39:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in purchase of buildings and vacant lots for Kingdom Halls from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 39:

Objection. This interrogatory is vague and ambiguous with respect to what is

specifically meant by "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 40:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in resolving/addressing property damage sustained at Kingdom Halls from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 40:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 41:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in resolving/addressing injuries sustained at Kingdom Halls from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 41:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "input." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 42:

With respect to the Gilead School, describe its function or purpose from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 42:

Objection. This interrogatory is vague and ambiguous. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash

service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: The Watchtower Bible School of Gilead is a school designed to train missionaries for missionary service in countries outside of the United States.

INTERROGATORY NO. 43:

With respect to the Gilead School, describe your involvement with the Gilead School from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 43:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

INTERROGATORY NO. 44:

Please describe on what occasions Watch Tower Bible and Tract Society of Pennsylvania's attorneys and its legal staff provide counsel or representation to individual Jehovah's Witnesses.

RESPONSE TO INTERROGATORY NO. 44:

Objection. This interrogatory seeks information protected from discovery by the attorney-client privilege. This interrogatory seeks information concerning religious doctrine and

teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that no Watch Tower PA attorneys or legal staff have any involvement with representation of individual Jehovah's Witnesses in California. The Legal Department does not operate under Watch Tower PA in the United States.

INTERROGATORY NO. 45:

Please describe on what occasions Watch Tower Bible and Tract Society of Pennsylvania's attorneys and its legal staff provide counsel or representation to congregation Elders.

RESPONSE TO INTERROGATORY NO. 45:

Objection. This interrogatory seeks information protected from discovery by the attorney-client privilege. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections,

Watch Tower PA responds as follows: The Legal Department does not operate under Watch Tower PA in the United States.

INTERROGATORY NO. 46:

With respect to the Legal Department at Watch Tower Bible and Tract Society of Pennsylvania, please describe where those offices are and how that Legal Department is separate and distinct from that of Watchtower Bible and Tract Society of New York from 1970 to the present.

RESPONSE TO INTERROGATORY NO. 46:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: The Watchtower Bible and Tract Society of New York, Inc.'s Legal Department cares for legal matters in the United States. Watch Tower PA's Legal Department cares for legal matters in countries outside of the United States and has offices in New York.

INTERROGATORY NO. 47:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify the person(s) making the claim, complaint and/or allegation.

RESPONSE TO INTERROGATORY NO. 47:

Objection. This interrogatory seeks information irrelevant to and not reasonably

calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 48:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify the person(s) to whom the report was made.

RESPONSE TO INTERROGATORY NO. 48:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 49:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify the date of each report.

RESPONSE TO INTERROGATORY NO. 49:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 50:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please describe the nature of the allegations.

RESPONSE TO INTERROGATORY NO. 50:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 51:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please describe any and all documents relating to the allegations.

RESPONSE TO INTERROGATORY NO. 51:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 52:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify and describe all systems of abuse/abuser information collection and use thereof.

RESPONSE TO INTERROGATORY NO. 52:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 53:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify all persons made aware of the claim, complaint and/or allegation.

RESPONSE TO INTERROGATORY NO. 53:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 54:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please identify all documents that were destroyed relative to the claims.

RESPONSE TO INTERROGATORY NO. 54:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 55:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please describe if these complaints are the subject of litigation, state the name of the case, the court file number, the court in which the action is venued, and the lawyers involved.

RESPONSE TO INTERROGATORY NO. 55:

Objection. This interrogatory seeks information irrelevant to and not reasonably

calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 56:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please describe if, when and by whom such claims, complaints or allegations were reported to the authorities; if not, state why not for each.

RESPONSE TO INTERROGATORY NO. 56:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 57:

Are you aware of the existence of a computerized database or collection of documents or files that contain information reports or allegations of sexual abuse within the Watchtower Organization?

RESPONSE TO INTERROGATORY NO. 57:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 58:

If your answer to the previous interrogatory is in the affirmative, please state the identity of the person or entity that maintains the database.

RESPONSE TO INTERROGATORY NO. 58:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 59:

If your answer to Interrogatory No. 57 is in the affirmative, please state when such database or filing system was first created.

RESPONSE TO INTERROGATORY NO. 59:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 60:

If your answer to Interrogatory No. 57 is in the affirmative, please state the purpose of keeping such information.

RESPONSE TO INTERROGATORY NO. 60:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to

conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 61:

If your answer to Interrogatory No. 57 is in the affirmative, please state where it is maintained and/or where it can be accessed.

RESPONSE TO INTERROGATORY NO. 61:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 62:

If your answer to interrogatory No. 57 is in the affirmative, please state the identity of the person having knowledge about the database or filing system.

RESPONSE TO INTERROGATORY NO. 62:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 63:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and/or reports of suspicions of abuse, please identify how, when and why the database was first created.

RESPONSE TO INTERROGATORY NO. 63:

Objection. This interrogatory seeks information irrelevant to and not reasonably

calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 64:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify what type of information is collected and stored in the database.

RESPONSE TO INTERROGATORY NO. 64:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 65:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify how the information is received before it is entered in the database.

RESPONSE TO INTERROGATORY NO. 65:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 66:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify who receives the information that is entered into the database.

RESPONSE TO INTERROGATORY NO. 66:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 67:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify who inputs the data into the database.

RESPONSE TO INTERROGATORY NO. 67:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 68:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please describe in detail what happens to the hard copy of the information once it is entered into the database.

RESPONSE TO INTERROGATORY NO. 68:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch

Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 69:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify who uses the database at present.

RESPONSE TO INTERROGATORY NO. 69:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 70:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify how the information in the database is accessed.

RESPONSE TO INTERROGATORY NO. 70:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 71:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify the software that is used to access

and/or operate the database.

RESPONSE TO INTERROGATORY NO. 71:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 72:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please describe the purpose for maintaining such information.

RESPONSE TO INTERROGATORY NO. 72:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 73:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please identify who is authorized to obtain information from the database.

RESPONSE TO INTERROGATORY NO. 73:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to

conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

INTERROGATORY NO. 74:

With respect to the computerized database of disfellowshippings, reprovals, sexual abuse reports, and reports of suspicions of abuse, please describe in detail the circumstances which give rise to requesting information from the database.

RESPONSE TO INTERROGATORY NO. 74:

Objection. This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

DATED: January 16, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

4105124.1

*****

VERIFICATION

The undersigned hereby declares as follows:

I am an authorized representative of specially appearing defendant Watch Tower Bible and Tract Society of Pennsylvania and make this verification on behalf of Watch Tower Bible and Tract Society of Pennsylvania.

I have read the foregoing Responses to Special Interrogatories, set one, and on that ground allege that the matters stated therein are true and correct within my knowledge or belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15TH day of January, 2004, at Patterson, N.Y.

By _____
Mario F. Moreno

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 16, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANT'S RESPONSE TO PLAINTIFFS' INTERROGATORIES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 16, 2004, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

EXHIBIT F

EXHIBIT F

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR PRODUCTION OF DOCUMENTS

PROPOUNDING PARTY: PLAINTIFFS CHARISSA W. AND NICOLE D.

RESPONDING PARTY: DEFENDANT WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, specially appearing[1]

SET NUMBER: ONE

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Defendant") specially appears, see fn. 1, and provides the following answers to plaintiffs Charissa W. and Nicole D.'s ("Plaintiffs") request for production of documents pursuant to CCP Section 2031.

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower PA specially appears with respect to these responses to plaintiffs' request for production of documents, which by Court order were to be limited to "Watch Tower Pennsylvania's contacts in California during the relevant time period."

REQUEST FOR PRODUCTION NO. 1:

Please produce the Corporate Book relating to your organization/operation.

RESPONSE TO REQUEST NO. 1:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 2:

Please produce the Bylaws relating to your organization/operation.

RESPONSE TO REQUEST NO. 2:

See the attached documents Bates nos. WTPA 00001-4.

REQUEST FOR PRODUCTION NO. 3:

Please produce the organizational meeting minutes relating to your organization/operation.

RESPONSE TO REQUEST NO. 3:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 4:

Please produce all Board of Director meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 4:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 5:

Please produce all shareholder or member meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 5:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 6:

Please produce all committee meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 6:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 7:

Please produce all resolutions from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 7:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 8:

Please produce a complete list of shareholders and/or members from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 8:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

REQUEST FOR PRODUCTION NO. 9:

Please produce any and all documents indicating corporate restructuring or reorganization from 1970 to the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 9:

Objection. This request seeks documents and information irrelevant to and not

reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA has no responsive documents, because there has been no corporate restructuring.

REQUEST FOR PRODUCTION NO. 10:

Please produce all documents describing the hierarchical flow chart of positions/personnel from 1970 through the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 10:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, no responsive documents.

REQUEST FOR PRODUCTION NO. 11:

Please produce all documents reflecting officers and directors from 1970 through the present relating to your organization/operation.

RESPONSE TO REQUEST NO. 11:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly

burdensome. Subject to and without waiving those objections, see Watch Tower PA's response to special interrogatory no. 10.

REQUEST FOR PRODUCTION NO. 12:

Please produce all mission statements and/or purpose statements relating to your organization/operation.

RESPONSE TO REQUEST NO. 12:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and vague. Subject to and without waiving those objections, see Watch Tower PA's charter (see documents Bates numbered WTPA 00005-11), which provides:

The purposes of the corporation are religious, educational, and charitable, including to act as the servant and legal entity for the religious body of Christian persons known as Jehovah's Witnesses; publicly and from house to house preach and teach the gospel of God's Kingdom under Christ Jesus unto all nations as a witness to the name, Word, and supremacy of Almighty God, JEHOVA (Matthew 24:14; 28:19, 20; Psalm 83:18; Isaiah 43:10-12); print, record by any means and in any medium, and otherwise produce, and distribute Bibles in any medium; disseminate Bible truths in various languages; write, record by any means and in any medium, and otherwise create, publish, and distribute literature in various languages containing information and comment explaining Bible truths and prophecy concerning the establishment of Jehovah's Kingdom under Christ Jesus (2 Timothy 3:16, 17); write, record by any means and in any medium, and otherwise create, publish, and distribute music, art, and other intellectual property of a religious or educational nature in any medium; improve men, women, and children intellectually and morally by Christian missionary work; instruct and educate men, women, and children about the Bible and incidental scientific, historical, and literary subjects; establish and

operate private Bible schools and ancillary facilities to house and care for the students at such schools and classes for gratuitously instructing men and women about the Bible, Bible literature, and Bible history and for preparing men and women for Christian missionary work; arrange for and hold assemblies for religious worship; maintain one or more religious orders of special ministers of Jehovah's Witnesses (2 Kings 2:3, 5; 6:1); provide humanitarian assistance to persons suffering from natural or man-made disasters and in other times of need; acquire, own, and utilize, including by gift, voluntary contributions, inheritance, and bequest, any interest in real and personal property, including residences and other facilities for missionaries throughout the world; and do any and all other lawful things that its Board of Directors, in accordance with the spiritual direction of the ecclesiastical Governing Body of Jehovah's Witnesses, shall deem appropriate in harmony with these purposes.

REQUEST FOR PRODUCTION NO. 13:

Please produce all flowcharts describing parent corporations and/or subsidiaries relating to your organization/operation.

RESPONSE TO REQUEST NO. 13:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA responds that it has no parent corporations or subsidiaries and thus no responsive documents.

REQUEST FOR PRODUCTION NO. 14:

Please produce all documents which indicate a relationship to or with other business or corporate entities relating to your organization/operation.

RESPONSE TO REQUEST NO. 14:

Objection. This request seeks documents and information irrelevant to and not

reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and vague. Subject to and without waiving those objections, Watch Tower PA will supplement this response if Plaintiffs clarify specifically what "other business or corporate entities" this request refers to.

REQUEST FOR PRODUCTION NO. 15:

With respect to property owned or used by you, please provide the ownership documents including deed records and plats with respect to property in California.

RESPONSE TO REQUEST NO. 15:

Watch Tower PA responds that it holds title to real property in Apple Valley, California (deed does not currently exist); a cemetery plot in Forest Lawn Memorial Park, Hollywood Hills, California; and a cemetery plot in Roosevelt Memorial Park Association, Gardens, California. These properties were devised to Watch Tower PA by means of wills or trusts. Watch Tower PA also responds that it has remainder interests in six homes in California.

REQUEST FOR PRODUCTION NO. 16:

With respect to property owned or used by you, please provide the documents relating to land purchase or acquisition in California.

RESPONSE TO REQUEST NO. 16:

Objection. This request violates privacy interests and privacy rights of the persons who devised said properties to Watch Tower PA. As noted, these properties were devised to Watch Tower PA by means of wills or trusts.

REQUEST FOR PRODUCTION NO. 17:

With respect to property owned or used by you, please provide the documents relating to building purchase or construction in California.

RESPONSE TO REQUEST NO. 17:

Watch Tower PA has not purchased or constructed any buildings in California and thus

has no responsive documents.

REQUEST FOR PRODUCTION NO. 18:

With respect to property owned or used by you, please provide the documents relating to financing or purchase of building(s) in California.

RESPONSE TO REQUEST NO. 18:

No responsive documents, because Watch Tower PA does not use property in California and did not finance or purchase any such buildings in California. See also response to No. 15 above.

REQUEST FOR PRODUCTION NO. 19:

With respect to property owned by you, please provide all lease agreements relating to property or buildings in California.

RESPONSE TO REQUEST N O. 19:

No responsive documents.

REQUEST FOR PRODUCTION NO. 20:

Please provide documents relating to financing or purchases of building(s) for use by assemblies and/or congregations in California, including but not limited to Kingdom Halls and Assembly Buildings.

RESPONSE TO REQUEST NO. 20:

Objection. This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, Watch Tower PA has provided funds to 197 congregations to build Kingdom Halls in California.

REQUEST FOR PRODUCTION NO. 21:

Produce all documentation that relates to monies you have received from California including but not limited to organizational financial statements from 1970 to the present.

RESPONSE TO REQUEST NO. 21:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on

Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request also is overly broad and unduly burdensome, and seeks private and confidential financial information in the form of financial statements for purposes of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

REQUEST FOR PRODUCTION NO. 22:

Produce all documentation that relates to monies you have received from California including but not limited to documents that indicate or reflect the origin of monies received by you.

RESPONSE TO REQUEST NO. 22:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

REQUEST FOR PRODUCTION NO. 23:

Produce all documentation that relates to monies you have received from California

including but not limited to documents that describe how monies from California congregations are received by you from 1970 to the present.

RESPONSE TO REQUEST NO. 23:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA receives contributions from approximately 1,977 congregations in California, which contributions are received by cash, checks and electronic transfers.

REQUEST FOR PRODUCTION NO. 24:

Produce all documentation that relates to monies you have received from California including but not limited to treasurer summaries and reports from 1970 to the present.

RESPONSE TO REQUEST NO. 24:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome, and seeks private and confidential documents for purpose of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower

PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request. Further, Watch Tower PA receives contributions from approximately 1,977 congregations in California.

REQUEST FOR PRODUCTION NO. 25:

Produce all documentation that relates to monies you have received from California including but not limited to tax returns and other government filings or reportings from 1970 to the present.

RESPONSE TO REQUEST NO. 25:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request violates privacy interests and privacy rights. This request is overly broad, unduly burdensome, and is intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 26:

Produce all documentation that relates to monies you have received from California including but not limited to documents that memorialize wire transfers or deposits from congregations in California from 1970 to the present.

RESPONSE TO REQUEST NO. 26:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or

donations it receives are not segregated by state of origin, it would therefore be unduly burdensome to attempt to respond to this request.

REQUEST FOR PRODUCTION NO. 27:

Produce all documentation that relates to monies you have received from California including but not limited to deposit summaries from individuals and/or congregations in California from 1970 to the present.

RESPONSE TO REQUEST NO. 27:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request.

REQUEST FOR PRODUCTION NO. 28:

Produce all documentation that relates to monies you have received from California including but not limited to bank statements reflecting amounts received from California by you from 1970 to the present.

RESPONSE TO REQUEST NO. 28:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome,

violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request.

REQUEST FOR PRODUCTION NO. 29:

Produce all corporate and/or governmental filings (state or federal) from 1970 to the present.

RESPONSE TO REQUEST NO. 29:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that there are none in California.

REQUEST FOR PRODUCTION NO. 30:

Produce any and all communications from Edward Villegas to you from 1970 to the present.

RESPONSE TO REQUEST NO. 30:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 31:

Produce any and all communications from you to Edward Villegas from 1970 to the present.

RESPONSE TO REQUEST NO. 31:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 32:

Produce any and all documents provided to you regarding Edward Villegas from anyone including but not limited to any present or former Overseer, Elder or other Jehovah's Witness or any of the Watchtower Defendants.

RESPONSE TO REQUEST NO. 32:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 33:

Produce any and all documents from you regarding Edward Villegas to anyone including but not limited to any present or former Overseer, Elder or other Jehovah's Witness or any of the Watchtower Defendants.

RESPONSE TO REQUEST NO. 33:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 34:

Produce any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding all correspondence associated with Edward Villegas' movement of membership from one congregation to another.

RESPONSE TO REQUEST NO. 34:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 35:

Produce any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding Edward Villegas' recommendation and appointment as an Elder or other position in any congregation.

RESPONSE TO REQUEST NO. 35:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 36:

Produce any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding any references or allegations relating to child sexual abuse, molestation, lewdness, and/or other improper conduct on the part of Edward Villegas.

RESPONSE TO REQUEST NO. 36:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 37:

Produce any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding any investigation or inquiry performed by any of the Watchtower Defendants or any individual regarding Edward Villegas regarding allegations of child sexual abuse,

molestation, lewdness, and/or other improper conduct with any minor.

RESPONSE TO REQUEST NO. 37:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 38:

Produce any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding matters leading to any and all congregational discipline, reproval (private or public) and/or disfellowshipping of Edward Villegas.

RESPONSE TO REQUEST NO. 38:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analogy. See, e.g., Serbian Eastern Orthodox Diocese v. Milovojevich, 426 U.S. 696(1976). This request is overly broad, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 39:

Produce any and all church and/or membership files or publisher record cards kept by you or any of the Watchtower Defendants pertaining to Edward Villegas.

RESPONSE TO REQUEST NO. 39:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and potentially seeks documents protected by the minister-communicant privilege.

REQUEST FOR PRODUCTION NO. 40:

Produce any and all church and/or membership files or publisher record cards kept by you or any of the Watchtower Defendants pertaining to Plaintiff Charissa W.

RESPONSE TO REQUEST NO. 40:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA responds that it does not have membership files or publisher record cards pertaining to Plaintiff.

REQUEST FOR PRODUCTION NO. 41:

Produce any and all church and/or membership files or publisher record cards kept by you or any of the Watchtower Defendants pertaining to Plaintiff Nicole D., in this action.

RESPONSE TO REQUEST NO. 41:

Objection. This request seeks documents and information irrelevant to and not

reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA responds that it does not have membership files or publisher record cards pertaining to Plaintiff.

REQUEST FOR PRODUCTION NO. 42:

Produce all documents sent by or prepared by you from 1970 to the present to any media representative relative to child sexual abuse or matters related thereto.

RESPONSE TO REQUEST NO. 42:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 43:

Produce all documents sent by or prepared by you from 1970 to the present that serve as press releases or public announcements relative to child sexual abuse or matters related thereto.

RESPONSE TO REQUEST NO. 43:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning

religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 44:

Produce all documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to Elder school materials from 1970 to the present (together with addenda, additions and supplements provided either verbally or in writing).

RESPONSE TO REQUEST NO. 44:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 45:

Produce all documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to Gilead school materials from 1970 to the present (together with addenda, additions and supplements provided either verbally or in writing).

RESPONSE TO REQUEST NO. 45:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 46:

Produce all documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to Instruction/Operation manuals from 1970 to the present (including all supplements).

RESPONSE TO REQUEST NO. 46:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 47:

Produce all documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to policy materials and manuals from 1970 to the present (including all replacements and/or supplements) including but not limited to "Watch Over Yourselves and All Your Flock".

RESPONSE TO REQUEST NO. 47:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 48:

Produce all documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to instructional letters to the Elders or Circuit Overseers or any of the Watchtower Defendants.

RESPONSE TO REQUEST NO. 48:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in

California during the relevant time period"). This request seeks information concerning religious doctrine and teachings and internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This request is overly broad, vague, and unduly burdensome.

REQUEST FOR PRODUCTION NO. 49:

All articles from "The Watchtower" or "Awake!" that relate to child sexual abuse from 1970 to the present, including but not limited to Let Us Abhor What Is Wicked (1997).

RESPONSE TO REQUEST NO. 49:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

REQUEST FOR PRODUCTION NO. 50:

Produce all articles from "The Watchtower" or "Awake!" that relate to child sexual abuse from 1970 to the present, including but not limited to Christendom Walks in The Way of Canaan (1989).

RESPONSE TO REQUEST NO. 50:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

REQUEST FOR PRODUCTION NO. 51:

All articles from "The Watchtower" or "Awake!" that relate to child sexual abuse from 1970 to the present, including but not limited to Child Molesting - - You Can Protect Your Child (1985).

RESPONSE TO REQUEST NO. 51:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

REQUEST FOR PRODUCTION NO. 52:

If you have ever been involved in a criminal investigation or charged with a crime in California from 1970 to the present, please provide all criminal records, including but not limited to indictments, informations, subpoenas, briefing and docket sheets.

RESPONSE TO REQUEST NO. 52:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA has not been involved in a criminal investigation or charged with a crime in California, and thus there are no responsive documents.

REQUEST FOR PRODUCTION NO. 53:

If you have ever been involved in a criminal investigation or charged with a crime in California from 1970 to the present, please provide all judgments, verdicts or plea agreements.

RESPONSE TO REQUEST NO. 53:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA has not been involved in a criminal investigation or charged with a crime in California, and thus there are no responsive documents.

REQUEST FOR PRODUCTION NO. 54:

If you have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all pleadings, discovery, motions and briefing.

RESPONSE TO REQUEST NO. 54:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 55:

If you have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

RESPONSE TO REQUEST NO. 55:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on

Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 56:

If your past or present Governing Body members have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all pleadings, discovery, motions and brief.

RESPONSE TO REQUEST NO. 56:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 57:

If your past or present Governing Body members have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

RESPONSE TO REQUEST NO. 57:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 58:

If your past or present members of your Board of Directors has ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all pleadings, discovery, motions and briefing.

RESPONSE TO REQUEST NO. 58:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

REQUEST FOR PRODUCTION NO. 59:

If your past or present members of your Board of Directors has ever been involved as a party in any civil litigation in California from 1970 to the present, please provide all judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

RESPONSE TO REQUEST NO. 59:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant.

DATED: January 16, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

4105237.1

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EXHIBIT G

EXHIBIT G

FI-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
Rudy Nolen, Esq. SBN 59808
William L. Brelsford, Esq. SBN 202839
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ATTORNEY FOR (Name): Charissa W. and Nicole D.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
Napa County Superior Court
BRANCH, IF ANY:

SHORT TITLE OF CASE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.

FORM INTERROGATORIES

Asking Party: Charissa W. and Nicole D.

Answering Party: Watchtower Bible and Tract Society of Pennsylvania, Inc.

Set No.: One

CASE NUMBER: 26-22191

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure section 2030 and the cases construing it.

(c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds $25,000. Separate interrogatories, *Form Interrogatories —Economic Litigation* (form FI-129), which have no subparts, are designed for use in limited civil cases where the amount demanded is $25,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions — Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure section 2030 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you, including the information possessed by your attorneys or agents, permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.

(h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE) (SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) *(Check one of the following):*

[x] (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

Form Approved for Optional Use
Judicial Council of California
FI-120 [Rev. July 1, 2002]

FORM INTERROGATORIES

Legal Solutions Plus

Code of Civil Procedure, §§ 2030, 2033.5

☐ (2) **INCIDENT** means *(insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)"):*

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.5:

CONTENTS

1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information — Individual
3.0 General Background Information — Business Entity
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5.0 *[Reserved]*
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
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9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation — General
13.0 Investigation — Surveillance
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17.0 Responses to Request for Admissions
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19.0 *[Reserved]*
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25.0 *[Reserved]*
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101.0 Economic Litigation *[See separate form FI-129]*
200.0 Employment Law *[See separate form FI-130]*
Family Law *[See separate form 1292.10]*

1.0 Identity of Persons Answering These Interrogatories

☒ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. *(Do not identify anyone who simply typed or reproduced the responses.)*

2.0 General Background Information — Individual

☐ 2.1 State:
(a) your name;
(b) every name you have used in the past; and
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.5 State:
(a) your present residence **ADDRESS**;
(b) your residence **ADDRESSES** for the last five years; and
(c) the dates you lived at each **ADDRESS**.

☐ 2.6 State:
(a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment; and
(b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

☐ 2.7 State:
(a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed; and
(d) the degrees received.

☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
(a) the city and state where you were convicted;
(b) the date of conviction;
(c) the offense; and
(d) the court and case number.

☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?

☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?

[ ] 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
(a) the name, **ADDRESS**, and telephone number of that **PERSON**; and
(b) a description of your duties.

[ ] 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:
(a) the name, **ADDRESS**, and telephone number;
(b) the nature of the disability or condition; and
(c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.

[ ] 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
(a) the name, **ADDRESS**, and telephone number;
(b) the nature or description of each substance;
(c) the quantity of each substance used or taken;
(d) the date and time of day when each substance was used or taken;
(e) the **ADDRESS** where each substance was used or taken;
(f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken; and
(g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information — Business Entity

[X] 3.1 Are you a corporation? If so, state:
(a) the name stated in the current articles of incorporation;
(b) all other names used by the corporation during the past 10 years and the dates each was used;
(c) the date and place of incorporation;
(d) the **ADDRESS** of the principal place of business; and
(e) whether you are qualified to do business in California.

[X] 3.2 Are you a partnership? If so, state:
(a) the current partnership name;
(b) all other names used by the partnership during the past 10 years and the dates each was used;
(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
(d) the name and **ADDRESS** of each general partner; and
(e) the **ADDRESS** of the principal place of business.

[X] 3.3 Are you a limited liability company? If so, state:
(a) the name stated in the current articles of organization;
(b) all other names used by the company during the past 10 years and the date each was used;
(c) the date and place of filing of the articles of organization;
(d) the **ADDRESS** of the principal place of business; and
(e) whether you are qualified to do business in California.

[X] 3.4 Are you a joint venture? If so, state:
(a) the current joint venture name;
(b) all other names used by the joint venture during the past 10 years and the dates each was used;
(c) the name and **ADDRESS** of each joint venturer; and
(d) the **ADDRESS** of the principal place of business.

[X] 3.5 Are you an unincorporated association? If so, state:
(a) the current unincorporated association name;
(b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
(c) the **ADDRESS** of the principal place of business.

[X] 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
(a) the name;
(b) the dates each was used;
(c) the state and county of each fictitious name filing; and
(d) the **ADDRESS** of the principal place of business.

[X] 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
(a) identify the license or registration;
(b) state the name of the public entity; and
(c) state the dates of issuance and expiration.

4.0 Insurance

[X] 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:
(a) the kind of coverage;
(b) the name and **ADDRESS** of the insurance company;
(c) the name, **ADDRESS**, and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
(g) the name, **ADDRESS**, and telephone number of the custodian of the policy.

[X] 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

5.0 *[Reserved]*

6.0 Physical, Mental, or Emotional Injuries

[ ] 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**? *(If your answer is "no," do not answer interrogatories 6.2 through 6.7).*

[ ] 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

(c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
(d) the name, **ADDRESS**, and telephone number of each registered owner;
(e) the name, **ADDRESS**, and telephone number of each lessee;
(f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder; and
(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.

☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:
(a) your location when you first saw it;
(b) the color;
(c) the number of seconds it had been that color; and
(d) whether the color changed between the time you first saw it and the **INCIDENT**.

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
(a) just before the **INCIDENT**;
(b) at the time of the **INCIDENT**; and
(c) just after the **INCIDENT**.

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
(d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and
(d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 *[Reserved]*

30.0 *[Reserved]*

40.0 *[Reserved]*

50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:
(a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
(c) identify all **DOCUMENTS** that evidence any part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(d) identify all **DOCUMENTS** that are part of any modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
(e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
(f) identify all **DOCUMENTS** that evidence any modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of termination, and the basis of the termination.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 *[Reserved]*

[ ] 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
(a) identify it;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
(a) identify each service;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
(a) identify each cost;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
(a) identify each part of the loss;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT**? If so:
(a) identify each item of property damage;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
(a) identify each cost item;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
(a) the source of each **DOCUMENT**;
(b) the date each claim arose;
(c) the nature of each claim; and
(d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

[ ] 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure section 2034)? If so, for each plaintiff state:
(a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
(b) a description of each **DOCUMENT**; and
(c) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

[X] 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
(a) state the number of the request;
(b) state all facts upon which you base your response;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 *[Reserved]*

19.0 *[Reserved]*

20.0 How the Incident Occurred — Motor Vehicle

[ ] 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).

[ ] 20.2 For each vehicle involved in the **INCIDENT**, state:
(a) the year, make, model, and license number;
(b) the name, **ADDRESS**, and telephone number of the driver;

[X] 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:
(a) the number of photographs or feet of film or videotape;
(b) the places, objects, or persons photographed, filmed, or videotaped;
(c) the date the photographs, films, or videotapes were taken;
(d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes; and
(e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

[X] 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure section 2034) concerning the **INCIDENT**? If so, for each item state:
(a) the type (i.e., diagram, reproduction, or model);
(b) the subject matter; and
(c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

[X] 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:
(a) the name, title, identification number, and employer of the **PERSON** who made the report;
(b) the date and type of report made;
(c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made; and
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of the report.

[X] 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:
(a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure section 2034); and
(b) the date of the inspection.

13.0 Investigation — Surveillance

[X] 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:
(a) the name, **ADDRESS**, and telephone number of the individual or party;
(b) the time, date, and place of the surveillance;
(c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance; and
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

[X] 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:
(a) the title;
(b) the date;
(c) the name, **ADDRESS**, and telephone number of the individual who prepared the report; and
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

[X] 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify the name, **ADDRESS**, and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

[X] 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:
(a) the name, **ADDRESS**, and telephone number of the **PERSON**;
(b) the statute, ordinance, or regulation allegedly violated;
(c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and
(d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

[ ] 15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:
(a) state all facts upon which you base the denial or special or affirmative defense;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
(c) identify all **DOCUMENTS** and other tangible things that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

16.0 Defendant's Contentions — Personal Injury

[ ] 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON**:
(a) state the name, **ADDRESS**, and telephone number of the **PERSON**;
(b) state all facts upon which you base your contention;
(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

[ ] 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**? If so:
(a) state all facts upon which you base your contention;
(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
(c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

9.0 Other Damages

[ ] 9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:
(a) the nature;
(b) the date it occurred;
(c) the amount; and
(d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.

[ ] 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

10.0 Medical History

[ ] 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:
(a) a description of the complaint or injury;
(b) the dates it began and ended; and
(c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

[ ] 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. *(You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)*

[ ] 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:
(a) the date and the place it occurred;
(b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
(c) the nature of any injuries you sustained;
(d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and
(e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

[ ] 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:
(a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;
(b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;
(c) the court, names of the parties, and case number of any action filed;
(d) the name, **ADDRESS**, and telephone number of any attorney representing you;
(e) whether the claim or action has been resolved or is pending; and
(f) a description of the injury.

[ ] 11.2 In the past 10 years have you made a written claim or demand for worker's compensation benefits? If so, for each claim or demand state:
(a) the date, time, and place of the **INCIDENT** giving rise to the claim;
(b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
(c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
(d) the period of time during which you received workers' compensation benefits;
(e) a description of the injury;
(f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** who provided services; and
(g) the case number at the Workers' Compensation Appeals Board.

12.0 Investigation — General

[X] 12.1 State the name, **ADDRESS**, and telephone number of each individual:
(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
(b) who made any statement at the scene of the **INCIDENT**;
(c) who heard any statements made about the **INCIDENT** by any individual at the scene; and
(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

[X] 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:
(a) the name, **ADDRESS**, and telephone number of the individual interviewed;
(b) the date of the interview; and
(c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

[X] 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:
(a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
(b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
(c) the date the statement was obtained; and
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

6.3 Do you still have any complaints that you attribute to the **INCIDENT**? If so, for each complaint state:
(a) a description;
(b) whether the complaint is subsiding, remaining the same, or becoming worse; and
(c) the frequency and duration.

6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure section 2034) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**? If so, for each **HEALTH CARE PROVIDER** state:
(a) the name, **ADDRESS**, and telephone number;
(b) the type of consultation, examination, or treatment provided;
(c) the dates you received consultation, examination, or treatment; and
(d) the charges to date.

6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:
(a) the name;
(b) the **PERSON** who prescribed or furnished it;
(c) the date it was prescribed or furnished;
(d) the dates you began and stopped taking it; and
(e) the cost to date.

6.6 Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:
(a) the nature;
(b) the date;
(c) the cost; and
(d) the name, **ADDRESS**, and telephone number of each provider.

6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:
(a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
(b) the complaints for which the treatment was advised; and
(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:
(a) describe the property;
(b) describe the nature and location of the damage to the property;
(c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and
(d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:
(a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
(b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy of it; and
(c) the amount of damage stated.

7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:
(a) the date repaired;
(b) a description of the repair;
(c) the repair cost;
(d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
(e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? *(If your answer is "no," do not answer interrogatories 8.2 through 8.8).*

8.2 State:
(a) the nature of your work;
(b) your job title at the time of the **INCIDENT**; and
(c) the date your employment began.

8.3 State the last date before the **INCIDENT** that you worked for compensation.

8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT**.

8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:
(a) the facts upon which you base this contention;
(b) an estimate of the amount;
(c) an estimate of how long you will be unable to work; and
(d) how the claim for future income is calculated.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On December 17, I caused the within **FORM INTERROGATORIES, SET ONE,** the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

Attorneys for Plaintiffs
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Five Houston Center
Houston, TX 77010

XXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 17, 2003, at Sacramento, California.

Deanna Czarnecki

Robert J. Schnack, SBN 191987
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11335 Gold Express Drive
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 DEFENDANT'S RESPONSE TO PLAINTIFFS' FORM INTERROGATORIES

PROPOUNDING PARTY: PLAINTIFFS CHARISSA W. AND NICOLE D.

RESPONDING PARTY: DEFENDANT WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, specially appearing[1]

SET NUMBER: ONE

Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Defendant") specially appears, see fn. 1, and provides the following answers to plaintiffs Charissa W. and Nicole D.'s ("Plaintiffs") interrogatories pursuant to CCP Section 2030. In answering these

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower PA specially appears with respect to these responses to plaintiffs' form interrogatories, which by Court order were to be limited to "Watch Tower Pennsylvania's contacts in California during the relevant time period."

interrogatories, you have been furnished with such information as is presently available. This may include hearsay and other forms of evidence that are neither reliable nor admissible. The answers are, in addition, given without prejudice to producing at trial subsequently discovered information or information omitted from the answers as a result of good faith oversight.

PRELIMINARY STATEMENT

These responses are made solely for the purposes of this action. Each answer is subject to all of the appropriate objections (including but not limited to objections concerning incompetence, irrelevance, immateriality, propriety and admissibility) which would require the exclusion of any statement contained herein if an interrogatory were asked of, or if the answer was given by, the witness testifying in court. All such objections and grounds are reserved and may be interposed at the time of trial.

Defendant also expressly reserves and does not waive all applicable objections, rights, and privileges other than the specific objection that these interrogatories fall outside the limited scope of discovery permitted by the Court regarding Watch Tower PA (see fn. 1, supra). Therefore, subject to and without waiving those other possible objections, rights or privileges, Defendant answers Plaintiffs' interrogatories as follows:

RESPONSES TO FORM INTERROGATORIES

FORM INTERROGATORY NO. 1.1:

State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

RESPONSE TO FORM INTERROGATORY NO. 1.1:

Robert J. Schnack, Bullivant Houser Bailey PC, 11335 Gold Express Drive, Suite 105, Gold River, CA 95670 (916)-852-9100, and Mario F. Moreno, Esq., 100 Watchtower Drive, Patterson, New York, (845) 306-1000.

FORM INTERROGATORY NO. 3.1:

Are you a corporation? If so, state:

(a) the name stated in the current articles of incorporation;

(b) all other names used by the corporation during the past ten years and the dates each was used;

(c) the date and place of incorporation;

(d) the **ADDRESS** of the principal place of business;

(e) whether you are qualified to do business in California.

RESPONSE TO FORM INTERROGATORY NO. 3.1:

Yes.

(a) Watch Tower Bible and Tract Society of Pennsylvania.

(b) Not applicable.

(c) December 15, 1885, Allegheny County, Pennsylvania.

(d) 25 Columbia Heights, Brooklyn, New York 11201.

(e) No.

FORM INTERROGATORY NO. 3.2:

Are you a partnership? If so, state:

(a) the current partnership name;

(b) all other names used by the partnership during the past ten years and the dates each was used;

(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;

(d) the name and **ADDRESS** of each general partner;

(e) the **ADDRESS** of the principal place of business.

RESPONSE TO FORM INTERROGATORY NO. 3.2:

No.

FORM INTERROGATORY NO. 3.3:

Are you a limited liability company? If so, state:

(a) the current partnership name;

(b) whether you are a limited partnership and, if so, under the laws of what jurisdiction;

(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;

(d) the name and **ADDRESS** of each general partner; and

(e) the **ADDRESS** of the principal place of business.

RESPONSE TO FORM INTERROGATORY NO. 3.3:

No.

FORM INTERROGATORY NO. 3.4:

Are you a joint venture? If so, state:

(a) the current joint venture name;

(b) all other names used by the joint venture during the past ten years and the dates each was used;

(c) the name and **ADDRESS** of each joint venture;

(d) the **ADDRESS** of the principal place of business.

RESPONSE TO FORM INTERROGATORY NO. 3.4:

No.

FORM INTERROGATORY NO. 3.5:

Are you an unincorporated association? If so, state:

(a) the current unincorporated association name;

(b) all other names used by the unincorporated association during the past ten years and the dates each was used;

(c) the **ADDRESS** of the principal place of business.

RESPONSE TO FORM INTERROGATORY NO. 3.5:

No.

FORM INTERROGATORY NO. 3.6:

Have you done business under a fictitious name during the past ten years? If so, for each fictitious name state:

(a) the name;

(b) the dates each was used;

(c) the state and county of each fictitious name filing;

(d) the **ADDRESS** of the principal place of business.

RESPONSE TO FORM INTERROGATORY NO. 3.6:

No.

FORM INTERROGATORY NO. 3.7:

Within the past five years has any public entity registered or licensed your businesses? If so, for each license or registration:

(a) identify the license or registration;

(b) state the name of the public entity;

(c) state the dates of issuance and expiration.

RESPONSE TO FORM INTERROGATORY NO. 3.7:

Objection. This request is overly broad with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. Subject to and without waiving that objection, Defendant responds that no public entity in California has registered or licensed Defendant's "businesses" within the past five years.

FORM INTERROGATORY NO. 4.1:

At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:

(a) the kind of coverage;

(b) the name and **ADDRESS** of the insurance company;

(c) the name, **ADDRESS**, and telephone number of each named insured;

(d) the policy number;

(e) the limits of coverage for each type of coverage contained in the policy;

(f) whether any reservation of rights, controversy or coverage dispute exists between you and the insurance company;

(g) the name, **ADDRESS**, and telephone number of the custodian of the policy.

RESPONSE TO FORM INTERROGATORY NO. 4.1:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 4.2:

Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

RESPONSE TO FORM INTERROGATORY NO. 4.2:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.1:

State the name, **ADDRESS**, and telephone number of each individual:

(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;

(b) who made any statement at the scene of the **INCIDENT**;

(c) who heard any statements made about the **INCIDENT** by any individual at the scene;

(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure, §2034).

RESPONSE TO FORM INTERROGATORY NO. 12.1:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.2:

Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:

(a) the name, **ADDRESS**, and telephone number of the individual interviewed;

(b) the date of the interview;

(c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

RESPONSE TO FORM INTERROGATORY NO. 12.2:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.3:

Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:

(a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;

(b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;

(c) the date the statement was obtained;

(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

RESPONSE TO FORM INTERROGATORY NO. 12.3:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.4:

Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

(c) the date the photographs, films, or videotapes were taken;

(d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes;

(e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

RESPONSE TO FORM INTERROGATORY NO. 12.4:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery

concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.5:

Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure, §2034) concerning the **INCIDENT**? If so, for each item state:

(a) the type (i.e., diagram, reproduction, or model);

(b) the subject matter;

(c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

RESPONSE TO FORM INTERROGATORY NO. 12.5:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.6:

Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:

(a) the name, title, identification number, and employer of the **PERSON** who made the report;

(b) the date and type of report made;

(c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made.

RESPONSE TO FORM INTERROGATORY NO. 12.6:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service

of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 12.7:

Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:

(a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by the Code of Civil Procedure §2034);

(b) the date of the inspection.

RESPONSE TO FORM INTERROGATORY NO. 12.7:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 13.1:

Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:

(a) the name, **ADDRESS**, and telephone number of the individual or party;

(b) the time, date, and place of the surveillance;

(c) the name, **ADDRESS**, and telephone number of the individual who conducted the surveillance.

RESPONSE TO FORM INTERROGATORY NO. 13.1:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service

of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 13.2:

Has a written report been prepared on the surveillance? If so, for each written report state:

(a) the title;

(b) the date;

(c) the name, **ADDRESS**, and telephone number of the individual who prepared the report;

(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

RESPONSE TO FORM INTERROGATORY NO. 13.2:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 14.1:

Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**? If so, identify each **PERSON** and the statute, ordinance, or regulation.

RESPONSE TO FORM INTERROGATORY NO. 14.1:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service

of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 14.2:

Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**? If so, for each **PERSON** state:

(a) the name, **ADDRESS**, and telephone number of the **PERSON**;

(b) the statute, ordinance, or regulation allegedly violated;

(c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered;

(d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

RESPONSE TO FORM INTERROGATORY NO. 14.2:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

FORM INTERROGATORY NO. 17.1:

Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

(a) state the number of the request;

(b) state all facts upon which you base your response;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts;

(d) identify all **DOCUMENTS** and other tangible things that support your responses and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each

DOCUMENT or thing.

RESPONSE TO FORM INTERROGATORY NO. 17.1:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

DATED: January 16, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

4105119.1

*****

VERIFICATION

The undersigned hereby declares as follows:

I am an authorized representative of specially appearing defendant Watch Tower Bible and Tract Society of Pennsylvania and make this verification on behalf of Watch Tower Bible and Tract Society of Pennsylvania.

I have read the foregoing Responses to Form Interrogatories, set one, and on that ground allege that the matters stated therein are true and correct within my knowledge or belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of January, 2004, at Patterson, N.Y.

By _____
Mario F. Moreno

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 16, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANT'S RESPONSE TO PLAINTIFFS' FORM INTERROGATORIES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

___ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

___ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 16, 2004, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

BLUEBIRDONLINE.COM (888) 772-0705

EXHIBIT H

EXHIBIT H

REINMUELLER –
NOT PERSON WITH MOST KNOWLEDGE
REGARDING ORGANIZATIONAL STRUCTURE

A. REINMUELLER
could tell me, are there any branches in California. Based on this, I'll understand that I don't need to worry about anything above district.
MR. SCHNACK: This is outside the topics of the PMK deposition notice, and I'll instruct him not to answer. I gave you some leeway thinking you were going to link it up, but this is strictly limited to jurisdictional issues, and we could get the order out if you want to quote the language from it.
MR. LOVE: I know what the order says. I know what the notice says.
MR. SCHNACK: Then let's pursue it.
MR. LOVE: This notice relates to the interaction between the different organizations which Watch Tower Pennsylvania is a part of.
MR. SCHNACK: I don't see Watchtower New York listed on here, and I don't see Kingdom Support

A. REINMUELLER
Services on here.
MR. LOVE: But you see congregations listed on there.
MR. SCHNACK: Let's take a break and go off the record.
THE VIDEOGRAPHER: We're going off the record at 9:55 a.m.
[Discussion held off the record.]
THE VIDEOGRAPHER: We're going back on the record. The time is now 10:04 a.m.
MR. SCHNACK: We took a break. Greg, you presented Exhibit 4, and again, I have an objection to this whole line of questioning, and you're getting into the ecclesiastical structure of Jehovah's Witnesses, and we're here for the limited purpose of discussing whether Watch Tower Pennsylvania has sufficient contacts with California. I'll exercise personal jurisdiction there.
This was not a topic in the

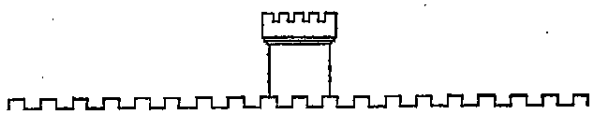
A. REINMUELLER
notice of deposition. There are other persons more knowledgeable about the ecclesiastical structure of the church, and if you want to notice the deposition in that regard, you could probably do that.
I'll let him answer with the interest of moving forward with whatever his understanding is on Exhibit 4, but again, it's in the interest of moving forward.
I have an objection on this whole ecclesiastic structure, and I'll keep repeating it if you continue to go into it. With that, restate your question on Exhibit 4.
Q. Mr. Reinmueller, I prepared Exhibit 4, so there is no misunderstanding that this is a document that was produced by me. What I tried to do is take the information that I had and create something that describes some of the ways in which these people report to one another.

A. REINMUELLER
I've handed you Exhibit 4. In all fairness, you told me about zone overseers, aren't an exact identifiable geographic office or department. With that, if you would, help me understand that this is not an accurate description of how these people relate to one another. What would be?
MR. SCHNACK: Again, I'll allow him to answer subject to the objections I just stated.
A. I want to state that I'm not the person most knowledgeable about the ecclesiastical structure of the organization. I'm here to represent the financial and business matters of the corporation, but to my knowledge as one of Jehovah's Witnesses, on your exhibit, the area zones, again, are not a permanent assignment or really not in the hierarchy of communication ecclesiastically or dashboard between the other developments of the religion.
Q. So would it be fair for us to

EXHIBIT I

EXHIBIT I

JEHOVAH'S WITNESSES
IN THE DIVINE PURPOSE



"'You are my witnesses,' is the utterance of Jehovah."
—Isaiah 43:10

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In this book all Scripture quotations or citations not identified as to translation are from the New World Translation of the Holy Scriptures (*NW*) except those found in material quoted from some other publication, in which case they are from the *King James* or *Authorized Version* (*AV*). Reference to the *American Standard Version* is indicated by the abbreviation *AS*.

Other abbreviations used:

Ibid., abbreviation of *Ibidem,* Latin, meaning "In the same place."

Supra, Latin, meaning "Above or beyond."

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Brooklyn, New York, U.S.A.

Made in the United States of America

visited Henry Ward Beecher at his Columbia Heights residence.

The Society also purchased the old "Plymouth Bethel," a nearby mission structure that had long been used by the Plymouth Church.[d] After some remodeling, on January 31, 1909, the Society dedicated their new headquarters, with 350 in attendance. An assembly hall on the second floor of the renovated Plymouth Bethel had a seating capacity of 800 and was attractively redecorated in light olive green, as the predominating color, with a few artistic Scripture texts along the walls. On its street floor were located the Society's offices and in the basement was a small press for printing handbills, also a shipping department. Concerning these buildings an announcement in *The Watch Tower* stated:

> The new home we shall call "Bethel," and the new office and auditorium, "The Brooklyn Tabernacle"; these names will supplant the term "Bible House."[e]

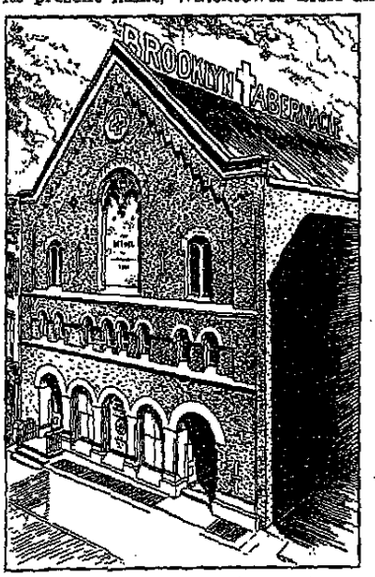
The Society's facilities in Pittsburgh were now sold and its accelerated preaching campaign in its final stage of this important phase of the work was ready to begin. Commodious and convenient as these expanded headquarters in Brooklyn were, however, within two years, in 1911, spacious new housing accommodations were completed adjoining the rear of Bethel, fronting on Furman Street and overlooking the Brooklyn waterfront.[f]

A NEW LEGAL SERVANT IS FORMED

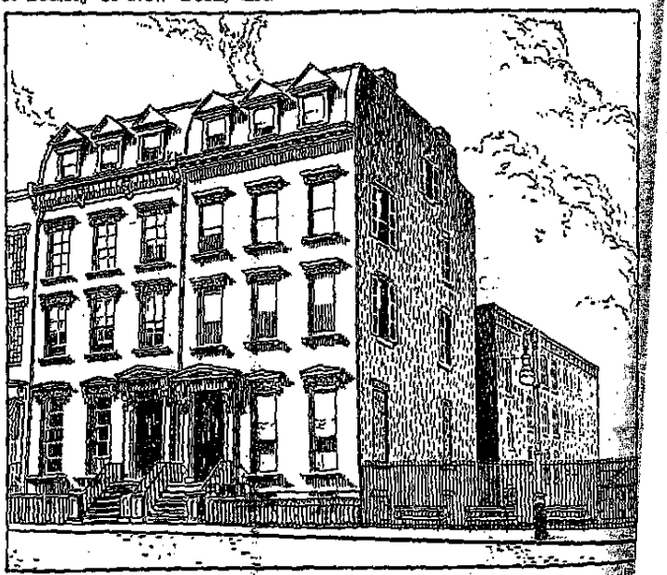
In order to hold title to this property in New York state it was thought advisable for the Witnesses to form a new corporation. The Watch Tower Bible and Tract Society of Pennsylvania was subject to certain legal restrictions. So, after proper application, on February 23, 1909, the People's Pulpit Association was given legal identity as decreed by New York Supreme Court Justice Isaac N. Miller.[g] Its chartered purposes are stated as follows:

> Its corporate purposes are, Charitable, benev-

[d] Built in 1868 at 13-17 Hicks Street, the building has since been removed. The Plymouth Church was founded in 1849 and is still located on Orange Street near Hicks, about two blocks from 124 Columbia Heights. [e] *W* 1909, pp. 67, 68. [f] *W* 1917, p. 58. [g] The certificate of incorporation was filed and recorded March 4, 1909. February 6, 1939, the corporation's name was legally changed to Watchtower Bible and Tract Society, Inc.; and January 16, 1956, to its present name, Watchtower Bible and Tract Society of New York, Inc.



BROOKLYN TABERNACLE, 1909



BETHEL, 122-124 COLUMBIA HEIGHTS, 1911

olent, scientific, historical, literary and religious purposes; the moral and mental improvement of men and women, the dissemination of Bible Truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and for religious missionary work.[h]

TOM: How do you co-ordinate the work of these two corporations, John?

JOHN: Perhaps this quotation from *The Watch Tower* in 1914 will help.

For the sake of our many new readers we explain that the WATCH TOWER BIBLE AND TRACT SOCIETY [Pennsylvania corporation], as the parent organization, represents all the activities in Christian work with which THE WATCH TOWER and its Editor are associated. All of the work done through the INTERNATIONAL BIBLE STUDENTS ASSOCIATION and PEOPLE'S PULPIT ASSOCIATION, directly and indirectly, is the work of the WATCH TOWER BIBLE AND TRACT SOCIETY.

As I have already explained, Tom, the People's Pulpit Association was the New York corporation formed in 1909, whereas the International Bible Students Association mentioned here was a British corporation formed in 1914. This British corporation, while organized particularly for the British field, also had a New York address at the Society's headquarters in Brooklyn. Now the *Watch Tower* article continues:

The Editor of THE WATCH TOWER is the President of all three of these Societies. All financial responsibility connected with the work proceeds from the WATCH TOWER BIBLE AND TRACT SOCIETY [the Pennsylvania corporation]. From it the other Societies and all the branches of the work receive their financial support. . . .

Our division of the work was made necessary by the fact that the parent society Charter by the State of Pennsylvania is not by law permitted to hold property in New York State; hence the necessity for organizing a subsidiary society to hold any real estate in New York. Similarly, the laws of Great Britain prevent any foreign society from holding title to real estate there. This necessitated the organization of the INTERNATIONAL BIBLE STUDENTS ASSOCIATION with a British charter. Thus it comes that we use sometimes the one name and sometimes the other in various parts of our work—yet they all in the end mean the WATCH TOWER BIBLE AND TRACT SOCIETY [the Pennsylvania corporation]—to which all donations should be made.[i]

TOM: Are those three the only corporations you use?

JOHN: No, since then the Society has formed a number of corporations in various countries of the world, but all work together under the direction of the Pennsylvania corporation, which is, itself, merely a legal instrument for the unincorporated body of Jehovah's witnesses world-wide.

AN INTENSIVE CAMPAIGN BEGINS

Jehovah's witnesses have always carried on an intensive campaign, but these years from 1909 to 1914 were truly climactic in the activity exerted by these early modern Witnesses and in the results obtained. Day and night those at headquarters, as well as the pilgrims and colporteurs in the field and those volunteer service workers giving freely of their spare time, were truly expending themselves to give a global witness with the facilities they had.

Beginning with the year 1909 the Society began to put out a new series of tracts first called "People's Pulpit," then "Everybody's Paper" and still later "The Bible Students Monthly." Each month a different issue appeared with a powerful new salvo released against Protestantism, false religion and apostasy. Illustrations and cartoons added to their telling effect. These were distributed literally by the millions under the doors of homes and in front of churches and by personal contact. This tract distribution, however, was by no means the limit to the Society's efforts to give as great a witness as possible. Distribution of pamphlets and bound books, especially by colporteurs, was also running into many millions of copies.

MARIA: At the same time, the brothers organized an international newspaper syn-

[h] Charter of Watchtower Bible and Tract Society, Inc., pp. 1, 5, 6, 11. [i] *W* 1914, p. 371. See also "The History and Operations of Our Society," *W* 1917, pp. 327-330.

EXHIBIT J

EXHIBIT J

Organization
FOR KINGDOM-PREACHING AND DISCIPLE-MAKING

"This good news of the kingdom will be preached in all the inhabited earth for a witness to all the nations." "Go . . . and make disciples of people of all the nations, baptizing them . . . teaching them."—Matt. 24:14; 28:19, 20.

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CHAPTER 1

THE WORK OF PREACHING AND DISCIPLE-MAKING

JEHOVAH has provided good news for mankind, and it is his will that people everywhere be given opportunity to hear it. Now, as the wicked system of things nears its finish, the time left in which to reach people of all nations with this good news is short. There is much to be done. It is a work for everyone who truly loves God and who loves his neighbor. Will you share in it?

Of course, service to God has always included such basic matters as clean living, loving care for the members of one's family, obedience to divine law and prayerful expressions of gratitude to our Creator. But at various times Jehovah has also given special assignments of work to his servants. Noah, for example, was instructed to build an ark and to be a "preacher of righteousness" at a time when the earth was filled with violence. Israel's prophets served as God's spokesmen, announcing both good news and messages of judgment. —2 Pet. 2:5; Gen. 6:13, 14; Jer. 1:7-10.

The special work assigned to Christians was begun at Jehovah's direction nineteen hundred years ago. It was a twofold work: first, that of proclaiming the good news of God's kingdom along with God's judgment messages to peoples of all nations, and, second, that of teaching all those people responding favorably to that proclamation, making disciples of them.

God gave a splendid start to that work, using his own Son to initiate it and to set the right pattern for others to follow. Jesus personally "set out on a tour of all the cities and villages, teaching in their synagogues and preaching the good

by Jesus his "other sheep." (John 10:16) The Bible also designates them as a "great crowd," having the hope of everlasting life on earth as subjects of the Kingdom.—Rev. 7:9-17.

The remaining ones of Christ's spirit-anointed body members on earth constitute the "faithful and discreet slave" of today, and it is this class, as foretold at Matthew 24:47, that the Lord Jesus has appointed "over *all* his belongings" here on earth. So it is vital to work in close association with this "slave" class and to respond in a positive way to the counsel that you receive through it.

From among the members of that "faithful and discreet slave" class certain ones serve as a visible governing body. In the first century of our Common Era that visible governing body was made up of the apostles and other "older men" in the Jerusalem congregation. (Acts 15:2, 6, 23) When they were called on to make decisions affecting the lives and activity of God's people, they considered carefully what the Scriptures said about the matter, looked to God for the direction of his spirit, and then gave appropriate counsel. They also appointed men to responsible positions. (Acts 6:1-6) And they sent out members of the governing body and others on special assignments. (Acts 8:14, 15; 11:22; 15:22) Response to such oversight provided by the Master Jesus Christ through this visible agency resulted in continued increase, with God's blessing.—Acts 16:1-5; 1 Cor. 3:6, 7.

INSTRUMENTS USED BY THE "FAITHFUL AND DISCREET SLAVE" CLASS

In order to carry out the work of preaching and disciple-making most effectively under modern-day conditions, the "faithful and discreet slave" has organized various legal corporations, the principal one of which is the Watch Tower Bible and Tract Society of Pennsylvania. This Society, made

up of dedicated, baptized Christians, is nonprofit and is completely devoted to advancing the interests of true worship in the earth. To facilitate its work world wide, the Society also has branch offices in various countries. All of these are subject to the "faithful and discreet slave" class and its governing body.

Throughout the territory supervised by the various branch offices of the Watch Tower Society are congregations of Jehovah's Christian witnesses. These are all organized in harmony with the arrangements set out in the Scriptures. These congregations have appointed elders, at present some of the anointed and some of the "other sheep," but all spiritually qualified men, who serve as overseers and spiritual shepherds of the flock of God entrusted to their care. (Acts 14:23; 20:17, 28; Titus 1:5) None of these elders is looked to as the head of the congregation; that is the position to which God has appointed Jesus Christ. Rather, the elders as a body work together to care for the flock under the direction of the Fine Shepherd, Jesus Christ. (1 Tim. 4:14; John 10:11) They well know that the flock is not theirs but God's, and they recognize their accountability to Jehovah. The result is a unified organization, one that upbuilds and refreshes its members and that serves for the accomplishment of the work that God has given it to perform.

RECOGNIZING GOD'S ARRANGEMENT

If you desire to serve Jehovah and to share in the work that he gives his people to do today, you need to associate with those whom God approves. Are you convinced that Jehovah is using an earthly organization of disciples of Jesus Christ, that the Christian congregation of anointed ones is indeed the appointed "slave" that has been entrusted with *all* the earthly interests of the Master Jesus Christ?

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EXHIBIT K

EXHIBIT K

The WATCHTOWER



"GOOD NEWS" —Even For Our Day!

JANUARY 1, 1977

ANNOUNCING JEHOVAH'S KINGDOM

KEEPING ON WATCH FOR THE MASTER

14 In 1971, the Governing Body of the "slave" class began to be enlarged in order to give broader spiritual supervision over the "belongings" of the Master here on earth. This includes caring for the interests of the "great crowd." It includes giving oversight to the preparing of Kingdom publications, to teaching God's people and to helping them in their service in the field.

15 Over the years, the Governing Body of the "faithful and discreet slave" was always associated closely with the corporate body now known as the Watch Tower Bible and Tract Society of Pennsylvania, which was first incorporated in 1884, and which administers necessary matters for Jehovah's Witnesses world wide. There is no question that the first president of this corporation, C. T. Russell, was used mightily by Jehovah during the period when basic Bible truths were being restored among God's true worshipers on earth. Then, from 1917 to 1942, J. F. Rutherford served as president, and fought courageously against Christendom's efforts to discredit and destroy God's organized people on earth. From 1942, N. H. Knorr, who is still serving as president of the Watch Tower Society, has energetically pushed a great Bible educational campaign to the very ends of the earth. Administration by these faithful men and their fellow workers in the Governing Body of Jehovah's Witnesses has been marvelously blessed by Jehovah. It is indicative of heaven's direction, and of the permanence and stability of the organization, that in the space of almost a hundred years, only three different men have served as president of the Watch Tower Society, each with abilities particularly suited to the needs of the time.

14. For what "belongings" does the "slave" now care?
15. (a) How has the Governing Body of the "slave" been blessed over the years? (b) What has helped in giving permanence to the organization?

16 To meet further demands of expansion, it was arranged in 1971 to increase the number of "older men" serving as the Governing Body of Jehovah's Witnesses from seven (the directors of the Watch Tower Society) to a total of eleven members. Further expansion, to eighteen members, took place late in 1974; of these, John Groh has since finished his earthly course. And it was during the next year, 1975, that one of the most significant organizational readjustments in the 100-year history of the modern-day witnesses of Jehovah came under consideration. After discussions that continued through most of that year, the reorganization was approved on December 4, 1975, by a unanimous vote of the seventeen members of the Governing Body. It became operative from January 1, 1976.

17 What was involved in this reorganization? As always, Christ Jesus continued to be recognized as Head over the "slave" class, his congregation here on earth. (Eph. 1:22; 5:23) Under this one Head, the anointed members of the Governing Body serve as equals, with a chairman rotating alphabetically each year. Administrative responsibilities are divided among the Chairman's Committee of three members (comprising the chairman for the current year, for the previous year and for the year to follow), and five permanent committees of from five to seven members, which oversee the activities of Jehovah's Witnesses world wide. Each of these five committees has a chairman rotating each year and a permanent coordinator or secretary.—Prov. 11:14.

18 The Writing Committee supervises the

16. (a) How were needs of expansion met in 1971, and in 1974? (b) What significant readjustment was planned in 1975, and when did it become operative?
17. (a) Who is always Head over the "slave" class? (Matt. 23:8, 10) (b) How were responsibilities delegated, in harmony with Proverbs 11:14?
18. (a) Specifically, how do the committees share responsibilities? (b) What is the organization now well equipped to handle? (Isa. 60:5; 32:1, 2)

preparation of all publications; the Teaching Committee prepares materials for the various schools, meetings and assemblies arranged for God's people; the Service Committee takes care of all matters related to Kingdom-preaching and disciple-making; the Publishing Committee handles all printing operations and business affairs; and the Personnel Committee watches over the interests of all persons serving in the Bethel homes and factories of Jehovah's Witnesses. Thus responsibilities are shared, as was done among "older men" in the first-century Christian congregation. Moreover, the organization is now well equipped to handle further expansion, as well as problems that may arise due to the worsening world crisis.—Acts 15:1, 2, 6-29; 1 Cor. 14:40.

[19] On February 1, 1976, a similar arrangement was put into effect in all branch offices of the Watch Tower Society throughout the earth. No longer is there a branch overseer, but three or more experienced "older men" serve as a committee under the Governing Body in watching over the interests of Jehovah's Witnesses in that area. In these committees, too, the chairman rotates each year, while one member serves continuously as coordinator.—Prov. 15:22.

19. How have the Watch Tower branch offices been reorganized, in line with Proverbs 15:22?

[20] With Jehovah's blessing, the work of his self-sacrificing Witnesses has borne marvelous fruitage, and the organization has expanded accordingly. There are some faithful workers in the field who have served Jehovah loyally for forty, fifty, sixty and more years, and these continue as outstanding examples to the entire congregation. There are those, too, who have expended themselves in "pioneering" difficult territories, in carrying the Kingdom message into new cities and lands, and in serving "underground" for decades in countries where Jehovah's Witnesses are banned. As all of us continue to serve with zeal, we can be confident that fine fruitage will be produced right through to the time when "Jehovah's day" brings sudden and instant destruction on this wicked world. —1 Thess. 5:1-4.

[21] Clearly, "expressions inspired by demons" are now going forth "to the kings [rulers] of the entire inhabited earth, to gather them together to the war of the great day of God the Almighty." It is in this situation that our Master adds the warning: "Look! I am coming as a thief.

20. (a) What marvelous fruitage has been produced by faithful workers in the field? (Matt. 13:23) (b) What encouragement does First Thessalonians 5:1-4 give toward our continuing to bear such fruitage?

21. (a) In what situation do the Master and his "slave" admonish all to serve God with zeal? (b) What rewards result from zealous service? (Prov. 18:10; Isa. 26:20, 21)



EXHIBIT L

EXHIBIT L

"Your Word Is a Lamp to My Foot"

1

"Your Word Is a Lamp to My Foot"



"Your word is a lamp to my foot,
and a light to my roadway."
—Ps. 119:105.

to the 144,000 spiritual Israelites who would be "slaves of our God," a "great crowd" of others would stand approved before God and Christ. Their respect for Jehovah's organizational arrangement is made clear, because it is pointed out that they serve God "in his temple," that is, in association on earth with the remnant of Christ's body members, who make up a temple of "living stones," "a holy temple for Jehovah . . . a place for God to inhabit by spirit." (1 Pet. 2:5; Eph. 2:21, 22) And in his illustration of the sheep and the goats, Jesus says that people of the nations are to undergo judicial examination on the basis of their treatment of his "brothers," his spirit-anointed fellow heirs of the heavenly kingdom. It is those who loyally uphold them even when they are being persecuted and who refresh them by wholehearted participation with them as dedicated Christians in God's service who will be approved by Jesus Christ and rewarded with eternal life. —Matt. 25:31-46; Heb. 2:10, 11.

From among the members of Christ's spirit-anointed body members certain ones serve as a visible governing body. In the first century of our Common Era that governing body was made up of the apostles and certain other mature brothers in the Jerusalem congregation. (Acts 15:2, 6, 23) When they were called on to make decisions affecting the lives and activity of God's people, they considered carefully what the Scriptures said about the matter, looked to God for the direction of his spirit, and then gave appropriate counsel. Response to their oversight strengthened the faith of the congregations and resulted in continued increase, with God's blessing.—Acts 16:4, 5; 1 Cor. 3:6, 7.

In order to carry out the preaching work most effectively under modern-day conditions, the "faithful and discreet slave" has organized a legal corporation, the Watch Tower Bible and Tract Society of Pennsylvania. This Society, made up of mature Christians, is nonprofit and is completely devoted to advancing the interests of true worship in the earth. It has been used by the anointed followers of Jesus Christ for many years in dispensing knowledge to the household of faith and directing the preaching work, and Jehovah's blessing on that arrangement is very manifest. The visible governing body is closely identified with the board of directors of this Society. As was true among early Christians, response to the oversight of the governing body results in unity and increase.

To facilitate the carrying out of Jesus' instructions to preach "this good news of the kingdom" in all the inhabited earth, the Watch Tower Bible and Tract Society also has branch offices in various countries. All of these are subject to the visible governing body, but each branch devotes its attention to its own territory. Knowing the conditions that exist there, the branch office is in position to apply instructions in the most beneficial way and to handle local matters promptly.

It is no less true in our day than it was in the first century of our Common Era that close contact with Jehovah's visible organization is important. Those who got baptized as Christians at the time of Pentecost, 33 C.E., continued in close association with the apostles to receive instruction. (Acts 2:41, 42) When persecution resulted in a scattering of the disciples, they still kept in touch with the governing body in Jerusalem. (Acts 8:1, 14-17) Later, when Saul of Tarsus was converted, the Lord saw to it that he was brought into contact with representatives of the Christian congregation for instruction. (Acts 9:1-22) And as this zealous apostle went about the preaching work, he built up the appreciation of others for Jehovah's visible organization. How? By referring the important circumcision issue to the governing

body at Jerusalem and supporting the decision made; also by organizing congregations in many of the cities where he preached. (Acts 14:21-23; 15:1, 2; 16:4, 5) The instructions written to some of those congregations have been preserved for us in the inspired Word of God, and they continue to provide the basis for the organizational procedures followed by Jehovah's Christian witnesses today.

CHAPTER 3

Congregation Meetings

IN ALL parts of the earth where there are groups of Jehovah's witnesses, the Watch Tower Bible and Tract Society has organized congregations and provided a schedule of meetings for the spiritual upbuilding of those associated with them.

Gathering together to hear God's Word and to share in worship is important for each one of us, even as it was in the days of faithful Nehemiah, who urged his fellow Israelites: "We should not neglect the house of our God." (Neh. 10:39) Attending meetings of Jehovah's witnesses shows that you are conscious of your spiritual need and it identifies you with Jehovah's servants in the earth. At Hebrews 10:24, 25, the apostle Paul urges us to appreciate the importance of the meetings, saying: "Let us consider one another to incite to love and fine works, not forsaking the gathering of ourselves together, as some have the custom, but encouraging one another, and all the more so as you behold the day drawing near." That "day" is indeed drawing very near, and the pressures of the world are constantly increasing. So, more than ever before, it is necessary to gather

together at the congregation meetings, in order to stay spiritually awake. Even when you are tired at the end of the day, you will find that the meetings are refreshing.

Attending meetings is important for both young persons and those of older years. It is a fine thing when parents arrange to bring their children with them to the meetings. As the prophet Moses instructed the people in his day: "Congregate the people, the men and the women and the little ones . . . in order that they may listen and in order that they may learn." (Deut. 31:12) And of the young man Timothy, the Bible informs us that he knew the holy writings from the time of infancy.—2 Tim. 3:14, 15.

It is not just occasional meeting attendance that makes one a spiritually sound, mature Christian. More is required than that. Regularity is needed, and balance, enabling one to benefit from all the provisions made by Jehovah through his organization. Those who embraced the truth at the time of Pentecost, 33 C.E., did not treat the matter lightly. "They continued devoting themselves to the teaching of the apostles . . . And day after day they were in constant attendance at the temple with one accord." (Acts 2:42, 46) Later, when Paul instructed disciples in Ephesus, he provided a consistent program of spiritual upbuilding for them, giving talks daily. (Acts 19:9) Really, where would we rather be than in association with Jehovah's people? And what could be more beneficial than hearing the Word of God discussed?

It is also our privilege and duty when attending meetings to consider the others who are present. Of course, our being in attendance is itself a source of encouragement to them. But, when discussing the importance of attending meetings, the apostle Paul urged us to do more than simply be present. He said: "Let us hold fast the public declaration

EXHIBIT M

EXHIBIT M

How the Governing Body Differs From a Legal Corporation

ANNUAL meetings of the Watch Tower Bible and Tract Society of Pennsylvania have been held since January of 1885. When the ingathering of anointed Christians was underway in the late 19th century, the directors and officers of this corporation had the heavenly hope. In fact, this has almost always been the case.

There was one exception. In 1940, Hayden C. Covington—then the Society's legal counsel and one of the "other sheep," with the earthly hope—was elected a director of the Society. (John 10:16) He served as the Society's vice president from 1942 to 1945. At that time, Brother Covington stepped aside as a director to comply with what then seemed to be Jehovah's will—that all directors and officers of the Pennsylvania corporation be anointed Christians. Lyman A. Swingle replaced Hayden C. Covington on the board of directors, and Frederick W. Franz was elected vice president.

Why did Jehovah's servants believe that all the directors and officers of the Watch Tower Bible and Tract Society of Pennsylvania should be anointed Christians? Because at the time, the board of directors and officers of the Pennsylvania corporation were closely identified with the Governing Body of Jehovah's Witnesses, which has always been made up entirely of spirit-anointed men.

A Historic Annual Meeting

At the annual meeting held on October 2, 1944, in Pittsburgh, the members of the Pennsylvania corporation adopted six resolutions amending its charter. The charter had provided that voting shares be issued to contributors of funds to the Society's work, but the third amendment eliminated that provision. A report on that annual meeting noted: "Membership in the Society will be limited to not more than 500 . . . Each one chosen must be a full-time servant of the Society or a part-time servant of a company [congregation] of Jehovah's witnesses and must show the spirit of the Lord."

Thereafter, directors of the Society were to be voted into office by individuals who were fully devoted to Jehovah, irrespective of the amount of money that they contributed to advance the Kingdom work. This turned out to be in accord with the progressive refinements foretold at Isaiah 60:17, where we read: "Instead of the copper I shall bring in gold, and instead of the iron I shall bring in silver, and instead of the wood, copper, and instead of the stones, iron; and I will appoint peace as your overseers and righteousness as your task assigners." In referring to "overseers" and "task assigners," this prophecy pointed to improvements in organizational procedures among Jehovah's people.

This important step in bringing the organization into theocratic alignment came at the end of the "two thousand three hundred evenings and mornings," mentioned at Daniel 8:14. At that time, "the holy place" was "brought into its right condition."

After the historic annual meeting in 1944, however, a vital question remained. Since the Governing Body was then closely identified with the Pennsylvania corporation's seven-member board of directors, did this mean that the Governing Body could never be made up of more than seven anointed Christians? Moreover, since the directors are elect-

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ed by the members of the corporation, were the corporation members electing members of the Governing Body at the annual meeting each year? Are the directors and officers of the Watch Tower Bible and Tract Society of Pennsylvania and the members of the Governing Body one and the same, or are they different?

Another Unforgettable Annual Meeting

These questions were answered at the annual meeting held on October 1, 1971. On that occasion, one of the speakers pointed out that the governing body of "the faithful and discreet slave" preceded the Watch Tower Bible and Tract Society of Pennsylvania by hundreds of years. (Matthew 24:45-47) A governing body was formed at Pentecost of 33 C.E., more than 18 centuries before the Pennsylvania corporation came into existence. At first, the governing body consisted of, not 7 men, but 12 apostles. Evidently, its number was enlarged later, for "the apostles *and older men* in Jerusalem" were taking the lead.—Acts 15:2.

In 1971 the same speaker explained that the members of the Watch Tower Society could not vote in the members of the anointed Governing Body. Why? "Because," he said, "the governing body of the 'slave' class is not appointed by any man. It is appointed by . . . Jesus Christ, the Head of the true Christian congregation and the Lord and Master of the 'faithful and discreet slave' class." Clearly, then, the members of the Governing Body cannot be voted into office by the membership of any legal corporation.

Continuing, the speaker made this very significant statement: "The governing body does not have officers such as the Society's Board of Directors has, namely, president, vice president, secretary-treasurer and assistant secretary-treasurer. It has merely a chairman." For many years, the president of the Pennsylvania corporation was also the foremost member of the Governing Body. This would no longer be the case. While not equal in experience or ability, Governing Body members would be equal in responsibility. The speaker added: "Any member of the governing body can be chairman thereof without being at the same time the president of the . . . Society . . . It all depends upon the rotation system for the chairmanship in the governing body."

At that unforgettable annual meeting in 1971, a distinction was clearly drawn between the spirit-anointed members of the Governing Body and the directors of the Pennsylvania corporation. Still, members of the Governing Body continued to serve as directors and officers of the Society. Today, however, the question arises: Is there any Scriptural reason why the directors of the Watch Tower Bible and Tract Society of Pennsylvania must be members of the Governing Body?

The answer is no. The Pennsylvania corporation is not the only legal entity used by Jehovah's Witnesses. There are others. One is the Watchtower Bible and Tract Society of New York, Incorporated. It facilitates our work in the United States. Jehovah's blessing has clearly been upon that corporation, though its directors and officers have been mainly of the "other sheep." The International Bible Students Association is used in Britain. Other legal entities are used to promote Kingdom interests in other lands. All of them harmoniously assist and have a role to play in getting the good news preached earth wide. No matter where they are located or who serve as directors or officers, these entities are theocratically guided and used by the Governing Body. Hence, such entities have assigned tasks to perform in furthering Kingdom interests.

It is beneficial for us to have legal entities. We thereby conform to local and national laws, as required by God's Word. (Jeremiah 32:11; Romans 13:1) Legal entities facilitate our work of spreading the Kingdom message by printing Bibles, books,

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magazines, brochures, and other material. Such entities also serve as legal instruments to handle matters related to property ownership, relief efforts, contracts for the use of convention facilities, and so forth. We are thankful for the services of such legal entities.

Jehovah's Name to the Fore

In 1944, Article II of the charter of the Watch Tower Bible and Tract Society of Pennsylvania was amended to underscore the objectives of this corporation. According to the charter, the purposes of the Society include this principal purpose: "To preach the gospel of God's kingdom under Christ Jesus unto all nations as a witness to the name, word and supremacy of Almighty God JEHOVAH."

Since 1926 'the faithful slave' has brought Jehovah's name to the fore. Especially noteworthy was 1931 when the Bible Students adopted the name Jehovah's Witnesses. (Isaiah 43:10-12) Publications of the Society that have laid emphasis on God's name include the books *Jehovah* (1934), *"Let Your Name Be Sanctified"* (1961), and *"The Nations Shall Know That I Am Jehovah"—How?* (1971).

Special mention must be made of the *New World Translation of the Holy Scriptures*, published in its entirety in English in 1960. It contains Jehovah's name in every place where the Tetragrammaton appears in the Hebrew Scriptures. This translation also includes the divine name in 237 places in the Christian Greek Scriptures where careful analysis indicated that this was warranted. How thankful we are that, in various ways, Jehovah has permitted the "slave" and its Governing Body to utilize their publishing resources and legal entities in making his name known earth wide!

Distribution of God's Word Promoted

Jehovah's people have consistently borne witness to his name and have upheld his Word by publishing and distributing millions of Bible-based publications as well as the Bible itself. In the early 1900's, the Watch Tower Society became the copyright owner of *The Emphatic Diaglott*, Benjamin Wilson's Greek-English interlinear edition of the Christian Greek Scriptures. The Society published the Bible Students' edition of the *King James Version*, which included a 500-page appendix. In 1942 it published the *King James Version* with marginal references. Then in 1944 the Society began to print the *American Standard Version* of 1901, which uses the divine name. The name of Jehovah also was a feature of *The Bible in Living English*, by Stephen T. Byington, published by the Society in 1972.

The legal entities used by Jehovah's Witnesses have assisted in printing and distributing all of these Bible translations. Most notable, however, has been the very close cooperation between the Watch Tower Society and the group of anointed Witnesses of Jehovah comprising the New World Bible Translation Committee. We rejoice that, in whole or in part, to date over 106,400,000 copies of this translation have been printed in 38 languages. The Watch Tower Bible and Tract Society of Pennsylvania truly is a *Bible* society!

The faithful slave' has been 'appointed over all his master's belongings.' These include facilities at headquarters in New York State, U.S.A., and the 110 branches now operating worldwide. The members of the slave class know that they will be called upon to

IN OUR NEXT ISSUE

Finding Security in a Risk-Filled World

Are You Living Up to Your Dedication?

You Can Cope With Discouragement!

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render an account for the way in which they have used what has been entrusted to them. (Matthew 25:14-30) Yet, this does not prevent the 'slave' from allowing qualified overseers from among the "other sheep" to care for legal and administrative responsibilities. In fact, this allows members of the Governing Body to devote more time "to prayer and to the ministry of the word."—Acts 6:4.

As long as conditions in this world permit, the Governing Body, representing "the faithful and discreet slave," will make use of legal entities. These are convenient, but they are not indispensable. If a legal entity is dissolved by government decree, the preaching work will still go on. Even now, in lands where restrictions are in effect and no legal entities are used, the Kingdom message is being proclaimed, disciples are being made, and theocracy's increase continues. That is happening because Jehovah's Witnesses plant and water, and 'God keeps making it grow.'—1 Corinthians 3:6, 7.

As we look to the future, we are confident that Jehovah will care for the spiritual and material needs of his people. He and his Son, Jesus Christ, will continue to provide the heavenly direction and support needed to complete the Kingdom-preaching work. Of course, whatever we accomplish as God's servants is done 'not by a military force, nor by power, but by Jehovah's spirit.' (Zechariah 4:6) We therefore pray for divine help, knowing that in the strength that Jehovah supplies, we will be able to finish the work he has given us to do in this time of the end!

A Special Announcement

AT THE conclusion of the annual meeting of the Watch Tower Bible and Tract Society of Pennsylvania on October 7, 2000, a special announcement was made by the chairman, John E. Barr of the Governing Body. This announcement built further on discourses given earlier that day by Theodore Jaracz and Daniel Sydlik.—See pages 12-16 and 28-31 of this magazine.

Making a very significant point, Brother Barr stated: "'The faithful and discreet slave' and its Governing Body have had entrusted to them interests that are higher and far more encompassing than those granted to legal corporations. Set out in the chartered purposes of each of such entities are matters that are limited in their scope. Our Master, Jesus Christ, however, has appointed the faithful slave class over all his 'belongings,' or Kingdom interests here on earth."—Matthew 24:45-47.

Concerning the Pennsylvania corporation, Brother Barr added: "Ever since its incorporation in 1884, the Watch Tower Bible and Tract Society of Pennsylvania has played an important role in our modern-day history. Still, it is merely a legal instrument available for use by 'the faithful and discreet slave' when it is necessary."

In their discourses, Brothers Sydlik and Jaracz had explained that the fact that "the faithful and discreet slave" has been entrusted with all of the Lord's earthly belongings does not prevent the slave class from allowing qualified men from among the "other sheep" to care for certain routine administrative responsibilities. (John 10:16) Nor is there any Scriptural reason to insist that all or any of the directors of the legal entities used by Jehovah's Witnesses be anointed Christians.

Brother Barr told the audience that recently certain members of the Governing Body of Jehovah's Witnesses who had been serving as directors and officers voluntarily stepped aside from the boards of directors of all the corporations used by "the faithful and discreet slave" in the United States. Responsible brothers of the other sheep class were elected as replacements.

This decision is beneficial indeed. It allows members of the Governing Body to spend more time in preparing spiritual food and in otherwise caring for the spiritual needs of the worldwide brotherhood.

In conclusion, the chairman told his delighted audience: "While various legal and administrative duties have been assigned to experienced overseers, . . . all of them serve under the spiritual direction of the Governing Body. . . . All of us prayerfully look to Jehovah for his blessing upon our united efforts in doing his will, to the honor and glory of his great name."

EXHIBIT N

EXHIBIT N

THEOCRATIC ORGANIZATION WITH WHICH TO *Move Forward Now*

THOSE "twelve apostles of the Lamb" were gifts from the great Theocrat Jehovah through Jesus Christ to the congregation. The psalm of David (68:18) had foretold such gifts, and the apostle Paul matches the psalm to its fulfillment and says: "Wherefore he says [in Psalm 68:18]: 'When he ascended on high he carried away captives; he gave gifts in men.' . . . And he gave some as apostles, some as prophets, some as evangelizers, some as shepherds and teachers, with a view to the readjustment of the holy ones, for ministerial work, for the building up of the body of the Christ." (Eph. 4:8-12) At the beginning those twelve apostles, because of their position, served as a governing body for the whole congregation of believers. So they made appointments of qualified men in the congregation to assist them in less vital matters. As an illustration of this, when the Jerusalem congregation had increased to five thousand members and a disturbing difficulty arose, here is what happened:

[2] "So the twelve called the multitude of the disciples to them and said: 'It is not pleasing for us to leave the word of God to distribute food to tables. So, brothers, search out for yourselves seven certified men from among you, full of spirit and wisdom, that we may appoint them over this necessary business; but we shall devote ourselves to prayer and to the ministry of the word.' And the thing spoken was pleasing to the whole multitude, and they selected . . . and they placed them before the apostles, and, after having prayed, these laid their hands upon them. Consequently the word of God went on growing, and the number of the disciples kept multiplying in Jerusalem very much." —Acts 6:1-7.

[3] As those seven assistants were appointed by the apostolic governing body, who extended their hands in approval of such assistants, those appointments were theocratic, not congregational or democratic. Later on, official "older men" or "elders" (presbyters) were theocratically appointed and added to the governing body at Jerusalem. So, about the year 49 C.E., when Paul and Barnabas came to Jerusalem and submitted the question raised about circumcising non-Jewish believers, the governing body that handled and settled the issue was made up of "the apostles and the older men," under the guidance of God's holy spirit.—Acts 15:1-29; 16:4.

[4] That first-century congregation was not some legal corporation that was registered and chartered by the Jewish gov-

1. (a) According to Psalm 68:18, what were those twelve apostles? (b) As a group, how did they act together, and so what were they authorized to do?
2. How did the apostles take care of the difficulty over food distribution, and so what happened regarding the word of God?
3. (a) Why were those appointments of the seven assistants theocratic? (b) Were additions made to the governing body, and what does the account of the settling of the circumcision issue show?
4, 5. (a) What shows whether the first-century congregation was a legal corporation regulated by worldly authority or not? (b) The whole congregation was what, in a composite way, and how do the words of Isaiah 43:10 indicate this?

tant secretary-treasurer. It has merely a chairman, such as the governing body of the first century had. Apparently, the apostle Peter was the chairman of the governing body on the festival day of Pentecost of 33 C.E., and the disciple James, the half brother of Jesus Christ, was the chairman at a later date, according to the account in Acts of Apostles. From this, and from what historical evidence there is available, the chairmanship of the governing body rotated, just the same as the chairmanship of the presbytery or "body of elders" of each Christian congregation rotated among the coequal elders.—1 Tim. 4:14.

From this it can clearly be seen that, when a member of the Society's Board of Directors is elected each year to the presidency of the Watch Tower Society, he is not simultaneously elected to the chairmanship of the governing body of Jehovah's witnesses. Any member of the governing body can be chairman thereof without being at the same time the president of the Watch Tower Bible and Tract Society of Pennsylvania. It all depends upon the rotation system for the chairmanship in the governing body. Only if the rotation method puts an individual in the chairmanship at the same time that he is elected by the Board of Directors to the presidency will one occupy the chairmanship and the presidency at the same time, for at least a year.

SIZE OF THE GOVERNING BODY

Another point worth noting is this: The membership of the governing body is not limited to the number of members of the Board of Directors of the Society, namely, to the number seven. The Christian congregation or the "faithful and discreet slave" class started out on Pentecost of 33 C.E. with twelve members on its governing body, and that governing body located at Jerusalem was increased from the twelve apostles of Christ to include other elders of the Jerusalem congregation. So the governing body at that vital Jerusalem council included the eleven surviving apostles of Christ, and the disciple James who seems to have been chairman for the occasion, also Judas (Barsabbas) and Silas as "leading men among the brothers," yes, "prophets," and doubtless Paul and Barnabas. That means at least sixteen anointed Christians associated with the governing body back there at Jerusalem. (Acts 15:22, 32) So it is today: the governing body of the "faithful and discreet slave" class includes more than the seven anointed Christians who are on the Board of Directors of the Society. This fact, in addition, makes it manifest that the voting members of the Watch Tower Bible and Tract Society of Pennsylvania do not nominate and elect the members of the governing body of the "slave" class. It further accentuates the difference between the governing body and the legal Board of Directors.

How is it, then, that members of the governing body come to be directors of the Pennsylvania corporation? This is according to the will of the voting members of the Watch Tower Society. They choose to be guided by God's inspired Word. They look to Jehovah God through Jesus Christ to direct them in this matter of voting for the Society's directors. From the Society's present-day Charter (as amended in 1944) the Society as a legal corporation is merely an "administrative agency"* of Jehovah's witnesses. Hence, also, of the governing body of Jehovah's

* Quoting from the Charter: "The purposes of this Society are: To act as the servant of and the legal world-wide governing agency for that body of Christian persons known as Jehovah's witnesses; to preach the gospel of God's kingdom under Christ Jesus unto all nations as a witness to the name, word and supremacy of Almighty God JEHOVAH; to print and distribute [*continued on page 760*]

witnesses. So the Society's voting members see that this governing body could most directly use that "administrative agency" as an instrument in behalf of the work of the "faithful and discreet slave" class by having members of the governing body on the Board of Directors of the Society. They recognize that the Society is not the administrative body, but is merely an agency for administering matters.

Hence the Society's voting members do not desire that there be any basis for conflict and division. They do not want to cause anything like a situation where the "administrative agency" controls and directs the user of that agency, which user is the governing body as representing the "faithful and discreet slave" class. No more so than to have the tail wag a dog instead of the dog's wagging its tail. A legal religious instrument according to Caesar's law should not attempt to direct and control its creator; rather, the creator of the legal religious instrument should control and direct it. In harmony with God's holy spirit, therefore, in order to have the greatest efficiency and perfect harmony between the governing body and the Board of Directors of the legal corporation, the voting members of the Society have wisely elected to the Directorate those whom they know are members of the governing body of the "faithful and discreet slave" class.

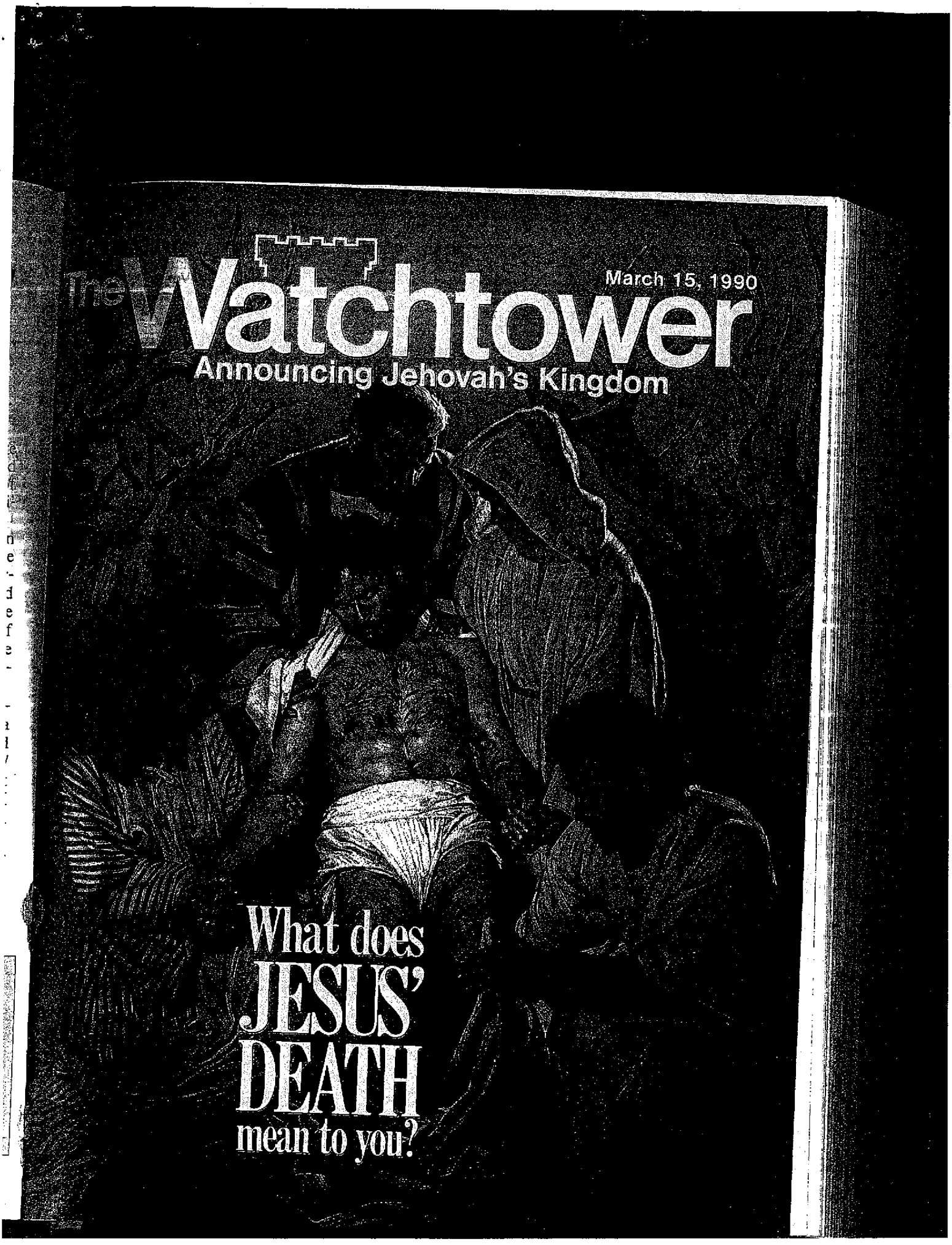
[*continued from page 759*] Bibles and to disseminate Bible truths in various languages by means of making and publishing literature containing information and comment explaining Bible truths and prophecy concerning establishment of Jehovah's kingdom under Christ Jesus; to authorize and appoint agents, servants, employees, teachers, instructors, evangelists, missionaries and ministers to go forth to all the world publicly and from house to house to preach and teach Bible truths to persons willing to listen by leaving with such persons said literature and by conducting Bible studies thereon; to improve men, women and children mentally and morally by Christian missionary work and by charitable and benevolent instruction of the people on the Bible and incidental scientific, historical and literary subjects; to establish and maintain private Bible schools and classes for gratuitous instruction of men and women in the Bible, Bible literature and Bible history; to teach, train, prepare and equip men and women as ministers, missionaries, evangelists, preachers, teachers and lecturers; to provide and maintain homes, places and buildings for gratuitous housing of such students, lecturers, teachers and ministers; to furnish gratuitously to such students, lecturers, teachers, educators and ministers suitable meals and lodging and to prepare, support, maintain and send out to various parts of the world Christian missionaries, teachers and instructors in the Bible and Bible literature, and for public Christian worship of Almighty God [through] Christ Jesus; to arrange for and hold local and world-wide assemblies for such worship; to use or operate radio broadcasting stations for preaching this gospel of the kingdom; and to do any and all other lawful things that its Board of Directors shall deem expedient for the purposes stated."

HOW THE GOVERNING BODY CAME TO EXIST

How did this governing body make its appearance in recent times? Evidently under the direction of Jehovah God and his Son Jesus Christ. According to the facts available, the governing body became associated with the Watch Tower Bible and Tract Society of Pennsylvania. C. T. Russell was patently of that governing body back there in the last quarter of the nineteenth century. Being fully dedicated to God through Christ, he set himself to apply his time, energy, abilities, wealth and influence to defending God's inspired Word and spreading its message. To that end he began publishing *Zion's Watch Tower* back there in July of 1879, believing, as he said in its columns, that this had Jehovah's backing, and hence there would be no solicitation for money. He manifested the qualifications of an overseer as set out in 1 Timothy 3:1-7 and Titus 1:5-9 and accordingly he was requested by the congregation of Christian Bible students at Allegheny to serve as its pastor or spiritual shepherd. Five years later Zion's Watch Tower Tract Society was incorpo-

EXHIBIT D

EXHIBIT O


The Watchtower
March 15, 1990
Announcing Jehovah's Kingdom
What does JESUS' DEATH mean to you?

so that membership would no longer be on a financial basis. Members would be chosen from among faithful servants of Jehovah, and these have come to include many serving full-time at the Society's headquarters in Brooklyn, New York, and in its branches throughout the world.

[11] Reporting on this improvement, *The Watchtower* of November 1, 1944, stated: "Money, as represented in financial contributions, should have no determining voice, should in fact have nothing to do with the filling of the governing body of Jehovah's witnesses on earth. . . . The holy spirit, the active force which comes down from Jehovah God through Christ Jesus, is that which should determine and guide in the matter."

Different From a Board of Directors

[12] The progress of the preaching work during the following decades proves that Jehovah blessed the foregoing refinements in the understanding of the Governing Body. (Proverbs 10:22) Why, the number of Kingdom proclaimers throughout the earth jumped from less than 130,000 in 1944 to 1,483,430 in 1970! But further improvements were yet to come.

[13] Until 1971 those of the Governing Body were still identified with the seven members of the board of directors of the Watch Tower Bible and Tract Society of Pennsylvania. The Society's president carried the main load of responsibility for making decisions affecting the operation of the Society's branches throughout the world. But epoch-making talks were delivered at the annual meeting held on October 1, 1971. The Society's president spoke on the subject "Bringing the Holy Place Into Right Condition," and the vice president on the topic "A Governing Body As Different From a Legal Corporation." What difference is there between the Governing Body and the legal corporation?

[14] As already mentioned, the Watch Tower Bible and Tract Society of Pennsylvania has a board of directors limited to seven members. These dedicated Christian men are elected for three-year terms by corporation members totaling no more than 500, the majority of whom are not anointed Christians. Moreover, since the corporation's existence is purely legal, with a fixed geographic headquarters, it can be dissolved by Caesar, that is, the State. (Mark 12:17) However, the Governing Body is not a legal instrument. Its members are not elected. They are appointed through the holy spirit under the direction of Jehovah God and Jesus Christ. (Compare *Acts* 20:28.) Moreover, those making up the Governing Body are spirit-appointed men without any obligatory fixed geographic location or headquarters.

[15] As to such refinements in understanding, *The Watchtower* of December 15, 1971, said: "Thankfully Jehovah's Christian witnesses know and assert that this is no one-man religious organization, but that it has a governing body of spirit-anointed Christians." The Governing Body of the anointed slave class and of their millions of companions among the other sheep has been progressively equipped to take care of its office of oversight.

12. What shows that Jehovah blessed the refinements under the direction of the Governing Body?
13. (a) Until 1971, what was the situation as regards the Governing Body? (b) What occurred at the Society's annual meeting in 1971?
14. What differences exist between a legal corporation and the Governing Body?
15. What statement about organization was made in *The Watchtower* of December 15, 1971, and what can be said of the modern-day Governing Body?

[16] The earthly belongings of the King Jesus Christ have continually grown. Since 1971 the number of Witnesses has leaped from under 1,600,000 to a peak of over 3,700,000 in 1989. What proof of God's blessing! (Isaiah 60:22) This growth has called for the expansion of facilities at the Society's headquarters and in its branches, as well as for the modernizing of methods of production and distribution. It has resulted in the building of many Kingdom Halls and Assembly Halls throughout the earth. All the while, the Governing Body has also continued to carry the responsibility of overseeing the preaching work, producing Bible study material, and appointing overseers in the branches, districts, circuits, and congregations. These are the Kingdom interests that Christ has committed to the care of the faithful and discreet slave, represented by its Governing Body.

[17] The first-century governing body was enlarged to include more than Jesus' apostles. When the circumcision issue was decided, that body evidently included "the apostles and older men in Jerusalem." (Acts 15:1, 2) Comparably, the Governing Body was enlarged in 1971 and again in 1974. To facilitate their work of oversight, the Governing Body arranged for five committees to begin functioning on January 1, 1976. Each committee is composed of from three to six members, all of whom have equal voice in matters under consideration. The chairman of each committee serves for one year, and individual members of the Governing Body serve on one or more of these committees. Each of these five committees gives particular attention to a specific aspect of Christ's earthly belongings. A sixth committee—the Chairman's Committee, whose membership rotates each year, handles urgent problems.

16. How have Christ's earthly belongings increased since 1971, and what are some of these that he has committed to the care of the faithful and discreet slave, represented by its Governing Body?
17. What further improvements in oversight were made in 1971, 1974, and 1976?

Active Cooperation With the Governing Body

[18] The committees of the Governing Body hold weekly meetings to review important matters, make decisions after prayerful considerations, and plan for future theocratic activity. As noted earlier, Acts chapter 15 shows that a weighty question needing resolution was referred to the first-century governing body for attention. Similarly today, important questions are referred to the entire Governing Body, which meets weekly or more often when necessary. The members of the Governing Body, at present 12 in number, seek Jehovah God's direction through the Scriptures and by means of prayer. One way we reflect our cooperation with the Governing Body is by remembering these specially appointed ones in our daily prayers.—Romans 12:12.

[19] How do the instructions and decisions of the Governing Body reach the congregations? After the members of the first-century governing body reached their decision with the help of God's spirit, they sent a letter to the congregations. (Acts 15:22-29) However, the principal way today is through Christian publications.

[20] Since February 1, 1976, each of the branches of the Watch Tower Society has had a Branch Committee made up of capable men appointed by the Governing Body.

18. How does the Governing Body operate, and what is one way that we can reflect our cooperation with it?
19. How do instructions of the Governing Body reach the congregations?
20. (a) What further organizational refinement was made in 1976? (b) How do Branch Committees cooperate with the Governing Body?

As representatives of the Governing Body for the country or countries under the supervision of their branch, these brothers must be faithful, loyal men. This reminds us of the capable, God-fearing, trustworthy men who helped Moses judge the people in ancient Israel. (Exodus 18: 17-26) Members of a Branch Committee implement instructions received by means of the Society's books and magazines and *Our Kingdom Ministry*, as well as in general letters and special letters dealing with local problems. Branch Committees keep the Governing Body up-to-date on the progress of the work in each land and on problems that may arise. Such reports from all over the world help the Governing Body to decide what subjects should be considered in the Society's publications.

[21] Under the direction of the holy spirit, Branch Committees recommend mature, spiritual men to serve as circuit and district overseers. After being appointed directly by the Governing Body, they serve as traveling overseers. These brothers visit circuits and congregations in order to build them up spiritually and help them apply instructions received from the Governing Body. (Compare Acts 16:4; Romans 1:11, 12.) Traveling overseers submit reports to the branch office. With the help of the holy spirit and the inspired Scriptures, they share with local elders in recommending qualified brothers for appointment as ministerial servants and elders by the Governing Body or by its representatives.—Philippians 1:1; Titus 1:5; compare 1 Timothy 3:1-13; 4:14.

[22] In turn, those making up bodies of elders 'pay attention to themselves and to all the flock, among which the holy spirit has appointed them overseers.' (Acts 20: 28) These overseers faithfully seek to apply instructions received from Jehovah God and Jesus Christ by means of the faithful and discreet slave and its Governing Body. Jehovah is blessing this theocratic arrangement, for 'the congregations continue to be made firm in the faith and to increase in number from day to day.'—Acts 16:5.

[23] How fine it is that through the Governing Body, Jehovah God and the Master, Jesus Christ, are manifesting support of God's people! (Psalm 94:14) As part of Jehovah's organization, we individually benefit from such support. (Psalm 145:14) This should strengthen our resolve to cooperate with God's arrangements. Indeed, may we always be found cooperating with the Governing Body of Jehovah's Witnesses as we move forward to the time when "the earth will certainly be filled with the knowledge of Jehovah as the waters are covering the very sea."—Isaiah 11:9.

21. How are traveling overseers appointed, and what do their duties include?
22. (a) How do congregation elders cooperate with the Governing Body? (b) What proves that Jehovah is blessing this theocratic arrangement?
23. Regarding the Governing Body, we should be resolved to do what?

Main Points to Remember

- What increased responsibilities did the steward class receive in 1919?
- For many years, with what was the visible Governing Body identified?
- What progressive refinements were made in the appointment of the members of the Governing Body?
- What are some of Christ's earthly belongings that he has committed to the slave class and its Governing Body?
- How can we cooperate with the Governing Body?

EXHIBIT P

EXHIBIT P

FILED

FEB 10 1986

Time 11:42 O'Clock A M
EVA LINDSEY
District Clerk, Fannin Co., Texas
By Lorraine Eden Deputy

AFFIDAVIT OF DON ADAMS

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Don Adams, after being duly sworn, depose and say:

1. I am over 21 years of age and reside at 124 Columbia Heights, Brooklyn, New York 11201. I have never been convicted of a felony or a crime of moral turpitude and I am competent to testify.

2. I am the Assistant Secretary-Treasurer of the Watchtower Bible and Tract Society of New York, Inc., and, as such, I am familiar with the books, records, publications and operating procedures of the Watchtower Bible and Tract Society of New York, Inc. I have personal knowledge of the facts set out herein and I am a custodian of the official records and publications described herein.

3. The Watchtower Bible and Tract Society of New York, Inc. is the parent organization of all congregations of Jehovah's Witnesses in the United States, including the Bonham Congregation of Jehovah's Witnesses located in Bonham, Texas.

4. It is the teaching and practice of Jehovah's Witnesses to follow the example of first century Christians. A Governing Body, at present comprised of thirteen men, direct all teaching, preaching, disciple-making and congregational activ-

EXHIBIT
27

ities of Jehovah's Witnesses throughout the world. (See the basic organization manual of Jehovah's Witnesses, Organized to Accomplish Our Ministry, pages 10 and 25, and The Watchtower, the official semimonthly journal of Jehovah's Witnesses, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

5. Regarding the position of the Governing Body, Organized to Accomplish Our Ministry states at page 28:

> All in the organization recognize God's way of theocratic control. The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangements for the benefit of all.

6. To implement their decisions, the Governing Body uses a hierarchial organization together with corporate entities, when appropriate, to accomplish its worldwide work of teaching and declaring the good news of God's established Kingdom. The principal corporation used by the Governing Body is the Watch Tower Bible and Tract Society of Pennsylvania. (See Organized to Accomplish Our Ministry, page 26.)

7. Under the Watch Tower Bible and Tract Society of Pennsylvania, the Governing Body directs 95 branches through Branch Committees that report their progress to the Governing Body and implement the directives of the Governing Body in a uniform manner. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

8. The Watchtower Bible and Tract Society of New

York, Inc. is a branch used to administer to the needs of Jehovah's Witnesses in the United States. (See Organized to Accomplish Our Ministry, pages 26 and 27.)

9. The United States Branch is part of a zone, which is supervised by a Zone Overseer. Organized to Accomplish Our Ministry states at page 53:

> Periodically, arrangements are made by the Governing Body to have qualified brothers serve each of the branches throughout the earth.

These visits are comprehensive and cover every aspect of the branch's activities. A primary objective is to assure that each branch is working in harmony with the directives of the Governing Body.

10. Each zone is made up of districts. Each district is supervised by a District Overseer. Organized to Accomplish Our Ministry states at page 51:

> The district overseer is a traveling elder who is also appointed by the Governing Body and assigned by the branch office to serve a number of circuits that comprise a district.

At regular intervals, the District Overseer reports to the branch on the progress and spiritual health of the circuits which make up the district to which he is assigned. Like the Zone Overseer, he is charged with the responsibility to assure that all of the activities in the district conform to the directives of the Governing Body. (See Organized to Accomplish Our Ministry, pages 51 and 52.)

> [I]t is Jehovah's arrangement and he will hold the overseers responsible for their actions. They are representing him and his theocratic rule. He will remove from office [through the actions of the Governing Body] those overseers who fail to manifest the fruitage of the spirit and whose pattern of life falls short of the Scriptural requirements.

(Also See Organized to Accomplish Our Ministry, pages 41-53.)

14. The responsibility of all of these positions is to assure the unity and oneness of the congregations throughout the world with the direction of the Governing Body. (See Organized to Accomplish Our Ministry, page 54.)

15. Each position is filled by appointment from the Governing Body and each appointed representative is required to cooperate with the Governing Body. (See Organized to Accomplish Our Ministry, page 41 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, page 598.)

16. Appointed representatives within the congregations fall into two catagories, elders or overseers and ministerial servants. (See Organized to Accomplish Our Ministry, pages 28 to 40 and The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 599 to 601.)

17. It is the responsibility of the body of elders to see that the congregation is managed according to the directives of the Governing Body. In harmony with these directives, each body of elders has specific responsibilities to be filled by qualifying elders. Each congregation has the following positions to be filled: the presiding overseer, secretary, service

overseer, Watchtower Study conductor and Theocratic Ministry School overseer. Organized to Accomplish Our Ministry states at page 42:

> The presiding overseer serves as chairman at the meetings of the body of elders. Communications and important records of the congregation are handled by the secretary who keeps the elders informed about important communications. Arrangements for field activity and other service-related matters come under the direction of the service overseer.

18. There are five scheduled meetings of worship which each member of the congregation attends. While these meetings are conducted by the local body of elders in each congregation, the material covered in the meetings is prescribed by the Governing Body in order to assure that all of the congregations are receiving the same information and direction. (See The Watchtower, "The Christian Congregation and Its Operation," October 1, 1977, pages 601 to 603.)

19. One area in which the body of elders would conduct matters for the benefit of the congregation and subject to the Governing Body would be in the area of buying or selling real estate to be used by the local congregation as a place of worship know as the Kingdom Hall.

20. By "Memorandum on Kingdom Halls" from Hayden C. Covington, General Counsel for Watchtower Society and Jehovah's Witnesses, dated September 1960, bodies of elders in the United States Branch received instructions regarding ownership of Kingdom Halls. Under the subheading, "Relationship Between

Congregation and Titleholders," the memorandum states in part:

> When either a corporation or trustee arrangement is made and title to property is vested in the corporation or trustees, the titleholders have the same relationship to the congregation as does any other instrument, equipment or property necessary to carry out the work of the congregation, which is preaching the good news in the assigned territory and holding meetings. All such instruments or tools are used to serve the congregation in harmony with the theocratic government.
>
> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants of the congregation in whom is vested legal title to the Kingdom Hall. Titleholders as such do not act as a part of the congregation committee to operate the Kingdom Hall or run the business of the congregation. They have absolutely nothing to do with the use to be made of the property and cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the Kingdom Hall, making of repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

21. By memorandum entitled "Information Regarding Ownership of Kingdom Halls" from the Office of the Secretary and Treasurer of the Watch Tower Bible and Tract Society of Pennsylvania, dated April 1, 1982, similar language defines the relationship between congregation and titleholders:

> The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders (trustees or corporation) are merely special servants

> of the congregation in whom is vested legal title to the Kingdom Hall. The titleholders as such do not act as a part of the committee to operate the Kingdom Hall or run the business of the congregation. The titleholders, as such, have absolutely nothing to do with the use to be made of the property. They cannot determine who is going to live on the property or what kind of work is to be done in it.
>
> The operation of the hall, making repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed by the Society.

22. The trustees holding title for any Kingdom Hall resemble the "Trustees" which held title to the church property which was the subject of the controversy in a landmark United States Supreme Court case, Watson v. Jones, 80 U.S. 679 at 681:

> Connected with each local church, and apparently without any functions in essence ecclesiastically, are what are called the "Trustees;" three persons usually, in whom is vested for form's sake, the legal title to the church edifice and other property; the equitable power of management of the property being with the Session. These Trustees are usually elected biennially; they are subject to the Session, and may be removed by the congregation.

23. In 1964 when the Bonham Congregation secured a mortgage through the Watchtower Bible and Tract Society, it was determined by vote from the congregation that it would be willing to contribute to cover the expenses of a mortgage and contemplated construction expenses. All matters were handled between the body of elders and Watchtower Bible and Tract Society of New York, Inc. acting in harmony with the directives of the Governing Body as expressed in the above-mentioned correspondence and other publications of the Watchtower Bible and Tract Society

of New York, Inc.

24. By notice dated June 4, 1985, the following duly appointed elders of the Bonham Congregation of Jehovah's Witnesses were deleted from their appointed positions and are no longer elders of Jehovah's Witnesses: (1) Wendel Baker; (2) Trymer L. Berry; (3) James E. Coleman; (4) Ralph E. Deal; and (5) Tony M. Jones.

25. There are currently four duly appointed elders in the Bonham Congregation of Jehovah's Witnesses who are recognized by the Governing Body of Jehovah's Witnesses. They are (1) Luther Brogdon; (2) Richard L. Scofield; (3) Ronald H. Williams; and (4) Bennie Bolin. Their dates of appointment were (1) Luther Brogdon—July 4, 1985; (2) Richard L. Scofield—June 4, 1985; (3) Ronald H. Williams—November 28, 1985; and (4) Bennie Bolin—November 28, 1985.

26. From the dates of their appointment, the above-mentioned duly appointed elders (Luther Brogdon, Richard L. Scofield, Ronald H. Williams, and Bennie Bolin) have had the duty and responsibility to insure that the Kingdom Hall property located at 1105 Pecan Street, Bonham, Texas, is properly cared for and secured on behalf of the Bonham Congregation of Jehovah's Witnesses.

27. Each Kingdom Hall owned by Jehovah's Witnesses, including the Bonham Kingdom Hall, is dedicated solely to the worship and service of Almighty God Jehovah by means of a solem

ceremony conducted in harmony with the Holy Scriptures and by virtue of such dedication, may not be used for any secular or mundane purpose or for religious services which are in conflict with the Holy Scriptures and the theocratic organization of Jehovah's Witnesses which is directed by the Governing Body and of Jehovah's Witnesses through the Watchtower Bible and Tract Society of New York, Inc.

28. Only the four above-mentioned appointed elders act on behalf of the Governing Body of Jehovah's Witnesses under authority customarily delegated to congregational elders. They and the Bonham Congregation of Jehovah's Witnesses, are entitled to the uninterrupted use and enjoyment of the Bonham Congregation Kingdom Hall located at 1105 Pecan Street, Bonham, Texas.

Respectfully submitted,

Don Adams

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

On the 11th day of February, 1986, before me personally came Don Adams, a person known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Roger T. Biles

Roger T. Biles
Notary Public, State of New York
No. 24-01B14761180
Qualified in Kings County
Comm. Expires March 30, 1986

I hereby certify that the aforesaid is a true and correct copy on file or of record in the 336th Judicial District Court, Fannin Co., Texas, signed and sealed this 18th day of Feb., 2011 A.D.

Rochelle Turner
Clerk, District Courts,
Fannin County, Texas

EXHIBIT Q

EXHIBIT Q

AGENCY

A. REINMUELLER

page 20. In about an inch and a half down, do you see a sentence on the left-hand side that starts with "Members"?

A. Yes.

Q. It says, "Members of a branch committee implement instructions received by means of the Society's books, magazines, and Our Kingdom Ministry as well as general letters and special letters dealing with local profits."

Did I read that right?

A. Yes.

Q. General letters and special letters would be some of the letters we looked at in the last two days, correct?

A. Yes. They would be included.

Q. So a letter from Watch Tower Pennsylvania would be included amongst those ways in which instructions were given, correct?

A. Yes.

Q. And if a member of a branch committee received a letter from Watch Tower Pennsylvania which was one of the

A. REINMUELLER

general or special letters, they implement those instructions, correct?

A. They would do their best to implement them, yes.

Q. Down further under that paragraph that starts 21, do you see that?

A. Yes.

Q. It says, "Under the direction of the Holy Spirit, branch committees recommend mature spiritual men to serve as circuit and district overseers. After being appointed directly by the Governing Body, they serve as travelling overseers. These brothers visit circuits and congregations in order to build them up spiritually and help them apply instructions received from the Governing Body."

Did I read that right?

A. Yes.

Q. So that's talking about circuit and district overseers helping congregations apply the instruction received, correct?

A. REINMUELLER

A. Yes.

Q. And those instructions it talks about above can include general and special letters from Watch Tower Pennsylvania, correct?

A. They can.

Q. And it also includes books and magazines of which Watch Tower Pennsylvania holds the copyright, correct?

A. Yes, that's correct.

MR. LOVE: Mark this as Exhibit 52.

(Whereupon, the above mentioned document was marked Exhibit 52 for identification.)

Q. I will hand you what has been marked as Exhibit 52 (handing).

Are you familiar with that being a photocopy of the book Pay Attention to Yourselves and All the Flock? I apologize if there are a few handwritten notes on that that are mine. I'll replace that with a clean copy later.

A. I'm familiar with the

A. REINMUELLER

publication.

Q. And that is a publication that says on the first couple of pages -- it's a document that Watch Tower Pennsylvania holds the copyright, correct?

A. Yes.

Q. Do you see also in the page before that, it mentions that it is a copy of a textbook which is issued to each appointed elder?

A. Yes.

Q. Each appointed elder would include those elders in California, correct?

A. Yes, that's true.

Q. If you would, turn the page. Do you see where it indicates that this particular book is copyrighted in 1991?

A. Yes.

Q. Do you see below there that there had been prior editions in 1977, 1979, and 1981?

A. Yes.

Q. Do you have any reason to

A. REINMUELLER

believe that those prior editions weren't copyrighted by Watch Tower Pennsylvania?

A. No.

Q. And those prior versions would have also been delivered to the elders in California, correct?

A. Yes.

MR. SCHNACK: Is this a good time to take a quick break?

MR. LOVE: I'll tell you what. Let's go about 20 more minutes and we might be done.

MR. SCHNACK: I need a quick restroom break.

THE VIDEOGRAPHER: We're going off the record at 9:33 a.m.

[A recess was taken.]

THE VIDEOGRAPHER: We're going back on the record. The time is now 9:41 a.m.

Q. Mr. Reinmueller, I've handed you Exhibit 52 which is entitled Pay Attention To Yourselves and All the Flock. I refer to it as the Flock book. Do you mind if I

A. REINMUELLER

call it that?

A. No, that is fine.

Q. Again, the Flock book is instructional material, correct?

A. Yes, correct.

Q. And would you consider it the type of instructional material that's received and expected to be implemented by elders in California?

A. Yes, I would.

Q. And with respect to the provision of guidelines to the extent there are those in this book, elders in California are required to follow them, correct?

A. Yes.

Q. Isn't it true that this particular book was copyrighted in 1991, right?

A. That's true.

Q. And there has been prior versions of this book, correct?

A. Yes.

Q. Do you know where I can get a

A. REINMUELLER

copy of any of those prior editions?

A. I do not believe that they're in print or circulation anymore.

Q. Do you know of anyone who has an archived copy?

A. Yes.

Q. Would those be at Watch Tower Pennsylvania?

A. Yes.

MR. LOVE: For the sake of the record, we've spoken -- counsel has spoken about areas that I explained to you areas in which you desired to question the witness, and you shared with me your reservations?

MR. SCHNACK: That's correct.

MR. LOVE: In order to try to move this forward and take up those issues later with the Court, I'll hold back those questions, and we'll address it as it's appropriate to address it at a later time.

MR. SCHNACK: That's correct.

Q. Mr. Reinmueller, would you

A. REINMUELLER

consider the Flock book to be direction from the Governing Body in the form of a book?

A. Yes, I would.

Q. I want you to pick up Exhibit 9 with me and turn to page 28. In the first full paragraph on the left-hand side, the second sentence, do you see a sentence that starts with "The congregations"?

A. Yes.

Q. Do you see where it reads: "The congregations acknowledge and conform to the guidance of the Governing Body as it outlines organizational arrangement for the benefit of all"?

Do you see that?

A. Yes.

Q. Watch Tower Pennsylvania would be a part of that organizational arrangement, correct?

A. Yes, it would.

Q. It says "they," and they're referring to the congregations. "accept the appoints made of older men to oversee

A. REINMUELLER

the branches, districts, circuits, and congregations," correct?
A. That is what it says.
Q. Would you agree with me that if a district overseer in California receives instruction in the form of a book, he's required to follow it?
A. Yes, that would be correct.
Q. You would expect the same from circuit overseers and elders, correct?
A. Yes.
Q. Isn't it true that if a district overseer or circuit overseer or elder in California receives an instructional letter from Watch Tower Pennsylvania, they're expected to follow the instructions, correct?
A. Yes, that's correct.
Q. Earlier, we talked about traveling overseers. Do you recall that?
A. Yes.
Q. It's a term that refers to district overseers and circuit overseers, correct?

A. REINMUELLER

A. That's correct.
Q. And we also talked about special pioneers, correct?
A. I don't recall, but yes.
Q. We mentioned that they exist.
A. Yes.
Q. And we mentioned there are circuit overseers, district overseers, and special pioneers in California, correct?
A. Yes, that's correct.
MR. LOVE: Mark this as Exhibit 53.
(Whereupon, the above mentioned document was marked Exhibit 53 for identification.)
Q. I'm handing you what I've marked as Exhibit 53 (handing).
Do you recognize that as a letter written by Watch Tower Pennsylvania?
A. Yes, I do.
Q. Does it appear to be a true and correct copy?
A. It would appear to be.

A. REINMUELLER

Q. Do you see that the letter is directed to all special pioneers, missionaries, circuit and district overseers, and Kingdom Ministry School traveling overseers?
A. Yes.
Q. That would include those district and circuit overseers in California, correct?
A. Yes.
Q. Do you see that -- if you take a moment to skim over it, you'll notice that this document gives parameters for vacation arrangements. Do you see that?
A. Yes.
Q. And those would apply to circuit overseers and district overseers in California, correct?
A. Yes.
Q. And also on the second page, you see a heading of circuit and district overseers on the second page of that document?
A. Yes, I do.

A. REINMUELLER

Q. Take a moment and took through that paragraph. Isn't it true that that paragraph deals with some of the reporting responsibilities of circuit and district overseers?
A. Reporting with respects to vacations, yes.
Q. Right. So even though they are both volunteer positions, there's arrangements for when and how they take vacations, correct?
A. Well, as members of our Religious Order, they -- as are all members of our Religious Order, they are required to give account for how they use their time and fulfill their assignments.
Q. Isn't it true that this particular document is outlining when a circuit overseer and district overseer and how they could take vacations?
A. Yes.
Q. So even though they are volunteers, there is structure to how they could take time off, correct?

A. REINMUELLER

A. Yes.
Q. Of course, Watch Tower Pennsylvania is the entity providing instructions for how and when this happens, correct?
A. It's conveying those instructions, yes.
Q. And the person that receives those instructions are expected to follow those instructions, correct?
A. Yes.
MR. LOVE: Mark this as 54.
(Whereupon, the above mentioned document was marked Exhibit 54 for identification.)
Q. I'll hand you what I've marked as Exhibit 54. Do you recognize that as a copy of a Watchtower magazine?
A. Yes.
Q. A January 1, 1992 Watchtower magazine, correct?
A. Yes.
Q. And of course, Watch Tower Pennsylvania is the copyright holder,

A. REINMUELLER

correct?
A. Correct.
Q. On the third page of the document, do you see some 1991 statistics?
A. Yes.
Q. It talks about countries in a number of statistics about people and a number of congregations, correct?
A. Yes.
Q. About three-fourths of the way down the list of columns, there is a number of congregations, correct?
A. Yes.
Q. And it breaks down the number of congregations per geographic area, correct?
A. Correct.
Q. If you would, flip over to the very last page where it provides the total number of congregations for America. Do you see that?
A. Yes.
Q. About 9,524, correct?
A. Yes, at this time.

A. REINMUELLER

Q. Do you know what that number is today, roughly?
A. It's roughly 13,000. Between 13,000 and 14,000.
Q. And approximately 2,000 of those are in California, correct?
A. That's correct.
Q. So about one out of every seven congregations in the United States is in California, correct?
A. Yes.
Q. Now, again, when I see "Watchtower" as one word, it generally refers to Watchtower New York?
A. Yes.
Q. And when I see "Watch Tower" as two words, it refers to Watch Tower Pennsylvania, correct?
A. Yes.
Q. The very bottom of that page, do you see where it reads: "During the 1991 service year, the Watch Tower Society spent $40 million plus in caring for special pioneers, missionaries, and

A. REINMUELLER

traveling overseers in their field service assignments"?
A. Yes, I see that.
Q. Again, Watch Tower in two words is Pennsylvania, correct?
A. Yes.
Q. What does it mean to place literature?
A. It means to leave literature with those who are interested in reading it.
Q. And that literature being placed is literature that Watch Tower Pennsylvania holds the copyright, correct?
A. Yes, that's correct.
Q. Isn't it true that Jehovah's Witness members are encouraged to place literature?
A. With those who are interested and willing to read it.
Q. And isn't it true that literature is placed in California?
A. Yes, that's true.
Q. Isn't it true that placing

EXHIBIT R

EXHIBIT R

PHONE (212) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

CABLE WATCHTOWER

T:TD

October 1, 1981

TO CIRCUIT OVERSEERS AND
DISTRICT OVERSEERS IN THE UNITED STATES

Dear Brothers:

The Society would like to again assist congregations of Jehovah's Witnesses in respect to Kingdom Hall financing, and we hope to be able to do this on a limited scale. Our thought is that there may be some congregations in emergency situations. Some may have financed Kingdom Halls during the past few years by obtaining commercial loans at very high interest rates, finding that the monthly payments are proving to be difficult. Other congregations may have an urgent need for Kingdom Hall facilities but have not been able to proceed with a building project because of the high cost of borrowing or even the unavailability of funds. There may be other emergency situations. So, to the extent that we are able to do so, we want to assist congregations having a genuine need in respect to their Kingdom Halls.

A Kingdom Hall loan through the Society would be at an interest rate of 6% per annum. We could consider a repayment of not more than ten years. Repayment of a Kingdom Hall loan at 6% in ten years would require monthly payments of $12.00 per $1,000.00 of the loan. As an example, for a Kingdom Hall loan in the amount of $10,000.00, the monthly payments would be $120.00.

This gives you some idea of our desire to assist congregations in a limited way, and the amounts that would be involved in repaying any loan through the Society of funds needed in addition to those raised within the congregation.

We are not making a general announcement to all of the congregations, but we are informing you so that if in serving the congregations in your circuits and districts you do observe any with needs such as are outlined here, you can tell the body of elders that if they wish to do so, they are free to write to this office of the Society making inquiry as to the possibility of a loan for Kingdom Hall financing. We do

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not have in mind your making any sort of a general announcement of this because our resources are limited, and we would like to give what assistance we can to congregations where the aid would be most justified. You may come across such congregations, and if this is the case, you might tell the body of elders that if they write to us about the matter, they should mention the fact that you have spoken to them, telling them that they may make inquiry of the Society. We do not require a letter from you about any such congregation, but, on the other hand, if there is some information that you would like to bring to our attention relating to the congregation's need or loan request, we would be glad to get such from you.

The assistance you are rendering to the congregations in so many ways in serving them is very much appreciated, and it may be that at this time you and the Society can be of further help to some of the congregations as outlined above.

Warm Christian love, and we wish you Jehovah's continued blessings.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA0102

EXHIBIT S

EXHIBIT S

PHONE (212) 625-3600

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

T:TD

June 1, 1982

TO CIRCUIT OVERSEERS AND
DISTRICT OVERSEERS IN THE UNITED STATES

Dear Brothers:

Under date of October 1, 1981, the Society was pleased to inform you of its desire to again assist congregations of Jehovah's Witnesses in respect to Kingdom Hall financing, at least doing so on a limited scale.

The response to that letter has been heavy, and we are happy to have been able to help many congregations who were in an emergency situation. Because of the heavy response on the part of the congregations, the Society now wishes to let you know that it is advisable for us to somewhat curtail our loan arrangement at this time.

As with the case of the October 1, 1981, letter, we are not making a general announcement to all of the congregations, but we are informing you so that if in serving the congregations in your circuits and district you have occasion to discuss Kingdom Hall loans with bodies of elders, you can tell them that the Society hopes to be able to help others who are also in an emergency situation but may not be able to do so immediately.

We are very appreciative of the many valued services and assistance you are rendering to the congregations in so many ways and will appreciate your further assistance at this time in the matter of Kingdom Hall financing arrangements as outlined above.

Please accept our warm Christian love and best wishes.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

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EXHIBIT 1

EXHIBIT T

SCOPE OF DEPOSITION (A)

A. REINMUELLER

Witness Organization is a hierarchial organization?

A. Ecclesiastically, that is true.

Q. I am just talking about the structure of the organization and who reports to whom.

Isn't it true that there is a chain of command?

MR. SCHNACK: I'll object. It's been asked and answered. Go ahead and answer it again.

A. Legally, there is no chain of command.

Q. I want to discuss the legal also, but not right now. I want to talk about organizationally.

In terms of reporting relationship which I know doesn't having anything to do with the -- there is a Governing Body at the top?

A. Yes.

Q. And below the Governing Body, there are zones, correct?

A. That's perhaps a little unclear.

A. REINMUELLER

There is no fixed zone that is established over which there is a permanent oversite. Zones are assigned every year based on the need.

Q. And they're just large geographic areas, correct?

A. Yes.

Q. And they're more fluid than some of the circuits, but the zone is a general category underneath the Governing Body which covers large geographic territories; is that fair?

A. That is reasonably accurate.

Q. Below the zone are districts, correct?

A. No. Below the Governing Body are the branch committees. The branch is a country or generally a group of countries.

Q. You're actually right. I'm sorry. I forgot to talk about branches. Below the Governing Body, there are branches, correct?

A. Yes.

A. REINMUELLER

Q. And those branches have people that deal with branch business called the branch committee, correct?

A. Yes.

Q. Below the branches, there are districts, correct?

A. Correct.

Q. And in those districts, there are people called district overseers, correct?

A. Yes.

Q. And there are how many districts per branch, generally?

A. It varies on the number of active Witnesses in the country.

Q. In the United States, do you know how many districts there are?

MR. LOVE: Strike that.

Q. Before you answer that question, wouldn't you agree that the United States is considered a single branch?

A. Yes, it is. - Except for Alaska + Hawaii that have own Branch

Q. And within the United States branch, there is a branch committee,

A. REINMUELLER

correct?

A. Correct.

Q. Below that branch, the United States as a branch is broken up into districts, correct?

A. That's correct.

Q. And those districts have a person that handles district business called a district overseer; is that correct?

A. That's correct.

Q. And below the district, or within that district, there are several circuits, correct?

A. That's correct.

Q. And there is a position of a circuit overseer that handles the circuit business, correct?

A. Correct.

Q. And within a circuit, there is, give or take, 20 congregations?

A. Approximately.

Q. And those congregations have a body of elders which handle congregation

A. REINMUELLER
business, correct?
A. That is correct.
Q. Mr. Reinmueller, isn't it true that within the congregation, there are the positions of presiding overseer, secretary, service overseer, Watchtower study coordinator and theocratic ministry school overseer?
A. That is correct.
Q. And all of those positions are held by elders; is that correct?
A. That is correct.
MR. LOVE: Mark this as Exhibit 4.
(Whereupon, the above mentioned document was marked Exhibit 4 for identification.)
Q. I want to hand you what was marked as Exhibit 4.
MR. SCHNACK: Again, are you going to try to tie this to California somehow, Greg?
MR. LOVE: Absolutely.
MR. SCHNACK: How are you going

A. REINMUELLER
to do that, because I've been giving you a lot of leeway here, but we haven't heard anything much about Watch Tower Pennsylvania and California yet, and that is the sole purpose of the deposition here.
MR. LOVE: I understand. Some of your letters are written to district and circuit overseers, and I am trying to get to is a way by someone in the outside world, by understanding how these people work together when a letter goes to a circuit overseer in Pennsylvania, exactly which entity it's going to and how that is related to a congregation where we're alleging offenses took place. This is simply a visual that depicts the testimony he's already given.
MR. SCHNACK: This deals with the ecclesiastical structure of Jehovah's Witnesses, and that is not relevant to the personal jurisdiction

A. REINMUELLER
issues.
MR. LOVE: You and I have a sharp disagreement about what is ecclesiastical and what is discoverable. What he's already given testimony as to what this depicts.
I simply want him to get a pen out and mark it if it's wrong so I could have a visual that describes what he's already given testimony about so I'll understand when we talk about California, how California functions as some of these letters are received.
MR. SCHNACK: I'll object and instruct him not to answer on this. This was not a document that was produced. If you want to create an exhibit that is demonstrative, you could do that at trial.
MR. LOVE: That is what I'm trying to do. He's the person you designated with most knowledge, and what I simply want him to tell me is

A. REINMUELLER
anything on that error, so I could correct and it make a better demonstrative.
MR. SCHNACK: This has nothing to do with any of the topics that were noticed in the PMK deposition.
MR. LOVE: This is something to help us understand the documentation that you've already produced.
MR. SCHNACK: Bring out the documents, and we'll link it up, but to go over a document that you created that concerns the ecclesiastical structure of the Jehovah's Witnesses is improper. It's objectionable. It's not relevant, and it's inadmissible.
MR. LOVE: I understand your objection. This is simply something that is memorializing the testimony that he's provided, that you've allowed him to provide.
So I understand that when I receive a letter from the circuit, he

A. REINMUELLER
could tell me, are there any branches in California. Based on this, I'll understand that I don't need to worry about anything above district.
MR. SCHNACK: This is outside the topics of the PMK deposition notice, and I'll instruct him not to answer. I gave you some leeway thinking you were going to link it up, but this is strictly limited to jurisdictional issues, and we could get the order out if you want to quote the language from it.
MR. LOVE: I know what the order says. I know what the notice says.
MR. SCHNACK: Then let's pursue it.
MR. LOVE: This notice relates to the interaction between the different organizations which Watch Tower Pennsylvania is a part of.
MR. SCHNACK: I don't see Watchtower New York listed on here, and I don't see Kingdom Support

A. REINMUELLER
Services on here.
MR. LOVE: But you see congregations listed on there.
MR. SCHNACK: Let's take a break and go off the record.
THE VIDEOGRAPHER: We're going off the record at 9:55 a.m.
[Discussion held off the record.]
THE VIDEOGRAPHER: We're going back on the record. The time is now 10:04 a.m.
MR. SCHNACK: We took a break. Greg, you presented Exhibit 4, and again, I have an objection to this whole line of questioning, and you're getting into the ecclesiastical structure of Jehovah's Witnesses, and we're here for the limited purpose of discussing whether Watch Tower Pennsylvania has sufficient contacts with California. I'll exercise personal jurisdiction there.
This was not a topic in the

A. REINMUELLER
notice of deposition. There are other persons more knowledgeable about the ecclesiastical structure of the church, and if you want to notice the deposition in that regard, you could probably do that.
I'll let him answer with the interest of moving forward with whatever his understanding is on Exhibit 4, but again, it's in the interest of moving forward.
I have an objection on this whole ecclesiastic structure, and I'll keep repeating it if you continue to go into it. With that, restate your question on Exhibit 4.
Q. Mr. Reinmueller, I prepared Exhibit 4, so there is no misunderstanding that this is a document that was produced by me. What I tried to do is take the information that I had and create something that describes some of the ways in which these people report to one another.

A. REINMUELLER
I've handed you Exhibit 4. In all fairness, you told me about zone overseers, aren't an exact identifiable geographic office or department. With that, if you would, help me understand that this is not an accurate description of how these people relate to one another. What would be?
MR. SCHNACK: Again, I'll allow him to answer subject to the objections I just stated.
A. I want to state that I'm not the person most knowledgeable about the ecclesiastical structure of the organization. I'm here to represent the financial and business matters of the corporation, but to my knowledge as one of Jehovah's Witnesses, on your exhibit, the area zones, again, are not a permanent assignment or really not in the hierarchy of communication ecclesiastically or dashboard between the other developments of the religion.
Q. So would it be fair for us to

A. REINMUELLER

I've provided to you, does it look like a true copy of the branch office and procedure?

A. It appears to be somewhat out of date, but it's -- it appears to be a copy of the documents some years ago.

Q. From the mid '80s, correct?

A. Or thereafter.

Q. When, to your knowledge, was this updated?

A. It's -- to the best of my knowledge, it's updated continuously.

Q. Every year, every two years?

A. At least every year.

Q. Where are copies of that document kept? Are they archived?

A. I am not aware of it, what is done with them.

Q. So if I asked you for the branch office procedure manual that post-dates Exhibit 3 but is prior to the one being used today, would I be able to obtain a copy?

A. I can't answer that question. I

A. REINMUELLER

don't know.

Q. Who would be able to answer that question?

A. I am not certain.

Q. Do you know anybody who would know who I would need to ask?

A. We have to check with the Governing Body.

Q. If you would, turn -- the pages aren't numbered -- but it appears to be chapter one, paragraph 36. You can look at the bottom. I am sure you know how to use the document. Why don't I just say paragraph 36 of chapter one. Are you there with me?

A. I believe so.

Q. Do you see a paragraph that reads, "The Governing Body gives direction to the branch committees throughout the world by means of such publications as the Watchtower and Awake Magazines, Our Kingdom Ministry, publications outlining organizational arrangements, as well as various letters to all branches and to

A. REINMUELLER

individual branches answering local problems."

Did I read that right?

A. Yes.

Q. And at least in the mid 1980's was how the Governing Body communicated, correct?

A. Yes, correct.

Q. So some of the exhibits that we labeled are some of the means through which the Governing Body communicates to the district and circuit offices in California?

MR. SCHNACK: I'll object again. This deposition is about Watch Tower Pennsylvania. It's not about the Governing Body, not about other entities.

MR. LOVE: I know. The next question is going to be, is Watch Tower Pennsylvania going to be the entity that does that? Just hold on.

MR. SCHNACK: I've given you a lot of leeway throughout this

A. REINMUELLER

deposition, Greg, and you're just not tying it to California. We've been here, God knows, an hour and a half.

MR. LOVE: If we read back the last question, it was about California.

MR. SCHNACK: Well, then let's move on and get California in the questions.

MR. LOVE: Well, okay.

MR. SCHNACK: I'm serious, Greg.

MR. LOVE: I'm trying to do my job, and I understand you have a job to do.

MR. SCHNACK: I'd appreciate you doing your job as to what the Court ordered this deposition to encompass.

MR. LOVE: I disagree.

MR. SCHNACK: You don't want to do what the Court says?

MR. LOVE: I disagree with your understanding of the Court's order.

MR. SCHNACK: Should we get it out and read it?

A. REINMUELLER
MR. LOVE: I understand what the Court order says.
MR. SCHNACK: Limited discovery with respect to Watch Tower Pennsylvania's contact with California.
MR. LOVE: Understood.
MR. SCHNACK: Okay. Let's move it then.
Q. Mr. Reinmueller, isn't it true that the Governing Body communicates through these documents that were just listed in paragraph 1:36 to the districts, circuits, and congregations in California?
MR. SCHNACK: I am going to, again object to the question. You're asking about the Governing Body, and it has nothing to do with Watch Tower Pennsylvania.
MR. LOVE: I just told you my next question is being to be, based on his prior answers that the Governing Body uses watch Watch Tower Pennsylvania to do that. That is a

A. REINMUELLER
contact in California.
MR. SCHNACK: Well, put it in the question then. You're asking about the Governing Body.
MR. LOVE: I'm trying to be fair to your witness.
MR. SCHNACK: With all due respect, I don't think you're trying to be fair to anybody. Let's move it along, Greg, and get to contacts with California.
Q. Isn't it true, Mr. Reinmueller, that the Governing Body communicates to the districts, the circuits, and the congregations in California through these materials?
MR. SCHNACK: Same objection. Go ahead and answer so we can move it forward.
A. The Governing Body provides spiritual and ecclesiastical direction to through its publications and letters to circuit overseers, district overseers, and congregations.

A. REINMUELLER
Q. In California?
A. In California.
Q. And the Watch Tower Pennsylvania is the entity through which these documents get created and are copyrighted, correct?
A. They are copyrighted by Watch Tower Pennsylvania.
Q. But you told me a minute ago that the writing department operates through Watch Tower Pennsylvania; is that correct?
A. That's correct, but I said earlier that the writing department does not produce all of the materials that you're referring to.
Q. Well, tell me all of the things that the writing department at Watch Tower Pennsylvania is responsible for creating.
A. I'm probably not the best person to answer that authoritatively, but to the best of my knowledge, our publications are produced. But letters and other, brochures, other direction may originate

A. REINMUELLER
in other departments or areas of the organization. See correction/addition
Q. But they're all still copyrighted at Watch Tower Pennsylvania?
MR. SCHNACK: "By Watch Tower Pennsylvania"? Is that your question?
Q. By Watch Tower Pennsylvania?
A. To the best of my knowledge, with one exception. The Kingdom Ministry. Our Kingdom Ministry is copyrighted by Christian Congregation of Jehovah's Witnesses.
Q. And prior to it being copyrighted by Christian Congregation of Jehovah's Witness, it was copyrighted by Watch Tower Pennsylvania; is that correct?
A. To the best of my knowledge.
Q. So at any time before the year 2000, it would be copyrighted by Watch Tower Pennsylvania, correct?
A. I believe that's true.
Q. And Our Kingdom Ministry was an instructional materials used in the circuits, districts, and congregations in

EXHIBIT U

EXHIBIT U

KINGDOM HALL LOANS

A. REINMUELLER
Q. And is it also true that some of the monies received are interests income on loans?
A. Yes, that is true.
Q. Does Watch Tower Pennsylvania have records of how many Kingdom Hall loans have been made in California since 1960?
MR. SCHNACK: Since 1960? That is overly broad for the purposes of the lawsuit.
MR. LOVE: I know, but there are records that say that the loans are up to ten years in term, which would be loaned that reach into our scope that we're talking about.
MR. SCHNACK: I'll let you ask from 1974, otherwise I'm going to object.
Q. Mr. Reinmueller, does the Watch Tower Pennsylvania have any records that can identify how many Kingdom Hall loans have been made since 1970?
A. Our records on Kingdom Hall

A. REINMUELLER
loans presently go back to the mid 1980's.
Q. Why is that so?
A. Just retention schedules, there was no need to keep them beyond seven years once they're completed.
Q. But you don't have any records that show who may have received the loan?
A. Not prior to that time.
Q. No database, nothing?
A. No.
Q. If someone from Watch Tower Pennsylvania were to call a congregation in California and ask if they had ever had a Kingdom Hall loan, do you suppose the people in the congregation would know?
MR. SCHNACK: Again, I'll instruct the witness not to guess. If you hadn't asked the question, "do you suppose," it involves a guessing by the way that your question is phrased.
If you have an answer, go ahead.
A. I wouldn't know the answer you would get.
Q. What did you personally do, if

A. REINMUELLER
anything, to research what loans had been made to Kingdom Halls in California since 1970?
A. I reviewed the number of loans that are in our records that were made to the State of California. That is as far as back as our records go.
Q. In preparation for this deposition?
A. Yes.
MR. SCHNACK: Actually, I think that was involved with prior discovery responses, as opposed to this deposition.
Q. What exactly did you review, and what form did it exist in?
A. I reviewed the list of congregations that received loans according to our records in the State of California.
Q. How many congregations appeared on that list?
A. About 375.
Q. Does that include the loans that

A. REINMUELLER
are presently in existence?
A. Yes, it does.
Q. So there's been 375 loans made by Watch Tower Pennsylvania to California congregations for the purposes of building Kingdom Halls since the mid 1980's?
A. That's correct.
Q. Did the list you looked at also indicate the amount of the loans?
A. No.
Q. Are there records at Watch Tower Pennsylvania that would verify the amount of those loans?
A. Yes, thre are.
Q. Are there records at Watch Tower Pennsylvania that would indicate how much money had come in by virtue of the 375 loans in the form of interest income?
A. I believe so. I can't verify exactly for the early part that, because our computer systems may not have segregated it prior to the mid '90s, but I believe so.
Q. Let me make sure I didn't

A. REINMUELLER
misunderstand you. You said 375 loans from the mid '90s or the mid '80s?
A. The mid '80s.
MR. SCHNACK: I believe that number is high, based on our discussion previously.
MR. LOVE: Again, if you have better information, I would like to have it.
MR. SCHNACK: I'm not sworn to testify. My understanding was 250 to 300, but I'll go with his recall.
I'm just trying to create an accurate record for you, Greg.
MR. LOVE: I know you are, and I would like it to be from somebody with knowledge. I would like to be able to use that information. If there is a way in which you could give that to me in a form which I can use it, I would appreciate it.
MR. SCHNACK: We could discuss it over a break and address the number again.

A. REINMUELLER
MR. LOVE: Then let's discuss all of those things on break.
MR. SCHNACK: Fine. Give me a list.
MR. LOVE: I don't want any of your comments on the record, other than objections.
MR. SCHNACK: Some of the earlier comments, Greg, were on topics that you asked were not noticed as being a topic of this deposition. Don't get on my case about trying to give you an accurate record.
MR. LOVE: I just need the information that supports what you understand, if this witness doesn't know it.
MR. SCHNACK: He's giving you his best testimony.
MR. LOVE: Please mark these as 10 and 11.
(Whereupon, the above mentioned documents were marked Exhibit 10 and 11 for identification.)

A. REINMUELLER
Q. Mr. Reinmueller, I'm handing you what was marked as deposition Exhibits 10 and 11.
Have you reviewed these letters in the course of your preparation for this deposition?
A. Briefly.
Q. Do they appear to be true and correct copies of letters from Watch Tower Pennsylvania?
A. They do.
Q. Now, both of these letters relate to Kingdom Hall financing; is that correct?
A. Yes, they do.
Q. Do you see that the letterhead of this particular document, Exhibit 10, is Watch Tower Pennsylvania, correct?
A. Yes, it is.
Q. Does it say Watchtower New York anywhere on that document?
A. Not that I could see.
Q. Do you see underneath the letterhead Watch Tower Pennsylvania,

A. REINMUELLER
office of the secretary and treasurer?
A. Yes, I do.
Q. Do you see an address underneath that?
A. Yes.
Q. And that address is of Watch Tower Pennsylvania; is that correct?
A. Correct.
Q. That doesn't say office of the secretary treasurer of Watch Tower New York, does it?
A. No, it doesn't.
Q. Is there a separate office of the secretary and treasurer, other than the one you've testified about, at Watchtower New York?
MR. SCHNACK: I'll object to the question, to the extent it mischaracterizes his prior testimony.
Go ahead and answer.
A. The secretary treasurer office of the Pennsylvania corporation does have an office in that capacity that is different and distinct from the department

A. REINMUELLER
all.
Q. Because it goes further and says, "Coverage can be arranged through the Brooklyn office."
Do you see that?
A. Yes.
Q. So Watch Tower Pennsylvania in the mid '80s would loan the funds to congregations in California, correct?
A. Yes.
Q. And it would be considered an insured in California, correct?
A. The congregation?
Q. Watch Tower Pennsylvania would be named as an insured with respect to property in California?
A. In some cases, yes.
Q. With respect to the insurance arrangement handled out of Brooklyn, that was also arranged by Watch Tower Pennsylvania; is that correct?
A. Yes, whatever insurance program was in place at that time was in Watch Tower Pennsylvania.

A. REINMUELLER
Q. So Watch Tower Pennsylvania had the tools with respect to a loan in California to loan the money and then arrange for the insurance of itself in connection with that property, correct?
A. Yes. That would be correct.
Q. In parenthetical number 18, it asks, "Do you hold a properly executed promissory note for the amount of the loan, showing the amount, the monthly payments, and the interest at six percent?"
Did I read that right?
A. Yes, you did.
Q. Would there be a promissory note evidencing the loaning of monies by Watch Tower Pennsylvania to congregations in California?
A. Yes, there would.
Q. Do you know where those notes are kept?
A. Those notes are kept in the treasurer's office.
Q. If I asked you for a note on a

A. REINMUELLER
California congregation's Kingdom Hall, would you walk to a particular filing cabinet to access that particular information?
A. Yes, I would.
Q. Is the information with respect to the promissory notes in connection with loans in California all in one place?
A. Yes, it is.
Q. How far back do those records go?
A. As I mentioned earlier, to about the mid '80s.
Q. So the 197 present congregation loans in California, loaned by Watch Tower Pennsylvania, there are promissory notes for each one of those loans, correct?
A. Yes, that's correct.
Q. With Watch Tower Pennsylvania as the lender, correct?
A. Yes, that's correct.
Q. With the stated amount of interest in one each of those notes?
A. Yes.

A. REINMUELLER
Q. There would be a term also of that note, correct?
A. Yes.
Q. And identified monthly payments, correct?
A. Yes.
Q. And in most cases, it would include Watch Tower Pennsylvania in connection with that transaction as an insured, correct?
MR. SCHNACK: You're talking about the promissory note?
MR. LOVE: The transaction.
A. In what sense are you saying?
Q. I backed up to paragraph 15, in connection with the 375 promissory notes between 1970 and the present, Watch Tower Pennsylvania is listed as an insured on the property of most of them, correct?
A. I believe not, because the Kingdom Hall Assistance Arrangement began in 1989, and since that time, I do not believe that the Watch Tower Pennsylvania is named in connection with the insurance

A. REINMUELLER
Q. Who is assigned to the real estate area?
A. In what aspect are you talking about? The Kingdom Hall loan program?
Q. Yes.
A. David -- David Giglio works directly with those files.
Q. And how do you spell that last name?
A. G-I-G-L-I-O.
Q. What is his position?
A. We don't have positions. It's just his assignment to care for the Kingdom Hall loan processing.
Q. He is a volunteer in the accounting office?
A. In the treasurer's office.
Q. Does Watch Tower Pennsylvania have a copy of the deed for trust of which they are named as the beneficiary?
A. I would expect that to be true, yes.
Q. And where do you expect it to be?

A. REINMUELLER
A. They would be in the file together in the file with any documents relating to a loan application.
Q. And did you review any deeds of trust before giving your testimony today?
A. No, I didn't.
Q. Are you familiar enough with the real estate transactions that if the Woodland Congregation of Jehovah's Witnesses would have defaulted in their loan, Watch Tower Pennsylvania had legal rights pursuant to this lead of trust, does it not?
MR. SCHNACK: I'll object to the extent it calls for a legal conclusion. He's already testified about his educational background, and it doesn't include legal training.
You could go ahead and respond, if you can.
A. I'm not particularly sure of the legalities involved.
Q. In this document, it lists Title insurance and Trust Company as the trustee

A. REINMUELLER
for Watch Tower Pennsylvania. Do you know who Title Insurance and Trust Company is?
MR. SCHNACK: I object to the characterization as worded in the question.
You could go ahead and respond, if you can.
A. I don't. I am not familiar with that organization.
Q. Do you see that it references it as being a California corporation?
A. I see that.
Q. So is it safe for me to assume that there is a promissory note that was created in connection with this transaction involving Woodland Congregation in 1967?
A. That would be safe to assume, yes.
Q. But it's your testimony that you don't have those records?
A. Not from 1967.
Q. Do you know of anybody that would have a copy of that record?

A. REINMUELLER
A. To the best of my knowledge, we don't keep closed files for that period of time.
MR. LOVE: Please mark this as 16.
(Whereupon, the above mentioned document was marked Exhibit 16 for identification.)
Q. I've handed you what we've marked as Exhibit 16. Take a second to look at the document and see if you recognize it as a similar form of deed of trust.
I'll represent to you that there are two deeds of trust in connection with the Red Bluff Congregation of Jehovah's Witnesses, a corporation.
A. Yes. There appears to be two deeds of trust here.
Q. And like the prior document, Watch Tower Pennsylvania is the beneficiary of this deed of trust, correct?
A. Which one are we referring to?

A. REINMUELLER
Q. The top one, the one filed in February of 19 -- that is a good question. Let's stop and go over to the older one, which is the third page of that collection.
It's a transaction, dated May 15, 1960. Do you see that?
A. Yes.
Q. Do you have any reason to doubt that the Watch Tower Pennsylvania was making Kingdom Hall loans in 1960?
A. No, I have no reason to doubt that.
Q. Do you see this document which indicates Watch Tower Pennsylvania as the beneficiary of the dead of trust in connection with this Red Bluff Congregation transaction?
A. Yes, I see that.
Q. It says to Tahama County Title Company, a corporation herein called trustee. Do you see that?
A. Yes.
Q. Do you know who the Tahama

A. REINMUELLER
County Title Company is?
A. No. I'm not familiar with it.
Q. Do you know that they are acting as a trustee on behalf of the beneficiary Watch Tower Pennsylvania?
A. Yes, I understand that.
Q. And that the trustee is a California corporation, correct?
A. Yes.
MR. SCHNACK: It doesn't say that.
A. It doesn't say that.
MR. LOVE: Well, by law, it has to be.
Q. If you would, turn to the first page of that stapled Exhibit 16. Do you see that the Red Bluff Congregation of Jehovah's Witnesses also was involved in a real estate transaction in February of 1973?
A. Yes.
Q. Again, the Watch Tower Bible and Tract Society of Pennsylvania is the lender, correct?

A. REINMUELLER
A. Yes.
Q. And they are listed as a beneficiary of the deed of trust in California?
A. That's correct.
Q. Have you ever seen a deed of trust with respect to a loan in California?
MR. SCHNACK: Prior to today?
Q. Prior to today?
A. No, I haven't.
Q. But you are pretty confident there are documents like this on file in your office?
A. Yes.
Q. Have you seen records indicating a loan by Watch Tower Pennsylvania that precedes 1960 to a California congregation?
MR. SCHNACK: I'll draw the line. We're talking about 1970 to 2003. Move on.
MR. LOVE: You are instructing him not to answer?

A. REINMUELLER
MR. SCHNACK: Yes. It's, again, outside the scope of what the deposition is about.
MR. LOVE: I'm required to show the Court continuous and systematic transactions and contacts in California. I'm just trying to find out if this witness has any idea of how continuous it has been.
MR. SCHNACK: You could address the Court. The Court put the parameters on this.
Q. Now, you reviewed the interrogatory responses prior to the deposition, correct?
A. Yes.
Q. Do you recall one of the responses, more specifically number 31, that says, "Watch Tower Pennsylvania was not involved in the purchase or building used by the Defendants, Napa, and did not provide any monies to the congregation for that purpose"?
A. Yes.

A. REINMUELLER

A. We don't keep a copy in our file since we've been doing it on computer.

Q. So are the records kept on computer?

A. Yes, they are.

Q. If I wanted to recreate a loan transaction that was made to one of these present 197 Kingdom Halls with an outstanding loan, and all of the documentation that has gone back and forth between that congregation and Watch Tower Pennsylvania or whoever was related to that transaction, in what form would those records be kept?

A. They would be kept electronically for the last few years.

Q. And at whose computer would I need to get access?

A. Any one of several people in the treasurer's office.

Q. Which includes you?

A. Probably not myself, but some others in the office.

Q. Who would someone else be that

A. REINMUELLER

would have more knowledge about obtaining the documents than you?

A. Mr. Giglio or others working with him.

MR. SCHNACK: Do you want to break here?

THE VIDEOGRAPHER: We're going off the record at 12:16.

[TIME NOTED: 12:16 p.m.]

[Whereupon, after a luncheon recess was taken, the following was had:]

A. REINMUELLER

MR. LOVE: What was my last question before lunch?

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

THE VIDEOGRAPHER: We're back on the record. The time is now 1:35 p.m.

ALEXANDER REINMUELLER, the Witness, having earlier been duly sworn by the Notary Public, was examined and continued to testify as follows:

EXAMINATION BY

MR. LOVE:

Q. Mr. Reinmueller, we were talking about -- before we took a break, we were talking about the remittance forms. What exhibit was that?

A. It was 18.

Q. Those particular three forms cover about a nine-year period, don't they? One's in 1990, one is in 1993, and one is in 1997, correct?

A. Right, so that's about -- almost

A. REINMUELLER

eight years. Yes.

Q. And all of them reference making payments to Watch Tower Pennsylvania, correct?

A. With respect to the property loan payments, that's correct.

Q. In fact, the first two of these three documents, every payment listed there is to be made to Watch Tower Pennsylvania; is that correct?

A. Correct.

Q. Before we leave the area of the loan transactions and switch to another subject, I want to hand you another document that was produced to me that I don't have. I want to be careful, because they're not stapled.

MR. LOVE: Please mark these documents as Exhibits 19, 20, and 21.

(Whereupon, the above mentioned documents were marked Exhibits 19, 20, and 21 for identification.)

Q. I want to hand you what I marked as Exhibits 19, 20, and 21 (handing).

A. REINMUELLER
Q. Is a similar letter --
MR. LOVE: Strike that.
Q. Has a similar letter been used in years before today?
A. Essentially. To the best of my knowledge, yes.
Q. So Exhibits 20 and 21, or some similar form of them, have been sent to the congregations for years, correct?
A. To all congregations with whom we have extended a loan.
Q. And that would include California, correct?
A. That would include California.
Q. Do you keep copies of these letters when they go to the congregations?
A. A copy of this letter would be kept in the active loan file.
Q. And is there a different active loan file for every congregation that has an active Kingdom Hall loan?
A. That's correct, yes, sir.
Q. Does this particular document, Exhibit 21, relate to a payment being made

A. REINMUELLER
for communication with Watchtower New York?
MR. SCHNACK: Could you repeat the question?
A. I'm not sure I understand it.
Q. Is there anything in the instructions contained in Exhibit 21 that relate to payments being made for obligations to Watchtower New York?
A. No, there are not.
Q. I want to hand you (handing) Exhibit 20. Would your answer be the same with respect to the congregations that have a loan by virtue of creating a corporation?
In other words, your answer is not different, is it?
A. No. This document does not provide for any payments to be paid to Watchtower of New York.
Q. And there are no instructional instructions given in either of those letters of required communication with Watchtower New York, is there?

A. REINMUELLER
A. No, there are not.
Q. All the communication and all the instructions relate to a relationship between the congregation and Watch Tower Pennsylvania; is that correct?
A. For the purpose of this loan.
Q. And these loans occur in California; is that correct?
A. That's correct.
Q. And the same instructions would be provided to the congregations in California?
A. To each of the congregations a loan has been extended.
Q. True?
A. Yes.
Q. Exhibit 19 is a Kingdom Hall loan application form.
Would that form or something like it have been used in California for the loans extended to those congregations?
A. Yes.
Q. These documents refer to the creation of a promissory note evidencing

A. REINMUELLER
the loan between Watch Tower Pennsylvania and the congregation, correct?
A. Correct.
Q. Who prepares that promissory note?
A. The treasurer's office prepares that promissory note, and it's executed by the congregation.
Q. The office of the secretary and treasurer of Watch Tower Pennsylvania?
A. With the assistance of staff from the treasurer's office.
Q. Would the promissory note be created by the office of the secretary and treasurer of Watch Tower of Pennsylvania?
A. Yes.
Q. And that's been true for as long as loans have been made to the congregation in California, correct?
A. To the best of my knowledge.
Q. Of course, the terms of the loan were already preset, correct?
A. In the majority of cases, that would be true.

A. REINMUELLER

A. The local congregations, to the best of my knowledge.
Q. So in the documents that we've seen, the deeds of trust documents, do you have any idea who hired those particular title companies to serve as the trustee for Watch Tower Pennsylvania?
A. To the best of my knowledge, it was done at the local level by the trustees or the corporation that would be holding titles to the properties.
Q. You understand that the congregation's corporation didn't hold the claim title to the property, correct?
A. Correct.
Q. There was a title company acting as a trustee for Watch Tower Pennsylvania; is that correct?
A. Yes.
Q. But you don't know who hired that particular California company?
A. I don't know specifically.
Q. Was the legal department ever -- the Watch Tower's legal --

A. REINMUELLER

MR. LOVE: Strike that.
Q. There is such thing as the legal department; is that correct?
A. At the Watch Tower?
Q. Yes. Mr. Moreno is a member of that department, correct?
A. The Watchtower Bible and Tract Society of New York has a legal department, correct.
Q. Does Watch Tower Pennsylvania have a separate and distinct legal department?
A. No, it does not.
Q. Does the Religious Order of Jehovah's Witnesses have a distinct legal department?
A. No.
Q. And neither does Kingdom Support Services, does it?
A. No, it does not.
Q. Does the legal department you're referring to ever have any involvement in the loan transaction to congregations in California?

A. REINMUELLER

A. I'm not specifically aware of what involvement they may have had.
Q. So maybe, maybe not?
A. Maybe, maybe not. Not on a regular basis.
Q. Who from the Watch Tower Pennsylvania, if anyone, signed the promissory notes?
A. One of the officers generally would have done so.
Q. One of the officers of Watch Tower Pennsylvania?
A. Correct.
Q. Isn't it true that up until the year 2000, the officers of Watch Tower Pennsylvania were also members of the Governing Body?
A. That's correct.
Q. Do you have any records that indicate how much interest income Watch Tower Pennsylvania has earned on its Kingdom Hall loans in the year 2003?
A. We do not --
MR. SCHNACK: I'll restrict that

A. REINMUELLER

to California, if at all.
MR. LOVE: I'll re-ask the question. I apologize for not doing that.
Q. Is it possible to determine how much interest income Watch Tower Pennsylvania has earned on its Kingdom Hall loans in California in the year 2003?
A. It would be possible to determine. It's not something that we track separately as an item or -- certainly not by state.
Q. And I assume sitting here today, you don't know how much that was?
A. No, I don't.
Q. Is it possible to determine how much interest income Watch Tower Pennsylvania has earned on Kingdom Hall loans in California since 1970?
A. No, it's not.
Q. Why not?
A. The records just don't exist anymore.
Q. How far back do the records go,

A. REINMUELLER

such that you could tell me from what years forward I could determine that?

A. To the best of my knowledge, it goes back to somewhere in the middle of '97.

Q. So if I asked you how much interest income Watch Tower Pennsylvania has earned on California Kingdom Hall loans, the only accurate information you could give me would be from 1997 forward?

A. With some effort, we could probably get the figures -- that figure from 1997, middle of 1997 forward.

Q. But you at least -- but you could at least have access to loan records from 1986-ish forward, correct?

A. Physical loan files, yes.

Q. Are you able to determine how much money has been loaned to California congregations by Watch Tower Pennsylvania since 1970?

A. No. That would not be possible to determine accurately.

Q. For what time periods can you

A. REINMUELLER

tell me money had been loaned by Watch Tower Pennsylvania to California congregations?

A. Probably from -- probably all new loan activity from about ten years ago are in our current active files. So 197 or so loans that are still active.

Q. With respect to the information that you reviewed to come up with the 397 loans number that we discussed earlier, would that information have also indicated the amount of those loans?

MR. SCHNACK: I object to the extent you mischaracterized the number. Go ahead.

A. It didn't. The information I reviewed did not have the amount. Just the congregations that received loans.

Q. Isn't it true that Watch Tower Pennsylvania owns real estate in California?

A. Watch Tower Pennsylvania at the present time owns less than ten properties that were part of bequests to the

A. REINMUELLER

corporation, of which the majority have -- the individuals still live on them with life rights, so we haven't been able to divest ourselves of any of them as of yet.

Q. I believe your interrogatory responses mentions that six of the properties, Watch Tower Pennsylvania owns a remainder interest?

A. Correct.

Q. So, in other words, you don't retain possession until something future happens?

A. That's correct.

Q. Usually the death of the person that occupies the property; is that correct?

A. That is correct.

Q. With respect to the other properties that make up that ten or so, your discovery responses indicated property in Apple Valley, California, just northeast of Loss Angeles, correct?

A. Correct.

Q. What is the nature of --

A. REINMUELLER

MR. LOVE: Strike that.

Q. What is the property?

A. I am not familiar with the details of that property, other than its current use.

Q. What is its current use?

A. We have a member of our Religious Order using -- living there at the moment.

Q. And who lives there at the moment?

A. I don't know them by name.

Q. Who is he by position?

A. They are a member of our Religious Order.

Q. Under what arrangements does he live in this home or this property?

A. He is, as any member of our Religious Order, permitted to live on this property until they die. They are a retired member, and we're providing them a place to live.

Q. Why don't I ask you this instead: What type of place is this? Is

A. REINMUELLER
accounting, filing, stuff like that?
A. Yes.
Q. USB, what is USB?
A. It's a corporation through which some of other professionals operate to provide their services for various construction activities.
Q. What does USB stand for?
A. I'm not certain.
Q. Can you hazard a guess?
MR. SCHNACK: I ask that the witness not guess. If he has an estimate, fine. Don't guess.
Q. Do you know what either U, S, or B, stands for?
A. No, I don't know. I've always dealt with it as an acronym.
Q. Do you know where it's incorporated?
A. I believe it's in New York.
Q. Do you know who the corporate officers or directors for that organization are?
A. I am not certain.

A. REINMUELLER
Q. Who would know?
A. Mr. Corkern would know.
Q. Of course, if you have records at your office that you could immediately access to tell us what USB stands for, wouldn't you?
A. Yes.
Q. Could we leave a blank in the transcript and let you fill it in when you get a chance to review it --
MR. SCHNACK: Could you tell me how this relates to California? I'm letting you go a little far afield here. We're here on personal jurisdiction issues for California. Unless you start bringing it in, I'll object and instruct him not to answer. I don't have a problem letting him provide that information.
MR. LOVE: Consider me with respect to USB ringed in. All I want is a name. See additions
MR. SCHNACK: We'll provide it later. To take time on this, I think,

A. REINMUELLER
it ridiculous.
Q. Also as the accounting overseer, can you describe generally what services you provided?
MR. SCHNACK: To Watch Tower Pennsylvania?
Q. Just as an accounting overseer? I assume the roles were similar for all the corporations?
A. We provided the preparation of their financial statements for the regular meetings of the board of directors and --
Q. You said what?
A. We provided the financial statements needed by the boards of directors.
Q. The board of directors of the various corporations?
A. Of the various corporations.
Q. What, if anything, did you review in preparation for this deposition? I assume you went through some documentation?
A. Yes. I reviewed the information

A. REINMUELLER
that was provided to you.
Q. So you reviewed only the documentation that was produced to me in the course of discovery?
A. That's correct.
Q. Did you review the affidavits of Mr. Abrahamson?
A. Yes.
Q. Did you review the affidavits of anyone else?
A. I reviewed the affidavit of Don Adams.
Q. Do you have that with you?
A. I don't.
MR. SCHNACK: I have it with me. It's the one that was attached to your response to the motion to quash summons.
MR. LOVE: So you showed him the same one I have that's missing page four?
MR. SCHNACK: Exactly. I took it from the exhibit attached to your motion.

A. REINMUELLER

24.

(Whereupon, the above mentioned document was marked Exhibit 24 for identification.)

Q. Mr. Reinmueller, Exhibit 24 was my taking a certain category of documents that was provided to me and just clip them all together to ask you questions as a group rather than labelling them as 15 different exhibits, okay?

A. All right.

Q. I'll represent to you that these are either minutes of board meetings or resolutions in connection with property transactions in California.

A. Okay.

Q. Have you ever seen this type of document before?

A. Yes.

Q. Are you the one who prepares documents like this?

A. Not for Watch Tower of Pennsylvania.

Q. Do you prepare documents like

A. REINMUELLER

this for anybody?

A. I prepare documents like this for Kingdom Support Services.

Q. Where you're the secretary and treasurer, correct?

A. That's correct.

Q. Do you have any idea who prepared these particular documents starting with the one on May 29, 1973, or to the one dated November 17, 2003?

A. I know who prepares them at the present and has for a number of years, yes.

Q. Who is that?

A. Danny Bland. Bland, B-L-A-N-D.

Q. Do you understand the purpose of these particular documents that we're looking at?

A. Yes.

Q. Do you understand them to be resolutions of the board of directors of Watch Tower Pennsylvania in the connection of sale of real estate in California?

A. That's correct.

A. REINMUELLER

Q. It is not possible for me to look at these documents and determine that the property being sold is property that was donated or gifted to the Society.

Is it your testimony from having access to the records that the resolutions contained in Exhibit 24 are in connection with the sale of properties that were donated to Watch Tower Pennsylvania?

Mr. Reinmueller, here is what I'm getting at: If there is a piece of property that you're familiar with that I'm not, that Watch Tower Pennsylvania, for example, has owned for 75 years and just decided in 1973 to sell it, I would like for you to be able to tell me that. Otherwise, I'm assuming that this is falling into the Watch Tower Pennsylvania procedure that when something is donated, you make a resolution, and you sell it, convert it to cash, and deposit it into one of the funds.

A. That is correct. As far as I am aware, Watch Tower Pennsylvania did not

A. REINMUELLER

have any long-standing property holdings in the State of California that was sold during this period of time. These are all bequests that were then sold.

Q. Let me ask you that in a cleaner question-answer form. With respect to the solutions contained in Exhibit 24, wouldn't you agree that these are memorializations of Watch Tower Pennsylvania resolving to give someone the authority to sell donated property in California?

A. Yes.

Q. The documents that had been provided to me cover the time period 1973 to 1975 and then pick up with 2003.

Are there more resolutions than just these, are were there no donations received between 1985 and 2003?

A. I can't say for sure. I'm not aware.

MR. SCHNACK: Counsel, I could comment on that. I think initially with this document production, in one

A. REINMUELLER
particular case where a certain particular time frame was at issue on the personal jurisdiction issue, that is why documents were produced in that time frame.
MR. LOVE: Would you have any problem in the next few weeks trying to fill in that gap for me on this category of documents?
MR. SCHNACK: I can inquire. I'll inquire.
MR. LOVE: Thanks.
Q. Describe to me the procedure of how Watch Tower Pennsylvania goes about selling donated property.
A. Generally speaking, we will try to find a local real estate agent in the area to transact the sale for us once the board has given approval to make that disposition.
Q. Let me see if I'm understanding, also based on your prior testimony, people in California were given instructions and information about how to donate to the

A. REINMUELLER
Society, which, for the most part, meant identifying giving property to Watch Tower Pennsylvania, correct?
A. Correct.
Q. Watch Tower Pennsylvania will receive that property or some type of interest in that property, and will probably then take the legal steps to acquire clean title; is that fair?
A. Yes.
Q. And then will hire a real estate agent then to market that property, correct?
A. If necessary. Often, we have members that are willing and licensed to do so at no charge.
Q. Regardless of who they are, a licensed realtor in California will then market that particular property?
A. Yes.
Q. With the purpose being to liquidate it, correct?
A. Yes.
Q. And once a potential buyer is

A. REINMUELLER
identified, Watch Tower Pennsylvania is notified, correct?
A. Correct.
Q. And somebody, like Danny Bland, will prepare a resolution for the board of directors for Watch Tower Pennsylvania to give that corporation legal permission to negotiate that property for cash, correct?
A. Correct.
Q. And that money is deposited where? Is it one of the three or four funds we've talked about?
A. It would be deposited into the general funds of the Pennsylvania corporation.
Q. These documents talk about the preparation and execution of grant deeds and corporate grant deeds. Do you know what that means?
A. I am not familiar with that term.
Q. So you can't tell me then who's creating and preparing these grant deeds?
A. No, I can't.

A. REINMUELLER
Q. Who would know the answer to that for California?
A. Probably -- either Danny Bland may, or Dan ~~Reis~~ Rice in our property office.
Q. Would there be a record somewhere as to the amount of money each one of these particular properties referenced in Exhibit 24 were sold for?
A. Not going back very far, I don't believe.
Q. So the answer to that question would be similar to the answer in the similar line of questions I asked you earlier?
A. Yes, I believe that's true.
Q. Having this resolution or resolutions like it doesn't help you determine the amount of the sale?
A. Exactly.
Q. All it indicates is that there was, in fact, a sale, correct?
A. Correct.
Q. If you would, turn to the Bates stamped page which says WPTA15 at the

A. REINMUELLER
Pennsylvania was contributions for Society Kingdom Hall funds. Do you see that?
A. Yes.
Q. That is not necessarily the payment on the loan, is it?
A. No, it is not.
Q. That is an opportunity for the congregation to simply pour money into that fund and it can be made available to the congregation of the Kingdom Halls; is that correct?
A. Correct.
Q. Down on the bottom part of the list, it says, "Payment for property loan number one and payments for property loan number two."
Did I read that right?
A. Yes, you did.
Q. And, of course, there's a place to identify how many payments are being made and the amount, correct?
A. Yes, that's correct.
Q. In 1990, payments for those loans were not made to Watch Tower New

A. REINMUELLER
York, were they?
A. No, they were not.
Q. Prior to this form of September 1990, isn't it true that the same payments that are listed in this remittance form were made payable to Watch Tower Pennsylvania?
A. That's correct -- Excuse me, can you rephrase that question again?
Q. Isn't it true that the same list of things being asked to remit payment to Watch Tower Pennsylvania prior to 1990 were also payments that were made to Watchtower Pennsylvania?
In other words, this form didn't institute a change for what would be happening in the years prior?
A. No. That is correct.
Q. The next document in that collection is a form called Loan Remittance Form, dated March 1993. Do you see that?
A. I do.
Q. Again, this is a form used by

A. REINMUELLER
congregations to make payments on their Kingdom Hall loan, correct?
A. Correct.
Q. These were the types of remittance forms used in California, correct?
A. Likely so, yes.
Q. It also indicates where the payments are to be made, doesn't it?
A. Yes, it does.
Q. And it says they're to be made to Watch Tower Pennsylvania?
A. Yes.
Q. Please turn to the last one. Do you see that the form is entitled Record of Electronic Funds Transferred, but it's dated August of 1997?
A. Yes.
Q. Now, it appears that the congregation has available to them the opportunity to make their payments electronically. Correct?
A. Correct.
Q. Do you see at the very last

A. REINMUELLER
statement on that document, it says, "All property loan payments will be acknowledged on your Pennsylvania Corporation statement."
Did I read that right?
A. Yes, you did.
Q. What is the Pennsylvania Corporation statement?
A. Every congregation that has an outstanding loan with a Pennsylvania Corporation receives a monthly statement acknowledging their payments on that loan and the outstanding balance.
Q. When did that procedure get instituted, or has it been the case for as long as you know?
A. As long as I know.
Q. Are there records available that show those communications back to the congregation?
A. We do not keep a copy of the statement.
Q. For how long do you keep them before you destroy them?

A. REINMUELLER

A. We don't keep a copy in our file since we've been doing it on computer.

Q. So are the records kept on computer?

A. Yes, they are.

Q. If I wanted to recreate a loan transaction that was made to one of these present 197 Kingdom Halls with an outstanding loan, and all of the documentation that has gone back and forth between that congregation and Watch Tower Pennsylvania or whoever was related to that transaction, in what form would those records be kept?

A. They would be kept electronically for the last few years.

Q. And at whose computer would I need to get access?

A. Any one of several people in the treasurer's office.

Q. Which includes you?

A. Probably not myself, but some others in the office.

Q. Who would someone else be that

A. REINMUELLER

would have more knowledge about obtaining the documents than you?

A. Mr. Giglio or others working with him.

MR. SCHNACK: Do you want to break here?

THE VIDEOGRAPHER: We're going off the record at 12:16.

[TIME NOTED: 12:16 p.m.]

[Whereupon, after a luncheon recess was taken, the following was had:]

A. REINMUELLER

MR. LOVE: What was my last question before lunch?

[Whereupon, the requested portion of the record was read back by the Court Reporter.]

THE VIDEOGRAPHER: We're back on the record. The time is now 1:35 p.m.

ALEXANDER REINMUELLER, the Witness, having earlier been duly sworn by the Notary Public, was examined and continued to testify as follows:

EXAMINATION BY

MR. LOVE:

Q. Mr. Reinmueller, we were talking about -- before we took a break, we were talking about the remittance forms. What exhibit was that?

A. It was 18.

Q. Those particular three forms cover about a nine-year period, don't they? One's in 1990, one is in 1993, and one is in 1997, correct?

A. Right, so that's about -- almost

A. REINMUELLER

eight years. Yes.

Q. And all of them reference making payments to Watch Tower Pennsylvania, correct?

A. With respect to the property loan payments, that's correct.

Q. In fact, the first two of these three documents, every payment listed there is to be made to Watch Tower Pennsylvania; is that correct?

A. Correct.

Q. Before we leave the area of the loan transactions and switch to another subject, I want to hand you another document that was produced to me that I don't have. I want to be careful, because they're not stapled.

MR. LOVE: Please mark these documents as Exhibits 19, 20, and 21.

(Whereupon, the above mentioned documents were marked Exhibits 19, 20, and 21 for identification.)

Q. I want to hand you what I marked as Exhibits 19, 20, and 21 (handing).

A. REINMUELLER

A. Yes.

Q. What can you tell me between 1970 and the mid '80s was the procedure for transactions that involved mortgages, or are you not the right guy?

A. All I could tell you is that we were -- it was the practice during that period of time to have each of the loans secured by a mortgage up until about the early to mid '80s.

Q. You don't have any of those records anymore?

A. I believe not.

Q. Again, Watchtower Pennsylvania in connection with the 1976 transaction was protected as the beneficiary of the trust; was it not?

A. It appears so.

Q. And it would be protected by the laws of the State of California, correct?

A. I am not a legal expert.

Q. Isn't it true that the Jehovah's Witnesses Organization considered these loan transactions to Kingdom Halls to be

A. REINMUELLER

investments?

A. I wouldn't characterize it that way.

Q. Let's look at Exhibit 3 again. Of course, that is entitled the branch office procedure, correct?

A. That's correct.

Q. If you would, look at paragraph 16, subparagraph 50, with me. Do you see a paragraph entitled Annual Branch Report of Activities and Financial Status?

A. Yes, I do.

Q. Do you see at the bottom where it reads, "Kingdom Hall loans are considered as an investment which means they will be listed under assets on your balance sheets"?

A. I do.

Q. This is a document that Watch Tower Pennsylvania holds the copyright to, correct?

A. Correct.

Q. And these were materials that were disseminated by the Governing Body,

A. REINMUELLER

correct?

A. That is correct.

Q. Not only are they investments, but they're used to advance the Kingdom work, correct, the loans to build the congregation's Kingdom Halls?

A. Yes. The Kingdom Halls provide meeting places which are where the congregations can perform their work.

MR. LOVE: Please mark this as 18.

(Whereupon, the above mentioned document was marked Exhibit 18 for identification.)

Q. I will hand you what was marked as Exhibit 18. I'll represent to you that those three points were produced to me. I'll also represent to you that it's three different documents from three different periods of time.

A. That's correct.

Q. I'll just call these remittance forms. Is that fair?

A. It's fair.

A. REINMUELLER

Q. And these remittance forms relate to monies paid from the congregations to Watch Tower Pennsylvania; is that correct?

A. And/or Watchtower New York.

Q. Then let's start with the first one. Do you see any reference on that particular remittance form to Watchtower New York?

A. No, I don't.

Q. In fact, there is a list of things that you could give money for that you total at the bottom, correct?

A. Yes, that's correct.

Q. Where does it say to make the check payable to?

A. To Watchtower Bible and Tract Society of Pennsylvania.

Q. Do you see a date on that form?

A. Yes.

Q. September of 1990?

A. That's correct.

Q. One of the things listed on this remittance form to pay to Watch Tower

EXHIBIT V

EXHIBIT V

EXHIBIT V

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191

SECOND AFFIDAVIT OF RICHARD E. ABRAHAMSON

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Richard E. Abrahamson, after being duly sworn, depose and state as follows:

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

2. I am the secretary and treasurer of Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA"), who is a Defendant in this proceeding.

3. Watch Tower PA coordinates the worldwide activities of Jehovah's Witnesses by providing copyrighted literature (text and images for various publications) and financial support. Historically, Watch Tower PA has also given powers of attorney to individuals in foreign countries to act on its behalf where the national laws require the appointment of a "chief" religious person. Few, if any, foreign countries now have such requirements.

4. In most countries where Jehovah's Witnesses are legally recognized, a local corporation has been formed to be legally responsible for the various appointments of individuals and is used to communicate with congregations in that country.

EXHIBIT 28

5. Watch Tower PA has never acted in a supervisory capacity to any congregation in the United States, other than providing infrequent spiritual direction by mail. Additionally, Watch Tower PA has never been responsible for the appointment of individual Elders or others in the United States. Furthermore, Watch Tower PA is not responsible for any assemblies or conventions of Jehovah's Witnesses held in California or in the United States.

6. Watch Tower PA, as a recognized charity, has received donations from individuals in California. Some of these donations are in the form of real property. In many cases, the individuals have deeded a part of their property to Watch Tower PA, but have retained a life estate in the property donated.

7. Watch Tower PA administers a fund for the construction of church buildings entitled the Kingdom Hall Fund. Through this fund, Watch Tower PA has provided financial assistance to congregations in the United States and around the world to build their places of worship known as Kingdom Halls and Assembly Halls. In return for the financial assistance, the congregations have executed promissory notes, or some mortgages before 1988, agreeing to pay back the loans.

8. Watch Tower PA has lent money to congregations in California through its Kingdom Hall Fund to assist in the construction of places of worship and received promissory notes or mortgages in return for the money lent. However, these financing arrangements have been conducted exclusively through the mails and over the telephone.

9. Watch Tower PA does not hold, and has never held, promissory notes or mortgages from the Napa Congregation of Jehovah's Witnesses in Napa, California, or from the Oak Knoll Congregation of Jehovah's Witnesses in Napa, California.

10. Watch Tower PA administers a fund named the Kingdom Hall Assistance Arrangement ("KHAA"). The KHAA is a fund created from voluntary donations and used for the discretionary purposes of Watch Tower PA. These discretionary purposes include paying for uninsured property damage to Kingdom Halls as well as expenses and liability claims arising from accidents at Kingdom Halls. No premiums have ever been collected for the KHAA. Similarly, the KHAA does not guarantee payment to any person or legal entity that contributes to the fund. Finally, the KHAA has been used by Watch Tower PA in all 50 States in the United States and in many countries around the world.

11. The Watchtower Bible School of Gilead ("School") has been owned and operated by Watchtower Bible and Tract Society of New York, Inc. ("WTNY") since its inception in 1942. The School does not have income, in the classical sense, because students do not pay tuition or other fees. WTNY underwrites all expenses for the School. All invitations to the School have been sent by WTNY to students in the United States and around the world since its inception.

12. Watch Tower PA maintains its own separate corporate meetings. Watch Tower PA maintains its own separate corporate books and records. Members of the Board of Directors and Officers of Watch Tower PA do not sit on any other corporations, including WTNY or Christian Congregation of Jehovah's Witnesses ("CCJW").

13. Watch Tower PA prepares its own annual financial reports. These financial reports are prepared separately from all other corporations, including WTNY and CCJW.

14. Watch Tower PA maintains separate bank accounts from all other corporations. Watch Tower PA does not commingle funds with any other corporation.

15. Watch Tower PA has provided funds to other corporations, including WTNY and CCJW. These funds have been recorded as long-term receivables by Watch Tower PA and long-term payables by the other corporations. Watch Tower PA has also made gifts to other corporations and recorded them as such.

16. Watch Tower PA is not held out as liable for the debts of any other corporation, including WTNY or CCJW.

17. Watch Tower PA occupies WTNY office space under a written lease. To some extent, some of the same personnel serve all of the corporations in providing legal, accounting, and risk management services.

18. Watch Tower PA maintains all corporate formalities required by Pennsylvania law. Watch Tower PA holds annual meetings of members and directors and documents all its meetings (annual, regular, or special), and all significant corporate actions.

SIGNED this the 26th day of January, 2004.

Richard E. Abrahamson
Secretary-Treasurer of Watch Tower Bible and Tract Society of Pennsylvania

SUBSCRIBED AND SWORN TO BEFORE ME on the 26th day of January, 2004, to certify which witness my hand and official seal.

Notary Public, State of New York

DANNY L. BLAND
Notary Public, State of New York
No. 24-4725298
Qualified in Kings County
Commission Expires February 28, 2007

EXHIBIT W

EXHIBIT W

RECORDING REQUESTED BY

VOL 991 PAGE 221

AND WHEN RECORDED MAIL TO

Watch Tower Bible and Tract Society
of Pennsylvania
124 Columbia Heights
Brooklyn, N.Y. 11201

BM9615

RECORDED AT REQUEST OF
TITLE INS. & TRUST CO.
NAPA COUNTY RECORDS
AT 10:40 O'CLOCK A M.
APR 21 1976
ELEANOR E. EUMBERGER
COUNTY RECORDER
FEE $4.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TO 486 I C (11-67) (OPEN END) **CORPORATION DEED OF TRUST AND ASSIGNMENT OF RENTS — SHORT FORM**

This Deed of Trust, made this 21st day of JANUARY 1976, between
NAPA CONGREGATION OF JEHOVAHS WITNESSES, INC.

a corporation organized under the laws of the State of California, herein called TRUSTOR,
whose address is 1976 Wise Drive (number and street) Napa (city) California (zone) 94558 (state),

TITLE INSURANCE AND TRUST COMPANY, a California corporation, herein called TRUSTEE, and
WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a nonprofit corporation, herein called BENEFICIARY,

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Napa, Napa County, California, described as:

Parcel "B", as shown on the Map entitled, "Parcel Map of the lands of Felix Zerba, Sr." filed June 13, 1968 in Book 1 of Parcel Maps at page 22 in the office of the County Recorder of said Napa County.

A.P. #38-090-44

SEE EXHIBIT "A" FOR SPECIAL PROVISION

TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note of even date herewith, and any extension or renewal thereof, in the principal sum of $ 48,000.00 executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County October 18, 1961, and in all other counties October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	435	684	Kings	792	833	Placer	895	301	Sierra	29	335
Alpine	1	250	Lake	362	39	Plumas	251	5	Siskiyou	468	181
Amador	104	348	Lassen	171	471	Riverside	3005	522	Solano	1105	182
Butte	1145	1	Los Angeles	T2055	899	Sacramento	4331	62	Sonoma	1851	689
Calaveras	145	154	Madera	810	170	San Benito	271	383	Stanislaus	1715	456
Colusa	296	617	Marin	1508	339	San Bernardino	5567	61	Sutter	572	297
Contra Costa	3978	47	Mariposa	77	292	San Francisco	A332	905	Tehama	401	289
Del Norte	78	414	Mendocino	579	530	San Joaquin	2470	311	Trinity	93	366
El Dorado	568	456	Merced	1567	538	San Luis Obispo	1151	12	Tulare	2294	275
Fresno	4626	572	Modoc	184	851	San Mateo	4078	420	Tuolumne	135	47
Glenn	422	184	Mono	52	429	Santa Barbara	1878	860	Ventura	2042	386
Humboldt	657	527	Monterey	2194	538	Santa Clara	5336	341	Yolo	652	245
Imperial	1091	551	Napa	639	86	Santa Cruz	1431	494	Yuba	334	486
Inyo	147	598	Nevada	305	320	Shasta	684	528			
Kern	3427	60	Orange	5889	611	San Diego	Series 2 Book 1962, Page 183887				

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

Signature of Trustor

NAPA CONGREGATION OF JEHOVAHS WITNESSES, INC.
(Name of corporation)

By Gabe J. Clark
President

By Tom Conatser
Secretary

By Forrest D. Smith
Treasurer

STATE OF CALIFORNIA, COUNTY OF Napa } ss.

On January 23, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared Gabe J. Clark known to me to be the President and Tom Conatser, known to me to be the Secretary, and Forrest D. Smith known to me to be the Treasurer of the corporation that executed the within instrument, and known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Doris S. Conner
Doris S. Conner

DORIS S. CONNER
Notary Public
Napa County, California
My Commission Expires
October 23, 1979

EXHIBIT 17

EXHIBIT "A"

SPECIAL PROVISION:

Mortgagor agrees to obtain, and deliver to Mortgagee, written and unconditional waivers of mechanic's liens upon the real property mortgaged hereunder, for all work, labor and services to be performed and materials to be furnished to Mortgagor in connection with any construction on or renovation of said premises, signed by all contractors, subcontractors, material men and laborers to become involved in any such work. Notwithstanding the foregoing, if any mechanic's lien is filed against the premises mortgaged hereunder, or the building located thereon, for work claimed to have been done for, or materials claimed to have been furnished to Mortgagor, it shall be discharged by Mortgagor within five (5) days thereafter, at Mortgagor's expense, by filing the bond required by law. In the event that any such lien is not so discharged as herein specified, it shall be a default hereunder and Mortgagee shall be entitled to all the rights and remedies herein provided in the event of a default hereunder including but not limited to the right to commence foreclosure proceedings forthwith.

G.J.C.
J.L.
F.S.

END OF DOCUMENT

EXHIBIT X

EXHIBIT X

EXHIBIT X

WATCH TOWER
Bible and Tract Society of Pennsylvania
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5000 Fax: (718) 560-5101

October 6, 2003

TO ALL BODIES OF ELDERS IN THE UNITED STATES

Dear Brothers:

The Kingdom Hall Assistance Arrangement (KHAA) uses designated contributed funds to pay for property damage to Kingdom Halls and for expenses and liability claims arising from incidents at Kingdom Halls. Jehovah's blessing on the fine support that all have shown has made it possible to provide this assistance all these years without any change in the suggested contributions.

To properly fund the KHAA, we suggest that each congregation once again contribute $4.50 per publisher for this year. To avoid burdening the brothers with one large expense, we recommend that each congregation pass a resolution to contribute monthly based upon the number of its publishers. (For example, $4.50 x (number of publishers) ÷ 12 months = $ per month.) Since this will be a monthly donation, it should be cared for by each congregation instead of by the operating committee in the case of congregations that share a Kingdom Hall. If you prefer to send the entire annual amount at once, you may do so.

When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. Please **do not** include this contribution with any payments on your Congregation Account.

We are pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to properly care for our buildings and all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

cc: Traveling overseers

WTPA 00001

EXHIBIT Y

EXHIBIT Y

RECD FEB 8 1993

Alexander & Alexander of New York Inc.
1185 Avenue of the Americas
New York, N.Y. 10036
Telephone 212 575-8000

Alexander & Alexander

February 5, 1993

Mr. Dan Blackwood
Watch Tower Bible & Tract Society
25 Columbia Heights
Brooklyn, NY 11201

RE: COMMERCIAL GENERAL LIABILITY
POLICY NO.: GL 5903705RA
NATIONAL UNION FIRE INSURANCE COMPANY
EFFECTIVE: 10/1/90 - 10/1/91

Dear Dan:

Enclosed are the following endorsements for attachment to the captioned policy:

1) Endorsement No. 11 - Adds Vandermeyde Welding as a Named Insured subject within parameters stated on endorsement.

2) Garage Liability Coverage Part - is attached.

3) QCP Endorsement - Adds protective liability for the State of New York for the issuance of Highway Permits to Watch Tower.

These endorsements complete the policy and there are none outstanding. Following your review, should you have any questions, do not hesitate to contact us.

Sincerely,

Audrey J. Agacinski, CPCU
Assistant Vice President

AJA/ar

Enclosures

cc: Peter Byrne

EXHIBIT
36
* D E F 0 0 0 4 4 *

B053AR06.RTN/1

Telex 420580
Cable ALEXALEX

1. NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH
A STOCK COMPANY

2. AMERICAN HOME ASSURANCE COMPANY
A STOCK COMPANY

Member Companies of American International Group

EXECUTIVE OFFICES
70 PINE STREET, NEW YORK, N.Y. 10270

3. THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
A STOCK COMPANY

[1] COVERAGE IS PROVIDED IN THE COMPANY DESIGNATED BY NUMBER (HEREIN CALLED THE COMPANY).

COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NO. GL 590-37-05 RA

NAMED INSURED WATCHTOWER BIBLE & TRACT SOCIETY ETAL

MAILING ADDRESS 25 COLUMBIA HEIGHTS
BROOKLYN HEIGHTS NY 11201-0000

POLICY PERIOD: From 10/01/90 to 10/01/91 at

12:01 A.M. Standard Time at your mailing address shown above

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

GENERAL AGGREGATE LIMIT (Other Than Prod-Comp Operations)	$	3,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	$	1,000,000	
PERSONAL & ADVERTISING INJURY LIMIT	$	1,000,000	
EACH OCCURRENCE LIMIT	$	1,000,000	
FIRE DAMAGE LIMIT	$	1,000,000	Any One Fire
MEDICAL EXPENSE LIMIT	$		Any One Person

Forms Of Business: ☐ Individual ☐ Partnership ☐ Joint Venture ☒ Organization (Other than Partnership or Joint Venture)

Business Description: RELIGOUS SECT

Location Of All Premises You Own, Rent or Occupy: SEE ATTACHED SCHEDULE

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE.	ADVANCE PREMIUM	
				PR/CO	ALL OTHER
SEE ATTACHED SCHEDULE					

Premium shown is payable: $ at inception. **TOTAL: $** 413,820

ENDORSEMENTS ATTACHED TO THIS POLICY: SEE ATTACHED SCHEDULE.

COUNTERSIGNED NOV 26 1990 (Date) **BY** (Authorized Representative)

DEFD0045

Date Issued: 10/03/90

TRANSMITTAL TO INSURED

Alexander & Alexander of New York Inc.
1185 Avenue of the Americas
New York, N. Y. 10036
Telephone 212 575-8000

Alexander & Alexander

4033-91

Submitted by

AUDREY AGACINSKI

4/10/91
Date

To:

MR. JOSEPH COSSETTE
NATIONAL UNION FIRE INS. CO.
1230 AVE. OF THE AMERICAS
NEW YORK, NY 10020

THE ENCLOSED COMPLETES THE BINDER INSTRUCTIONS AS PREVIOUSLY ACKNOWLEDGED TO YOU.

INSURED WATCHTOWER BIBLE & TRACT SOCIETY
25 COLUMBIA HEIGHTS, NEW YORK, NY 11201

TYPE OF INSURANCE COMMERCIAL GENERAL LIABILITY

EFFECTIVE DATE 10/1/90 EXPIRATION DATE 10/1/91

LOCATION

INSTRUCTIONS:

BINDING AS AGREED EFFECTIVE 4/12/91
ADD AS AN ADDITIONAL NAMED INSURED ONLY AS RESPECTS OPERATIONS PERFORMED FOR WATCHTOWER AT THEIR REQUEST THE FOLLOWING:
VANDERHEYDE WELDING &
IRON WORKS INCORPORATED
890 BURNT MEADOW RD.
NEWITT, N.J. 07421
COVERAGE TO APPLY EXCESS OF $500,000/$1,000,000 AGGREGATE AS EVIDENCED ON ATTACHED CERTIFICATE, EXCEPT SHOULD THESE LIMITS BE EXHAUSTED BY PAYMENT OF CLAIMS THEN COVERAGE SHALL DROP DOWN AND BE PRIMARY SUBJECT TO A SELF-INSURED RETENTION OF $100,000.

INSURANCE COMPANY NATIONAL UNION FIRE INS. CO.

POLICY NO. GLA5903705RA ACCEPTED BY Joseph Cossette

DEF00046

TRANSMITTAL TO INSURED

Alexander & Alexander of New York Inc.
1185 Avenue of the Americas
New York, N. Y. 10036
Telephone 212 575-8000

Alexander & Alexander

60015-90

Submitted by

AGACINSKI/DOHERTY

10/5/90

Date

To:

MR. JOSEPH COSSETTI
AMERICAN INTERNATIONAL GROUP, INC.
1230 AVENUE OF THE AMERICAS
NEW YORK, NY 10020

THE ENCLOSED COMPLETES THE BINDER INSTRUCTIONS AS PREVIOUSLY ACKNOWLEDGED TO YOU.

INSURED: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC. etal
(and as per specifications) 25 COLUMBIA HEIGHTS, BROOKLYN, NY 11201

TYPE OF INSURANCE: COMMERCIAL GENERAL LIABILITY

EFFECTIVE DATE: 10-1-90 EXPIRATION DATE: 10-1-91

LOCATION:

INSTRUCTIONS: BINDING AS AGREED:

FORM: 1986 ISO OCCURRENCE

LIMITS:
$1,000,000 PER OCCURRENCE
$1,000,000 PERSONAL INJURY & ADVERTISING INJURY LIMIT
$3,000,000 GENERAL AGGREGATE-PER LOCATION
$1,000,000 EMPLOYEE BENEFITS LIABILITY
$1,000,000 PRODUCTS/COMPLETED OPERATIONS AGGREGATE
$1,000,000 FIRE DAMAGE-ANY ONE FIRE
$ 100,000 COMPREHENSIVE PERSONAL LIABILITY

SELF-INSURED RETENTION: $100,00 PER CLAIM
WITHOUT AGGREGATE-INCLUDING SUPPLEMENTARY PAYMENTS
CLAIMS WITHIN SIR TO BE HANDLED BY GAB

INSURANCE COMPANY: NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA

POLICY NO. GLA5903705RA ACCEPTED BY [signature] 10/5/

DEF00047

TRANSMITTAL TO INSURED

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INSURED WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC. etal

(and as per specifications) 25 COLUMBIA HEIGHTS, BROOKLYN, NY 11201

TYPE OF INSURANCE COMMERCIAL GENERAL LIABILITY

EFFECTIVE DATE 10-1-90 EXPIRATION DATE 10-1-91

LOCATION

INSTRUCTIONS:

MINIMUM ANNUAL

PREMIUM: $413,820 FLAT CHARGE)
100% DUE WITHIN 30 DAYS OF EFFECTIVE DATE

CONDITIONS: PURCHASE OF ACCIDENT POLICY BY NAMED INSURED COVERING CONSTRUCTION SITES WITH LIMITS AS PREVIOUSLY SUBMITTED.

EXTENSIONS OF COVERAGE:

1. CLERGY COUNSELING PROFESSIONAL LIABILITY COVERAGE (FORM AIUX 306) WITH THE FOLLOWING AMENDMENTS.
   A. THE PERSONS INSURED PROVISION IS AMENDED TO INCLUDE ANY "ELDER OR MINISTERIAL SERVANT DESIGNATED AS SUCH BY THE NAMED INSURED"...
   B. NO. 3 - DEFINITION OF A "CLERIC" IS DELETED IN ITS' ENTIRETY."

INSURANCE COMPANY NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA

POLICY NO. GLA5903705RA ACCEPTED BY

DEF00048

TRANSMITTAL TO INSURED

Alexander & Alexander of New York Inc.
1185 Avenue of the Americas
New York, N. Y. 10036
Telephone 212 575-8000

Alexander & Alexander

60015-90

Submitted by

AGACINSKI/DOHERTY
10/5/90
Date

To:

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1230 AVENUE OF THE AMERICAS
NEW YORK, NY 10020

THE ENCLOSED COMPLETES THE BINDER INSTRUCTIONS AS PREVIOUSLY ACKNOWLEDGED TO YOU.

INSURED WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC. etal
(and as per specifications) 25 COLUMBIA HEIGHTS, BROOKLYN, NY 11201

TYPE OF INSURANCE COMMERCIAL GENERAL LIABILITY

EFFECTIVE DATE 10-1-90 EXPIRATION DATE 10-1-91

LOCATION

INSTRUCTIONS:

9. BLANKET ADDITIONAL INSURED-LEASED PREMISES

10. ADDITIONAL INTEREST UNDER CONTRACT ENDORSEMENT.

11. GARAGE LIABILITY

12. WATCH TOWER VETO AUTHORITY ON CLAIMS INVOLVING SENSITIVE THEOLOGICAL ISSUES WITH INDEMNITY AGREEMENT AS EXPIRING

13. $1,000,000 EMPLOYEE BENEFITS LIABILITY - $1,000 DEDUCTIBLE PER CLAIM.

EXCLUSION:
POLLUTION; ASBESTOS; EMPLOYEE BODILY INJURY; RADIOACTIVE MATTER; NUCLEAR ENERGY.

INSURANCE COMPANY NATIONAL UNION FIRE INSURANCE CO. OF PITTSBURGH, PA

POLICY NO. GLA5903705RA ACCEPTED BY Joseph Cossetti

DEF00049

ENDORSEMENT
MS # 6

This endorsement, effective 12:01 A.M. 10/01/90 forms a part of

Policy No. GLA 590 3705 RA issued to Watchtower Bible & Tract Society, Etal

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.

Additional Declarations

EMPLOYEE BENEFITS LIABILITY INSURANCE

COVERAGE	LIMIT OF LIABILITY		DEDUCTIBLE	
Employee Benefits	$1,000,000.	Each Occurrence		
Liability Insurance	$1,000,000.	Annual Aggregate	$ 1,000.	Each Occurrence

Premium Computation

Est. No. of Employees	Rated Per Employee		Advance Premium
	First 5,000	If Any	$ Included
	Next 5,000		$
	Over 10,000		$

Total Advance Premium $ Included

In consideration of the payment of the premium, this Company agrees with the Insured named in the Declarations to afford the coverage set forth herein. The other terms, conditions and limits of liability in other sections of the policy to which this endorsement is attached shall not apply to insurance afforded hereunder.

INSURING AGREEMENTS

1. Employee Benefits Liability

The Company will indemnify the Insured for all sums which the Insured shall become legally obligated to pay as damages because of any claim made against the Insured due to any negligent act, error or omission of the Insured, or any other person for whose acts the Insured is legally liable, in the administration of the Insured's Employee Benefits Programs, as defined herein, and this Company shall have the right and duty to defend any suit against the Insured seeking damages on account of such negligent act, error or omission, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient; but this Company shall not be obligated to defend any suit after the applicable limit of this Company's liability has been exhausted by payment of judgments or settlements.

2. Definition of "Insured"

With respect to the insurance afforded by this endorsement the unqualified work "Insured" includes the Named Insured; provided that (a) if the Named Insured is designated as an individual, the insurance applies only to the conduct of a business of which he is the sole proprietor and (b) the unqualified work "Insured" also includes the following :

EXHIBIT Z

EXHIBIT Z

COMMERCIAL UMBRELLA
DECLARATIONS

1 NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.
2 AMERICAN HOME ASSURANCE COMPANY
3 THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
4 AMERICAN INTERNATIONAL UNDERWRITERS

[1] COVERAGE IS PROVIDED IN THE COMPANY DESIGNATED BY NUMBER

A STOCK INSURANCE COMPANY HEREIN CALLED THE COMPANY

MEMBERS OF THE AMERICAN INTERNATIONAL GROUP, INC.
EXECUTIVE OFFICES
70 PINE STREET
NEW YORK, N.Y. 10270

POLICY NUMBER: BE 308-11-85 Renewal of: 3074289
PRODUCER NO: 07295
PRODUCER NAME: ALEXANDER & ALEXANDER

ADDRESS: 1185 AV OF THE AMERICAS

NEW YORK NY 10036-0000

ITEM 1. NAMED INSURED: WATCHTOWER BIBLE & TRACT SOCIETY

ADDRESS: 25 COLUMBIA HEIGHTS
BROOKLYN, NY 11201-0000

ITEM 2. POLICY PERIOD: FROM OCTOBER 01, 1990 TO OCTOBER 01, 1991 AT 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE NAMED INSURED SHOWN ABOVE.

EXHIBIT 37

ITEM 3. LIMIT OF INSURANCE:

a) Per Occurrence $4,000,000
b) Self Insured Retention $10,000
c) Aggregate Limits - Separately as respects:
(i) Products Hazard and Completed Operations Hazard Combined $4,000,000
(ii) All Other Coverages Combined $4,000,000
(Except Automobile Liability, which is not subject to any aggregate limit).

ITEM 4. PREMIUM COMPUTATION:

ESTIMATED EXPOSURE	RATE PER	ADVANCE PREMIUM	ANNUAL MINIMUM PREMIUM	MINIMUM EARNED PREMIUM AT INCEPTION
N/A	FLAT	$147,500	$147,500	$147,500

ITEM 5. ENDORSEMENTS ATTACHED: SEE ATTACHED SCHEDULE

DEF00055

COUNTERSIGNED 12/27/90 BY Gregory P. Gahley
DATE AUTHORIZED REPRESENTATIVE

U44016 (5/86) INSURED'S COPY Date Issued: 10/17/90

SCHEDULE OF UNDERLYING INSURANCE

ISSUED TO: WATCHTOWER BIBLE & TRACT SOCIETY

TYPE OF COVERAGE	INSURER POLICY NUMBER POLICY PERIOD	LIMITS OF LIABILITY
AUTOMOBILE LIABILITY	CONTINENTAL CASUALTY TBA OCTOBER 01, 1990 TO OCTOBER 01, 1991	COMBINED SINGLE LIMIT $2,000,000
COMMERCIAL GENERAL LIABILITY	NATIONAL UNION FIRE TBA 1986 OCC. OCTOBER 01, 1990 TO OCTOBER 01, 1991	COMBINED SINGLE LIMIT $1,000,000 EACH OCCURRENCE $3,000,000 AGGREGATE
MISCELLANEOUS LIABILITY (PRODUCTS LIABILITY)	NATIONAL UNION FIRE TBA 1986 OCC. OCTOBER 01, 1990 TO OCTOBER 01, 1991	COMBINED SINGLE LIMIT $1,000,000 EACH OCCURRENCE $1,000,000 AGGREGATE
STANDARD WORKERS COMPENSATION AND EMPLOYERS LIABILITY	NATIONAL UNION FIRE TBA OCTOBER 01, 1990 TO OCTOBER 01, 1991	COVERAGE B EMPLOYERS LIABILITY $1,000,000 EACH ACCIDENT



EXHIBIT AA

EXHIBIT AA

INSURANCE /KINGDOM HALL ASSISTANCE ARRANGEMENT

A. REINMUELLER
Watch Tower Pennsylvania; is that correct?
A. Yes.
Q. And it gives a specific attention to the insurance desk; is that correct?
A. Correct.
Q. This document goes further and describes an insurance policy, doesn't it?
A. Yes. It appears to.
Q. And isn't it true that Watch Tower Pennsylvania purchased one large insurance policy and let different congregations participate?
A. I believe that's correct, yes.
Q. The fact, there were different levels of insurance, wasn't there?
A. Yes.
Q. If you have questions about the insurance or the extent of your coverage, you're directed again to contact Watch Tower Bible and Tract Society of Pennsylvania; that is correct?
A. Yes, correct.
Q. It goes further and describes

A. REINMUELLER
how to protect your Kingdom Hall or some suggestions for protecting your Kingdom hall. Do you see that?
A. Yes.
Q. It talks about making an inspection on a regular basis, doesn't it?
A. Yes.
Q. And analyzing your security needs?
A. Yes.
Q. Frequent maintenance checks, correct?
A. Correct.
Q. Those aren't spiritual matters, are they?
A. Not specifically.
Q. Those are practical business directions, correct?
A. I guess you could characterize them that way.
Q. "Check your roof for seasonal problems."
Is that a spiritual instruction?
A. Not specifically, no.

A. REINMUELLER
Q. "Starting, increasing, or cancelling your insurance."
Then there are some instructions given, correct?
A. Correct.
Q. It's talking about congregations obtaining insurance, and it's done through Watch Tower Pennsylvania; is that correct?
A. Yes, that's correct.
Q. It says in the third paragraph underneath that title, "To cancel your insurance, notify the Society. Your insurance will not be cancelled because failed to pay your premium."
Did I read that right?
A. Yes.
Q. What is a premium?
A. In a general sense, or the way it's being used here?
Q. If it's different from the way it's being used here, in a general sense?
MR. SCHNACK: I object. I don't understand the question.
MR. LOVE: I'll start again.

A. REINMUELLER
Q. It says premium, doesn't it?
A. Yes.
Q. It doesn't say volunteer donation, doesn't?
A. Right.
Q. The bottom describes reporting and handling a property loss, injury, or lawsuit, doesn't it?
A. Yes.
Q. And it describes the three categories of claims that your insurance covers, doesn't it?
A. Yes.
Q. One of those is listed as lawsuits, correct?
A. Correct.
Q. And if there is a lawsuit, you should report it immediately to the Society, correct?
A. Yes.
Q. And again, the Society's Watch Tower Bible and Tract Society of Pennsylvania, correct?
A. Yes.

A. REINMUELLER
in the middle of the page, it instructs that if you have an injury or liability claim, to do the following things. Do you see that?
A. Yes.
Q. Now, these are instructions that Watch Tower Pennsylvania expected to be followed if there was an injury or liability claim in the congregation, correct?
A. Yes, that's correct.
Q. And Watch Tower Pennsylvania had the authority to issue these instructions, correct?
A. Yes, to all those who were enrolled in this program. Certainly.
Q. And any California congregation that received these instructions understood them to be authoritative as it relates to these matters, correct?
A. If they participated in these matters, they viewed them as authoritative.
Q. If you would, turn to page five.

A. REINMUELLER
Do you see the section Renewing and Paying for Your Insurance?
A. Yes.
Q. Do you see where it mentions that on October 30, you will receive an invoice for your insurance.
A. Yes.
Q. And what to do when you receive the invoice?
A. Yes.
Q. Again, those are instructions, correct?
A. Correct.
Q. It says "invoice" and not "voluntary donation," correct?
A. That's correct.
Q. Actually, paragraph three, it says to "Keep in mind that the Society pays your premiums in advance and waits for reimbursement from congregations." Doesn't it?
A. That's correct.
Q. So Watch Tower Pennsylvania would go and purchase these levels of

A. REINMUELLER
insurance and simply send premium notices to the congregations, correct?
A. That's correct.
Q. And Watch Tower Pennsylvania would front all of the money and then collect if from the congregations that were enrolled in the program, correct?
A. That's correct.
Q. On the next page, do you see the item number two listing who's covered by the insurance?
A. I am not sure I'm following you. We're on page six?
Q. Yes. Do you see the reference under paragraph two that the insurance covers claims against elders and ministerial servants?
A. Yes.
Q. That would include elders and ministerial servants in California congregations that were enrolled in the program, correct?
A. Yes.
THE VIDEOGRAPHER: We're going

A. REINMUELLER
off the record at 4:13 p.m.
[A recess was taken.]
THE VIDEOGRAPHER: We're going back on the record. The time is now 4:19 p.m.
MR. LOVE: Mark these as Exhibits 36 and 37.
(Whereupon, the above mentioned document were marked Exhibits 36 and 37 for identification.)
Q. I'll hand you what I marked as Exhibits 36 and 37 (handing). I've clipped together what I understand to be some documents that relate to an insurance purchase for the period of October 1, 1990 through October 1, 1991.
Are you familiar with this type of document?
A. Yes.
Q. Does it appear to be a true and correct copy of some of the insurance documents for that period?
A. Yes, they do.
Q. Who is Mr. Dan Blackwood?

A. REINMUELLER
programs were in place year by year.
Q. Neither can I, Mr. Reinmueller. I'm doing the best I can with a little bit of documents. I apologize for not having more information available to ask you those questions.
With respect to those changes in programs, how many different changes have there been from 1970 to the present?
A. I wouldn't be able to wager a number, but I know that the programs have changed fairly from 1970 to the present. They've changed quite significantly.
Q. Starting with 1970, what is the first change that you're familiar with?
A. I couldn't give you a year-by-year or decade-by-decade analysis.
Q. Can you give me any more information, other than the fact that the Kingdom Hall Assistance Arrangement was brought on around 1989?
A. In what are you interested specifically?
Q. I'm interested in knowing what

A. REINMUELLER
contract Watch Tower Pennsylvania had in the State of California relative to insurance provision for anybody associated with the organization in California.
A. Well, the Kingdom Hall Assistance Arrangement does provide coverage to all of the congregations there.
Q. We'll get to Kingdom Hall Assistance Arrangement.
A. Okay.
Q. Is there any other program change or other any in way insurance was handled in California between 1970 and 2003?
MR. SCHNACK: I am not clear on what you mean. Program change or insurance? It sound like you're mixing apples and oranges. Maybe it's late in the day.
Q. You've been designated as the person with most knowledge about Watch Tower Pennsylvania's contacts in California, correct?

A. REINMUELLER
MR. SCHNACK: With respect to the issues in the notice of deposition.
Q. One of those issues relates to Kingdom Hall Assistance Arrangement, correct?
A. Correct.
Q. And that is an insurance program, correct?
A. Correct.
Q. Are there any other insurance programs that have been in effect in California, besides the Kingdom Hall Assistance Arrangement and the arrangement similar to what we're describing or discussing in this policy?
A. Not to my knowledge.
Q. Turn to the very last page of Exhibit 36, entitled "Endorsement" at the top. Do you see that?
A. Yes.
Q. Do you see at the bottom it says "page one of four"?
A. Yes.

A. REINMUELLER
Q. Do you notice like I have that there is no page two, three, or four?
A. Yes, I notice that.
Q. Do you see item number two, definition of insured?
A. Yes.
Q. That says at the very bottom, insured, and it also includes the following, and there is a colon?
A. Yes.
Q. There is nothing listed thereafter, correct?
A. Correct.
Q. Do you have any copies of insurance policies like this in your office?
A. Yes, we do.
Q. For the person to have been able to produce this to me, they would have had to have gotten this policy out of your office, correct?
A. Probably so, yes.
Q. Are there documents like this for other time periods, besides 1990 to

A. REINMUELLER

1991?

A. Yes, there would be.

Q. And those policies would have covered people and congregations in California, correct?

A. Congregations certainly, yes.

Q. Well, we saw the elders are covered, didn't we?

A. Yes.

Q. And ministerial servants, correct?

A. During certain periods, yes.

Q. We got those in California, correct?

A. Yes.

Q. How far back do your records go of insurance policies and levels of coverage?

A. I'm not sure specifically on the year, but evidently, at least back to the early '90s.

Q. You mentioned --

MR. LOVE: Strike that. Mark this as 38.

A. REINMUELLER

(Whereupon, the above mentioned document was marked Exhibit 38 for identification.)

Q. I'm handing you what's been marked as Deposition Exhibit -- what is it, 38?

MR. SCHNACK: 38.

Q. That document is also something sent by Watch Tower Bible and Tract Society of Pennsylvania?

A. Correct.

Q. And it indicates that it was sent to a congregation in Texas, correct?

A. That's correct.

Q. But is this also a form document that would have also something similar to it have been sent to California congregations?

A. To all those enrolled in the insurance program.

Q. And we don't know how many congregations were enrolled in the insurance program for any period of time back in the '70s or '80s, do we?

A. REINMUELLER

A. That is correct. We do not know.

Q. What is the title of this document?

A. Insurance invoice.

Q. It's dated February 1991; is it not?

A. Yes.

Q. And it also indicates that coverage is automatically renewed, correct?

A. Correct.

Q. It indicates or references at the bottom that it's for that same coverage date from the insurance policy we just looked at, correct?

A. Correct.

Q. So is it safe for me to assume that Watch Tower Pennsylvania was purchasing layers of insurance that covered different people in entities for different things, correct?

A. That's correct.

Q. And that they would turn around

A. REINMUELLER

then, and Watch Tower Pennsylvania would send out letters to the congregations that were enrolled in the program sending them an invoice for their portion of the premium payment, correct?

A. Correct.

Q. And those letters would have been directed to the participating congregations in California; is that correct?

A. Correct.

Q. Again, does this sheet anywhere say "voluntary donation" on it?

A. No, it does not.

MR. LOVE: Please mark this as 39.

(Whereupon, the above mentioned document was marked Exhibit 39 for identification.)

Q. This is Exhibit 39. Do you recognize that as a letter sent from Watch Tower Pennsylvania?

A. Yes.

Q. Dated November 1, 1981?

A. REINMUELLER
in the middle of the page, it instructs that if you have an injury or liability claim, to do the following things. Do you see that?
A. Yes.
Q. Now, these are instructions that Watch Tower Pennsylvania expected to be followed if there was an injury or liability claim in the congregation, correct?
A. Yes, that's correct.
Q. And Watch Tower Pennsylvania had the authority to issue these instructions, correct?
A. Yes, to all those who were enrolled in this program. Certainly.
Q. And any California congregation that received these instructions understood them to be authoritative as it relates to these matters, correct?
A. If they participated in these matters, they viewed them as authoritative.
Q. If you would, turn to page five.

A. REINMUELLER
Do you see the section Renewing and Paying for Your Insurance?
A. Yes.
Q. Do you see where it mentions that on October 30, you will receive an invoice for your insurance.
A. Yes.
Q. And what to do when you receive the invoice?
A. Yes.
Q. Again, those are instructions, correct?
A. Correct.
Q. It says "invoice" and not "voluntary donation," correct?
A. That's correct.
Q. Actually, paragraph three, it says to "Keep in mind that the Society pays your premiums in advance and waits for reimbursement from congregations." Doesn't it?
A. That's correct.
Q. So Watch Tower Pennsylvania would go and purchase these levels of

A. REINMUELLER
insurance and simply send premium notices to the congregations, correct?
A. That's correct.
Q. And Watch Tower Pennsylvania would front all of the money and then collect if from the congregations that were enrolled in the program, correct?
A. That's correct.
Q. On the next page, do you see the item number two listing who's covered by the insurance?
A. I am not sure I'm following you. We're on page six?
Q. Yes. Do you see the reference under paragraph two that the insurance covers claims against elders and ministerial servants?
A. Yes.
Q. That would include elders and ministerial servants in California congregations that were enrolled in the program, correct?
A. Yes.
THE VIDEOGRAPHER: We're going

A. REINMUELLER
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Are you familiar with this type of document?
A. Yes.
Q. Does it appear to be a true and correct copy of some of the insurance documents for that period?
A. Yes, they do.
Q. Who is Mr. Dan Blackwood?

potentially pay claims that involve elder misconduct?
A. Yes.
Q. What elder misconduct is not covered? Can you think of any?
MR. SCHNACK: I'll object to the question. How is this related to California?
MR. LOVE: I just want to know about how the Kingdom Hall Assistance Arrangement works.
MR. SCHNACK: Again, can you --
MR. LOVE: I've got a hand --
MR. SCHNACK: Hold on. Let me finish my comment. How does this relate to the contact with California?
MR. LOVE: All the claims that I'm holding in my hand, you provided me in Exhibit 49 are claims made and paid in California. I want to ask him about that.
MR. SCHNACK: How does it relate? We've admitted there were claims paid in California? How is

this line of questioning going to further the issue of new contacts --
MR. LOVE: Because I want to ask him about the process in which these particular claims in California were paid, who, if anyone, was involved, and how it works.
MR. SCHNACK: Your question didn't involve the process.
MR. LOVE: I'm going to ask the questions to get to the process, but I need to ask my predicate questions first.
MR. SCHNACK: You could ask then, but I'll object and direct him not to answer. Again, this is outside the scope of the deposition.
MR. LOVE: I understand.
Would you read back my question, please?
[Whereupon, the requested portion of the record was read back by the Court Reporter.]
MR. SCHNACK: Again, I'll object

to the question. It's outside the scope of this deposition. Unless you tie this to California contacts, I'll instruct the witness not to answer.
Q. You heard my question, right?
A. Yes.
Q. Are you refusing to answer my question?
MR. SCHNACK: He's refusing to answer based on my instruction that this is outside the scope of this deposition.
A. Yes, that's...
Q. On page 265 of that exhibit --
MR. SCHNACK: Refer to the Bates number.
MR. LOVE: I am.
Q. There is a little number on the very left-hand side of the page. Do you see them right here (indicating)?
A. Okay, um-hmm.
Q. There is a list of types of claims listed there. Do you see that?
A. Sorry, 256 or 265?

Q. 265?
A. Your question again?
Q. Do you see that on that page, there is a whole list of types of claims?
A. Yes.
Q. In fact, this document is full of different types of claims that the Kingdom Hall Assistance Arrangement has paid in California, correct?
A. That's correct.
Q. Do you see in the middle of the page an item "elder misconduct"?
A. Yes.
Q. Do you have any idea what kind of elder misconduct that was?
A. No, I don't.
Q. Do you see that this says the Red Bluff Congregation California?
A. Yes, I see that.
Q. Do you have any understanding as to whether or not the Red Bluff Congregation contributed funds to the Kingdom Hall Assistance Arrangement?
A. I cannot say specifically

A. REINMUELLER

whether they have or not.
Q. Do you have records that would allow you to determine that?
A. Yes, we do.
Q. And are those in your office?
A. Yes.
Q. Before processing this claim, for example, what communication would have taken place from the congregation and then from Watch Tower Pennsylvania's insurance desk back to the congregation?
A. The congregation likely would have contacted the risk management desk with particulars of the situation, and the risk management desk would have communicated back to determine what assistance would be needed.
Q. How many people are available to answer that phone at the insurance desk?
A. There are, um, five that would answer the phones.
Q. Has a always been a handful, like five, or less?
A. Probably less. Five is probably

A. REINMUELLER

the most we've had.
Q. Is there a high turnover at the desk, or has it been pretty much the same people?
A. There has been a considerable turnover through the years.
Q. Would there be records to determine who could have processed this particular elder misconduct claim at the legal -- at the insurance desk?
A. I'm not certain.
Q. If I wanted to know more about that particular elder misconduct, what records exist?
A. Likely would be the computer database records what we're looking at here, which would be the payment. There'd likely be a file of the correspondence with the congregation. From 1989, I'm not certain whether that file still exists, if the file is complete. I couldn't say that specific file still exists, but likely in a typical case, there would be a file with the correspondence.

A. REINMUELLER

Q. And where would that file be kept?
A. In our office.
Q. That is a file that you would have access to if you were asked to access it?
A. Yes.
Q. Are you familiar with any claim ever being paid out of the Kingdom Hall Assistance Arrangement in California for child sexual abuse?
A. I am not personally aware.
Q. Do you know whether or not child sexual abuse is a claim that the Kingdom Hall Assistance Arrangement is available to cover?
A. Yes. I believe if there was a claim, that Kingdom Hall Assistance Arrangement would be available to cover.
Q. And that would be true in California, correct?
A. Yes.
Q. Do you have any idea whether this particular elder misconduct was child

A. REINMUELLER

sexual abuse?
A. I do not.
Q. Before this amount of $50,000 was paid, what information or processing went into deciding that that would be the appropriate amount?
MR. SCHNACK: He's already testified he's not aware of it. Are you asking him in general terms what might happen?
Q. I'm just asking what that process might look like.
A. This particular case?
Q. In a case such as this?
MR. SCHNACK: He's asking in general terms.
A. In general terms, there would be communication with the congregation. There would be communication with legal counsel. Depending on the circumstances, there may also be communication with a higher-up. Immediate oversite, before making a final decision.
Q. When injury in California, and

A. REINMUELLER

there is a number of them listed on this document, involves someone who was not a Jehovah's Witness, would there customarily be a settlement agreement or release document created?

A. Customarily, if there is a settlement agreement, there would be a release document executed.

Q. And who would prepare that document?

A. The legal counsel appointed to work on that particular file.

Q. Would there potentially be a legal counsel in the legal department or a legal counsel appointed in California?

A. That's correct.

Q. And would a copy of that settlement agreement, if one were created, be kept in the file in your office?

A. Yes. I believe that would be the case.

Q. And it would be fair for me to assume that if your file contained a settlement agreement, it would also

A. REINMUELLER

contain the rest of the correspondence that was involved in that claim being processed?

A. Yes, as I've already indicated.

Q. So with respect to this particular elder misconduct claim that was paid, if, in fact, Red Bluff Congregation was not a participant in the Kingdom Hall Assistance Arrangement, then the monies being paid to resolve this particular claim would have been contributions from other congregations, correct?

A. That's correct.

Q. Administered by Watch Tower Pennsylvania, correct?

A. Yes.

Q. Do you know of any legal or other requirement that Watch Tower Pennsylvania provide insurance coverage to elders, circuit overseers, or district overseers in California?

A. I'm sorry. I am not sure I fully understand your question. Are we legally required to provide such? Is that

A. REINMUELLER

your question?

Q. Yes.

A. I'm not aware of that.

Q. So Watch Tower Pennsylvania's decision to provide or extend insurance coverage to people in California is a voluntary choice, correct?

A. As I said, I am not aware one way or another whether there are legal requirements.

Q. So from the creation of the Kingdom Hall Assistance Arrangement, isn't it true that elders, circuit overseers, district overseers, Kingdom Halls, and Assembly Halls in California have all been protected by a Watch Tower Pennsylvania insurance program?

A. To varying degrees, that's correct.

Q. And part of the money used to provide that insurance coverage comes from congregations in California, correct?

A. Yes, that's correct.

Q. We have seen in Exhibit 49 a

A. REINMUELLER

substantial amount of that money has been used by Watch Tower Pennsylvania to pay claims in California, correct?

A. I don't know if I would characterize it as substantial, but yes.

Q. Now, with respect to investigating a potential claim out of California, isn't it true that Watch Tower Pennsylvania relies upon elders and circuit overseers to investigate and provide them information before processing that claim?

A. I'm sorry. Could you rephrase that question again?

Q. Let me try to break it down. For Watch Tower Pennsylvania to issue a check to pay a claim in California, they have to satisfy themselves that that is an actual claim that needs to be paid, correct?

A. Correct.

Q. And they rely upon elders and circuit overseers to give them the information to make those decisions.

correct?
A. The local congregation elders would -- or at least some of them -- would be involved in those investigations. It would be highly unlikely for a circuit or district overseer to be involved in such.
Q. Let me ask you a better question, then.
Isn't it true before Watch Tower Pennsylvania pays a claim in California, that they would we rely upon information and investigation from elders before doing that?
A. Local congregation would appoint one or more elders to be a contact, and they would be involved in an investigation.
There may, of course, be others that are hired or involved either by Watch Tower Pennsylvania or by the third-party administrator of our claims to investigate claims.
So the local elders would be involved in all cases, but others may well

involved in such an investigation.
Q. Let me ask you a better question. Isn't it true that at a minimum, at least a few appointed elders from a congregation would be involved in providing investigation and information to Watch Tower Pennsylvania before they pay a claim in California?
A. Certainly. The ones that are submitting the claim would be involved.
Q. And if Watch Tower Pennsylvania decided it needed more information or more participation, it can appoint or instruct more elders to be involved, correct?
A. Or others.
Q. But it could include more elders, correct?
A. It could potentially.
Q. Tell me all of the ways which the California congregation would have been made aware of the existence of the Kingdom Hall Assistance Arrangement.
A. I believe we've looked at most of the correspondence that would have gone

to congregations in the various exhibits that we've examined here. That would have been the only way that we would have been made aware.
Q. Would they also be given information at Kingdom Ministry Schools or assemblies?
A. Not at assemblies. At Kingdom Ministry Schools, I'm not aware that in all the years that I've been an elder that that subject was ever discussed.
Q. So the primary away that you're familiar with the Watch Tower Pennsylvania, it communicates to the California congregations about the Kingdom Hall Assistance Arrangement would be through writing and written documents, correct?
A. That's correct.
Q. And any of these that we've seen today?
A. That's correct.
Q. And all of those have had Watch Tower Pennsylvania letterhead, correct?

A. Yes.
Q. Wouldn't you agree with me that Watch Tower Pennsylvania intended for the California congregations to be recipients of the information about the Kingdom Hall Assistance Arrangement?
A. Yes, that's correct.
Q. Watch Tower Pennsylvania's receiving contributions not only from California, but all over the country, correct?
A. Yes.
Q. In connection with the Kingdom Hall Assistance Arrangement, correct?
A. Yes, that's correct.
Q. And every year, they're paying out sums of money in claims, correct?
A. Yes.
Q. Who would be able to tell me whether or not the Kingdom Hall Assistance Arrangement operates at a surplus or a deficit?
A. I would.
Q. Does the Kingdom Hall Assistance

A. REINMUELLER

Arrangement operate at a surplus or a deficit?

MR. SCHNACK: Again, I'll instruct him not to answer this question, as it's outside the scope of this deposition. We've already discussed the parameters of it.

MR. LOVE: The reason why I want that answer to the question is, I want to know whether or not the congregations in California are contributing money to a way in which Watch Tower Pennsylvania profits.

MR. SCHNACK: I'm going to instruct him not to answer. I don't think it's relevant.

Q. Are you going to answer my question?

A. No.

MR. LOVE: Mark these as Exhibits 50 and 51.

(Whereupon, the above mentioned documents were marked Exhibit 50 and 51 for identification.)

A. REINMUELLER

Q. I now want to go back and hand you two exhibits, numbers 50 and 51.

Again, I don't have copies of these. I believe you mentioned to me earlier that these relate to Kingdom Hall loan processing.

MR. SCHNACK: Can I get the Bates numbers from the bottom so we could keep track? Exhibit 51 is what?

THE WITNESS: Exhibit 51 is 399 and 400.

MR. SCHNACK: Okay.

THE WITNESS: And Exhibit 50 is 395, 396, 397, and 398.

Q. Exhibit 50, do you see that that appears to be a form letter sent to congregations seeking Kingdom Hall loan simply about a process of accumulating a document in connection with that loan?

A. Yes, I do.

Q. And that would have been a type of letter that would have been sent to the congregations in California who were attempting to obtain a Kingdom Hall loan.

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correct?

A. Yes, that's correct.

Q. And that would be a letter sent by Watch Tower Pennsylvania, correct?

A. Correct.

Q. Now, Exhibit 51 is a form promissory note, correct?

A. Yes.

Q. Do you see a date on that form at the very bottom left-hand side?

A. Both forms are dated October 2001.

Q. So is it safe for me to assume that that document was at least updated in 2001?

A. Yes.

Q. But is it also safe for me to assume that there would have been a predecessor form that would have been used in prior years?

A. Yes.

Q. And that document was created by Watch Tower Pennsylvania?

A. Yes.

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Q. And provided to the congregations in California that are desiring a Kingdom Hall loan?

A. That's correct.

Q. I want you to look at Exhibit 29 with me. Do you see that that's a March 15, 1990 Watchtower?

A. Yes.

Q. Earlier, we talked about the fact that Watch Tower Pennsylvania holds the copyrights to several things, correct?

A. Yes.

Q. In terms of publications?

A. Yes.

Q. And I believe that you agreed that Watch Tower Pennsylvania holds the copyrights to the Society's books, magazines, pamphlets, and things like that, but I think that you mentioned that they did not hold the copyright to Our Kingdom Ministry. Did I understand that correctly?

A. Yes.

Q. I want you to look with me on

EXHIBIT BB

EXHIBIT BB

DONATIONS MADE TO WTPA BY CALIFORNIA

A. REINMUELLER
directly from the Society, they could write to Watch Tower Bible and Tract Society of Pennsylvania?
A. That is true.
Q. Let's go over to the last two pages. There would have been the enclosure or the information that would have been contained in an enclosure. Do you see that it's also from Watch Tower Pennsylvania?
A. Yes.
Q. Does it mention Watchtower New York anywhere on this document?
MR. SCHNACK: What was the question again?
Q. Does this document, the third and fourth page of the collection, mention Watchtower New York anywhere?
MR. SCHNACK: This is the situation where I could say the document speaks for itself. If you want him to review it line by line, he can.
A. Just glancing through it, I

A. REINMUELLER
don't see any references to Watchtower of New York.
Q. You're familiar with the information generally contained in this document, aren't you?
A. Yes.
Q. Would these be the same instructions that the Society's providing to its members today?
A. With regard to some matters, there may be particulars that have been revised in more recent times. Without thoroughly examining the document, I can't say that there have been no changes.
Q. How about any change to whom you'd make a donation?
A. I do know that more recent editions of these general guidelines do have certain provisions that are directed to Watchtower of New York, in addition to Watch Tower of Pennsylvania.
Q. And when did those new provisions go into effect?
A. I'm not certain of the exact

A. REINMUELLER
year, but probably within the last seven or eight years.
Q. Do you have any documents that reflect that?
A. We would have more correct copies of these circulars. I'm not sure -- I don't believe we have a current copy of this. We no longer disseminate the information this way, but there would be more current information of a similar nature.
Q. If you wanted to find that information, would you know where to go to lay your hands on it?
A. Yes.
MR. LOVE: Bob, I'll talk to you about that off the record.
Q. In the first paragraph of the last two pages, which I'll call the contribution information letter, the first paragraph ends with a sentence that says, "The purpose of this letter is to respond in general to all these inquiries so that potential donors have a better idea as to

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how they might leave whatever property they want to the Society to use to advance Kingdom interests."
Did I read that right?
A. Yes.
Q. The purpose of the letter is to tell people, if they want to make a donation, how, and to whom to make it? Fair?
A. Yes.
Q. And there is a list of things that a person can donate, correct?
A. That's correct.
Q. First of all, money. You could give money, can't you?
A. Yes.
Q. And those contributions should be made to which entity?
A. To Watch Tower of Pennsylvania.
Q. The second one says other property. Do you see that?
A. Yes.
Q. It says, "Gifts, other than money, can be given during your lifetime.

A. REINMUELLER
district overseers simply act as references if anyone has any questions, I guess. That's fair?
A. That's correct.
Q. So if anyone in the congregation or an elder had questions or issues about how to donate property, the circuit overseers and the district overseers had the information available to them to give them those instructions, correct?
A. No. Actually, the congregation has these instructions. Likely, the district and circuit overseers, if they received any inquiries, they would direct the elders first to these instructions or directly back to the Society, the treasurer's office, for information.
Q. Or if an elder simply had a question about those things in particular work, the district overseer and the circuit overseers had the information to answer the question?
A. That's correct.
Q. And if they can't answer the

A. REINMUELLER
question, the member wishing to donate property is directed to Watch Tower Pennsylvania; is that correct?
A. That is correct.
Q. In fact, people in California have made donations to Watch Tower Pennsylvania; is that correct?
A. Yes, that's correct.
Q. And they have made that in the form of money and property, correct?
A. Yes.
Q. Are you familiar with the fact that any California resident has named Watch Tower Pennsylvania the beneficiaries of any insurance proceeds?
A. I don't know for a fact that -- I haven't personally reviewed any insurance contracts from...
Q. Do you know whether or not it's ever happened?
A. I can't say definitely one way or another.
Q. Who would be the person most knowledgeable about the donations and

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gifts made by people in California to Watch Tower Pennsylvania?
A. I don't believe there's any one person who would be able to answer all of the questions.
Q. So it would just be a matter of tasking somebody in the accounting department to go start pulling documents and records to obtain that information?
A. That's correct.
Q. And you would be one of those people, correct?
A. That is correct.
MR. LOVE: Please mark this as 23.
(Whereupon, the above mentioned document was marked Exhibit 23 for identification.)
Q. Mr. Reinmueller, I'm handing you what was marked as Exhibit 23. We'll represent to you that it is a collection of documents that appear to be relating to letters acknowledging receipt of donated property and money.

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A. The first four of them are of that nature. The last two pertain to -- I think they got separated from a previous exhibit.
Q. Then let me go ahead and take the last two off of you, and we'll figure that out later.
Now you're holding Exhibit 23, which is made up of four pages?
A. That's correct.
MR. SCHNACK: What are the Bates numbers on the bottom?
THE WITNESS: Bates number 391 to 394.
Q. Briefly describe what is Exhibit 23.
A. They are variations of acknowledgments for donations received, either from a congregation or an individual.
Q. The first particular page references an account statement for 2001. Do you see that?
A. Yes.

A. REINMUELLER

Q. And it's written on Watch Tower Pennsylvania letterhead, correct?

A. Correct.

Q. And it mentions an accounting office of Watch Tower Pennsylvania; is that correct?

A. Correct.

Q. Does Watch Tower Pennsylvania have an accounting office?

A. The accounting office, which is now part of the treasurer's office, provides accounting services to both Watch Tower Pennsylvania, Watchtower New York, and other corporations. That's the accounting office that is being referred to.

Q. Now, if I understand your prior testimony, that has been the case, that arrangement, for quite some time?

A. Yes, that's true.

Q. This particular letter appears to relate to the time period of 2001, correct?

A. Yes.

A. REINMUELLER

Q. And it references an accounting office under the letterhead of Watch Tower Pennsylvania, correct?

A. Yes.

Q. And that is for the year 2001, correct?

A. Correct.

Q. Would this be the type of form letter that would be sent to a congregation in California?

A. I believe so.

Q. Now, even though that particular one references the year 2001, is it fair for me to assume that a letter like that would have gone to the congregations in California for the past years?

A. For a number of years before, 2001, yes.

Q. And all of those would have been written on Watch Tower Pennsylvania letterhead, correct?

A. If the contribution was given to Watch Tower Pennsylvania, the answer would be yes.

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Q. And of course, the instructions are to make your donation and gifts payable to Watch Tower Pennsylvania, correct?

A. Correct.

Q. Are those sent to the congregations yearly, monthly, or as a donation is made?

A. To the congregations, an acknowledgment is ~~kept~~ provided (sent) once a month.

Q. Are copies of those acknowledgments kept anywhere?

A. No, they're not.

Q. Are they kept on computer anywhere?

A. Not a copy of the acknowledgment itself. Simply the transaction or details that produce -- that were used to produce the accounting and the acknowledgment.

Q. So there is a database or a computerized collection of information that is used to plug into that form to send to the congregations, correct?

A. Yes, correct.

A. REINMUELLER

Q. And that information still exists, correct?

A. For a limited number of years, correct.

Q. How many years?

A. Back in 1997 -- middle of 1997.

Q. So prior to 1997, unless it involved real estate, you can't tell me what donations were made in California to Watch Tower Pennsylvania?

A. I don't believe we can.

Q. Was there any accounting records or financial statements that were put together that would have totaled contribution amounts given to Watch Tower Pennsylvania?

MR. SCHNACK: From California?

MR. LOVE: From anywhere? I want to first ask --

MR. SCHNACK: That is a yes or no question.

I'll let him answer it.

A. Can you repeat it again?

Q. Is there financial statements or

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a financial document prepared that identifies the total amount of contributions made in the United States to Watch Tower Pennsylvania?
A. Yes.
Q. Is there a financial statement or document that can identify from past years the total amount of contributions made out of California to Watch Tower Pennsylvania?
A. No.
Q. So you can give me that number as it relates to the entire United States, you just can't break it down per state?
A. That's correct.
Q. And, more specifically, to California?
A. That's correct.
Q. Mr. Reinmueller, you said that you can give me that information from the California congregations for how many years going back?
A. We would be able to reconstruct what was contributed from the

A. REINMUELLER
congregations in California probably from back in late 1997, mid 1997.
Q. To the present?
A. To the present.
Q. And you're one of the people that could arrive at those numbers if you were tasked to do so?
A. Yes.
Q. With respect to the last three documents, pages of the four-page exhibit, briefly describe to me what those are.
A. These are form letters for acknowledging contributions that individuals send directly to Watch Tower Pennsylvania's offices.
Q. And those, again, are form letters, correct?
A. Yes.
Q. Those are not dated? Are those the letters that would be used today?
A. No. I believe we changed the content every four months.
Q. There's three different letters that all appear to do similar things in

A. REINMUELLER
Exhibit 23.
A. Yes.
Q. Isn't it true that those three letters are different depending on what a person is specifically giving a donation to?
A. That's correct.
Q. For example, one is disaster relief?
A. Correct.
Q. One was Kingdom Hall Fund?
A. Correct.
Q. And I think the first one of the three is just a general donation receipt, correct?
A. Correct.
Q. So these donation receipts have been sent to people for years, they just may have had a different content in terms of what was expressed in that letter, correct?
A. That's correct.
Q. Generally, the letter will indicate an amount of money and when the

A. REINMUELLER
contributions were made, correct?
A. Yes.
Q. Or if it's property, the identification of property, correct?
A. That's correct.
Q. And those letters would be sent to donors in California, correct?
A. Correct.
Q. And those letters would be written on Watch Tower Pennsylvania letterhead, correct?
A. If the contribution was made to Pennsylvania, certainly.
Q. Those particular three letters are specifically identified as originating out of the office of the secretary and treasurer, correct?
A. That's correct.
Q. And up until October 5, that would have been a member of the Governing Body, either Grant Suiter or Lyman Swingle; is that correct?
A. Yes, that's correct.
MR. LOVE: Please mark this as

EXHIBIT CC

EXHIBIT CC

A. REINMUELLER

know that this letter was coming from the office of Grant Suiter?

A. I am not sure.

Q. These people know who the Governing Body members are, don't they?

A. Yes, they do.

Q. And they know who the secretary and treasurer is generally, don't they?

A. I can't answer that for sure for everybody involved.

Q. With respect to 1981, a circuit overseer or district overseer receiving this letter may know that the office of secretary and treasurer of the Watch Tower Pennsylvania is an authority to them, wouldn't they?

MR. SCHNACK: I didn't hear that. Is a what?

Q. It's an authority to them?

MR. SCHNACK: I'll object on terms of vagueness as to what you mean by "was an authority to them."

Go ahead and answer, if you can.

A. I am not sure I do understand

A. REINMUELLER

what you mean by "an authority." Perhaps you could clarify.

Q. In 1981, if a circuit overseer or district overseer received instructions from the Watch Tower Pennsylvania office of the secretary treasurer, did they follow these instructions?

A. I am sure to the best of their ability, they would.

Q. And they were expected to follow the instructions, correct?

A. To the extent that they were in a position to do so, sure.

Q. And the office of the secretary treasurer knows what a circuit overseer and a district overseer is, don't they?

A. I am sure that's true.

Q. I mean, they're going to give them instructions that they expect them to carry out, correct?

A. To the extent they're able to do so, correct.

Q. So if this letter directing circuit overseers and district overseers

A. REINMUELLER

to go out and share with particular Kingdom Halls or congregations they feel may be appropriate that monies are available at this rate and at this term, they're going to follow these instructions, correct?

A. I am sure that they may try to do so.

Q. And in California, they would do so, correct?

A. Correct.

Q. Up here in the very top left-hand corner is T:TD. Do you see that?

A. Yes, I do.

Q. Does T refer to the treasurer's office?

A. It does.

Q. And the second T and D, what do those men?

A. Generally, it's the typist of the letter.

Q. Are you sure?

A. I can't speak for October 1,

A. REINMUELLER

1981, but that is the general practice.

Q. The Watch Tower Society uses these types of initials and a colon and then letters to designate departments and authors, doesn't it?

A. Authors and secretaries. Yes.

Q. If you would, look at Exhibit 11. Again, that is a letter from the Watch Tower Pennsylvania office of the secretary treasurer.

Do you see that?

A. Yes.

Q. It appears to be the same by the initials over here, the same department, the same author and typist, correct?

A. It appears to be.

Q. And it's dated about eight months later; do you see that?

A. Yes.

Q. June 1, 1982?

A. Yes.

Q. And it's again directed to circuit overseers and director overseers, correct?

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FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: A. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

NOTICE OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES

Date: 04-08-05
Time: 9:30 a.m.
Dept. B

on cal gm H

Complaint Filed:
Trial Date: None

TO DEFENDANTS AND TO THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on March __, 2005, at _____, or as soon thereafter as the matter may be heard in the above-entitled court, located at 825 Brown Street, Napa, California, before the Honorable W. Scott Snowden, Plaintiffs will move the Court for an Order to Compel Watchtower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Requests for Production and PMK Deposition Testimony and Document Responses.

Pursuant to Local Rule 3.04, the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. To receive the tentative ruling, call the department in which the matter is to be heard at (707) 299-1270. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

This motion will be based upon this Notice of Motion, Memorandum of Points and Authorities, Separate Statement in Support of Motion Watch Tower Pennsylvania's Responses to Form Interrogatories, Set One, Separate Statement in Support of Motion Watch Tower Pennsylvania's Responses to Special Interrogatories, Set One, Separate Statement in Support of Motion Watch Tower Pennsylvania's Responses to Request for Production of Documents, Set One, Separate Statement in Support of Motion Watch Tower Pennsylvania's Responses to PMK Deposition Areas of Inquiry, Separate Statement in Support of Motion Watch Tower Pennsylvania's Responses to Document Requests contained in Fourth Amended Deposition Notice of PMK, Declaration of William Brelsford, Esq., the pleadings, records and files herein, and upon such further oral evidence as may be presented at the hearing of this motion.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Attorney for Plaintiffs

FILED
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Clerk of the Napa Superior Court
By: D. M. Hunter
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL WATCH TOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUESTS FOR PRODUCTION AND PMK DEPOSITION RESPONSES

Date: 4/8/05
Time: 9:30 am
Dept. B
Complaint Filed:
Trial Date: None

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I.

BACKGROUND

In response to Plaintiffs' lawsuit, Defendant Watch Tower Bible and Tract Society of Pennsylvania (hereinafter "Watch Tower Pennsylvania") filed a Special Appearance and a Motion to Quash Service of Process. Plaintiffs served discovery on Watch Tower Pennsylvania, to which Watch Tower Pennsylvania responded. Plaintiffs respectfully challenge the objections and responses made by Watch Tower Pennsylvania.

With leave of the Napa Court, Plaintiffs noticed the deposition of the Person with Most Knowledge (PMK) regarding Watch Tower Pennsylvania's contacts in California and requested the production of additional documents related to those contacts. Counsel for Plaintiffs and Defendant agreed that the Watch Tower Pennsylvania PMK deposition would be taken in connection with all Jehovah's Witnesses sexual abuse cases in California being handled by the respective counsel (this agreement preceded the coordination of the suits). Counsel for Plaintiffs and Defendants could not agree, however, on a number of matters in advance of and during the PMK deposition. Plaintiffs desire to challenge the objections made and positions taken by Watch Tower Pennsylvania. Plaintiffs seek an order from this Court overruling Watch Tower Pennsylvania's objections and requiring Watch Tower Pennsylvania to provide complete responses to the discovery matters identified below.

Plaintiffs are seeking an order compelling full responses to a number of inquiries/requests; it is not Plaintiffs intention to unduly burden Watch Tower Pennsylvania or request volumes of documents to harass Watch Tower Pennsylvania. Watch Tower Pennsylvania has moved this Court to dismiss it from the suit under the pretense that it did not have the quantity or quality of contacts for the Court to appropriately exercise jurisdiction over Watch Tower Pennsylvania. Plaintiffs' requests are voluminous only because Watch Tower Pennsylvania's contacts are voluminous and cover a period in excess of a quarter of a century.

Before addressing the individual written and oral discovery disputes, Plaintiffs request that this Court consider Watch Tower Pennsylvania's position that the First

Amendment to the United States Constitution bars or limits discovery as to Watch Tower Pennsylvania's structure and operations. A brief analysis of what is discussed below was provided to Watch Tower Pennsylvania's counsel in a "meet and confer" letter attached hereto as **Exhibit A**; Plaintiffs received no response. Additional "meet and confer" letters were sent and are attached hereto as **Exhibits B and C**.

II.

WATCH TOWER PENNSYLVANIA'S OBJECTIONS TO DISCOVERY BASED ON THE FIRST AMENDMENT TO THE U.S. CONSTITUTION (The "*Serbian* Objection")

In an effort to evade relevant discovery, Watch Tower Pennsylvania claims that requests for information pertaining to its organizational structure, its corporate structure and its interrelationship to other entities within the Jehovah's Witnesses organization are unconstitutional. Outlined below is the way the objection is asserted by Watch Tower Pennsylvania and the particular places where the objection appears.

A. *Serbian* Objection

The *Serbian* Objection is asserted forty-nine (49) times in response to the *Charissa W.* minimum contacts discovery, alone. It is asserted as follows:

> This line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

B. Where the Objection Appears:

1. Defendant's Objection to 4th PMK Deposition Notice (attached as **Exhibit D**)
   Subject Matter Nos.: 1, 2, 3 and 9
   Request for Documents Nos.: 3, 6, 7, 9 and 10
   (*The scope of the PMK deposition was limited by Defendant's counsel)

2. Defendant's Response to Special Interrogatories (attached as **Exhibit E**)
   Interrogatory Nos.: 13 through 46

3. Defendant's Response to Request for Production (attached as **Exhibit F**)
   Request Nos.: 38, and 44 through 48

C. *Serbian* Objection Analysis

Watch Tower Pennsylvania's *Serbian* Objection finds no support in *Serbian East Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. *Serbian* does not say that a court

cannot examine the structure of a religious organization for the purposes of determining liability as to a violation of civil law. The issue in *Serbian* is whether a secular court is constitutionally prohibited from reviewing the decision of an ecclesiastical tribunal. *Id.* at 697–98. The *Serbian* court held:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724–25.

In reaching its decision, the Court engaged in an extensive analysis of the internal government of the church, including its constitution, leadership structure, hierarchy, and history. *Id.* at 699–705. Such inquiries were not only permissible, but *necessary* to determine whether a legitimate decision of an ecclesiastical tribunal was at issue.

A proper perspective on the relationship of these parties and the nature of this dispute requires some background discussion. The Serbian Orthodox Church, one of the 14 autocephalous, hierarchical churches which came into existence following the schism of the universal Christian church in 1054, is an episcopal church whose seat is the Patriarchate in Belgrade, Yugoslavia. Its highest legislative, judicial, ecclesiastical, and administrative authority resides in the Holy Assembly of Bishops, a body composed of all Diocesan Bishops presided over by a Bishop designated by the Assembly to be Patriarch. The Church's highest executive body, the Holy Synod of Bishops, is composed of the Patriarch and four Diocesan Bishops selected by the Holy Assembly. The Holy Synod and the Holy Assembly have the exclusive power to remove, suspend, defrock, or appoint Diocesan Bishops. The Mother Church is governed according to the Holy Scriptures, Holy Tradition, Rules of the Ecumenical Councils, the Holy Apostles, the Holy Faiths of the Church, the Mother Church Constitution adopted in 1931, and a "penal code" adopted in 1961. These sources of law are sometimes ambiguous and seemingly inconsistent. Pertinent provisions of the Mother Church Constitution provide that the Church's "main

administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspect," Art. 12, and that "(d)ecisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of vicar bishops, is decided upon by the (Holy Assembly), in agreement with the Patriarchal Council," Art. 16. *Id.* at 699–700.

Watch Tower Pennsylvania's reliance on *Serbian* fails for two reasons. First, unlike *Serbian*, this case involves common law claims against a religious institution by a third party. The *Serbian* court dealt with the constitutionality of a secular court's review of a decision by an ecclesiastical tribunal. Plaintiffs seek discovery for the purpose of determining whether this Court has personal jurisdiction over Watch Tower Pennsylvania. In contrast to *Serbian,* Plaintiffs do not ask this Court to resolve any issues which would require an evaluation of competing church doctrines. Second, the *Serbian* court discussed the internal structure of the Eastern Orthodox Church in great detail. The Court's discussion demonstrates that extensive discovery regarding the organization and structure of the church was allowed.

In *General Counsel on Finance and Administration of the United Methodist Church v. Superior Court*, the United States Supreme Court directly addressed the constitutionality of discovery in a civil suit between a church and a third party. (1978) 439 U.S. 1355, 1372–74. Defendant Methodist Church was one of six defendants in a class action seeking damages for fraud, breach of contract, and violation of state securities laws. *Id.* at 1369. Methodist Church filed an interlocutory appeal of a California court's denial of its motion to quash service of process for lack of personal jurisdiction. *Id.* at 1370. The Court stated:

> In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding the structure and actual operation of a hierarchical church and its constituent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese v. Milivojevich.* ***But this Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes.*** Thus, *Serbian Eastern Orthodox Diocese* and the other cases cited by applicant are not in point. Those cases are premised on a perceived danger that in resolving intrachurch disputes the

> State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. 426 U.S., at 709-710, 96 S.Ct., at 2380-2381. ***Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged.*** . . . Likewise untenable, in my view, is applicant's claim that the First and Fourteenth Amendments somehow forbid resort to traditional minimum-contacts analysis in determining the existence of in personam jurisdiction over a defendant that is affiliated with an organized religion. Not surprisingly, applicant has failed to cite any authority in support of this novel proposition.

Id. at 1372–73 (emphasis added).

California courts have allowed extensive discovery of the internal structure of churches in cases involving property disputes, tort claims, and breach of contract. *See, e.g., Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910, 915–17 (engaging in detailed analysis of the internal governance of United Presbyterian Church in order to resolve a property dispute); *Allard v. Church of Scientology of California* (1976) 58 Cal.App.3d 439, 446–47 (holding that evidence of church policy statements was directly relevant to tort claims). Discovery is not limited or denied simply because one party to a lawsuit is a religious organization. "Recognizing that churches, their congregations and hierarchy exist and function within the civil community, however, it is acknowledged that they are as amenable as other societal entities to the rules governing property rights, torts, and criminal conduct." *Higgins v. Maher* (1989) 210 Cal.App.3d 1168, 1170 (citing *Watson v. Jones* (1871) 80 U.S. 679, 732–33). "The commission of a common law tort in the name of or under the auspices of a church does not lessen its culpability." *Id.* at 1175.

In *Samoan Congregational Christian Church*, the court analyzed the relationships between church entities to resolve a property dispute. *Samoan Congregational Christian Church in the United States v. Samoan Congregational Christian Church of Oceanside* (1977) 66 Cal.App.3d 69, 71–73. After establishing that the dispute could be resolved on the basis of neutral principles of law, the court relied on extensive discovery of the internal structure of the church entities in its analysis. *Id.*

> The record reflects that the Samoan Oceanside Church is one of 23 churches in the United States that make up a general denomination of

> churches known as the Samoan Congregational Christian Churches in the United States. Plaintiff is the unincorporated association of these 23 churches with its headquarters in San Diego, California. This association consists of a single district for the territory of the United States, separated into subdistricts, three of which are located within California. The Samoan Oceanside Church is a member of the southern California subdistrict. The highest ecclesiastical authority over defendant church in the United States is denominated the "district" organization acting by and through its general assembly. Ultimate authority in religious matters rests with the mother church in Samoa acting through the ruling committee of elders. . . . The defendant Samoan Oceanside Church was organized as a California nonprofit religious corporation . . . . It was founded with the aid, help and direction of the San Diego Samoan Congregational Church and the Reverend Elder Suitonu, who authorized and directed members of the church in San Diego to transfer their membership to the newly formed Oceanside church. The bylaws here relied upon by defendant were brought into being with the aid of the Reverend Elder Suitonu. The assets here in dispute belong in title and possession to the corporate defendant. They are the fruits of work, labor and gifts of the membership of the Samoan Oceanside Church.

Id. at 72–73.

Similarly, in *Metropolitan Baptist Church of Richmond v. Younger*, 48 Cal.App.3d 850, 853–58, the court relied on extensive discovery of the church's internal structure and governance to resolve a property dispute. The court rejected the church defendant's claims that it was protected by the First Amendment. *Id.* at 859–60. "We have closely considered the Church's contention that as a democratic, autonomous, separatist and congregational Baptist church, considering itself free from any 'human authority, whether civil or ecclesiastical,' it merits special concern of the First Amendment, even in the area of property rights. The contention is found invalid." *Id.* at 859. The court of appeals affirmed the lower court's application of the Cy pres doctrine based on the relationships between five separate church entities, as viewed in light of the church's articles of incorporation. *Id.* at 860–61.

Finally, in *Guardian Angel*, the court conducted a detailed analysis of the Polish National Catholic Church's hierarchical structure, constitution, ecclesiastical laws and regulations, and articles of incorporation. *Guardian Angel Polish National Church of Los Angeles, Inc. v. Grotnik* (2004) 118 Cal.App.4th 919, 921–27. The court relied on a provision in the church's constitution to nullify an act of its board of directors. *Id.* at 927.

Watch Tower Pennsylvania's claim that the First Amendment prohibits discovery of information pertaining to the "internal ecclesiastical government of the Jehovah's Witnesses" is directly contradicted by California case law and the holding of the United States Supreme Court in *General Counsel. General Counsel,* 439 U.S. at 1372–73. The First Amendment prohibits secular courts from reviewing decisions of ecclesiastical tribunals. *Id.* It does not prevent injured parties from obtaining relevant discovery from church entities in purely secular disputes. *Id.* Watch Tower Pennsylvania's objections to discovery should be overruled.

D. Napa Court's Prior Ruling

The Napa Court has already determined that neutrally applied principles of law (including discovery rules) can be applied in this case without offending the First Amendment and the Free Exercise Clause. In response to the filing of Plaintiffs' Amended Complaint, the Watchtower Defendants filed a demurrer asserting the position that the Napa Court did not have the authority to hear the Charissa W. case. In support of that position, the Watchtower Defendants cited authority (including *Serbian*) that the Napa Court lacked jurisdiction based on the First Amendment and the Free Exercise Clause. The Napa Court, after reviewing the briefing on the issues, held as follows:

> They [defendants] assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the Court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.
> ...
> Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this Court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendant's demurrer to plaintiffs' claims on the ground that they are barred by the First Amendment is OVERRULED.

It is Plaintiffs' position that the analysis here is the same; Plaintiffs' discovery does not, and will not, impermissibly entangle the Court in intrachurch ecclesiastical affairs.

III.

GENERAL AND SPECIFIC JURISDICTION – RELEVANT AREAS OF DISCOVERY

A. Overview

It is Plaintiffs' position that the written and oral discovery responses sought from Watch Tower Pennsylvania are specifically related to the evaluation of Watch Tower Pennsylvania's contacts in California. Below is a brief analysis of the law relating to general jurisdiction and specific jurisdiction.

California courts may exercise jurisdiction over a nonresident defendant to the fullest extent consistent with the United States and California Constitutions. CAL. CIV. PROC. CODE, § 410.10 (West 2004); *Vons Co., v. Seabest Foods, Inc.* (1997) 14 Cal.4th 434, 444. The Due Process requirements of the United States Constitution are satisfied when a nonresident defendant has minimum contacts with the forum state such that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.

Personal jurisdiction may be general or specific. *Vons,* 14 Cal.4th at 445. General jurisdiction is proper when a nonresident defendant has substantial or continuous and systematic contacts with the forum which are "so wide-ranging that they take the place of physical presence in the forum state as a basis for jurisdiction." *Id.* at 445–46. If general jurisdiction is established, a defendant may be subject to any cause of action within the state, including those not arising from the defendant's contacts with the forum. *Id.* at 445. Additionally, agency may confer general jurisdiction in the forum state over a foreign corporation. *Sonora Diamond Corp., v. Superior Court* (2000) 83 Cal.App.4th 523, 540.

Specific Jurisdiction is established by examining the relationship between the defendant, the forum, and the litigation. *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269. The defendant must purposefully avail itself to the benefits of the forum; the controversy must be related to or arise out of the defendant's contacts with the forum; and "the assertion of personal jurisdiction [must] comport with fair play and substantial justice." *Id.* "The question whether the facts [in a given case] are sufficient to justify the exercise

of specific jurisdiction is answered fundamentally by considering the goal of fairness." *Vons,* 14 Cal.4th at 468.

B. General Jurisdiction – Agency

Notwithstanding its attempts to present itself as a distant corporate entity having no offices or activities in California, Watch Tower Pennsylvania's contacts in California are continuous and systematic through the activities of its many agents: District Overseers, Circuit Overseers, Elders and Ministerial Servants. An agent "is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and on account of the latter, and to render an account of such transactions." *McCollum v. Friendly Hills Travel Center* (1985) 172 Cal.App.3d 83, 91 (citing 3 Cal.Jur.3d, Agency, Section 1, p. 10). Agency may confer general jurisdiction in the forum state over a foreign corporation. *Sonora Diamond, 83 Cal.App.4th* at 540 (citing 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, Section 167, p. 730). Whether an agency exists is a question of fact to be determined from the circumstances of each case. *Stevens v. Roman Catholic Bishop of Fresno*, (1975) 49 Cal.App.3d 877, 884. The significant test of an agency relationship is the principal's right to control the activities of the agent. *Id.* It is not essential that the right of control be exercised or that there be actual supervision of the work of the agent; the existence of the right establishes the relationship. *Id.* The *Stevens* court held that the priest was the corporation's agent and that he was acting within the scope of the agency at the time of the [motor vehicle] accident... the corporation had a right of control over the priest's activities within its geographical jurisdiction. Control is the key characteristic of the agent/principal relationship. *Sonora Diamond,* 83 Cal.App.4th at 541. The by-laws and internal rules and regulations of religious organizations have been held to be relevant to the existence of a principal-agent relationship between various church bodies and religious workers. *Stevens,* 49 Cal.App.3d at 883 (citations omitted).

C. General Jurisdiction – Continuous and Systematic Contacts

Watch Tower Pennsylvania presents itself as a distant corporate entity having only minimal contacts with State of California and lacking the "traditional" contacts which would

allow this Court to assert general jurisdiction. However, by its own admission, Watch Tower Pennsylvania actively solicits and engages in numerous types of commercial activity in California including (1) entering into hundreds of loan contracts with California residents and securing the loans with mortgages on California property, (2) providing insurance to California congregations and individuals through its Kingdom Hall Assistance Arrangement (KHAA) insurance business, (3) acquiring and selling significant amounts of California real property for financial gain, and (4) facilitating the establishment of new Jehovah's Witnesses congregations in California from which it derives substantial revenue. All of these activities are continuous and systematic, directed towards the citizens and economy of California, and, when considered "in totality," approximate a physical presence in the State. *Gates Learjet Corp. v. Jensen* (9th Cir. 1984) 743 F.2d 1325, 1331. By written discovery and deposition discovery, Plaintiffs have been attempting to obtain the information that will present a fair and complete description of Watch Tower Pennsylvania and its "more-than-minimum" contacts in California.

D. Specific Jurisdiction

Plaintiffs have attempted to conduct discovery necessary to demonstrate Watch Tower Pennsylvania's contacts with the State of California to establish specific jurisdiction over Watch Tower Pennsylvania with respect to Plaintiffs' claims.

The first prong of the specific jurisdiction analysis requires "that the defendant purposefully availed itself to the benefits of conducting activities in the forum state by purposefully directing its activities toward the state, thereby obtaining the benefits and protections of the state's laws." *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 773; *see also Pavlovich*, 29 Cal.4th at 269. To establish purposeful availment, California courts have considered the economic reality or commercial actuality of a defendant's contacts with the forum state. *Seacrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 669; *Buckeye Boiler Co. V. Superior Court,* 71 Cal.2d 893, 903; *Foster v. Mooney Aircraft Corp.,* 68 Cal.App.3d 887, 892. When a foreign corporation sells a product or engages in economic activity within California, it invokes the benefits and

protections of the state and is therefore subject to jurisdiction in at least some cases. *Buckeye Boiler,* 71 Cal.2d at 901–02. "Thus [California courts] have equated engaging in economic activity within this state 'as a matter of commercial actuality' with [the] requirement of purposeful activity within this state." *Id.* at 903 (citation omitted).

IV.

DISCOVERY SERVED AND SOUGHT TO BE COMPELLED

Rather than present individual requests/interrogatories, Plaintiffs will present categories of information and documents they seek to compel with the respective requests/interrogatories referenced. The individual requests/interrogatories can be found in the following attachments:

-**Exhibit D**: Defendants' Objection to the 4TH Amended Notice of PMK Deposition

-**Exhibit E**: Defendant's Responses to Plaintiffs' First Set of Special Interrogatories;

-**Exhibit F**: Defendant's Response to Plaintiffs' Request for Production of Documents;

-**Exhibit G**: Defendant's Responses to Plaintiffs' Form Interrogatories;

V.

COMPEL ORGANIZATIONAL STRUCTURE INFORMATION

Plaintiffs have been attempting to discover the organizational structure of Watch Tower Pennsylvania, individually, and its interrelationship to the people and entities that make up the Jehovah's Witnesses' organization. As set forth above, such discovery is relevant to define and describe the agency relationship with individuals doing business on behalf of Watch Tower Pennsylvania in California. "The by-laws and internal rules and regulations of religious organizations have been held to be relevant to the existence of a principal-agent relationship between various church bodies and religious workers." *Stevens,* 49 Cal.App.3d at 883.

A. Special Interrogatory Nos. 1 and 2

Special Interrogatory Nos. 1 and 2 request a description of Watch Tower Pennsylvania's "function/purpose within the Watchtower Society/Jehovah's Witnesses organization" and all "changes to [Watch Tower Pennsylvania's] function/purpose since 1970."

B. Watch Tower Pennsylvania's Response to Special Interrogatory Nos. 1 and 2

In addition to asserting the *Serbian* Objection (see *supra*), Watch Tower Pennsylvania's responses to Special Interrogatory Nos. 1 and 2 provide little or no information and ignore the time periods for which information is requested. For example, the responses to Special Interrogatory Nos. 1 and 2 provide the standard objections (relevance, vagueness and ambiguity), and then go on to provide an anemic response describing Watch Tower Pennsylvania's function/purpose **since April of 2002**. Special Interrogatory No. 2 requests "all the changes in your function/purpose within the Jehovah's Witnesses organization since 1970"; NO ANSWER IS PROVIDED.

Given the issues raised by Watch Tower Pennsylvania's challenge to the Court's exercise of jurisdiction, Plaintiffs need responses that are complete and that cover the time period from at least 1980 to the present – not just April 2002 to the present. This is particularly necessary given the fact that three of Watch Tower Pennsylvania's responses to Plaintiffs' Requests for Production simply say: "see Defendant's response to Special Interrogatory No. 1" (Responses to Request for Production Nos. 5, 6 and 7). Watch Tower Pennsylvania should not be allowed to avoid responding to Request for Production Nos. 5, 6 and 7 by relying on an inadequate Special Interrogatory No. 1 response.

C. PMK Deposition – Witness Not "Most Knowledgeable"

Plaintiff attempted to obtain information about Watch Tower Pennsylvania's structure and its interrelationship with the Governing Body and the other Watchtower Defendants through the examination of a PMK witness (see PMK Deposition Notice – Subject Matter Nos. 1-3, Document Request No. 3). The objections made by Watch

Tower Pennsylvania include the *Serbian* Objection and that the subject matter was outside the relevant inquiry regarding jurisdiction. In discussions prior to the deposition, counsel for Watch Tower Pennsylvania made it clear that questioning Mr. Reinmueller (PMK witness) regarding the reporting relationships within the Jehovah's Witnesses organization was inappropriate inquiry into "ecclesiastical structure." Plaintiffs seek an order from this Court compelling the production of organizational structure answers, documents and testimony.

If Plaintiffs are entitled to obtain additional deposition testimony, Plaintiffs request that a person that is truly "most knowledgeable" be provided. In his deposition, Mr. Reinmueller testified that he is NOT the person with the most knowledge about the Watchtower Society's organizational structure, notwithstanding the notice (see PMK Deposition page 49, lines 2-24 attached as **Exhibit H**). In fact, Plaintiffs request the deposition of Don Adams, the President of Watch Tower Pennsylvania regarding Watch Tower Pennsylvania's structure and organization (see affidavit excerpts below and the full affidavit attached hereto as **Exhibit P**).

D. Special Interrogatory No. 22

Special Interrogatory No. 22 relates to Watch Tower Pennsylvania's organization, structure and interrelationship to the Governing Body. Watch Tower Pennsylvania relies upon the same objections as asserted to Special Interrogatory Nos. 1 and 2, above. Plaintiffs seek an order from this Court compelling a thorough answer to Special Interrogatory No. 22 which seeks a description of the "relationship between [Watch Tower Pennsylvania] and the Governing Body (including corporate, organizational and theocratic)."

E. Watch Tower Pennsylvania's Response to Special Interrogatory No. 22

Subject to its objections described above, Watch Tower Pennsylvania responded: "No legal relationship." This sworn answer flies in the face of Watchtower Society publications (see documents attached hereto as **Exhibits I-O**), and an affidavit signed by

Don Adams in 1986 (attached hereto as **Exhibit P**), the present President of Watch Tower Pennsylvania, which states in pertinent part as follows:

> 4. ... A Governing Body, at present comprised of thirteen men, direct all teaching, preaching, disciple-making and congregational activities of Jehovah's Witnesses throughout the world.
>
> ...
>
> 6. To implement their decisions, the Governing Body uses a hierarchical organization together with corporate entities, when appropriate, to accomplish its worldwide work of teaching and declaring the good news of God's established Kingdom. **The principal corporation used by the Governing Body is the Watch Tower Bible and Tract Society of Pennsylvania**.
>
> 7. **Under the Watch Tower Bible and Tract Society of Pennsylvania, the Governing Body** directs 95 branches through Branch Committees ... and **implement the directives of the Governing Body in a uniform manner**. [emphasis added]

The above affidavit was NOT produced by Watch Tower Pennsylvania or the Watchtower Defendants.

Certainly, there is a significant relationship between Watch Tower Pennsylvania and the Governing Body (and several other people and entities in the Jehovah's Witnesses organization) and Plaintiffs respectfully request an order from this Court permitting additional organizational oral testimony and compelling Watch Tower Pennsylvania to provide complete answers to relevant and unambiguous interrogatories.

F. Special Interrogatory Nos. 3, 4, 13 through 26

Special Interrogatory Nos. 3, 4 and 13 through 26 relate to Watch Tower Pennsylvania's organization, structure and interrelationship to the other Watchtower Defendants. Watch Tower Pennsylvania relies upon the same objections as asserted to Special Interrogatory Nos. 1 and 2, above. Again, Plaintiffs seek an order from this Court compelling complete answers to the above Special Interrogatories as appropriate jurisdictional inquiries. It is clear from the Jehovah's Witnesses publications and the Don Adams affidavit that relationships did, in fact, exist.

G. Request for Production No. 14

Request for Production No. 14 requests Watch Tower Pennsylvania to produce "all documents which indicate a relationship to or with other business or corporate entities relating to your organization/operation."

H. Watch Tower Pennsylvania's Response to Request for Production No. 14

Subject to objections for relevance, breadth and burden, Watch Tower Pennsylvania responded by requesting clarification about what "other business or corporate entities" refers to. Plaintiffs attempted to clarify this (though none seemed necessary) in a letter that stated:

> Plaintiffs are attempting to understand the relationship between Watch Tower PA and "other business and corporate entities"; more specifically, any person, organization, corporation or entity that is somehow related to the Jehovah's Witnesses organization. Please supplement with more than what has been provided in your responses to Request Nos. 1 through 3, and Special Interrogatories 1 through 24.

No supplementation has been made. Plaintiffs respectfully request that this Court order Watch Tower Pennsylvania to provide and complete production of documents responsive to Request for Production No. 14.

I. PMK Deposition – Dispute Regarding Appropriate Areas of Inquiry

As will be described below, Watch Tower Pennsylvania engaged in continuous and systematic lending and insurance businesses from at least 1980 to the present. Watch Tower Pennsylvania conducted these, and other businesses, through District Overseers, Circuit Overseers and congregation Elders. California has approximately 10 districts which means there are approximately 10 District Overseers in California. California has approximately 100 circuits which means there are approximately 100 Circuit Overseers in California. California has approximately 2000 congregations in California which means there are approximately 6,000 to 15,000 congregation Elders in California, alone.

In his deposition, Alex Reinmueller (the PMK) testified a number of times that the California District Overseers, the California Circuit Overseers and the California Elders often receive instructional letters, books and other materials from Watch Tower Pennsylvania and are expected to apply/follow those instructions (see excerpts from PMK

Depo, page 49, lines 13–16, attached hereto as **Exhibit Q**). It is Plaintiffs' position that the California District Overseers, the California Circuit Overseers and the California Elders are agents of Watch Tower Pennsylvania in California, and agency may confer general jurisdiction in the forum state over a foreign corporation. *Sonora Diamond*, at 540 (citing 2 Witkin, Cal. Procedure (4th ed. 1996) Jurisdiction, Section 167, p. 730).

The test of an agency relationship is the principal's right to control the activities of the agent. *Stevens v. Roman Catholic Bishop of Fresno*, 49 Cal.App.3d at 884 (priest was the corporation's agent ... the corporation had a right of control over the priest's activities within a geographical jurisdiction). It is clear from the PMK's testimony that Watch Tower Pennsylvania had the right to control the activities of California District Overseers, California Circuit Overseers and California Elders.[1] An example of how Watch Tower Pennsylvania uses its agents to conduct its business in California is depicted in an October 1, 1981 letter to "Circuit Overseers and District Overseers in the United States" and a June 1, 1982 letter to "Circuit Overseers and District Overseers in the United States"relative to interest-bearing loans for Kingdom Halls (attached hereto as **Exhibits R and S**). The testimony provided by the PMK about these instructional letters from Watch Tower Pennsylvania to District Overseers and Circuit Overseers (**Exhibit CC**) went as follows:

> **Q.** In 1981, if a circuit overseer or district overseer received instructions from the Watch Tower Pennsylvania office of the secretary treasurer, did they follow these instructions?
> **A.** I am sure to the best of their ability, they would.
> **Q.** And they were expected to follow the instructions, correct?
> **A.** To the extent that they were in a position to do so, sure.
> ...
> **Q.** So if this letter directing circuit overseers and district overseers to go out and share with particular Kingdom halls or congregations they feel may be appropriate that monies are available at this rate and at this term, they're going to follow these instructions, correct?
> **A.** I am sure they may try to do so.
> **Q.** And in California, they would do so, correct?
> **A.** Correct.

[1] Attached hereto as Exhibit Q is an underlined excerpt of the PMK deposition (page 379, line 2 through page391, line 12) discussing instructions being given by Watch Tower Pennsylvania and the expectation that they be followed by California District Overseers, California Circuit Overseers and California Elders.

Again, it is Plaintiffs position that the California District Overseers, California Circuit Overseers and California Elders are agents of Watch Tower Pennsylvania for MANY purposes, including its Kingdom Hall lending business, which confers general jurisdiction; put differently, Watch Tower Pennsylvania had over 6,000 agents in California following the instructions that were being provided to by Watch Tower Pennsylvania from which Watch Tower Pennsylvania profited.

During the PMK deposition, Plaintiff attempted to explore areas of organizational structure to better understand the people and entities that were part of the Jehovah's Witnesses organization and to better understand who is acting as an agent of whom. There was sharp disagreement between counsel for Plaintiffs and counsel for Watch Tower Pennsylvania and the Watchtower Defendants about the appropriateness of such an inquiry. A couple of the exchanges between counsel evidencing the disagreement about the scope of the Court's Order permitting the PMK deposition testimony are attached hereto as **Exhibit T.** Notwithstanding the clarity of Plaintiffs' Fourth Amended Notice of Deposition of Person Most Knowledgeable, Plaintiffs were precluded from examining the PMK witness about the organizational structure, the reporting relationships within the Watchtower Society and details about how Watch Tower Pennsylvania uses its California agents to conduct business in that state. Plaintiffs respectfully request that this Court compel Watch Tower Pennsylvania to produce the person most knowledgeable about organizational structure and Watch Tower Pennsylvania's interrelationship to other people and entities – including California District Overseers, California Circuit Overseers and California Elders (its agents).

VI.

COMPEL WATCH TOWER PENNSYLVANIA'S CORPORATE BOOK AND CORPORATE FILINGS

Plaintiffs have been attempting to discover the organizational structure of Watch Tower Pennsylvania, individually, and in the context of the larger Jehovah's Witnesses organization. As set forth above, such discovery is relevant to define and describe the agency relationship with individuals doing business on behalf of Watch Tower

Pennsylvania in California. "The by-laws and internal rules and regulations of religious organizations have been held to be relevant to the existence of a principal-agent relationship between various church bodies and religious workers." *Stevens,* 49 Cal.App.3d at 883.

A. Request for Production No. 1

Request for Production No. 1 requests the production of Watch Tower Pennsylvania's "Corporate Book relating to [Watch Tower Pennsylvania's] organization/operation." The document(s) being sought are the by-laws, incorporation documents, resolutions, meeting minutes and other documents that evidence the corporate existence and operation. This collection of documents should exist in the corporate offices of Watch Tower Pennsylvania and be kept pursuant to Pennsylvania corporations law.

B. Watch Tower Pennsylvania's Response

Watch Tower Pennsylvania's responses to Request for Production No. 1 claimed that the request is irrelevant, overly broad, vague, and unduly burdensome; no documents were produced. Plaintiffs directed a "meet and confer" letter to Watch Tower Pennsylvania's counsel describing the need for such documentation (see **Exhibit B**) and attached a copy of "Annual Meeting of Pennsylvania Corporation – October 7, 2000" which provides a detailed discussion of "A Governing Body as Different From a Legal Corporation by Brother Daniel Sydlik (Governing Body member)" (see page 6). That document, by way of example, provides on page 7:

> The Pennsylvania Corporation [Watch Tower Pennsylvania] is not the only legal entity used by Jehovah's Witnesses. ... These entities or corporations are controlled by the Governing Body. ... As the oldest and most stable and financially secure of the entities, the Pennsylvania Corporation is significant to the Governing Body in the care of the Master's belongings.

The above document WAS NOT produced by Watch Tower Pennsylvania; this and other documents are relevant and should be produced. As set forth above, by-laws and internal rules and regulations of religious organizations have been held to be relevant to the existence of a principal-agent relationship between various church bodies and religious workers.

Notwithstanding Plaintiffs clear and unambiguous request, the Corporate Book has not been produced. Given the issues raised by Watch Tower Pennsylvania's challenge to the Court's exercise of jurisdiction, Plaintiffs need the requested documents relative to time period covering 1970 to the present.

C. Request for Production Nos. 2 through 11, 14 and 29

Request for Production Nos. 2 through 11, 14 and 29 request the meeting minutes, resolutions, by-laws, government filings and other such documents that should be contained in Watch Tower Pennsylvania's Corporate Book and incidental to the operation of a 501(c)(3) corporation. Watch Tower Pennsylvania provided no other response other than that the Requests are objectionable as being irrelevant, vague, overly broad and unduly burdensome. Plaintiff has already accumulated some of Watch Tower Pennsylvania's corporate by-laws/filings from 1881 to the present at considerable trouble and expense. Plaintiffs respectfully request that this Court order Watch Tower Pennsylvania to provide complete responses to Request for Production Nos. 2 through 11, 14 and 29.

D. PMK Deposition

In an effort to obtain Watch Tower Pennsylvania's Corporate Book and explore the corporate formalities, Plaintiffs noticed Watch Tower Pennsylvania's representative with most knowledge about Watch Tower Pennsylvania's corporate and organizational structure and requested "Watch Tower PA's corporate book (which should include lists of officers, directors, organizational meeting minutes, resolutions and changes in organizational function and structure)"(see PMK Depo Notice, Document Request No.1 – **Exhibit D**).

In response to the PMK Deposition Notice, Watch Tower Pennsylvania produced some resolutions that related to Watch Tower Pennsylvania's sale of California property. The overwhelming majority of Watch Tower Pennsylvania's corporate book has not been produced; Watch Tower Pennsylvania presumably refuses to respond in reliance on the *Serbian* Objection (see above).

VII.

COMPEL DOCUMENTS RELATING TO KINGDOM HALL FINANCING AND INTEREST BEARING LOANS IN CALIFORNIA

For more than twenty years, Watch Tower Pennsylvania has engaged in the business of making interest bearing loans within the State of California. Through its Kingdom Hall Fund, Watch Tower Pennsylvania has made as least 375 loans in California[2], and currently has approximately 197 loan contracts in California.[3] Watch Tower Pennsylvania secures its loans through promissory notes or mortgages obtained from California congregations. In addition to the interest gained from the loans, Watch Tower Pennsylvania is further enriched by the increase in Jehovah's Witnesses' membership in California and the resultant increase in donation revenues from California's citizens.

A view of Watch Tower Pennsylvania's contacts from a general jurisdiction perspective would call for the evaluation of Watch Tower Pennsylvania's systematic and continuous contacts with California. It is Plaintiffs position that Watch Tower Pennsylvania's loan activity in California was continuous and systematic. Through written discovery, Plaintiffs have sought to obtain the information to clearly demonstrate Watch Tower Pennsylvania's continuous, systematic AND PROFITABLE lending business in California for at least a quarter of a century.

A specific jurisdiction analysis of Watch Tower Pennsylvania would call for the evaluation of the ways in which Watch Tower Pennsylvania *purposefully availed* itself to the benefits of conducting activities in the forum state by purposefully directing its activities toward the state, thereby obtaining the benefits and protections of the state's laws. *Bridgestone Corp. v. Superior Court* (2002) 99 Cal.App.4th 767, 773; *see also Pavlovich*, 29 Cal.4th at 269. To establish purposeful availment, California courts have considered the economic reality or commercial actuality of a defendant's contacts with the forum state. *Seacrest Machine Corp. v. Superior Court* (1983) 33 Cal.3d 664, 669; *Buckeye Boiler,* 71 Cal.2d at 903; *Foster,* 68 Cal.App.3d at 892. Plaintiffs have sought to obtain the

[2]See Reinmueller Deposition at page 91, line 25 - page 93, line 8 (**Exhibit U**)
[3] Defendants' 1/6/04 Response to Request for Production of Documents No. 20 (**Exhibit F**).

information related to the quantity and quality of Watch Tower Pennsylvania's lending business in California through Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

A. Request for Production No. 20

Request for Production No. 20 requests the production of documents "relating to financing or purchases of building(s) for use by assemblies and/or congregations in California, including but not limited to Kingdom Halls and Assembly Buildings." Obviously, Plaintiffs are seeking the information to understand Watch Tower Pennsylvania's contacts.

B. Watch Tower Pennsylvania's Response to Request for Production No. 20

Watch Tower Pennsylvania responded to Request for Production 20 as follows:

> Objection. This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, Watch Tower PA has provided funds to 197 congregations to build Kingdom Halls in California.

In response to Request for Production No. 20, Watch Tower Pennsylvania produced NO documents. Plaintiffs respectfully request that this Court order Watch Tower Pennsylvania to make a full production of responsive documents from 1980 to the present – including the records described in Paragraph G, below.

C. Special Interrogatory No. 27

Special Interrogatory No. 27 requests that Watch Tower Pennsylvania describe "any and all involvement you have had with Kingdom Hall financing from 1970 to the present.

D. Watch Tower Pennsylvania's Response to Special Interrogatory No. 27

Subject to the *Serbian* Objection and objections for vagueness and ambiguity, Watch Tower Pennsylvania responded to Special Interrogatory No. 27 that Watch Tower Pennsylvania "has provided money to congregations upon request so that the congregations could build Kingdom Halls." *Plaintiffs made it clear in two meet and confer* letters (see **Exhibits A and C**) that such a response was wholly inadequate; no supplemental answer has been provided. Plaintiffs, therefore sought additional information through the PMK deposition (see below).

E. Special Interrogatory No. 31

Special Interrogatory No. 31 requests that Watch Tower Pennsylvania describe its "involvement with the purchase and/or financing of Kingdom Halls, generally, and the specific Kingdom Halls used by Defendant Napa Congregation of Jehovah's Witnesses...."

F. Watch Tower Pennsylvania's Response to Special Interrogatory No. 31

Subject to the *Serbian* Objection and objections for vagueness and ambiguity, Watch Tower Pennsylvania responded in part that it "was not involved in the purchase or building of the Kingdom Hall used by Defendants Napa ... Congregation of Jehovah's Witnesses and did not provide any monies to [that] congregation for that purpose."

Watch Tower Pennsylvania's position is supported by the affidavit of Richard E. Abrahamson, Watch Tower Pennsylvania's Treasurer, in support of its Motion to Quash (Second Affidavit of Richard E. Abrahamson attached hereto as **Exhibit V**). Mr. Abrahamson testified by affidavit (paragraph 9):

> 9. Watch Tower PA does not hold, and has never held, promissory notes or mortgages from the Napa Congregation of Jehovah's Witnesses in Napa, California, ...

At considerable effort and expense, Plaintiffs obtained deed records from Napa County indicating that Watch Tower Pennsylvania did, in fact, loan monies to the Napa Congregation, holds a deed of trust filed in Napa County and holds an interest bearing note for the repayment of a loan by the Napa Congregation. A copy of Watch Tower Pennsylvania's Deed of Trust relative to their Kingdom Hall loan to the Napa Congregation is attached hereto as **Exhibit W**. This deed record (and others obtained from Yolo County and Tehema County) were not produced by Watch Tower Pennsylvania. Even after this was brought to Watch Tower Pennsylvania's attention, Watch Tower Pennsylvania has NOT supplemented its responses with ANY deed records or loan documents for the Napa Kingdom Hall or any others.

Notwithstanding Mr. Abrahamson's testimony and Watch Tower Pennsylvania's response to Special Interrogatory No. 31, Watch Tower Pennsylvania was involved in the purchase of the Kingdom Hall used by Defendants Napa Congregation of Jehovah's

Witnesses and did, in fact, provide monies to Defendant Napa Congregation for that purpose.

Plaintiffs respectfully request that this Court order Watch Tower Pennsylvania to provide full and complete answers to Special Interrogatory Nos. 27 and 31.

G. PMK Deposition

In an effort to explore Watch Tower Pennsylvania's thriving lending business in California, Plaintiffs noticed Watch Tower Pennsylvania's representative with most knowledge about Watch Tower Pennsylvania's lending activities in California (see PMK Depo Notice, Subject Matter Nos. 6, 7 and 8 – **Exhibit D**).

In response to the PMK Deposition Notice, Watch Tower Pennsylvania produced some blank forms regarding Kingdom Hall loans made by Watch Tower Pennsylvania. There is much, however, that has not been produced; excerpts from the PMK's deposition (Alex Reinmueller) highlight the areas of production and response that are inadequate. Underlined excerpts of the testimony described below are attached as **Exhibit U**.

1. **List of CA congregation receiving loans**
   Page 91, Line 25 – Page 94, Line 4
   -Mr. Reinmueller reviewed "the number of loans in WTPA records made to California" in preparation for the deposition
   -375 California congregations appeared on that list of WTPA loans since the 1980s
   -there are records that would verify the amounts of the WTPA loans made to California
   -there are records that would show how much money has come in to WTPA *via those loans*

   *Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

2. **Promissory Notes from CA loans**
   Page 119, Line 8 – Page 121, Line 7
   -the Kingdom Hall loans would be documented by a promissory note
   -the promissory notes are kept in the treasurer's office
   -those records go back to the mid-'80s

   *Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

3. **Deeds of Trust**
   Page 142, Line 19 – Page 143, Line 4
   Page 148 Lines 13-16

-WTPA has copies of the Deeds of Trust
-the Deeds of Trust are filed in the same files as those that contain the documents regarding a loan

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

4. **Loan Transaction Documentation**
Page 162, Lines 7 – 21
Page 170, Lines 16 – 23
-if I wanted a complete file of a congregation's Kingdom Hall loan transaction, those records would be on a computer in the treasurer's office
-applications would be in the respective congregation's active loan file

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

5. **Interest Income**
Page 181, Line 6 – Page 183 Line 8
-Mr. Reinmueller testified that it is possible to determine the interest income earned from Kingdom Hall loans (at least from 1997 to the present)
-more can be estimated

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

6. **Financial Statements**
Page 24, Lines 3 – 20
-Accounting Dept prepared Acct Reports/ Financial Reports for all corporate entities including Watch Tower Pennsylvania

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

7. **Additional Corporate Resolutions for Land Sales**
Page 214, Line 3 – Page 218, Line 12
-gap in records produced – Bob Schnack to "inquire"

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

8. **Statements to Congregations**
Page 160, Line 25 – Page 162, Line 6
-records exist regarding payments made by California Kingdom Halls
-"all property loan payments acknowledged on your PA Corp. statement"
-the records are kept on computer

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

9. **Annual Branch Reports**
Page 155, Line 5+
-Kingdom Hall loans are described as "assets on your balance sheet"
-Annual Branch Report of Activities and Financial Status
-deals with Kingdom Hall loans as investments

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice, Request for Production No. 20 and Special Interrogatory Nos. 27 and 31.

The above page-line summary was provided to counsel for Watch Tower Pennsylvania on November 15, 2004 in the hopes of avoiding the filing of this Motion (**Exhibit A**); counsel for Watch Tower Pennsylvania has made no attempt to contact counsel for Plaintiffs since the discovery stay has been lifted and no additional documents have been produced. Plaintiffs respectfully request that this Court order the production of the above-described areas of information.

VIII.

COMPEL KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)

The KHAA is a thinly veiled insurance business operated by Watch Tower Pennsylvania and doing business within the State of California. Watch Tower Pennsylvania collects calculated premiums at scheduled time intervals and provides coverage for property damage and third party liability claims. Watch Tower Pennsylvania asserts that the premiums paid by California congregations to the KHAA are "voluntary donations."[4] However, Watch Tower Pennsylvania's correspondence to KHAA participants provides a highly specific formula for calculating the amount of premium to be paid.[5] Watch Tower Pennsylvania dictates that premiums "will be" paid monthly, or, at the option of the insured, they may pay "the entire annual amount at once."[6] California congregations are

[4] Watch Tower Pennsylvania's Supplemental Memorandum of Points and Authorities in Support of Motion to Quash Service of Summons at page 8.

[5] "The Kingdom Hall Assistance Arrangement (KHAA) uses designated contributed funds to pay for property damage to Kingdom Halls and for expenses and liability claims arising from incidents at Kingdom Halls. . . . To avoid burdening the brothers with one large expense, we recommend that each congregation pass a resolution to contribute monthly based upon the number of its publishers. (For example, **$4.50 x (number of publishers) ÷ 12 months = $ per month.**) Since **this will be a monthly donation**, it should be cared for by each congregation instead of by the operating committee in the case of congregations that share a Kingdom Hall. **If you prefer to send the entire annual amount at once, you may do so.**"
Letter from Watch Tower Pennsylvania to "All Bodies of Elders in the United States" of 10/6/03, at 1 (emphasis added) attached hereto as **Exhibit X**.

[6] *Id.*

further required to make premium payments directly to Watch Tower Pennsylvania via the Watchtower Electronic Funds Transfer System, and specifically designate the funds for the KHAA account.

Watch Tower Pennsylvania attempts to minimize its insurance business in California by telling this Court that the KHAA does not guarantee payment to any person or legal entity.[7] However, in its correspondence to California congregations, Watch Tower Pennsylvania asserts that the KHAA "uses designated contributed funds to pay for property damage to Kingdom Halls and for expenses and liability claims arising from incidents at Kingdom Halls."[8] In reality, Watch Tower Pennsylvania is collecting insurance premiums from California congregations as consideration for its promise to reimburse them for future property damage and third party liability. Like any insurance agreement, California congregations participating in the KHAA submit "claims" to Watch Tower Pennsylvania when they suffer a loss. Watch Tower Pennsylvania stated that it had "less than 20 *claims* in California involving the KHAA for the year 2003 . . . ."

The hallmarks of an insurance agreement include the "shifting [of] one party's risk of loss to another party; and [the] distribution of that risk among similarly situated persons." *Automotive Funding Group, Inc. v. Garamendi* (2003) 114 Cal.App.4th 846, 851 (interpreting CAL. INS. CODE § 22). The KHAA shifts the California congregations' risk of loss to Watch Tower Pennsylvania. For example, if a California congregation sustains property damage or becomes financially liable to a third party as a result of an occurrence at a Kingdom Hall, the congregation files a claim with Watch Tower Pennsylvania for reimbursement from the KHAA fund. Watch Tower Pennsylvania also uses the KHAA to distribute risk of loss among similarly situated persons—congregations of Jehovah's Witnesses within California and the United States. Watch Tower Pennsylvania's correspondence describing the amount, timing, and method of KHAA premium payments

[7] See Second Affidavit of Richard E. Abrahamson's at ¶ 10 attached as **Exhibit V**.
[8] See ¶ 1 of 10/6/03 letter from Watch Tower Pennsylvania to "All Bodies of Elders in the United States" at **Exhibit X**.

is addressed "To All Bodies of Elders in the United States."[9] In its letter, Watch Tower Pennsylvania describes the KHAA as an "arrangement by which all congregations can share in assisting one another."[10] In the context of an arrangement which pools finances to cover potential future liabilities, "shar[ing] in assisting one another" and spreading risk are the same. Even though Watch Tower Pennsylvania may not have formal written contracts with California congregations regarding the KHAA, the agreements are, in essence, contracts for insurance.

Watch Tower Pennsylvania's continuous contacts with California Residents stemming from its operation of the KHAA for the last fifteen years fall into the following categories: (1) corresponding with California residents to solicit premium payments and participation in the KHAA; (2) receiving monthly payments directly from California congregations; and (3) receiving, investigating, and paying claims within the State of California. The KHAA is one way that Watch Tower Pennsylvania exerts control over activities within the State of California and profits from the creation and continued existence of California congregations. Watch Tower Pennsylvania's activities through its KHAA insurance business in California constitute part of its overall presence within the state (general jurisdiciton) and is purposeful commercial activity within the State of California (specific jurisdiction).

A. Special Interrogatory Nos. 29, 30, and 32 through 37

Special Interrogatory Nos. 29, 30, and 32 through 37 request information regarding Watch Tower Pennsylvania's operation of the KHAA and the Risk Management Office for any and all time periods between 1970 and the present. Special Interrogatory No. 29, for example, requests Watch Tower Pennsylvania to describe " any and all involvement you have had with Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present."

Special Interrogatory No. 30 requests a description of Watch Tower Pennsylvania's

[9] See ¶ 1 of 10/6/03 letter from Watch Tower Pennsylvania to "All Bodies of Elders in the United States" at **Exhibit X**.
[10] *Id.*

"involvement [Watch Tower Pennsylvania] has had with risk management for California congregations and their respective Kingdom Halls from 1970 to the present."

Special Interrogatory Nos. 32 through 37 request similar, if not more specific, information. Through these Special Interrogatories, Plaintiffs are seeking information to better understand Watch Tower Pennsylvania's insurance business and function in California risk management.

B. Watch Tower Pennsylvania's Responses to Special Interrogatory Nos. 29 and 30

Subject to the *Serbian* Objection and objections for vagueness and ambiguity, Watch Tower Pennsylvania responded to Special Interrogatory No. 29 that it "has received annual contributions from congregations to fund the KHAA since about 1989 and has managed the funds in KHAA." Also subject to the *Serbian* Objection and objections for vagueness and ambiguity, Watch Tower Pennsylvania responded to Special Interrogatory No. 30: "None."

As will be made more clear below, these answers were not only anemic and misleading, they were untrue. Watch Tower Pennsylvania has been acting as an insurance provider, broker and risk management agent for up to 2000 congregations in California for at least 25 years; Watch Tower Pennsylvania continues in that role today.

C. Form Interrogatory No. 4: Insurance Policies and Other Information

In Special Interrogatories, generally, and in Form Interrogatory, specifically, Plaintiffs requested past and present insurance policies purchased by Watch Tower Pennsylvania that relates to coverage provided to California people and entities and any insurance that relates to the claims made in this case.

Notwithstanding identical requests for information, counsel for Watch Tower Pennsylvania in a Texas case produced pieces of insurance policies dated 1988 and 1989. An incomplete copy of the 1988/1989 CGL and umbrella policies are attached hereto as **Exhibits Y and Z.** It is clear from the documents and from the PMK testimony related thereto, that Watch Tower Pennsylvania was purchasing CGL and umbrella policies for

California congregations (approximately 2000 congregations in California), California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers and California District Overseers. Additionally, Watch Tower Pennsylvania was purchasing the insurance with money provided, in part, by people and entities in California. The fact that Watch Tower Pennsylvania is the primary entity involved in the purchase of insurance and the fact that Elders (including California Elders) appear to be listed as if they are employees or agents of the policy-holder (Watch Tower Pennsylvania). This is yet another systematic and continuous contact with California and also demonstrates that Watch Tower Pennsylvania treats California Elders and others as agents in California for the sake of the organization's business. Please note specifically from "Instructions" of the policy which lists those to whom coverage is extended (attached as **Exhibit Y**):

> Extensions of Coverage:
> 1. Clergy Counseling Professional Liability Coverage (Form AIUX 306) with the following amendments.
> A. The persons insured provision is amended to include any "Elder or Ministerial Servant designated as such by the named insured"... [Watch Tower Pennsylvania]
> B. No. 3 – Definition of a "cleric" is deleted in its entirety."

The above item No. 1 appears on "Page 2 of 4" and Plaintiffs expect the policy to continue with item Nos. 2 through 8 to continue on Page 3 of 4; page 3, however, was not produced. Page 4 of 4 continues with item Nos. 9 through 13. This is just one example of how information is not being provided that Plaintiffs expect will more fully describe the relationship between Watch Tower Pennsylvania and its agents in California. As set forth below in Paragraph D.1., Watch Tower Pennsylvania has copies of policies going back to at least 1990; their Texas counsel was able to obtain copies of policies from 1988 and 1989.

Plaintiffs respectfully request this Court to order Watch Tower Pennsylvania to produce complete insurance policies related to California people or entities from 1970 to the present and to fully answer Special Interrogatory Nos. 29, 30 and 32 through 37.

D. PMK Deposition Regarding KHAA and Risk Management

Plaintiffs attempted to obtain more information from the person designated as having most knowledge about the KHAA, risk management and other related areas of inquiry (see PMK Depo Notice, Subject Matters 4 and 5 – attached as **Exhibit D**).

In response to the PMK Deposition Notice, Watch Tower Pennsylvania produced some documentation regarding the KHAA and risk management. There is much, however, that has not been produced. Excerpts from the deposition of the PMK (Alex Reinmueller) highlight a few areas of production and response that are inadequate; underlined excerpts of the testimony described below are attached as **Exhibit AA**.

1. **Insurance Policies**
   Page 274, Lines 11 – 24
   Page 285, Line 7 +
   Page 301, Line 15 – Page 302, Line 11*
   -Watch Tower Pennsylvania purchased insurance policies in which California congregations participated
   -1988/1989 insurance polices not complete (need complete for all years)

   -Watch Tower Pennsylvania has files that contain full policies for years from at least 1990 to present

   *Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 4) and Special Interrogatory Nos. 29, 30 and 32 through 37.

2. **Insurance Invoices**
   Page 283, Lines 5 – 8
   -congregations receive insurance invoices from Watch Tower Pennsylvania

   *Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 4) and Special Interrogatory Nos. 29, 30 and 32 through 37.

3. **Elder Misconduct**
   Page 362, Line 12 – Page 368, Line 5
   -KHAA paid a "Elder Misconduct" claim in Red Bluff; we need the database and claim file
   -we need the files for all Elder Misconduct or abuse claims paid by KHAA in California

   *Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 4) and Special Interrogatory Nos. 29, 30 and 32 through 37.

4. **KHAA Surplus/Deficit?**
   Page 374, Line 3 – Page 375, Line 20
   -does KHAA operate at a surplus or a deficit?
   -witness instructed not to answer

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 4) and Special Interrogatory Nos. 29, 30 and 32 through 37.

The above page-line summary was provided to counsel for Watch Tower Pennsylvania in the hopes of avoiding the filing of this Motion; counsel for Watch Tower Pennsylvania has made no attempt to contact counsel for Plaintiffs since the discovery stay has been lifted and no additional documents have been produced. Plaintiffs respectfully request that this Court order the production of the above-described areas of information.

IX.

COMPEL AMOUNT OF MONIES TO WATCH TOWER PENNSYLVANIA FROM CALIFORNIA

This Court's exercise of personal jurisdiction over Watch Tower Pennsylvania is appropriate if Watch Tower Pennsylvania has substantial or continuous and systematic contacts with the forum which are "so wide-ranging that they take the place of physical presence in the forum state (general jurisdiction). Additionally, this Court's exercise of personal jurisdiction over Watch Tower Pennsylvania is appropriate if Watch Tower Pennsylvania *purposefully availed* itself to the benefits of conducting activities in California; to establish purposeful availment, California courts have considered the economic reality or commercial actuality of a defendant's contacts with the forum state.

It is Plaintiffs' expectation that the amount of money that Watch Tower Pennsylvania obtains from California citizens and entities is staggering. Plaintiffs have directed discovery to Watch Tower Pennsylvania to obtain information relative to the economic reality of Watch Tower Pennsylvania's presence in California; however, no information regarding Watch Tower Pennsylvania's economic reality or commercial actuality has been produced or provided.

A. Request for Production No. 21

In Request for Production No. 21, Plaintiffs requested Watch Tower Pennsylvania to "produce all documentation that relates to monies you have received from California including but not limited to organizational financial statements from 1970 to the present."

B. Watch Tower Pennsylvania's Response to Request for Production No. 21

Subject to its objections that Request for Production No. 21 was irrelevant, overly broad, unduly burdensome and seeks private information, Watch Tower Pennsylvania responded that "Watch Tower PA ... receives contributions from approximately 1,997 *congregations in California; however, NO DOCUMENTS WERE PRODUCED and no* amounts of money were described.

C. Request for Production Nos. 22 through 29

Request for Production Nos. 22 through 29 seek documentation relative to monies received by Watch Tower Pennsylvania from California including treasurer summaries/reports, tax returns, government filings, deposit summaries, wire transfer summaries and bank statements.

D. Watch Tower Pennsylvania's Responses to Request for Production Nos. 22 - 29

Subject to its objections that Request for Production Nos. 22 through 29 are irrelevant, overly broad, unduly burdensome and seek private information, Watch Tower Pennsylvania again only responded that "Watch Tower PA ... receives contributions from approximately 1,997 congregations in California." No documents were produced by Watch Tower Pennsylvania and no amounts of money were described.

E. PMK Deposition

Plaintiffs attempted to obtain more information from the person designated as having most knowledge and in the notice for the deposition, Plaintiffs specifically requested "Documents related to monies received by [Watch Tower Pennsylvania] from California for any reason from 1970 to the present (including but not limited to donations, payments, *premiums, and rental/lease income)"(see PMK Depo Notice, Request No. 8* – attached as **Exhibit D**). No documents were produced.

Excerpts from the PMK deposition highlight a few areas of production and response that are inadequate relating to monies received by Watch Tower Pennsylvania from

California; underlined excerpts of the testimony described below are attached as **Exhibit BB**.

1. **Donations Instructions**
Page 195, Line 8 – Page 196, Line 18
-more documents that describe where and to whom to make donations

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 8) and Request for Production Nos. 21 through 29.

2. **Donations from California**
Page 203, Line 6 – Page 204, Line 14
-there have been many donations from California
-someone could be tasked with the job to determine the amount of donations from California

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 8) and Request for Production Nos. 21 through 29.

3. **Database of California Donations Information**
Page 206, Line 22 – Page 211, Line 9
-database exists that has records of California donations from 1997 to present
-there are financial statements that exist/were created that describe total donations
-no database that breaks out California only – can do entire USA

*Plaintiffs request that the above information be produced as responsive to the PMK Deposition Notice (Document Request No. 8) and Request for Production Nos. 21 through 29.

F. Kingdom Hall Assistance Arrangement – Operated at a Surplus?

As described above, Watch Tower Pennsylvania manages an insurance system that covers most ever type of injury, incident or accident that occurs in a Jehovah's Witnesses' property or event. Further, this coverage has included the payment for Elder Misconduct and is available for payment to victims of sexual abuse by Elders of California congregations.

This system works by Watch Tower Pennsylvania collecting a specified amount from each congregation (including those in California) and then uses a **portion** of that amount of money to purchase a high-deductible catastrophic liability policy that covers all buildings and Elders in California. The remaining money is used by Watch Tower Pennsylvania as a self-insured retention to handle matters as they arise that do not trigger

the high-deductible liability or umbrella policies. The KHAA is a business being managed and operated by Watch Tower Pennsylvania. In the PMK deposition, Plaintiffs' counsel asked Mr. Reinmueller if Watch Tower Pennsylvania operated the KHAA at a surplus or a deficit; Mr. Reinmueller was instructed by counsel not to respond. This discussion from the PMK deposition went as follows (page 374, line 3 – page 375, line 20):

Q. Wouldn't you agree with me that Watch Tower Pennsylvania intended for the California congregations to be recipients of the information about the Kingdom Hall Assistance Arrangement?
A. Yes, that's correct.
Q. Watch Tower Pennsylvania's receiving contributions not only from California, but from all over the country, correct?
A. Yes.
Q. In connection with the Kingdom Hall Assistance Arrangement, correct?
A. Yes, that's correct.
Q. And every year, they're paying out sums of money in claims, correct?
A. Yes.
Q. Who would be able to tell me whether or not the Kingdom Hall Assistance Arrangement operates at a surplus or a deficit?
A. I would.
Q. Does the Kingdom Hall Assistance Arrangement operate at a surplus or a deficit?
MR. SCHNACK: Again, I'll instruct him not to answer this question, as it's outside the scope of this deposition. We've already discussed the parameters of it.
MR. LOVE: The reason why I want that answer to the question is, I want to know whether or not the congregations in California are contributing money to a way in which Watch Tower Pennsylvania profits.
MR. SCHNACK: I'm going to instruct him not to answer. I don't think it's relevant.
Q. Are you going to answer my question?
A. No.

Counsel for Plaintiff explained to Watch Tower Pennsylvania's counsel that the KHAA was one of Watch Tower Pennsylvania's business contacts in California; it is relevant to discover whether Watch Tower Pennsylvania is profiting from a business that collects thousands of dollars from hundreds of congregations in California every month. Plaintiffs expect that Watch Tower Pennsylvania has amassed a substantial amount of money through its KHAA; given the fact that one out of every seven congregations in the United States is in California, such an inquiry is very relevant given Plaintiffs need to understand Watch Tower Pennsylvania's economic reality and/or commercial actuality in the State of California.

Plaintiffs request that the above information be produced as responsive to Request for Production Nos. 21-29 and/or for further deposition testimony consistent with Request

for Production of Documents, Set One, Nos. 21-29 and further deposition testimony consistent with questions page 374, line 3-page 375, line 20.

X.

CONCLUSION

Plaintiffs respectfully request that this Court overrule Watch Tower Pennsylvania's use of the Serbian Objection and order Watch Tower Pennsylvania to provide complete responses to the Requests for Production and the Special Interrogatories identified above. Additionally, Plaintiffs respectfully request this Court to order Watch Tower Pennsylvania to provide a PMK witness to testify *in California* about Watch Tower Pennsylvania's organizational and corporate structure, as well as its interrelationship to the other Watchtower Society entities (including the Governing Body); Plaintiffs would like this witness to be Don Adams, President of Watch Tower Pennsylvania and prior organizational affiant (**Exhibit P.**) Finally, Plaintiffs respectfully request this Court to order Watch Tower Pennsylvania to provide Alex Reinmueller (PMK regarding KHAA deficit/surplus) to testify *in California* about the financial and economic realities of Watch Tower Pennsylvania's contacts in California.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William Brelsford, Attorney for Plaintiffs

EXHIBITS A-CC ARE ATTACHED TO THE DECLARATION OF WILLIAM BRELSFORD, FILED CONCURRENTLY HEREWITH.

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB - 4 2005

Clerk of the Napa Superior Court
By: D. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO DOCUMENT REQUESTS CONTAINED IN FOURTH AMENDED DEPOSITION NOTICE OF PMK

Date: 4/8/05
Time: 9:30 AM
Dept. B
Trial Date: None

FOURTH AMENDED NOTICE OF DEPOSITION OF

PERSON MOST KNOWLEDGEABLE - DOCUMENTS REQUESTED

REQUESTED DOCUMENT NO. 3:

Documents describing the organizational structure and reporting relationships within the Watch Tower PA, specifically, and Watchtower Society, generally (describing how Watch Tower PA fits into the overall organization).

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and unduly burdensome. Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, Watch Tower PA responds as follows: See Exhibit, 39, 40, and 54.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The scope of the requested information sought from Watch Tower Pennsylvania is appropriate in light of their on-going tortious conduct as alleged in Plaintiffs' Amended Complaint.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." Ironically, Watch Tower Pennsylvania's own President signed an Affidavit under penalty of perjury establishing that Watch Tower Pennsylvania is a conduit, if not the conduit, which directs its congregational activities. But they failed to produced that affidavit. Clearly, this multi-million dollar corporation has documents, which explain their relation with the other corporate defendants, and all such documents should be produced to evaluate their contacts with California, in conjunction with further deposition testimony of a person most knowledge for further inquiry and explanation.

REQUESTED DOCUMENT NO. 4:

Documents related to the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present, including but not limited to instructions (present and prior), invoices (or "letters suggesting a contribution") from Watch Tower PA to California congregations, forms used in the operation of the KHAA, and claims paid in California.

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant

time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, vague, and an invasion of privacy of individuals not parties to this lawsuit, unduly burdensome, and intended for purposes of harassment.

Subject to and without waiving those objections, Watch Tower PA responds as follows: See documents for 1972 to 1985 and 203, attached hereto as Exhibits 5, 10, 12, 14, 15, 17, 18, 21, 25, 26, 28, 29, 31, 36, 37, 38, 49, 50, 51, 52, and 58. Defendant Watch Tower PA had less than 20 claims in California involving the KHAA for the year 2003 and no claims paid from 1972 to 1985 because the KHAA did not come into existence until 1989.

ARGUMENT:

This case is part of a coordination action wherein numerous plaintiffs allege Watch Tower Pennsylvania engaged in systematic tortious conduct since approximately 1970 to the present. The scope of requested is not overbroad, in light of their on-going activities in the State of California. Documents reflecting covered claims in the form of an insurer reflect on-going business activities in this State creating what Plaintiffs contend are the requisite contacts for this Court to exercise jurisdiction over Watch Tower Pennsylvania. Watch Tower Pennsylvania should be estopped from asserting their motion to quash, and then fail to provide documents that would establish their contacts with this State.

Such documents should be produced as discussed at pages 26-32 of the concurrently filed Motion to Compel, and further deposition inquiry into these documents should be allowed.

REQUESTED DOCUMENT NO. 8:

Documents related to monies received by you from California for any reason from 1970 to the present (including but not limited to donations, payments, premiums, and rental/lease income).

RESPONSE:

Objection. This request seeks documents and information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, this request is overly broad, an invasion of privacy, unduly burdensome, and intended to harass Watch Tower PA.

Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA sends letters on a monthly basis to each congregation acknowledging the receipt of donations sent by the congregation to Watch Tower PA. See also Exhibits 1, 5, 7, 10, 11, 12, 13, 14, 15, 22, 25, 26, 29, 30, 36, 37 and 38.

ARGUMENT:

This case is part of a coordination action wherein numerous plaintiffs allege Watch Tower Pennsylvania engaged in systematic tortious conduct since approximately 1970 to the present. The scope of requested is not overbroad, in light of their on-going activities in the State of California. Documents reflecting covered claims in the form of an insurer reflect on-going business activities in this State creating what Plaintiffs contend are the

requisite contacts for this Court to exercise jurisdiction over Watch Tower Pennsylvania. Watch Tower Pennsylvania should be estopped from asserting their motion to quash, and then fail to provide documents that would establish their contacts with this State.

Such documents should be produced as discussed at pages 32-34 of the concurrently filed Motion to Compel, and further deposition inquiry into these documents should be allowed.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford, Attorney for Plaintiffs

EXHIBIT 1

TELEPHONE (212) 625-1240

WATCH TOWER
BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
124 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

T:TD

July 1, 1970

TO ALL CIRCUIT SERVANTS AND DISTRICT SERVANTS

Dear Brothers:

Our last letter to all of you concerning the matters herein discussed was that of March 1, 1965. Your correspondence indicates that congregations and individuals continue to inquire of you as to what steps they can take to enable the Society to have use of funds which they have accumulated and would like to have used to advance the Kingdom interests to the fullest extent. It seems well at this time to provide all of you with information on points that have been raised so that you will be fully informed and will be in a position to continue to assist those who make such inquiries of you by giving them information. You are not to include a discussion of these matters in any talk you give to the congregation, but rather you are to have the facts in mind so that you can answer questions of congregations, committees and individuals. Correspondence we receive indicates the following are subjects of inquiry:

The Society's letter, INFORMATION REGARDING GIFTS AND WILLS, has been rewritten, November 1, 1968. We enclose a copy and you will see this covers the subject of gifts and wills generally. You can always recommend to individuals that they write to the Society for a copy of this letter of November 1, 1968, and probably it will answer their questions.

In connection with the conditional donation arrangement you will be interested to know that many congregations continue to place excess funds in conditional donations and some have accumulated their building funds under this arrangement. This enables the funds to be used by the Society until needed for the Kingdom Hall project.

Not only do donations made to the Society continue to be deductible under the income tax regulations but a change in the law enables deductions to be made greater than heretofore. The United States Treasury Department, Internal Revenue Service, has determined that, as provided in Section 170(b)(1)(B) of the 1954 Internal Revenue Code, contributions made to the Society are deductible by an individual subject to the limitation that the aggregate of his deductible contributions may not exceed 20% of his adjusted gross

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income and has also determined that, under Section 170(b)(1)(A) of the 1954 Code, individuals are allowed an additional deduction of not exceeding 10% of their adjusted gross income for contributions to the Society. This means that it held the Society constitutes an organization referred to in Section 170(b)(1)(A) of the 1954 Internal Revenue Code. The change of which you should be aware is that Section 201(a) of the Tax Reform Act of 1969 (P. L. 91-172) raises the income tax 30% limit on charitable contributions deduction to 50% of an individual's adjusted gross income for tax years beginning with 1970 according to our understanding. Donors can check this with their own tax authority.

The United States Treasury Department, Internal Revenue Service, publishes a list of organizations, contributions to which are deductible under Section 170 of the Internal Revenue Code of 1954. Therein appear Watch Tower Bible and Tract Society of Pennsylvania, Brooklyn, N.Y., and Watchtower Bible and Tract Society of New York, Inc., Brooklyn, N.Y. The latest listing of the Society appears in Cumulative List of Organizations (revised to December 31, 1968) (Publication 78 (Rev. 12-68)), pages 7, 284, 563.

The foregoing information may assist some at the time of making out their income tax returns to properly identify the Society and establish the fact that the special limitation provided in Section 201(a) of the Tax Reform Act of 1969 (P. L. 91-172) is applicable to contributions made to Watch Tower Bible and Tract Society of Pennsylvania.

You may review the contents of the November 1, 1968, letter enclosed to your advantage, refreshing your recollection as to the points it contains. Have in mind that the brothers should feel free to write to the Society, encouraging them to do so informing the Society fully as to any questions or plans they may have respecting their estates in which the Society has a beneficial interest.

Be assured of our loving interest and our prayers for Jehovah to continue to bless you as you in all ways seek to advance the interests of his work and his people to his praise.

With you, looking for oversight
of Jehovah as Shepherd,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Encl.

WTPA 00102

EXHIBIT 5

PHONE (212) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

CABLE WATCHTOWER

T:TD

October 1, 1981

TO CIRCUIT OVERSEERS AND
DISTRICT OVERSEERS IN THE UNITED STATES

Dear Brothers:

The Society would like to again assist congregations of Jehovah's Witnesses in respect to Kingdom Hall financing, and we hope to be able to do this on a limited scale. Our thought is that there may be some congregations in emergency situations. Some may have financed Kingdom Halls during the past few years by obtaining commercial loans at very high interest rates, finding that the monthly payments are proving to be difficult. Other congregations may have an urgent need for Kingdom Hall facilities but have not been able to proceed with a building project because of the high cost of borrowing or even the unavailability of funds. There may be other emergency situations. So, to the extent that we are able to do so, we want to assist congregations having a genuine need in respect to their Kingdom Halls.

A Kingdom Hall loan through the Society would be at an interest rate of 6% per annum. We could consider a repayment of not more than ten years. Repayment of a Kingdom Hall loan at 6% in ten years would require monthly payments of $12.00 per $1,000.00 of the loan. As an example, for a Kingdom Hall loan in the amount of $10,000.00, the monthly payments would be $120.00.

This gives you some idea of our desire to assist congregations in a limited way, and the amounts that would be involved in repaying any loan through the Society of funds needed in addition to those raised within the congregation.

We are not making a general announcement to all of the congregations, but we are informing you so that if in serving the congregations in your circuits and districts you do observe any with needs such as are outlined here, you can tell the body of elders that if they wish to do so, they are free to write to this office of the Society making inquiry as to the possibility of a loan for Kingdom Hall financing. We do

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not have in mind your making any sort of a general announcement of this because our resources are limited, and we would like to give what assistance we can to congregations where the aid would be most justified. You may come across such congregations, and if this is the case, you might tell the body of elders that if they write to us about the matter, they should mention the fact that you have spoken to them, telling them that they may make inquiry of the Society. We do not require a letter from you about any such congregation, but, on the other hand, if there is some information that you would like to bring to our attention relating to the congregation's need or loan request, we would be glad to get such from you.

The assistance you are rendering to the congregations in so many ways in serving them is very much appreciated, and it may be that at this time you and the Society can be of further help to some of the congregations as outlined above.

Warm Christian love, and we wish you Jehovah's continued blessings.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00111

EXHIBIT 7

PHONE (212) 625-3600

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

T:TD

June 1, 1982

TO CIRCUIT OVERSEERS AND
DISTRICT OVERSEERS IN THE UNITED STATES

Dear Brothers:

Under date of October 1, 1981, the Society was pleased to inform you of its desire to again assist congregations of Jehovah's Witnesses in respect to Kingdom Hall financing, at least doing so on a limited scale.

The response to that letter has been heavy, and we are happy to have been able to help many congregations who were in an emergency situation. Because of the heavy response on the part of the congregations, the Society now wishes to let you know that it is advisable for us to somewhat curtail our loan arrangement at this time.

As with the case of the October 1, 1981, letter, we are not making a general announcement to all of the congregations, but we are informing you so that if in serving the congregations in your circuits and district you have occasion to discuss Kingdom Hall loans with bodies of elders, you can tell them that the Society hopes to be able to help others who are also in an emergency situation but may not be able to do so immediately.

We are very appreciative of the many valued services and assistance you are rendering to the congregations in so many ways and will appreciate your further assistance at this time in the matter of Kingdom Hall financing arrangements as outlined above.

Please accept our warm Christian love and best wishes.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00114

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EXHIBIT 10

PHONE (718) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

CABLE WATCHTOWER

October 20, 1987

TO BODIES OF ELDERS WHOSE KINGDOM HALLS ARE
INSURED THROUGH THE SOCIETY'S ARRANGEMENT

Dear Brothers:

Re: 1987 Annual Insurance Billing

Enclosed is this year's invoice for insurance covering your Kingdom Hall. It covers the period October 1, 1987 to October 1, 1988. Thanks to your combined efforts in protecting your Kingdom Halls, there will be no increase in the cost of your insurance for the coming year.

Some congregations choose to pay the whole amount at once. Others prefer to pay in quarterly installments and others pay monthly. However, keep in mind that the Society pays your premiums in advance and waits for reimbursement from the congregations. By paying your entire invoice as soon as possible, you assist the Society to use its funds to advance the preaching work. In any event some payment must be made within the next 30 days.

Make your payment using the green T-51 Remittance Form. Enter your payment on the line of the form marked "Insurance Account Payment."

If more than one congregation uses the Hall, only the congregation whose T-51 Remittance Form includes a line for "Insurance Account Payment" should remit to the Society.

"KEY FACTS ABOUT KINGDOM HALL INSURANCE"

We are enclosing for your review and use the confidential memorandum "Key Facts About Kingdom Hall Insurance." This is updated information and will replace all previous information, including the manual, "Insurance for Congregations of Jehovah's Witnesses." Also enclosed are new forms for reporting property damage, as well as accidents that result in an injury to someone. You should discard all copies of the older insurance manual along with any old forms previously used to report property damage or accidents.

This memorandum contains most of the information you need on insurance matters. If further information is desired, you may contact the Society's Insurance Desk. A copy of the "Key Facts About Congregation Insurance" should be made and distributed to

each congregation meeting in the Kingdom Hall. All elders and the brothers serving on the Kingdom Hall Operating Committee should read this memorandum at this time and refer to it immediately when a question arises.

If Kingdom Hall construction, renovation, or demolition work is contemplated, please advise the Society's Insurance Desk.

ACCIDENTS AT THE KINGDOM HALL

We continue to receive reports of injuries resulting from unsafe conditions at Kingdom Halls. Several accidents have been caused by poor maintenance and improper lighting of stairs, failure to promptly remove snow and ice and neglected maintenance of parking areas. Children have been injured and have caused others to be injured because they were allowed to run in the Kingdom Hall. A number of accidents have occurred because of unsafe practices while working at the Kingdom Hall, including falls from ladders and injuries resulting from unsafe use of lawn mowers. We want to encourage elders to be especially watchful in these areas in order to reduce unnecessary suffering on the part of our brothers and sisters due to injury.

We note that in most cases, elders have been able to assist those who are injured to see the need to take responsibility for their own medical care utilizing their own insurance coverage when available. By helping individuals to see the wisdom of bearing costs this way, we avoid the spirit of the world, which often views insurance as a means of profiting from an accident.

PROPERTY LOSSES

Even though there has been an overall reduction in claims resulting from property damage, certain types of claims have increased. Preventable losses such as burglary and vandalism are being reported more frequently than ever before. Because of the changing times, Kingdom Halls located in "safe areas" are now being broken into and burglarized. This gives rise to the need for more protection and security in most locations. Please take time now to analyze and discuss what you can do to prevent such losses in the future. It will be less costly in the long run to upgrade and secure the Kingdom Hall now than to replace or repair a loss later on.

Your careful attention to these matters of safety of the brothers and care of the Kingdom Halls is greatly appreciated by the Society. We pray Jehovah's continued blessing as we work together in caring for the Kingdom interests entrusted to us.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00124

EXHIBIT 11

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS
BROOKLYN, NEW YORK 11201, U.S.A.

TO ALL CIRCUIT OVERSEERS

Re: Kingdom Hall Insurance

The enclosed memorandum "Key Facts About Kingdom Hall Insurance" is for your information only. The information contained in this memorandum is confidential and only pertains to congregations enrolled in the Society's insurance arrangement.

Watch Tower Bible and Tract Society of Pennsylvania
If writing regarding the above please return this slip.

NOTE: Although this was not dated, it is from 1987.

WTPA 00125

PHONE (718) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

(The information in this memorandum is confidential to the body(ies) of elders.)

KEY FACTS ABOUT CONGREGATION INSURANCE

This memorandum contains the following main headings:

How to Obtain Information
Protecting Your Kingdom Hall
Starting, Increasing, or Canceling Your Insurance
Reporting and Handling a Property Loss, Injury, or Lawsuit
Renewing and Paying for Your Insurance
Coverages
Administration of Your Kingdom Hall

HOW TO OBTAIN INFORMATION

If after reading this memorandum you have questions concerning your coverage through the Society's group arrangement, contact the Society directly at the following address:

Watch Tower Bible and Tract Society
of Pennsylvania
Attention: Insurance Desk
25 Columbia Heights
Brooklyn, NY 11201

Telephone: (718) 625-3600

It is not practical to provide each congregation with its own copy of the insurance policy, because of the fact that a single insurance policy has been issued to cover a very large number of congregations which are insured as a group.

If you receive a request for written proof of insurance, want to change the amount of coverage you have, or need special or additional coverages, please contact the Society. (Do not contact the insurance agency, since the Society maintains these records.)

PROTECTING YOUR KINGDOM HALL

No insurance covers all damage or expenses. Insurance provides only a measure of the protection you need. The rest you must provide yourself, protecting your property as if you had no insurance at all. To do this, it is advisable for the elders to select a brother or brothers

who will be able to give permanent attention to the hall. The ones assigned should do the following:

Make a complete inspection of your Kingdom Hall on a regular basis.

Analyze your Kingdom Hall's security needs.

Make frequent preventive maintenance checks.

Verify that all contractors you hire have necessary Workers' Compensation and Public Liability insurance with limits of at least $300,000.

Remove cash from the Kingdom Hall after every meeting.

Check your roof for seasonal problems.

STARTING, INCREASING, OR CANCELING YOUR INSURANCE

Any congregation of Jehovah's Witnesses can obtain insurance through the Society, even if its Kingdom Hall is mortgaged apart from the Society. Contact the Society if you want to obtain insurance.

If you sell your Kingdom Hall, notify the Society immediately to cancel coverage.

To cancel your insurance, notify the Society. Your insurance will not be canceled simply because you have failed to pay your premium. Do not leave your insurance premium unpaid on the assumption that the Society will cancel your insurance if you do not pay.

If you want to increase the amount of coverage on your hall, write the Society, giving the new insured value of (1) your building and (2) its contents. (Do not obtain a formal appraisal.)

Every building you own or build (Kingdom Hall, tool shed, house, etc.) must be separately insured.

Rented buildings can be insured for liability coverage. Any property the congregation owns, such as chairs or sound equipment, can be insured for fire and theft. If your lease requires you to insure the building, please contact the Society.

REPORTING AND HANDLING A PROPERTY LOSS, INJURY, OR LAWSUIT

There are three categories of claims that your insurance covers. Depending on the category into which your claim falls, please report it as follows:

1. Lawsuits: All lawsuits involving congregation matters—including suits against individual elders—should be reported immediately to the Society. Report all *threatened* lawsuits, as well as suits which have formally begun. Make all reports directly to the Society at the address shown on the following page, Attention: Legal Department.

2. Property Losses: This means theft, fire, flood, etc., involving property either owned by the congregation or being used by it. Report property losses to *the Society* as follows:

Watch Tower Bible and Tract Society
of Pennsylvania
Attention: Insurance Desk
25 Columbia Heights
Brooklyn, NY 11201

Telephone: (718) 625-3600

3. Injuries/Liability Claims: This refers to any accidents involving the Kingdom Hall operations. Use the "Accident Notice" to report claims in this category to *both* the Society and the insurance agency, as follows:

SEND ORIGINAL TO:

Alan Ross Insurance Agency, Inc.
14600 Detroit Avenue, Suite 1100
Lakewood, OH 44107

Tel.: (800) 262-1121
(800) 327-7677(Inside Ohio)

SEND COPY TO:

Watch Tower Bible and Tract Society
of Pennsylvania
Attention: Insurance Desk
25 Columbia Heights
Brooklyn, NY 11201

Tel.: (718) 625-3600

ALWAYS REPORT A LAWSUIT, PROPERTY LOSS, OR INJURY, even if you are not sure your insurance will cover it. However, DO NOT REPORT a property loss of less than $250, since your insurance will not pay loss claims of less than that amount.

IF YOU ARE BEING *SUED*, OR IF AN ELDER OR OTHER MEMBER OF YOUR CONGREGATION IS BEING SUED BECAUSE OF A JUDICIAL ACTION OR BECAUSE OF THEIR ASSIGNED WORK ON BEHALF OF THE CONGREGATION, FOLLOW THE STEPS BELOW AS SOON AS YOU RECEIVE ANYTHING IN WRITING FROM THE PERSON WHO IS SUING OR HIS ATTORNEY.

1. Do not discuss the case with the person who is suing or threatening to sue, or with his attorney. Do not discuss the matter with the news media.

2. Telephone the Society's Legal Department to report the lawsuit at (718) 625-3600.

3. Follow the instructions of the Society's Legal Department. Immediately mail to them the original legal papers or letters which you have received from attorneys or from persons involved.

4. The Society will care for reporting the matter to the insurance company. Do not hire your own attorney. If you are uncertain what to do, contact the Society's Insurance Desk.

IF YOU HAVE A *PROPERTY LOSS*, FOLLOW THE STEPS BELOW AS SOON AS YOU DISCOVER IT.

1. Appoint an elder to handle the property loss. This will include obtaining written estimates and bills for all damaged or stolen items and reporting the loss to the Society.

2. Report theft, vandalism, or vehicle damage to the police.

3. IF the damage creates a hazard to property or safety, or is very severe, telephone the Society's Insurance Desk at (718) 625-3600.

4. Protect your property from further damage or break-ins. Make temporary repairs, but do not make permanent repairs until the adjuster sent by your insurers has inspected the damage or until you are advised to do so.

5. WITHIN 30 DAYS AFTER YOU DISCOVER THE DAMAGE OR LOSS, send to the Society (a) bills or written estimates you obtain for all repairs or replacements made necessary by the loss, and (b) the "Property Loss Report" from your congregation file. IF YOU CANNOT DO THIS WITHIN 30 DAYS, contact the Society.

6. Make an investigation of the loss. Determine what could reasonably be done to prevent similar losses in the future. Take appropriate steps and send the Society a brief report of the cause of the loss and what you are doing to protect the Kingdom Hall from future losses.

7. If your property loss is more than $5,000, expect a visit from the insurance company's adjuster. Be prompt in your dealings with him.

8. If you are not contacted by the insurance company's claims adjuster within 7 days, or if you are dissatisfied with the handling of your claim or the settlement offered, contact the Society.

IF YOU HAVE AN *INJURY* OR *LIABILITY CLAIM* RESULTING FROM AN ACCIDENT AT YOUR KINGDOM HALL, FOLLOW THE STEPS BELOW AS SOON AS YOU LEARN ABOUT IT.

1. Appoint an elder to handle the accident. This will include keeping in touch with the injured person, gathering information about the accident and making sure it is properly reported to the insurance agency, and making any necessary contacts with the Society and the insurance company's claims adjuster.

2. If someone is injured, ask the injured person and any witnesses to the accident to describe in writing what they observed.

3. Consider the following with the injured person: Inquire if he has any type of medical coverage including personal insurance, an employer insurance plan, or a governmental plan such as Medicare. If so, encourage him to present his medical expenses to that insurance program. Explain that the congregation and the Society could consider assisting with any costs not cared for by such insurance if there is a need. Avoid telling the injured party or anyone else that there is insurance coverage.

4. Fill out the "Accident Notice" form in your congregation file, and attach the reports made by the injured person and any witnesses to the accident. Then mail the form, reports, and any medical bills to the insurance agency. Also mail a copy of all documents, including a copy of the "Accident Notice," to the Society. Do not wait until all medical bills have been received or until the injured person has determined what his insurance will pay.

WTPA 00129

up of sewers, theft (including theft of cash), glass breakage, damage to/theft of items being transported, etc.

Limits and Deductibles: This part of your coverage pays the replacement cost of any covered property which is stolen or destroyed. It does not penalize you if your property is temporarily underinsured. It has a $250 deductible on most coverages.

2. Insurance Against Claims and Lawsuits (protection if someone claims that your negligence caused injury or damage to his property)—This coverage has three aspects: (1) it covers elders and ministerial servants who are sued because of performing assigned work on behalf of the congregation; (2) it covers the congregation itself for claims and lawsuits it receives; and (3) it could pay medical expenses, up to a limit, for persons injured on insured property or on property which the congregation is using temporarily. (This could pay medical expenses not paid by any other insurance or government programs.)

3. Insurance for Injury to Volunteer Workers—This pays for loss of income. Maximum: $300/week for two years. It also pays for loss of a hand, foot, eye, life, etc. (There is a seven-day waiting period before this coverage begins to pay, and the amount paid weekly is based on wages earned.)

EXCLUSIONS — These coverages will not pay for damage or injury resulting from nuclear reaction, or from war or revolution. Damage to property owned or used by the congregation is not covered if it results from earthquake (California only), landslide, mudslide, gradual deterioration, wear, or improper manufacture, faulty construction or maintenance. Injuries are not covered if they occur to someone injured while performing work for pay. Finally, your standard coverage does not include the following "Optional Coverages."

Optional Coverages (The following coverages are available on a temporary or permanent basis. Please contact the Society if you need any of these.)

1. Temporary or permanent insurance for automobiles, trucks, buses, or trailers (includes vehicles owned, rented, or used by the congregation)

2. Temporary liability insurance for property which the congregation will be using for a meeting or for temporary work (parking lots, school auditoriums, etc., used for special meetings, Memorial, etc., or locations where the congregation has been allowed to carry out demolition work to obtain the building materials)

3. Insurance for paid workers hired by the congregation (Workers' Compensation Insurance)

4. Surety bonds (performance bonds or other types of bonds required by your city)

5. Special insurance on boilers and air conditioning equipment (to cover boiler explosion, to cover electrical or mechanical failure of air conditioning equipment, or to meet state boiler inspection requirements)

ADMINISTRATION OF YOUR KINGDOM HALL

All elders in the congregation(s) meeting in a Kingdom Hall share responsibility for taking care of it. However, regular, consistent attention needs to be given to the hall's security, maintenance, and day-to-day operation.

IF ONLY ONE CONGREGATION MEETS IN A HALL: The elders should select a brother who shows initiative and is familiar with the operation of the hall. The brother selected may either be an elder or a ministerial servant. He should be given the authority to make routine repairs to the hall and maintain it in its present condition. (Changes in the hall or extensive repair or remodeling projects should always be approved by the body of elders and, if they involve a substantial expenditure of funds, approved by the congregation as a whole with a resolution.) The brother selected will normally be the one to make the annual inspection of the Kingdom Hall, either alone or with another person appointed by the elders. He should keep the body of elders informed of the help he needs, the work he is doing, and the problems encountered.

IF MORE THAN ONE CONGREGATION MEETS IN A KINGDOM HALL: A "Kingdom Hall Operating Committee" should be appointed to care for the day-to-day operation of the hall, as discussed in the paragraph above. It will care also for the annual inspection of the hall.

Each congregation should appoint one elder or ministerial servant to serve on the "Kingdom Hall Operating Committee." All servants in the hall, whether appointed to serve on the committee or not, should appreciate that all congregations have an EQUAL responsibility for the hall. The important thing is to get the work done and to cooperate in a spirit of unity and humility. Only brothers who appreciate these things should be appointed to serve on the "Kingdom Hall Operating Committee."

The committee should have a permanent chairman, an elder if possible. He should have good organizational ability, be able to take the initiative, and be quick to expedite matters. He should not be a procrastinator. The chairman should be alert to care for details, or to see that they are cared for.

One member of the committee should be designated to care for all day-to-day matters in connection with the operation of the hall. He should be given the authority to care for repairs, the replenishing of supplies, etc. that do not involve changing the Kingdom Hall or the expenditure of large sums of money. This brother should ably care for routine matters, so that the other members of the operating committee can concentrate on a few major matters when the committee meets.

At least once every year, the "Kingdom Hall Operating Committee" should meet to discuss the needs of the hall. (It is recommended that the operating committee meet immediately after it makes its annual inspection of the hall.) When this committee does meet, it will be able to discuss important matters rather than trivial ones. Matters considered may include: What are the major problems revealed by the last annual inspection of the hall? Is its roof sound? Is its heating system in good repair, safe, and as economical as possible? Is there any way to reduce the expense of heating or cooling the hall? Are the hall's stairs and exits free from anything that could cause an accident or fall? Is the hall's electrical system safe and well-maintained? Is lighting sufficient inside the hall, on exits and stairs, and outside? Have there been frequent incidents of vandalism to the hall, or to vehicles of brothers parked during meetings? Have any threats against the hall been received? (What cooperation from the police, neighbors, or from other members of the congregations in the hall can be obtained to deal with these incidents or threats? Are regular patrols necessary for a time?) This meeting should emphasize practical results. Assign someone to follow through on each of the decisions made. Recommendations from this meeting must be submitted to the bodies of elders of all congregations in the hall. The elders should then discuss and give prompt attention to these recommendations.

CORRESPONDENCE: The Society will send correspondence regarding the Society's group insurance arrangement for congregations to *only one* congregation in each Kingdom Hall (normally the one which holds the territory where the hall is located). However, that congregation should promptly copy all correspondence regarding the Kingdom Hall and distribute it to all other bodies of elders in the hall.

When sending forms or letters *to the Society* regarding the Society's group insurance arrangement for congregations, use the name of the one congregation which receives correspondence from the Society.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

PROPERTY LOSS REPORT

Attach written estimates/bills and, if applicable, copy of police report.
Send to: Watch Tower Bible and Tract Society of Pennsylvania, Attention: Insurance Desk,
25 Columbia Heights, Brooklyn, N.Y. 11201

CONGREGATION NO. _____

CONGREGATION _____
(Congregation) (City) (State)

LOCATION WHERE LOSS OCCURRED _____
(Include City and State.)

DATE OF LOSS (Give *at least* month and year.) _____

TYPE OF LOSS (Circle one.)

Burglary Fire Glass Vandalism Vehicle Windstorm/Hail Water Damage

Other (Give description.) _____

IF "FIRE" OR "WATER DAMAGE," GIVE CAUSE _____

PROPERTY DAMAGED
(List each item, *giving the cost to repair.* You MUST attach written estimates or bills for each.)

PROPERTY STOLEN, DESTROYED, OR DAMAGED BEYOND REPAIR
(List each item, *giving the cost to replace.* You MUST attach written estimates or bills for each.)

TOTAL AMOUNT OF CLAIM $ _____ (MUST equal total of attached estimates & bills.)

IF BURGLARY, VANDALISM, OR VEHICLE DAMAGE - YOU MUST REPORT TO POLICE.
(Attach copy of official police report. If report is unavailable, attach explanation.)

Is identity of one responsible for damage known to you or police? YES ☐ NO ☐ IF YES:

Name _____ Phone _____

Street address _____ City & State _____

NAME, ADDRESS, PHONE OF 2 PERSONS WHO MAY BE CONTACTED DURING BUSINESS HOURS:

1. _____ 2. _____

_____ _____

_____ _____

Phone _____ Phone _____

Date completed _____ Signature _____

T-65 11/85

WTPA 00134

EXHIBIT 12

PHONE (718) 625-3600

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

TF:TV

January 1, 1988

TO ALL BODIES OF ELDERS

Dear Brothers:

You will find enclosed a supply of green envelopes and green remittance slips (Form T-51) for your use in mailing remittances to the Pennsylvania Corporation. This slip is tailored to your congregation's specific needs. Your congregation name and full congregation number are preprinted on the slip, and you should promptly check the name and number to be certain they are correct. Please keep in mind that slips should never be given to any other congregation or the circuit, as the slips provided herein are for use by your congregation only.

The function of the Form T-51 is to enable congregations to remit Society Kingdom Hall Fund contributions, donations for Kingdom Service and other donations or remittances directly to the Pennsylvania Corporation. Please note that line 4 on this form should be used only when and as directed by the Society. It is not intended for use by the congregations for miscellaneous purposes of their own choosing.

Basically, there are three categories according to which slips will be supplied, as follows:

1. Congregations which do not have either a Kingdom Hall Insurance Account or a Kingdom Hall Loan Account in their own name.

2. Congregations which have a Kingdom Hall Insurance Account in their own name but no Kingdom Hall Loan Account in their own name.

3. Congregations which have both a Kingdom Hall Insurance Account and a Kingdom Hall Loan Account in their own name on which they are responsible to make payments to the Society.

If a congregation now in either of the first two categories changes its status subsequent to the date of this mailing and prior to the next regular mailing, so that it needs lines not now provided on its forms, the Society will provide appropriate slips for its new needs automatically, at which time the remaining slips for the old status should be destroyed to prevent their misuse for any other purpose.

However, if a congregation at some point in the future pays off its Kingdom Hall Loan Account and no longer needs to make monthly payments, it can continue to use the same slips but show nothing on the line for mortgage payments. The same would be true if a situation developed where the line for insurance payments was no longer needed.

WTPA 00135

A NONPROFIT CORPORATION

The enclosed supply will allow for a carbon copy of each monthly remittance to be retained for your congregation records and should last you until the next regularly scheduled mailing which will be on or about January 1, 1989. Your sending in only one form and check per month will greatly expedite the Society's handling of this necessary paperwork. There should be no need for you to request an additional supply as only two slips (an original and the congregation copy) and one envelope should be used per month. They should be used for no other purpose and should not be ordered on the Literature Order Blank form. If an emergency arises necessitating more slips or envelopes, they may be requested by a letter to the Office of the Secretary and Treasurer. These supplies are always mailed separately and at a different time of the year from the service forms usually received in August or September of each year. The congregation should not order these forms because they failed to receive them with those supplies.

For further information and details on the use of the Form T-51, please see the Society's letter addressed "TO ALL BODIES OF ELDERS" which was dated January 15, 1984.

The individual handling the congregation accounts should read this letter also and be familiar with these instructions.

May Jehovah's blessings and favor continue with the congregation as it unitedly serves Kingdom interests.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosures: Green envelopes
T-51 forms

PHONE (718) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

TF:TV

1 de enero de 1988

A TODOS LOS CUERPOS DE ANCIANOS

Estimados hermanos:

Encontrarán adjunto un surtido de sobres y hojas de remesa de color verde (Formulario T-51-S) para que los usen al enviar por correo las remesas a la Corporación de Pensilvania. Se ha hecho esta hoja de acuerdo con las necesidades específicas de su congregación. El nombre y el número completo de su congregación ya están impresos en la hoja, y deben cotejar el nombre y el número lo más pronto posible para asegurarse de que estos estén correctos. Sírvanse tener presente que no se deben dar estas hojas a ninguna otra congregación ni al circuito, ya que las hojas adjuntas son para el uso exclusivo de su congregación.

El propósito del formulario T-51-S es facilitar a las congregaciones el remitir sus contribuciones para el Fondo de la Sociedad para Salones del Reino, donaciones para el Servicio del Reino y otras donaciones o remesas que se envían directamente a la Corporación de Pensilvania. Sírvanse notar que la línea 4 de este formulario solo debe usarse cuando y según lo indique la Sociedad. El propósito de esta no es para que las congregaciones la usen para diversos propósitos que ellas mismas escojan.

Hay tres categorías básicas según las cuales se proveerán las hojas, y son las siguientes:

1. Las congregaciones que no tienen una Cuenta de Seguro para Salón del Reino ni tampoco una Cuenta de Préstamo para Salón del Reino a su nombre.

2. Las congregaciones que tienen una Cuenta de Seguro para Salón del Reino a su nombre, pero que no tienen una Cuenta de Préstamo para Salón del Reino a su nombre.

3. Las congregaciones que tienen ambas, una Cuenta de Seguro para Salón del Reino y una Cuenta de Préstamo para Salón del Reino a su nombre y por las cuales son responsables de hacer pagos a la Sociedad.

Si la situación de una congregación que ahora se encuentra en cualquiera de las primeras dos categorías cambia en fecha posterior al envío de esta correspondencia, o antes del próximo envío regular, y, por consiguiente, necesita líneas que ahora no se proveen en sus formularios, la Sociedad le proveerá automáticamente las hojas apropiadas para su nueva necesidad, en cuyo caso deben destruirse las hojas que queden y que se usaban para su situación anterior, para así evitar que se usen incorrectamente con algún otro fin.

WTPA 00137

A NONPROFIT CORPORATION

Sin embargo, si en algún tiempo en el futuro una congregación termina de pagar su Cuenta de Préstamo para Salón del Reino y ya no necesita hacer pagos mensuales, aún puede seguir usando las mismas hojas, pero no usará la línea para pagos hipotecarios. Lo mismo sería cierto si surgiera una situación en que la línea para los pagos del seguro ya no se necesitara.

El surtido que enviamos adjunto permitirá que su congregación retenga en los archivos una copia hecha con papel carbón de cada remesa mensual, y debe durarles hasta el próximo envío regular programado, que será alrededor del 1 de enero de 1989. El que ustedes envíen solamente un formulario y un cheque por mes facilitará grandemente a la Sociedad el manejo de este papeleo necesario. Puesto que solo deben usar dos hojas (una para el original y otra para la copia de la congregación) y un sobre por mes, no debe haber necesidad de que ustedes pidan un surtido adicional. Estas no deben usarse para ningún otro propósito ni deben pedirse mediante el formulario Hoja de Pedido de Literatura. Si surge una emergencia que haga que necesiten más hojas o sobres, pueden pedirlos por medio de una carta a la Oficina del Secretario y Tesorero. El suministro de estos se manda siempre por separado y a diferente tiempo que el surtido de formularios de servicio que se envía generalmente en agosto o septiembre cada año. La congregación no debe solicitar estos formularios debido a que no se recibieron con el envío de esos suministros.

Para más información y detalles en cuanto al uso del formulario T-51-S, sírvanse ver la carta de la Sociedad con fecha del 15 de enero de 1984 dirigida "A TODOS LOS CUERPOS DE ANCIANOS".

El hermano encargado de las cuentas de la congregación también debe leer esta carta y estar familiarizado con estas instrucciones.

Que las bendiciones y el favor de Jehová continúen con la congregación a medida que sirve unidamente a los intereses del Reino.

Sus hermanos y consiervos,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Adjuntos: Sobres de color verde
Formularios T-51-S

WTPA 00138

EXHIBIT 13

PHONE (718) 625-3600

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

T:TD

November 17, 1988

TO ALL CONGREGATIONS OF JEHOVAH'S WITNESSES
IN THE UNITED STATES

Dear Brothers:

From time to time the Society receives inquiries concerning the proper procedure for making gifts to the Society. The following questions have been asked:

(1) How can gifts be made to the Society while one is still living?

(2) Can the Society be named in one's Will so that the activities of the Society may benefit from one's estate in the event of death?

(3) Is it possible for the Society to be the beneficiary of one's life insurance policies?

(4) Can funds in savings banks or savings and loan associations become the Society's in the event of death, but at the same time interest be earned and/or such funds be used for personal needs while one is still living?

(5) Is it possible for money to be given to the Society by individuals, congregations or circuits under an arrangement which provides that in case of personal need such money may be returned to the donor?

Enclosures answering these questions and describing various arrangements that can be made are being sent along with this letter. The secretary will hold these enclosures in the congregation's permanent file, and they can be made available to any members of the congregation who request to read them.

If any prefer to get the information directly from the Society, such can write to Watch Tower Bible and Tract Society of Pennsylvania, Office of Secretary and Treasurer, 25 Columbia Heights, Brooklyn, New York 11201, and ask for the information on Conditional Donations, gifts and Wills.

Be assured of our warm Christian love.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Encs.

WTPA 00139

A NONPROFIT CORPORATION

EXHIBIT 14

PHONE (718) 625-3600

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

CABLE WATCHTOWER

TF:TV

January 1, 1989

TO ALL BODIES OF ELDERS

Dear Brothers:

You will find enclosed **ONE YEAR'S SUPPLY** of green envelopes and green remittance slips (Form T-51) for your use in mailing your remittances to the Pennsylvania Corporation. Please note:

1. Promptly verify congregation name and number for accuracy.
2. These slips are for **YOUR** congregation only. Do **NOT** give the slips to (a) Another congregation (b) The Circuit Overseer (c) The Circuit.
3. Line 4 should be used only when and as directed by the Society.

The slips are tailored to the congregation's needs as they existed at the time of the mailing. If those needs change during the year new slips will be provided by the Society for the balance of the year. Payments should be made on insurance or mortgage accounts ONLY if the accounts are in the name of YOUR congregation, and lines are provided for that purpose.

Contributions to the Society Kingdom Hall Fund should be included on these forms only (T-51) and NOT on your congregation's white monthly remittance form (S-20). Only the enclosed green forms (T-51) for the Pennsylvania Corporation should be used for this Fund and the other items listed on the form. Your check should be for the total of all items on the T-51 form and should not include items on the form S-20.

Your observing the following procedures will be most helpful to the Society in handling your remittances to the Pennsylvania Corporation:

1. Do not pin, clip or staple checks.
2. Do not fold check. Fold T-51 form ONCE only and place check inside.
3. Always use green envelopes for the T-51 forms.
4. Before mailing double check figures on check and T-51 form and make sure there are two signatures on check.

The next regularly scheduled mailing will be on or about January 1, 1990. (These forms are not mailed with the service forms usually received in September.) Your sending in only **ONE FORM** and **ONE CHECK** per month will greatly expedite the Society's handling of this necessary paperwork.

The individual handling the congregation accounts should read this letter and be familiar with these instructions.

May Jehovah's blessings and favor continue with the congregation as it unitedly serves Kingdom interests.

Your brothers and fellow servants,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosures: Green envelopes
T-51 forms

PHONE (718) 625-3600

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

CABLE WATCHTOWER

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.

TF = DSF

1 de enero de 1989

A TODOS LOS CUERPOS DE ANCIANOS

Estimados hermanos:

Adjunto encontrarán un surtido de sobres y hojas de remesa verdes (Formulario T-51-S) PARA TODO UN AÑO, para que los usen al enviar sus remesas a la Corporación de Pensilvania. Sírvanse tomar nota de los siguientes puntos:

1. Verifiquen inmediatamente el nombre y el número de la congregación para asegurarse de que está correcto.
2. Estas hojas son solamente para SU congregación. NO den estas hojas a) A otra congregación b) Al superintendente de circuito c) Ni al circuito.
3. La línea 4 debe usarse solo cuando y según lo indique la Sociedad.

Las hojas se preparan según las necesidades de la congregación al tiempo que estas se envían. Si esas necesidades cambian durante el año, la Sociedad proveerá hojas nuevas para el resto del año. Deben hacerse pagos para el seguro o la hipoteca SOLO si las cuentas están a nombre de SU congregación, y se suministran líneas con ese propósito.

Las contribuciones al Fondo de la Sociedad para Salones del Reino deben incluírse únicamente en estos formularios (T-51-S) y NO en los formularios blancos para la remesa de su congregación (S-20-S). Al enviar contribuciones para este Fondo y para otros propósitos alistados en el formulario se deben usar solamente los formularios verdes adjuntos (T-51-S) para la Corporación de Pensilvania. El cheque debe hacerse por el total de los artículos alistados en el formulario T-51-S y no debe incluir lo que aparece en el formulario S-20-S.

El que observen los siguientes procedimientos ayudará a la Sociedad al manejar las remesas que envíen a la Corporación de Pensilvania:

1. No prendan con alfiler, ni con sujetapapeles, ni le pongan grapas a los cheques.
2. No doblen el cheque. Doblen el formulario T-51-S solo UNA VEZ y coloquen el cheque dentro.
3. Siempre usen sobres verdes para los formularios T-51-S.
4. Antes de enviarlo por correo asegúrense de que las cifras en el cheque y el formulario T-51-S concuerdan y que el cheque tiene dos firmas.

El próximo envío será alrededor del 1 de enero de 1990. (Estos formularios no se envían junto con los formularios de servicio que por lo general se reciben en septiembre.) El que envíen solo UN FORMULARIO y UN CHEQUE al mes hará que la Sociedad procese con mayor rapidez los documentos necesarios.

El hermano a cargo de las cuentas de la congregación debe leer esta carta y familiarizarse con estas instrucciones.

Que la bendición y el favor de Jehová continúen con la congregación a medida que sigue sirviendo unidamente a favor de los intereses del Reino.

Sus hermanos y consiervos, WTPA 00141

Adjunto: Sobres verdes
Formularios T-51-S

Watch Tower B. & T. Society
OF PENNSYLVANIA

A NONPROFIT CORPORATION

EXHIBIT 15

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS
BROOKLYN, NEW YORK 11201, U.S.A.

TO DISTRICT AND CIRCUIT OVERSEERS

Dear Brothers:

Attached are updates of information the Society makes available to those who wish to assist financially. Please keep these in your files with the November 17, 1988 letter addressed "TO ALL CONGREGATIONS OF JEHOVAH'S WITNESSES IN THE UNITED STATES." Thank you.

Your brothers,

Watch Tower Bible and Tract Society of Pennsylvania

If writing regarding the above please return this slip.

NOTE: Although this was not dated, it is from 1991.

WTPA 00142

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.
PHONE (718) 625-3600
FAX (718) 797-3032

INFORMATION REGARDING CONTRIBUTIONS TO THE SOCIETY

[1] *INTRODUCTION.* We thank you for your inquiry concerning ne proper procedure for making contributions to the Society. Some nquiries we receive pertain to gifts made during the lives of the giv-rs and others pertain to gifts that are to be effective upon death. he purpose of this letter is to respond in general to all these inqui-ies so that potential donors have a better idea as to how they might ave whatever property they want to the Society to be used to ad-ance Kingdom interests.

[2] *NO SOLICITATION.* Please understand that this information as been prepared for the sole purpose of answering these inquiries nd is not in any way to be considered a solicitation.

[3] *PURPOSE OF CONTRIBUTION.* We understand that any ntribution to the Society that you might make is an expression of our love for Jehovah and that the purpose for any contribution is to sist the Society in preaching the "everlasting good news." (Revela-on 14:6) To be acceptable to the Society, any contribution would eed to be completely voluntary, and appropriate legal steps should e taken to ensure that your wishes are carried out. We hope that ou find the following information helpful.

GIFTS DURING LIFETIME

MONEY. Gifts of money may be made to the Society in any ts at any time. Such contributions should be made to WATCH OWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA nd mailed to the Society at the address given below or if you are cated in a country outside the United States, mailed to the branch fice for that country. Please accompany any gifts of money with a ief letter stating that such is sent to the Society as a gift.

[5] *OTHER PROPERTY.* Gifts other than money can also be given the Society during your lifetime, should you so desire. This could clude jewelry, stocks, bonds, mortgages receivable, notes receivable d other property from which the Society can eventually benefit. If u wish to give such to the Society, you should write the Society at e address given below, and inform it of your desires, and a descrip-n of the property to be given. The Society will write in reply, in-rming you if the gift can be accepted and giving information as to w to make the transfer to the Society.

[6] *REAL ESTATE.* In the event that you have some interest in real operty that you are thinking about giving to the Society, it is gener-y preferable that you sell the real estate and then use the proceeds you wish, including any contribution that you want to make to the ciety. If you want the Society to receive the real estate upon your ath, then a provision can be made to this effect in your will, as dicated below. If you decide that you would rather deed the real ate to the Society while you are alive, it is important that the Soci-y first be consulted before this step is taken. In some cases a trans-r of the real estate to the Society followed by an immediate sale on behalf of the Society would be a practical way to handle the matter. any event, if you wish to contribute to the Society any interests at you own in real estate while you are alive, you should first con-t the Society to determine how to proceed.

[7] *ACKNOWLEDGMENT.* All gifts are acknowledged by the Soci-y when they are received. Thus you will know that the Society has ceived your gift.

GIFTS WITH SPECIAL PROVISIONS

[8] *GIFTS OF MONEY WITH SPECIAL PROVISIONS.* It is possible for money to be given to the Society under a special arrangement which provides that in case of personal need, the money may be returned to you. This arrangement meets the needs and wishes of many persons. Upon request, the Society will be glad to send more information regarding this conditional donation arrangement. If you want such information, write to the Society at the address given below, and ask for information on the *conditional donation arrangement.*

[9] *SPECIAL PROVISIONS PERTAINING TO OTHER PROPERTY.* Other property also can be given to the Society during your lifetime under special provisions so that, if you have a financial need and make a written request, the property may then be returned by the Society in a reasonable period of time. Such special arrangements can be made in respect to stocks, bonds and other similar property. This arrangement places title to property in the Society during your lifetime. It ensures the Society's possession of the property in the event of your death. If this arrangement is desired, then write to the Society at the address given below, informing the Society of your contemplated gift and inquiring as to how to proceed.

[10] *EFFECT OF SPECIAL PROVISIONS.* The effect of making this arrangement through these special provisions is to allow property to be placed in the name of the Society, but you may have it returned to you during your lifetime. This ensures that upon your death the remaining property shall go to the Society, thereby avoiding the expense, time, and uncertainties that could otherwise be related to the probate of such property. Many of these special provisions also have certain tax benefits favoring the donor or creator of the provision.

INSURANCE

[11] Frequently persons desire the Society to be the beneficiary of their life insurance policies. If you desire to name the Society as beneficiary of insurance, you, as the insured, the person who owns the policy, are responsible to request your insurance agent or the insurance company to designate the new beneficiary as: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a nonprofit corporation with office and principal place of business at 25 Columbia Heights, Brooklyn, New York 11201. If the Society is named as beneficiary in an insurance policy, we would like to be informed. If you have no objection we would like to have the policy filed with us for safekeeping after the Society has been designated as beneficiary.

SAVINGS BANK ACCOUNTS IN TRUST FOR SOCIETY

[12] *PROCEDURES.* Frequently persons have funds that they would like the Society to have in the event of death, but want to retain ownership, interest, and possession for personal needs that might arise while they are alive. To accomplish this they have put these funds in savings banks or savings and loan associations in accounts in their names, but which accounts are "in trust for WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA." In some states and some banks this arrangement can be made. The state regulations and also the regulations of individual banks vary

from place to place. To set up such an arrangement for you, the depositor, must discuss it with an officer of your bank or savings and loan association and be assured that such an arrangement is possible. Your social security number ought to appear on the account, and all interest or dividends during your lifetime will be yours. You will have complete control and ownership of this account while you are living and upon your death, ownership will pass to the Society.

[13] *NOTIFICATION TO SOCIETY.* If such an arrangement is established, you should write a letter to the Society stating that the account has been set up and indicating the title of the account, the name and address of the bank or association, and the number of the account. This information will be held by the Society for any needed future reference. In addition to taking the above steps to open the account and inform the Society, request that the bank write a letter to the Society or to you which states that, in the event of your death, the funds will be paid to the Society. Include in your letter what steps need to be taken by the Society to receive payment of the funds. If the letter is sent to you, please forward a copy to the Society, and in this way you will be assured that your desires will be carried out and the Society will also be apprised of the situation.

WILLS

[14] *PREPARATION.* If you desire to prepare a will, you ought to see a qualified attorney in your state. Prior to seeing your attorney, you should determine how you wish your property to be distributed and who you want named as the executor and the substitute executor. Normally gifts made to the Society through a will are deductible for state and inheritance tax purposes, and normally there are not any limitations as to the amounts or property that can be given to the Society. However, it would be wise for you to discuss these matters with your attorney. You will need to be assured by your attorney that these things can be done under the laws of the state in which you live. You may want to discuss in advance with your attorney what his fees will be for preparing the will.

[15] *DESIGNATION OF THE SOCIETY.* The Society is properly named in a will as: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a nonprofit corporation with office and principal place of business at 25 Columbia Heights, Brooklyn, New York 11201. If your attorney has further questions he can contact the Legal Department of the Society.

[16] *EXECUTION AND NOTIFICATION TO SOCIETY.* Your attorney is responsible to guide you in the execution and witnessing of your will. This is a very important part of having your will prepared and completed. If there is any question of your ability to make a will and sign it, it may be appropriate to have your attorney obtain a signed statement from at least one doctor attesting to your competency so that the will may not be contested later. Your attorney could also prepare an affidavit reflecting the circumstances and your competency. Also, you may want to have a provision in your will that waives any bond that otherwise might be required of the executor. A bond is sometimes difficult to obtain and results in costs that might not be necessary. The original of your will should be kept in a safe place. A will that makes the Society a beneficiary ought to be filed with the Society at the address given below. If the original is kept by you, then it would be helpful to notify the Society and executor as to its location, sending a copy of the will to the Society. You may also want to file with the Society a list of names and addresses of your relatives and a general list of your property and its location. This will aid in saving time and expense which otherwise would have to be borne by your estate.

TRUSTS

[17] *INTRODUCTION.* Probate is the process which distributes the estate of a deceased person through a court. This is usually adequate for the majority of small and medium-sized estates. For larger estates the legal procedures and requirements involved in probate may involve substantial effort, time, and money. For such estates, an instrument exists that enables you to avoid probate upon your death. This instrument is called a *revocable living trust* and it has been in existence for many years. A *revocable living trust* can also help you avoid court involvement in appointing a guardian or conservator to legally act in your behalf in the event of your incapacity.

[18] *KINDS OF TRUSTS.* There are several kinds of trusts, and understanding them may help you to determine if a trust is appropriate for you. 1) A *trust* is a separate entity created, administered, and distributed according to the language within it. 2) An *irrevocable trust* is one that cannot be revoked or changed after it is created. 3) A *revocable trust* is one that normally can be revoked or changed at any time. 4) A *testamentary trust* is created after death by a written will that is probated. 5) A *charitable remainder trust* is a type of trust that may be considered when property having a substantial value is involved, since its main purpose is to reduce income and estate taxes. 6) A *revocable living trust* is normally created for you while you are alive and contains provisions that give you complete control and flexibility. If you become incapacitated, the living trust can contain provisions for your care, and if you die, it contains provisions for distribution of property within it. Court proceedings that otherwise might be necessary as a result of your incapacity and probate proceedings upon your death can each be avoided for property within the living trust. The living trust can thus be a substitute for a will, which is effective only through probate.

[19] *CREATION OF A TRUST.* In the event that you might want to consider having a trust prepared for you, it would be advisable to contact a qualified attorney to discuss the matter. Since it is a document that is created for you, its written provisions are very important. Make sure that the attorney preparing it for you is very familiar with your desires, family, and property so that he can prepare it properly. If it is a revocable living trust, you can be the trustee, the one that administers and manages the property within the trust in accordance with its provisions. You could amend it or revoke it at any time. It is essential that you name a successor trustee to take care of matters in the event you become incapacitated or die. The Society should *not* be named as a successor trustee since it does not have the legal ability to be a trustee. The trust controls only assets that are inside it so that, if you do establish a trust, transferring property into it is important. The trust can, by its terms, terminate upon your death or continue for a period of time for the benefit of whomever you designate. If you want to name the Society as a beneficiary of property in the trust after you die, you can include this in the trust. If you do so, we would appreciate receiving a copy of the trust. Please mail it to the Society at the address given below and we will retain it in our files. It would also be helpful to have information pertaining to property that is ultimately to be distributed to the Society as well as any amendments to the living trust that you may later make.

[20] *APPROPRIATENESS.* The appropriateness of a revocable living trust for you will depend upon a number of things, including the property that you own, your health and family situation, and the availability of a successor trustee. It is important that you discuss these things with an attorney who is experienced and well qualified in estate planning. The cost of establishing a revocable living trust will normally be substantially more than the preparation of a will but, because probate can be avoided, long-term costs and the expenditure of time can be substantially reduced. Though such a trust may have many pages, the concept, purpose, and administration should be simple.

CONCLUSION

[21] *ADDRESS OF THE SOCIETY.* We appreciate your inquiry and hope that this information has been helpful to you. If you have any further questions, you should write to the Society as follows: WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, Office of the Secretary and Treasurer, 25 Columbia Heights, Brooklyn, New York 11201.

The Society sends you its warm Christian love.

Watch Tower B. & T. Society
OF PENNSYLVANIA

NOTE: Although this was not dated, it is from 1991.

WTPA 00144

EXHIBIT 17

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.
PHONE (718) 625-3600

TF:TV December 15, 1991

TO ALL BODIES OF ELDERS

Dear Brothers:

All congregations having accounts for Kingdom Hall loans and/or property insurance will be receiving under separate cover ONE YEAR'S SUPPLY of green envelopes and green remittance slips (Form T-51) for their use in mailing remittances to the Pennsylvania Corporation. As heretofore, Line 4 should be used only when and as directed by the Society.

These slips should never be given to (a) another congregation, (b) the circuit overseer, or (c) the circuit.

The congregation's name and number should be carefully and legibly shown in the spaces provided for that purpose. Payments should be made on Kingdom Hall loan and/or property insurance accounts ONLY by the congregation in whose name the account exists and which has been provided Form T-51 slips for that purpose. Other congregations sharing the Kingdom Hall should not attempt to make their portions of the payments directly to the Society.

Any congregation having a Kingdom Hall loan and/or property insurance account should use the green T-51 Remittance Form to forward contributions to the Society's Worldwide Work and the Society Kingdom Hall Fund. However, please note: DO NOT use the T-51 Remittance Form to forward payments for any special handling expenses that may be charged to your congregation. All payments for special handling expenses are to be made using the white S(d)-20 Contribution Form only. (See paragraphs 17 and 24 of "Instructions for Congregation Accounting, Revised September 1, 1991."

Please note that congregations NOT having a Kingdom Hall loan or a property insurance account will NOT be receiving a supply of Form T-51 slips or green envelopes. Those congregations should carefully read and follow the "Instructions for Congregation Accounting, Revised September 1, 1991." However, should any such congregation acquire a Kingdom Hall loan and/or a property insurance account during the year, a supply of Form T-51 slips and green envelopes will be automatically supplied by the Society.

WTPA 00147

Your observing the following procedures will be most helpful in handling your remittances:

1. Do not pin, clip or staple checks.

2. Do not fold check. Fold T-51 form ONCE only (horizontally) and place check inside.

3. Always use green envelopes for the T-51 forms.

4. Before mailing, double-check figures on check and T-51 form, and make sure there are TWO signatures on check.

The next regularly scheduled mailing will be on or about January 1, 1993. (PLEASE NOTE CAREFULLY: These forms are not mailed with the service forms usually received in September.) Your sending in only ONE FORM and ONE CHECK per month will greatly expedite the Society's handling of this necessary paperwork.

The individual handling the congregation accounts should read this letter and be familiar with these instructions.

May Jehovah's blessings and favor continue with the congregation as it unitedly serves Kingdom interests.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00148

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.
PHONE (718) 625-3600

TF:DSO

15 de diciembre de 1991

A TODOS LOS CUERPOS DE ANCIANOS

Estimados hermanos:

Todas las congregaciones que tengan cuentas por préstamos para el Salón del Reino y/o seguro de propiedad recibirán por separado UN SURTIDO PARA UN AÑO de sobres y hojas de remesas verdes (Formulario T-51-S), para que los usen al enviar sus remesas a la Corporación de Pensilvania. Al igual que en el pasado, se debe usar la línea 4 solo cuando y según lo indique la Sociedad.

Estas hojas nunca deben darse a) a otra congregación, b) al superintendente de circuito, o c) al circuito.

El nombre y número de la congregación deben escribirse cuidadosa y legiblemente en los espacios provistos con ese propósito. Los pagos por préstamos para el Salón del Reino y/o cuentas de seguro de propiedad se deben hacer únicamente por la congregación en cuyo nombre está la cuenta y a la cual se le ha suministrado los formularios de remesa T-51-S para ese propósito. Las demás congregaciones que comparten el Salón del Reino no deben hacer sus pagos directamente a la Sociedad.

Cualquier congregación que haya tomado un préstamo para el Salón del Reino y/o una cuenta de seguro de propiedad puede usar el formulario de remesa verde T-51-S para enviar las contribuciones para la obra mundial de la Sociedad y al Fondo de la Sociedad para Salones del Reino. Sin embargo, sírvanse notar: NO usen el formulario de remesa T-51-S para remitir pagos por pedidos especiales que se carguen a su congregación. Todos los pagos por pedidos especiales deben remitirse únicamente mediante el formulario de contribución blanco S(d)-20-S. (Véanse los párrafos 17 y 24 de las "Instrucciones para contabilidad de congregación, revisadas el 1 de septiembre de 1991".)

Noten que las congregaciones que NO tengan un préstamo para el Salón del Reino o una cuenta de seguro de propiedad NO recibirán un surtido de formularios T-51-S o de sobres verdes. Esas congregaciones deben leer y seguir cuidadosamente las "Instrucciones para contabilidad de congregación, revisadas el 1 de septiembre de 1991". No obstante, si alguna de esas congregaciones obtiene un préstamo para el Salón del Reino y/o una cuenta de seguro de propiedad durante el año, la Sociedad automáticamente

proveerá un suministro de formularios T-51-S y sobres verdes.

El que observen los siguientes procedimientos será de gran ayuda en el manejo de las remesas que envíen.

1. No prendan con alfiler, ni con sujetapapeles, ni le pongan grapas a los cheques.

2. No doblen el cheque. Doblen el formulario T-51-S solo UNA VEZ (horizontalmente) y coloquen el cheque dentro.

3. Siempre usen sobres verdes para enviar los formularios T-51-S.

4. Antes de enviarlo por correo, verifiquen que las cifras del cheque y el formulario T-51-S concuerden, y asegúrense de que el cheque tiene DOS firmas.

El próximo envío será alrededor del 1 de enero de 1993. (**SÍRVANSE NOTAR CUIDADOSAMENTE:** Estos formularios no se envían junto con los formularios de servicio que por lo general se reciben en septiembre.) El que envíen solo UN FORMULARIO y UN CHEQUE al mes hará que la Sociedad procese con mayor rapidez los documentos necesarios.

El hermano a cargo de las cuentas de la congregación debe leer esta carta y familiarizarse con estas instrucciones.

Que la bendición y el favor de Jehová continúen con la congregación a medida que sirven unidamente a favor de los intereses del Reino.

Sus hermanos,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00150

EXHIBIT 18

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201, U.S.A.
PHONE (718) 625-3600

TA:TK April 1, 1993

TO: ALL CONGREGATIONS PARTICIPATING IN THE KINGDOM HALL ASSISTANCE ARRANGEMENT

Dear Brothers:

RE: LOSS CONTROL / ACCIDENT PREVENTION

The spring season is here, and for most congregations, this means a resumption in the use of lawnmowers as a part of the maintenance of the Kingdom Hall. In the past, there have been some injuries to brothers and sisters resulting from the use of lawnmowers. With safety in mind, it would be beneficial to consider the following precautions:

1. Children should not be allowed to operate the lawnmower, or to be in the immediate area where the lawnmower is being operated, as they could be injured by flying debris.

2. Before mowing, clear the lawn of all rocks, sticks, and other objects that the mower could pick up and fling.

3. Wear sturdy, well-fitting shoes with non-slip soles to protect your feet.

4. After rain or a heavy dew, wait for the grass to dry before mowing. Wet grass may clog the chute or cause you to slip.

5. If the chute clogs, shut off the motor and wait for the blade to stop turning, then clear it with a stick. NEVER CLEAR A CHUTE WITH YOUR HANDS.

6. On hills, mow across the face of the slope with a walk-behind mower so your feet won't slip under the blades. With a riding mower, mow up and down the slope so that you are less likely to tip over.

7. It is preferable that gasoline not be stored at the Kingdom Hall. However, if it cannot be brought to the Kingdom Hall for each use, then it should only be stored in approved safety cans and away from combustibles and ignition sources.

We trust you will find these comments helpful. We take this opportunity to send our greetings and warm Christian love.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA
A NONPROFIT CORPORATION

WTPA 00151

EXHIBIT 21

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

KEY FACTS ABOUT THE KINGDOM HALL ASSISTANCE ARRANGEMENT
October 1, 1995

(Please place in the permanent file for ready access)

How does the KHAA work?

The Kingdom Hall Assistance Arrangement (KHAA) is an arrangement whereby designated contributed funds pay certain claims for property damage and general liability. ***This is not a commercial insurance arrangement.*** The Society handles the administration of the contributions and pays all claims out of these funds.

Each year each branch receives a report indicating a suggested contribution for the congregations under the oversight of the branch. A wide variety of factors are considered. In many cases, some areas of the world may be supporting the financial needs of their brothers in other areas of the world. This is a loving provision to help our brothers.

The contributions are used to establish a fund adequate to pay claims related to property losses and accidents. In addition, the fund purchases insurance protection so that larger catastrophes do not deplete the fund. The reason we can operate such a fund is that we have a lower risk of loss than most other organizations.

When do we make our contribution to the arrangement?

Each year you will receive a letter suggesting a contribution amount based upon the needs of all those supported by the arrangement. It would be appreciated if you would make the payment as soon as possible. At the same time, it would be important to perform a safety review and complete the *Loss Control Checklist* and include it in the year end audit file.

Why is loss control so important?

Loss control consists of preventing losses and minimizing losses that may occur. The cost of the KHAA is a direct result of the loss experience of all those that the arrangement supports. Therefore, it is in everyone's interest to minimize the losses of the fund.

Loss Prevention Each year, when you receive your suggested contribution letter, please complete the *Loss Control Checklist*. It should be helpful in identifying potential areas of property damage or accidents that could result in losses. Please take immediate action in correcting any noted problems and document the action taken. Please include the report in the annual audit file of the congregation that holds title to the property.

Loss Management Loss management means minimizing the amount of payments related to the loss while meeting our responsibilities and obligations.

In the case of property losses, quick action can go far in preventing further losses. For example, if a storm causes damage that results in a leak, fixing the leak prevents more damage and a larger claim. The use of Regional Building Committees and volunteer labor can save valuable contributed funds. Careful shopping and purchasing of high quality materials will minimize losses. If practical, eliminating the identified causes of the property damage will reduce future losses from the same cause.

T-44 10/95 Printed in U.S.A.

In the case of bodily injury, fail[redacted] care for the needs of the injured n[redacted]crease the amounts to be paid in order to care for injury. Failure to exercise loving concern could create feelings of resentment that could lead some to pursue litigation.

Please review and follow the direction provided under the heading "Accidents Resulting in Bodily Injury." And, of course, there is no substitute for displaying the valuable Scriptural qualities of love, concern, mercy, and wisdom at all times.

What do we do if we have property damage or an accident?

If you have property damage or an accident, appoint an experienced elder to review these instructions and follow the instructions carefully. Please review and carefully follow the instructions found in the section entitled "How Do We Report a Claim?"

What is covered by the KHAA?

Property Damage includes loss of property value (owned by ourselves) caused by the following: fire, explosion, windstorm, hail, damage from aircraft or vehicles, weight of ice or snow, flood, earthquake, water damage, riot or civil commotion, vandalism, theft, or sprinkler damage. The arrangement covers property damage to rental equipment up to a limit of $10,000 of damage. Specific exclusions include faulty construction or maintenance, normal wear and tear, gradual deterioration, or the personal property of volunteers.

General Liability includes property damage and bodily injury to others for which we may bear some responsibility.

A number of claims paid from the KHAA are related to injuries to our brothers and sisters for which we bear no apparent responsibility. For example, some, while at the Kingdom Hall, may lose their balance and fall. They then ask the Society to pay for their medical bills and disability because they do not have the financial resources to pay for these bills.

We offer ourselves willingly in many facets of Kingdom service. We willingly and eagerly choose to engage in such activities. While offering ourselves willingly, we care for our personal responsibilities. As a matter of responsibility, each family head should consider providing for health care needs, automobile damage, or disability that may result from an incident while serving willingly. If the Society has no responsibility for an accident, it would appear to be inappropriate to expect the Society to assume the responsibility for such matters which are the responsibility of the family head. This does not mean that ones should curtail their willing service. It does mean that we bear and should accept personal responsibility for our actions.

If in doubt about what is covered, please write the branch describing the details of the case to request a determination for support that may be available under the arrangement.

How do we participate in the arrangement?

Construction Prior to beginning construction, you should complete a *Kingdom Hall Under Construction Form*. Use the estimated building cost for all items except donated labor. If the building project should be canceled, please inform the branch in writing.

Purchased Buildings and Vacant Lots For newly purchased buildings, you should complete a *Property Description Form*. Use the estimated cost to replace the building for all items except donated labor. The Regional Building Committee may be able to provide you with such estimates. Vacant lots are automatically covered by your existing account.

Existing Kingdom Halls For existing Kingdom Halls, you should complete a *Property Description Form* if requested by your local branch. Use the estimated cost to replace the building for all items except donated labor. The Regional Building Committee may be able to provide you with such estimates.

Rented Facilities For rented [illegible]ties, coverage for property damage [illegible]ontents and improvements and general liability is available. Please request from the branch in writing, if possible, the requirements for a certificate of insurance for temporary rental arrangements.

Optional Requirements For special situations requiring proof of insurance, performance bonds, or surety bonds, please request from the branch in writing the exact need and the requirements.

Canceling Coverage If you should wish to cancel your participation in this arrangement, please notify the branch in writing, providing the termination date. Your participation will not be automatically canceled due to failure to make the suggested contribution so please notify the Society of any cancellation, in writing.

Specific Inclusions and Exclusions – Property Damage and General Liability

Inclusions:

Property Damage caused by fire, explosion, windstorm, hail, damage by aircraft, damage by vehicles, weight of snow or ice damage, flood, earthquake, water damage, riot, civil commotion, vandalism, theft, sprinkler leakage, and terrorism or warfare. If you have a loss for some other reason, please write us with the details.

Medical Payments up to $5,000 per occurrence regardless of cause, in the event the individual does not have medical insurance or the insurance does not cover the full amount of the bill.

Claims against elders and ministerial servants performing assigned work on behalf of the congregation.

Optional Coverages – A specific certificate of insurance must be obtained for these items:

General Liability coverage for rented facilities

Performance, surety, and other required bonds

Rental equipment damage, up to $10,000 limitation

Exclusions:

Vehicles for road use

Airplanes

Boats

Personal property of volunteers

Damage to automobiles of volunteers

Damage caused by the operation of vehicles owned by volunteers

Gradual deterioration and wear

Improper manufacture, construction, installation, operation, or maintenance

Disability or dismemberment of a volunteer when we do not bear some responsibility

For other special needs, please contact your local branch.

WTPA 00156

How Do We Report a Claim.

Incidents Involving Property Damage

1. Protect the property from further damage, loss, or break-in.

2. Appoint an experienced elder to handle the property damage. This will include completing the *Property Loss Report*, obtaining written estimates and bills, and reporting the loss to the Society.

3. In the event of a major loss ($5,000 or more), telephone the branch to obtain their recommendations as to loss management activity. You may wish to telephone the local Regional Building Committee to obtain their recommendations, including coordinating skilled volunteers to provide assistance and identifying cost-effective sources of materials. Please use volunteer labor where possible to minimize losses.

4. Immediately report acts of theft and vandalism to the police. Please include a copy of the Police Report with the *Property Loss Report*.

5. Within 30 days after you discover the damage or loss, send to the Society (1) bills or written estimates you obtained for all repairs or replacements made necessary by the loss and (2) the completed *Property Loss Report*. If you cannot do this within 30 days, contact the Society. (Loss estimates should not include labor costs if you are planning to use volunteers to do the work.)

Accidents Resulting in Bodily Injury

1. **Please ensure that the injured party receives appropriate medical attention as soon as possible.** Keep in close touch with the injured and their family, particularly if the injured is one of Jehovah's Witnesses. If the injured party is not one of Jehovah's Witnesses, attempt to obtain his or her name and telephone number for future reference.

2. **Show genuine Christian love and concern.**

3. ***Do not make any statements of responsibility or liability*** about the cause of the accident to the injured or any other party, including governmental officials.

4. **Appoint an experienced, mature elder to handle the accident.** This will include ensuring that all the steps outlined in this arrangement are followed. The elder should review this information and complete an *Accident Notice Report* as he handles the incident.

5. **Call the branch and notify them of the accident if:**

   The injured requires medical attention in a hospital setting.

   Any threat or notice of legal action is suggested.

Please have the following information when calling the branch: the date of the accident, the name of the injured, the name of the congregation, the name of the coordinating elder, his telephone number, and his address. The branch personnel will provide you with reminders concerning these procedures and will be available to provide answers concerning any questions you may have.

6. As soon as possible, complete the *Accident Notice Report*. If the injured is not available or is unwilling to answer any questions related to the accident, then so indicate and complete the form with the best available information. The following suggestions may help you complete the *Accident Notice Report*.

Section 1 If the [redacted]red is unavailable to answer any q[redacted]ons, please complete the section to the best of your knowledge and indicate that the injured was unavailable.

Section 2 Please describe the location of the activity with a brief description of any activity occurring at the accident location, such as congregation meeting or assembly day.

Section 3 Ask the injured party what happened. Have two brothers present while documenting the comments, questions, and answers. The following questions should be asked **(please do not ask any other questions, specifically do not discuss who or what may have been at fault, the cause of the accident, or any reference to any legal action):**

What were you doing when the accident occurred?

How did the accident happen?

What injury did you suffer?

Inquire if the injured has any type of medical coverage, including Medicare or Medicaid. If so, encourage the injured to present his or her medical expenses to that insurance program.

Section 4 Perform an investigation of the alleged cause of the accident. Determine what, if anything, could reasonably be done to prevent similar accidents in the future. Take appropriate steps and include a description of the corrective action taken on the *Accident Notice Report*.

Section 5 Ask any witnesses to the accident to describe what happened. Have two brothers present to document the comments, questions, and answers. No one is obligated to answer these questions. The following questions should be asked **(please do not ask any other questions, specifically do not discuss who or what may have been at fault, the cause of the accident, or any reference to any legal action):**

What were you doing when the accident occurred?

Did you see the accident?

According to your understanding, what happened?

7. Please complete the *Accident Notice Report,* make a copy for the congregation files, and send the original to the Society. When you receive any communication, correspondence, or bills related to the accident, make a copy for the congregation files and forward to the branch's insurance desk. This would include any threats or notices of litigation.

8. The Society or their legal representative may be contacting the coordinating elder. Please keep in contact with the injured person if possible and notify the Society of any significant changes in the injured's status. Please do not discuss the incident with anyone without the approval of branch personnel assigned to handle such matters.

9. If any correspondence or inquiry comes from an attorney or if there is any mention of litigation or a lawsuit, please contact the branch immediately for further direction. Do not provide any information to such a source.

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00158

Name of Congregation: _____ Congregation No.: _____

Street Address: _____ City: _____

State: _____ Zip Code: _____

FIRE PROTECTION	YES	NO	N/A*
Are all fire extinguishers:			
a. Serviced annually?	☐	☐	☐
b. Tagged with date of last service?	☐	☐	☐
Date last serviced _____			
c. Easily accessible?	☐	☐	☐
d. Hung within 75' of any part of each floor depending on size, in a conspicuous place?	☐	☐	☐
e. Not subject to freezing if water or soda acid?	☐	☐	☐
Are periodic tests and inspections made of the following to insure proper operation:			
a. Fire hoses	☐	☐	☐
Date tested _____			
b. Automatic sprinkler system	☐	☐	☐
Date tested _____			
c. Fire alarm system	☐	☐	☐
Date tested _____			
STAIRS AND DOORS			
a. Stairs covered with anti-slip surfaces?	☐	☐	☐
b. All handrails securely fastened?	☐	☐	☐
c. Hallway doors kept closed when not in use?	☐	☐	☐
d. Full length clean glass doors and windows marked to avoid someone's walking into them?	☐	☐	☐
HOUSEKEEPING			
Are waste receptacles provided and are they emptied regularly?	☐	☐	☐
Are storage and supply rooms neat and orderly?	☐	☐	☐
Are flammable paints and liquids:			
a. Kept to an absolute minimum?	☐	☐	☐
b. Kept in sealed metal containers?	☐	☐	☐
c. Stored in approved flammable liquids storage cabinets?	☐	☐	☐
Are only non-flammable cleaning materials used?	☐	☐	☐
Are all closets free of oily mops and flammable materials?	☐	☐	☐

*N/A-Does not apply

HOUSEKEEPING (contd)	YES	NO	N/A*
Is the building locked when there is no one on the premises?	☐	☐	☐
Is attic free of flammable materials?	☐	☐	☐
EXITS AND ACCESS			
Are all exits visible and unobstructed?	☐	☐	☐
Are all exits marked with a readily visible sign that is properly illuminated?	☐	☐	☐
Are all exit doors:			
a. Arranged to open outwards?	☐	☐	☐
b. Easily operated?	☐	☐	☐
c. Provided with anti-panic hardware in all public rooms and areas?	☐	☐	☐
Are all fire escapes in good condition?	☐	☐	☐
Are there any holes or cracks in sidewalks or parking lots?	☐	☐	☐
Will they be filled?	☐	☐	☐
SIDEWALKS AND PARKING AREAS			
Are all areas free of conditions which will cause slipping and falling?	☐	☐	☐
Is there adequate exterior lighting at night?	☐	☐	☐
Are all steps and ramps provided with securely fastened handrails?	☐	☐	☐
LIGHT, POWER, HEAT, AND APPLIANCES			
Is all heating equipment (incl. flues and pipes):			
a. Properly insulated from combustible materials?	☐	☐	☐
b. Cleaned and serviced annually by a competent heating contractor?	☐	☐	☐
Are electrical, heating, and A/C rooms:			
a. Restricted to authorized personnel only?	☐	☐	☐
b. Free of combustible storage?	☐	☐	☐
Are electrical extension and appliance cords in good condition?	☐	☐	☐
Has the electrical system been checked and serviced by a competent electrician within the past five years?	☐	☐	☐
Date of last inspection _____			

LIGHT, POWER, HEAT, AND APPLIANCES (contd)	YES	NO	N/A*
Is air-conditioning equipment cleaned and serviced by a competent serviceman?	☐	☐	☐
Date serviced _____			
Are motors kept clean and adequately ventilated to reduce overheating?	☐	☐	☐
Are all electrical appliances properly grounded?	☐	☐	☐
Are furnace rooms and boiler rooms free of flammable material?	☐	☐	☐
Are furnace rooms and boiler rooms free of lawn mowers and gasoline cans?	☐	☐	☐
MONEY			
Are money collections deposited the same day in a night bank depository?	☐	☐	☐
Are residents in the immediate area and local police asked to keep an eye out for suspicious activities?	☐	☐	☐
KITCHEN			
Are hood, ducts, ovens, ranges, and filters cleaned on a regular basis?	☐	☐	☐
Is the automatic fire extinguishing system inspected and maintained by contract?	☐	☐	☐
FIRST AID			
Is only the minimal emergency first aid and treatment administered?	☐	☐	☐
No medications kept at this location?	☐	☐	☐

Signature and phone numbers of operating committee

1. _____
2. _____
3. _____

Date completed: _____

(Please complete and return to the Society)

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T-45 12/95

WTPA 00159

ACCIDENT NOTICE REPORT

1. INJURED PERSON _____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

Sex: ____ Age: ____ Occupation: _____ Employer: _____

☐ Baptized ☐ Elder ☐ Ministerial Servant ☐ Pioneer ☐ Other _____

Health Insurance? ☐ Yes ☐ No If Yes, name of Insurance Company: _____

2. LOCATION OF ACCIDENT _____ (Facility Name)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

Type of Facility
☐ Kingdom Hall
☐ Assembly Hall
☐ Rented Facility

Accident Date ____/____/____ Time _____ Activity _____

_____ (Contact Name) _____ (Phone Number)

3. THE INJURY

Description of: _____

How treated: _____

Did a doctor treat? ☐ Yes ☐ No If Yes, please fill in the following:

_____ (Doctor's Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

Where? ☐ Office ☐ Hospital outpatient ☐ Hospital inpatient

If hospital, how taken to hospital? _____ Expected recovery duration: _____

Was any citation issued for the violation of any ordinance or statute? ☐ Yes ☐ No If Yes, please attach a copy of the citation. Was an investigation conducted by any third party? ☐ Yes ☐ No If so, please state the name, address, telephone number, and the name of the person conducting the investigation: _____

_____

Injured's account of the incident: _____

_____

4. THE ALLEGED CAUSE OF INJURY

Please indicate if any warning or counsel was given concerning safety measures before the accident occurred: _____

Please describe the apparent cause or condition that resulted in the injury: _____

_____

_____

T-5 12/95 Printed in U.S.A.

WTPA 00160

Please attach a diagram on unruled [illegible] size paper of the location describing whe[illegible] injury occurred.

Please attach photographs of the location of the accident, including the arrangement of items at the time of the accident. Please indicate if the photographs are of the scene shortly after the accident or if some time has passed (If so, how long? _____) and if the scene was arranged to correspond to actual conditions at the time of the accident.

If the accident involved a slip or a fall, please photograph the injured's shoes, including the bottom of the soles, if possible. Please save the item that caused the slip and fall, if possible.

Were corrective actions taken to correct any potential alleged causes of the injury? ☐ Yes ☐ No If Yes, please describe: _____

5. EYEWITNESSES

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

6. OTHER INDIVIDUALS WHO MAY HAVE HELPFUL INFORMATION

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

Comments: _____

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

Comments: _____

7. COORDINATING ELDER

_____ (Name) _____ (Phone Number)

_____ (Street Address) _____ (City) _____ (State) _____ (Zip)

_____ (Cong. Name) _____ (City) _____ (State) _____ (Cong. No.)

_____ (Signature of Presiding Overseer) _____ (Date Completed)

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

DATOS IMPORTANTES SOBRE EL PROGRAMA DE ASISTENCIA PARA SALONES DEL REINO
1 de octubre de 1995

(Coloquen este documento donde esté a mano en el archivo permanente.)

¿Cómo funciona el PASR?

El Programa de Asistencia para Salones del Reino (PASR) es un acuerdo mediante el cual se designan unas contribuciones para pagar ciertas reclamaciones por daños materiales y responsabilidad general. ***No es un programa asegurador comercial.*** La Sociedad administra las contribuciones y paga todas las reclamaciones con dichos fondos.

Cada sucursal recibe anualmente un informe que indica una contribución sugerida para las congregaciones bajo su superintendencia. Se toman en consideración una gran variedad de factores. En muchos casos puede que los publicadores de ciertas zonas del mundo apoyen económicamente a sus hermanos de otras zonas. Esta es una provisión amorosa para ayudar a nuestros hermanos.

Las contribuciones son la base de un fondo adecuado para saldar reclamaciones relativas a pérdidas materiales y accidentes. Además, con dichas contribuciones se adquiere la protección de un seguro para que las catástrofes de mayor envergadura no agoten el fondo. Podemos administrar un fondo de esta índole porque constituimos un riesgo de siniestro menor que la mayoría de las demás organizaciones.

¿Cuándo se aporta al programa?

Recibirán anualmente una carta en la cual se les sugerirá cierta contribución conforme a las necesidades de todos los participantes del programa. Les agradeceríamos que nos enviaran su aporte lo antes posible. Al mismo tiempo, sería esencial que ejecutaran una revisión de seguridad, llenaran el formulario *Loss Control Checklist* (Lista de control de siniestros) y lo archivaran.

¿Por qué es tan importante el control de siniestros?

El control de siniestros consiste en prevenirlos y reducir las pérdidas que pudiera haber. El costo del PASR es consecuencia directa del índice de siniestros de todos los participantes del programa. Por eso a todos les conviene reducir al mínimo los siniestros que afectan el fondo.

Prevención de siniestros: Cada año, cuando reciban la carta que les indica la contribución sugerida, llenen el *Loss Control Checklist*. Este debe ser útil para determinar las fuentes potenciales de daños materiales o accidentes que podrían ocasionar pérdidas. Actúen de inmediato para resolver cualquier situación peligrosa que noten, y documenten las medidas que tomen para solucionarla. Coloquen el formulario susodicho en los archivos de la congregación a cuyo nombre está el título de propiedad del salón.

Gestión de siniestros: Esto implica reducir las compensaciones de siniestros mientras cumplimos con nuestras responsabilidades y obligaciones.

En el caso de pérdidas materiales, actuar con prontitud puede contribuir mucho a prevenir más pérdidas. Por ejemplo, si una tormenta ocasiona ciertos daños que dan origen a una gotera, el componerla previene más daños y una reclamación mayor. Aprovechar los servicios que prestan los Comités Regionales de Construcción y trabajadores voluntarios puede ahorrar valiosos fondos contribuidos. La búsqueda y compra prudente de materiales de alta calidad disminuirá los siniestros. De ser práctico, la eliminación de determinadas causas de daños materiales reducirá futuras pérdidas ocasionadas por la misma causa.

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En el caso de daños corporales atender a las necesidades del lesionado puede aumentar las sumas que se han de desembolsar para curar la lesión. La falta de interés amoroso podría causar resentimiento, que a su vez podría llevar a algunos a entablar un litigio.

Examinen y sigan las instrucciones que se dan bajo la sección "Accidentes que ocasionen daños corporales". Desde luego, no hay nada como manifestar las valiosas cualidades piadosas de amor, interés, misericordia y sabiduría en todo momento.

¿Qué debemos hacer si sufrimos daños materiales u ocurre un accidente?

Si sufren daños materiales u ocurre un accidente, designen a un anciano con experiencia para que examine estas instrucciones y las siga con detenimiento. Examinen y sigan detenidamente las instrucciones que se dan en la sección "¿Cómo debemos presentar una reclamación?".

¿Qué cubre el PASR?

Daños materiales: Incluyen la pérdida en valor de bienes (que pertenecen a la congregación) ocasionada por incendio, explosión, tempestad de viento, granizo, cualquier daño causado por un avión u otro vehículo, peso del hielo o la nieve, inundación, terremoto, daños ocasionados por el agua, disturbios o conmoción civil, vandalismo, hurto, o daños causados por el sistema de rociadores. El programa cubre los daños materiales ocasionados a algún equipo de alquiler hasta un límite de 10.000 dólares (E.U.A.). Entre las exclusiones específicas están la construcción o el mantenimiento indebidos, el desgaste y depreciación resultante del uso normal, el deterioro progresivo y los bienes de los voluntarios.

Responsabilidad general: Incluye los daños materiales y corporales ocasionados a otros y por los cuales tal vez tengamos cierto grado de responsabilidad.

Algunas de las reclamaciones que el PASR ha saldado han tenido que ver con hermanos y hermanas nuestros que se han lesionado y de lo cual al parecer no somos responsables. Por ejemplo, puede que algunos pierdan el equilibrio y se caigan en el Salón del Reino. Luego piden a la Sociedad que pague sus facturas por atención médica y compense su incapacidad porque no tienen los recursos económicos para saldar tales facturas.

Nos ofrecemos de buena gana en muchas facetas del servicio al Reino. Elegimos participar en esas actividades gustosamente y con entusiasmo. Aunque nos ofrecemos de buena gana, nos ocupamos de nuestras responsabilidades personales. En lo que toca a responsabilidad, cada cabeza de familia debe pensar en adoptar las medidas necesarias para costear la atención médica requerida, los daños del automóvil o la incapacidad que pueden resultar de un accidente ocurrido mientras su familia sirve de buena gana. Si la Sociedad no es responsable de un accidente, parece impropio esperar que ella asuma la responsabilidad de tales asuntos en vista de que le tocan al cabeza de familia. Esto no significa que debemos restringir el servicio que rendimos de buena gana. Más bien, significa que somos personalmente responsables de nuestras acciones y debemos asumir dicha responsabilidad.

Si tienen dudas respecto a lo que el programa cubre, escriban a la sucursal y describan las circunstancias del caso en cuestión al solicitar que se determine si el lesionado tiene derecho a recibir ayuda conforme al programa.

¿Cómo participamos en el programa?

Construcción: Antes de empezar a construir, deben llenar un formulario *Kingdom Hall Under Construction* (Salón del Reino en construcción). Utilicen el costo estimado de todos los materiales de construcción, pero no incluyan la mano de obra prestada desinteresadamente. Si se cancelara el proyecto, infórmenlo por escrito a la sucursal.

Edificios comprados y terrenos baldíos: En el caso de edificios recién comprados, deben llenar un *Property Description Form* (Formulario sobre la descripción de la propiedad). Usen el costo estimado de reemplazar todos los elementos constitutivos del edificio, pero no incluyan la mano de obra prestada desinteresadamente. El Comité Regional de Construcción de su zona quizás pueda proporcionarles tales estimaciones. Su cuenta actual cubre automáticamente los terrenos baldíos.

WTPA 00163

Salones del Reino existentes. En el caso de Salones del Reino existe[illegible], deben llenar un ***Property Description Form*** si la sucursal se los solicita. Utilicen el costo estimado de reemplazar todos los elementos constitutivos del edificio, pero no incluyan la mano de obra prestada desinteresadamente. El Comité Regional de Construcción tal vez pueda proporcionarles tales estimaciones.

Instalaciones de alquiler: En el caso de instalaciones de alquiler, hay disponible cobertura de daños materiales ocasionados al contenido y las mejoras, y de responsabilidad general. Si se requiere prueba de un seguro para usar una instalación de este tipo, solicítenla por escrito a la sucursal. Cuando soliciten dicha prueba, no olviden indicar todas las condiciones necesarias para el certificado de seguro.

Situaciones especiales: Si en alguna situación especial se requiere que presenten prueba de un seguro, fianzas de cumplimiento o fianzas de caución, pidan por escrito a la sucursal lo que necesiten. Cuando soliciten los documentos requeridos, no olviden indicar todas las condiciones necesarias para el certificado o la obligación.

Cancelación de la cobertura: Cuando quieran cancelar su participación en este programa, informen su deseo por escrito a la sucursal y den la fecha de extinción. Su participación no se cancelará automáticamente por no haber enviado la contribución sugerida, así que informen su cancelación por escrito a la Sociedad.

Inclusiones y exclusiones específicas en cuanto a daños materiales y responsabilidad general

Inclusiones:

Daños materiales ocasionados por incendio, explosión, tempestad de viento, granizo, avión, vehículos, peso de la nieve o el hielo, inundación, terremoto, agua, disturbios, conmoción civil, vandalismo, hurto, escape en el sistema de rociadores, y actos terroristas o bélicos. De ocurrir un siniestro por alguna otra razón, escríbannos y suministren todos los detalles.

Gastos de atención médica por valor de 5.000 dólares (E.U.A.) como máximo por caso, prescindiendo de la causa, si el lesionado no tiene seguro médico o su seguro no cubre la suma total de la factura.

Reclamaciones contra ancianos y siervos ministeriales durante el desempeño de cierto trabajo asignado para beneficiar a la congregación.

Coberturas opcionales (*hay que obtener un certificado de seguro específico para estas situaciones*):

Cobertura de responsabilidad general para instalaciones de alquiler

Fianzas de cumplimiento, de caución, y otras obligaciones necesarias

Daños ocasionados a un equipo de alquiler, hasta un límite de 10.000 dólares (E.U.A.)

Exclusiones:

Vehículos de carretera

Aviones

Barcos

Bienes de los voluntarios

Daños ocasionados a los automóviles de los voluntarios

Daños ocasionados por el manejo de vehículos pertenecientes a los voluntarios

Deterioro y desgaste progresivos

Fabricación, construcción, instalación, manejo o mantenimiento inadecuados

Incapacidad o desmembramiento de algún voluntario cuando no tenemos ni siquiera cierto grado de responsabilidad por lo ocurrido

Si tienen otras nece[redacted]les especiales, comuníquense con [redacted]ucursal que los superentiende.

¿Cómo debemos presentar una reclamación?

Casos en que haya daños materiales

1. Protejan la propiedad de más daños, pérdidas o robos.

2. Designen a un anciano con experiencia para que se ocupe de los daños materiales. Su asignación incluirá llenar el formulario *Property Loss Report* (Informe de pérdidas materiales), obtener estimaciones por escrito y facturas, y notificar el siniestro a la Sociedad.

3. Si hay grandes pérdidas (5.000 dólares [E.U.A.] o más), llamen por teléfono a la sucursal para pedir sus recomendaciones sobre la gestión del siniestro. Pudieran telefonear al Comité Regional de Construcción para pedirle recomendaciones, que coordine la asistencia de voluntarios diestros y que les señale fuentes económicas de materiales. Utilicen la mano de obra de voluntarios cuando sea posible para reducir las pérdidas.

4. Informen de inmediato a la policía los hurtos y actos vandálicos. Adjunten al *Property Loss Report* una copia del informe policíaco.

5. Dentro de un plazo de 30 días después de descubrir los daños o las pérdidas, envíen a la Sociedad lo siguiente: 1) facturas o estimaciones por escrito que obtengan para realizar todas las reparaciones o restauraciones necesarias debido al siniestro, y 2) el *Property Loss Report* lleno. Si no pueden efectuar estos trámites dentro de 30 días, comuníquense con la Sociedad. (Las estimaciones susodichas no deben incluir el costo de la mano de obra si ustedes planean utilizar a voluntarios para efectuar el trabajo.)

Accidentes que ocasionen daños corporales

1. **Asegúrense de que la persona lesionada reciba la atención médica apropiada tan pronto como sea posible.** Manténganse en estrecha comunicación con el lesionado y su familia, especialmente si es testigo de Jehová. Si el lesionado no es testigo de Jehová, traten de conseguir su nombre y número telefónico para uso futuro.

2. **Manifiesten sinceramente amor e interés cristianos.**

3. ***No hagan ninguna declaración de responsabilidad*** tocante a la causa del accidente ni al lesionado ni a ninguna otra persona, ni siquiera a funcionarios gubernamentales.

4. **Designen a un anciano maduro y con experiencia para que se encargue de todos los trámites relativos al accidente.** Entre sus responsabilidades está asegurarse de que se sigan todas las instrucciones contenidas en este documento. El anciano debe examinar esta información y llenar un formulario *Accident Notice Report* (Informe relativo a un accidente) mientras se encarga del caso.

5. **Llamen por teléfono a la sucursal e informen el accidente si:**

   La persona lesionada requiere atención médica en un establecimiento hospitalario.

   Reciben una amenaza o una notificación de que se acudirá a la vía judicial.

Tengan a mano los siguientes datos cuando llamen a la sucursal: fecha del accidente, nombre del lesionado, nombre de la congregación, nombre del anciano coordinador, su número telefónico y dirección. El personal de la sucursal les recordará algunos de estos trámites y podrá contestar cualquier pregunta que tengan al respecto.

6. Tan pronto como sea posible, llenen el *Accident Notice Report*. Si no pueden hablar con el lesionado o él no está dispuesto a contestar ninguna pregunta relacionada con el accidente, indíquenlo y llenen el formulario como mejor puedan con los datos que consigan. Las siguientes sugerencias pueden ayudarlos a llenar el *Accident Notice Report*.

WTPA 00165

Sección 1: Si no [redacted]ien conseguir que el lesionado les co[redacted]e algunas preguntas, llenen esta sección conforme a su entender e indiquen que no pudieron hablar con el lesionado.

Sección 2: Indiquen el lugar del accidente y señalen brevemente la actividad que se llevaba a cabo en tal lugar, como reunión de congregación o día de asamblea.

Sección 3: Pregunten al lesionado qué ocurrió. Que dos hermanos estén presentes al ponerse por escrito los comentarios, preguntas y respuestas de la conversación. Deben hacerse las siguientes preguntas **(no hagan ninguna otra pregunta, en concreto, no mencionen quién o qué puede haber tenido la culpa de lo ocurrido o cuál fue la causa del accidente, ni hablen de acudir a la vía judicial):**

¿Qué estaba haciendo cuando tuvo lugar el accidente?

¿Cómo ocurrió el accidente?

¿Qué lesiones sufrió?

Pregunten al lesionado si tiene algún tipo de seguro médico, incluso *Medicare* o *Medicaid*. Si su respuesta es afirmativa, anímenlo a presentar sus gastos médicos a dicho programa de seguros.

Sección 4: Investiguen la presunta causa del accidente. Determinen qué podría hacerse razonablemente, si es que podría hacerse algo, para evitar accidentes como ese en el futuro. Tomen medidas adecuadas y señalen en el *Accident Notice Report* las medidas correctivas que hayan tomado.

Sección 5: Pidan a cualquier testigo del accidente que describa lo ocurrido. Que dos hermanos estén presentes al ponerse por escrito los comentarios, preguntas y respuestas de la conversación. Nadie debe sentirse obligado a contestar estas preguntas. Deben hacerse las siguientes preguntas **(no hagan ninguna otra pregunta, en concreto, no mencionen quién o qué puede haber tenido la culpa de lo ocurrido o cuál fue la causa del accidente, ni hablen de acudir a la vía judicial):**

¿Qué estaba haciendo cuando tuvo lugar el accidente?

¿Presenció el accidente?

Según su interpretación del suceso, ¿qué ocurrió?

7. Llenen el *Accident Notice Report,* hagan una copia para los archivos de la congregación y envíen el original a la Sociedad. Cuando reciban alguna comunicación, correspondencia o factura relativa al accidente, hagan una copia para los archivos de la congregación y envíen el original a la oficina de seguros de la sucursal. Estas instrucciones aplicarían a cualquier amenaza o aviso de litigio.

8. La Sociedad o su representante legal quizás se comunique con el anciano coordinador. De ser posible, manténganse en comunicación con el lesionado e informen a la Sociedad cualquier cambio significativo que haya en su estado. No hablen del caso con nadie sin la aprobación del personal de la sucursal que se encarga de estos asuntos.

9. Si reciben de un abogado alguna correspondencia o petición de datos o se les hace alguna mención de litigio o demanda judicial, comuníquense de inmediato con la sucursal para que les dé más instrucciones. No suministren ninguna información a dicha persona.

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00166

EXHIBIT 22

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

November 1, 1995

INFORMATION REGARDING OWNERSHIP OF KINGDOM HALLS

[1] The headquarters and place of congregational assembly of each congregation of Jehovah's Witnesses is its Kingdom Hall. Many congregations rent their Kingdom Hall facilities. Others own their own Kingdom Hall property. The Society does not decide if a local congregation should or should not own its own Kingdom Hall. This is a matter that should be decided by the local congregation. Our purpose here is to answer questions that many congregations ask for the sake of congregations of Jehovah's Witnesses who have decided they wish to own Kingdom Hall property and who inquire as to the manner in which they may best take title or hold ownership of the Kingdom Hall land and building.

PRECAUTIONS NECESSARY BEFORE TAKING TITLE

[2] Once determination is made to acquire property and a resolution is passed by the congregation approving the same, careful consideration should be given to potential environmental hazards, local zoning regulations and building codes and their application to the property before a commitment to purchase is made. It should be determined whether zoning regulations permit use of the property for a church or place of worship. Also, the deed records should be examined to see whether there are any restrictive covenants running with the property making it impossible to use it as a Kingdom Hall. Even if the property is restricted to church use only, this may make it unacceptable, since persons may be unwilling to loan money for the purpose of purchase or construction on such property, and also such restriction may prevent the sale of the property should the congregation wish to sell at some later time. Building codes should be studied to determine the type, style, placement, and possible minimum cost of building permitted to be constructed. Requirements for off-street parking should be looked into. A brother should obtain a copy of the local regulations. These regulations can be acquired from the local zoning department or building department. These free services should be utilized before taking the matter to a local attorney for assistance.

TAKING TITLE

[3] It is improper for any congregation to acquire title to Kingdom Hall property in the name of the Society. Only in the event of specific instructions from the Society should such property be deeded to Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania, or International Bible Students Association. Otherwise, the Society does not desire to take title to Kingdom Halls or permit Kingdom Halls to be registered in the name of the Society.

[4] Title to property bought for the congregation should not be held in the name of one of the overseers or other ministers in the congregation.

[5] Congregations operate as unincorporated associations. In many states an unincorporated association cannot hold title to real property and therefore there is a need for a trusteeship or incorporated entity. In those locations where title insurance is obtained, please be advised that a subsequent transfer of title, perhaps to another congregation when you depart to build or use another Kingdom Hall, may result in loss of title insurance coverage.

TWO WAYS TO TAKE TITLE

[6] Generally speaking, there are two ways by which title can be taken by a congregation: (1) trustees in behalf of the congregation and (2) a corporation formed by the congregation. Our comments are general and there are considerable variations from state to state, which, in some cases, may make one arrangement more desirable than the other due to the state laws. Your own attorney can assist you in your discussion of the best procedures.

[7] A contract to purchase real property or a deed to trustees or to a corporation cannot be made until the trustees have been properly appointed or the corporation has been legally formed.

THE TRUSTEE ARRANGEMENT

[8] In the event the congregation decides to have trustees hold property for it, the trustees must be appointed by the congregation. This is accomplished by a resolution being made and passed by the congregation appointing three persons as trustees. In selecting trustees, mature ministers who are not likely to move away from the community should be chosen. It is desirable, although not necessary, to appoint overseers or ministerial servants of the congregation to act as trustees. In the event an overseer or ministerial servant who has been appointed a trustee is replaced in his office of elder or as ministerial servant, it will not be necessary to replace him as trustee unless he moves away, is disfellowshipped, or becomes inactive.

[9] When trustees have been appointed the deed can be made to the named and appointed trustees, followed by the recital: "as trustees for the (name of the congregation)." In the deed a paragraph should be inserted authorizing the congregation to appoint a substitute trustee to act in the place of any trustee who may die, resign, or become disqualified to act as trustee. The declaration of trust signed by trustees should include language recognizing the authority of the congregation to replace trustees. This language should also be included in the certificate of appointment of trustees signed by the Congregation Service Committee.

[10] When it becomes necessary to appoint a substitute trustee, he should be appointed by resolution duly adopted by the congregation. When a substitute trustee is appointed, it is advisable to have a certified or notarized copy of the resolution appointing a substitute trustee kept with the deed. The substitute trustee need not record anything, but when the property is conveyed it will be necessary to have the certified resolutions indicating who the current trustees are. This is in order to keep the title records straight and avoid complications.

[11] Consult with your attorney as to the language to be used in the appointment of trustees and in the appointment of substitute trustees if such substitution becomes necessary. Have your attorney advise if anything needs to be recorded in the land records when a trustee is changed.

[12] Everyone who is appointed a trustee or substitute trustee should sign a formally written legal document, a declaration of trust, before a notary public showing that he takes title to the property as a trustee and that he has no personal right, title, or interest in and to the property conveyed to him. It should be recited that neither his estate nor heirs have any interest in and to the property when the trustee or substitute trustee dies. This need not be recorded but should be carefully kept in the congregation's records. Your attorney handling the interests of the congregation in respect to the property can guide you in respect to the language of the declaration of trust so that the congregation will be fully protected legally under the laws of your locality. If you choose to hold title to the Kingdom Hall by the trustee arrangement, you should contact the Legal Department which has prepared sample documents for the trustee arrangements. Once you obtain these documents, you should notify the Regional Building Committee which may be able to assist you to locate a qualified local attorney.

INCORPORATION

[13] The procedure for the formation of a corporation differs in each state. You will need the services of a local attorney in forming a corporation. He will probably advise you that it should be created under the religious or nonprofit laws of the state where the congregation is

situated. If he does not so advise you, let us know, informing us of the reasons why he recommends otherwise or have him explain the situation to us.

14 As to the name of the corporation, it should be the same as the congregation's name.

15 The procedure that is required for the formation of a corporation is that a charter or articles of incorporation are properly prepared by an attorney and filed in the office of the appropriate public official in the state where the congregation is situated. The corporation is not created unless and until the charter or articles of incorporation are approved and filed in the office of the secretary of state or recorded in the county clerk's office, where required.

16 Since the purpose of the congregation in forming a corporation is to hold title to Kingdom Hall property, the charter or articles of incorporation should specifically state the purpose to acquire and hold title to real estate as a meeting place and place of worship for the local congregation of Jehovah's Witnesses. It may also include the right to accept gifts and bequests of personal and real property, and to mortgage its property. If the corporation laws require that the articles of incorporation designate an organization to receive the assets of the corporation in the event of dissolution name: Watchtower Bible and Tract Society of New York, Inc.

17 After the articles of incorporation or charter have been filed, bylaws prepared by your lawyer may also be necessary, and if they are required in your state for a corporation such as you form, they should be adopted by the corporation. Find out from your attorney if they are necessary.

18 The corporation may not hold title to Kingdom Hall property of another congregation even upon the request of the other congregation, unless with specific approval of the Society. It is preferable that each congregation hold title to its property in its own name, except where two or more congregations share the same Kingdom Hall. In such a case the corporation will be the instrument of only one of the congregations, preferably the one holding the territory, although not absolutely necessary, as long as the congregation having the title-holding corporation also shares the use of the Kingdom Hall.

19 If you choose to incorporate, you may contact the Legal Department which has prepared sample articles of incorporation or charters, as well as bylaws for your state. Once you obtain these documents, you should notify the Regional Building Committee which may be able to assist you to locate a qualified local attorney who is experienced in formation of corporations in your state. Use of these samples will reduce the attorney's work.

FINANCING THE KINGDOM HALL

20 Financing the purchase or construction of a Kingdom Hall is the responsibility of all the congregation. Before final plans for a Kingdom Hall are made, the congregation should determine how much money can be contributed by all in the congregation to pay for the Kingdom Hall. If donations are not sufficient, determine how much must be borrowed and what size loan, payable in monthly installments, the congregation can reasonably bear. Therefore it should be determined: (1) how much money can be raised by outright contributions from the members of the congregation, (2) how much can be raised by loans from members of the congregation, (3) how much will be necessary and advisable to borrow elsewhere and (4) how much the congregation can and will pay monthly to retire all loans. To determine this, slips of paper can be distributed, giving everyone the privilege and opportunity to indicate the amounts.

21 Promissory notes can be given to the members of the congregation who loan money. These unsecured notes can be executed by the Congregation Service Committee as the congregation's promise to pay.

22 If the congregation is unable, through diligence, to finance entirely within the congregation, it may request a Kingdom Hall Loan Survey (Form S-83) from the Regional Building Committee. It is important that there be evidence of local support of the Kingdom Hall project in order to assist the Society in approving financial assistance.

APPLY FOR EXEMPTION FROM TAXES

23 Almost every state provides for the exemption from the payment of taxes on real property used for a meeting place or place of worship by a congregation. Application for exemption must be made in the time and manner provided for by local law and practice. Inquire at the office of your local tax assessor or tax collector. In some few states the law does not allow for exemption unless the property is owned by a corporation. Also, if part of the property is rented exemption may not be granted, but the application can be made for exemption from taxes on the part used by the congregation. The law usually allows a minister, or a caretaker, to reside on the premises without affecting the exemption if no rent is charged. Ask your local tax assessor. You may wish to have your attorney handle the matter for the congregation. Even after tax exemption has been obtained, check yearly with the taxing authorities to make sure the Kingdom Hall property is still exempt and no assessments have been levied.

24 If the congregation decides to make housing available to its ministers, we recommend the congregation limit the housing to full-time ministers, preferably elders, of the congregation regularly using the Kingdom Hall. There should be no written or oral obligation to pay rent in exchange for the housing. Contributions to the congregation are acceptable but should be voluntary and in no way related to the housing available to members of the congregation. All occupants should clearly understand that no rent is paid in exchange for the housing. This understanding points to the need to select occupants with a high level of spirituality who appreciate this arrangement. Under this arrangement no income is earned on property renovated or acquired through a debt to your lender.

RELATIONSHIP BETWEEN CONGREGATION AND TITLEHOLDERS

25 The titleholders (either trustees or a corporation) have the same relationship to the congregation as any other instrument, equipment, or property necessary to carry out the work of the congregation. All such instruments or tools are used to serve the congregation in harmony with the theocratic arrangement.

26 The mere fact that a legal corporation or trustee arrangement has been made does not mean that a separate organization has been formed that can function separately and apart from the congregation and be used to guide and direct its policies. The titleholders are merely special servants of the congregation in whom is vested legal title to the Kingdom Hall. Titleholders as such do not act as a part of the congregation service committee to operate the Kingdom Hall or run the business of the congregation. They have absolutely nothing to do with the use to be made of the property and cannot determine who is going to live on the property or what kind of work is to be done in it.

27 The operation of the Kingdom Hall, making of repairs and improvements, payment of expenses and obligations and all other business in connection with owning and maintaining the property are all under the direction of the theocratic organization through the elders and ministerial servants appointed through the Society. Consult the counsel and instructions provided by the Society for guidance in matters of service and organization. If there are legal functions that the titleholders need to perform, they should act in harmony and willing cooperation with the congregation service committee.

28 Payments for expenses, maintenance, notes, and all other obligations incurred as the result of the ownership and maintenance of the Kingdom Hall are to be paid out of the congregation's funds, contributed in the regular way. In actual practice the corporation (if one is used) will never have any funds, since all money belongs to the congregation and is to be placed in the regular congregation bank account opened as an unincorporated association even though the congregation has a corporation for title-holding purposes.

29 It should be understood that any brothers who contribute or loan large or small sums of money for the acquisition and maintenance of the Kingdom Hall do not have any voice in its management, other than as members of the congregation. Brothers who loan money have the right to expect the payment of their indebtedness and good business management. If a corporation is used the officers are not paid any salary, but they, as any other member of the congregation, are entitled only to be reimbursed for expenses authorized by the congregation.

If any congregation contemplating the ownership of its Kingdom Hall property has further questions after carefully considering the foregoing, it should feel free to write fully to the Society for additional information that may be needed. We are very much interested in your efforts to have good Kingdom Hall facilities.

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00168

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

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1 de noviembre de 1995

INFORMACIÓN CONCERNIENTE A LA PROPIEDAD DE SALONES DEL REINO

[1] El Salón del Reino es el centro de reunión y demás actividades de toda congregación de los testigos de Jehová. Muchas congregaciones alquilan las instalaciones que les sirven de Salón del Reino, mientras que otras son sus propietarias. No le corresponde a la Sociedad determinar si una congregación debe ser propietaria de su propio Salón del Reino. Este es un asunto que la congregación decide. Nuestro objetivo es responder a diversas preguntas que han hecho muchas congregaciones de los testigos de Jehová que desean poseer su propio Salón del Reino y saber cuál sería la mejor manera de adquirir el título de propiedad del Salón del Reino y su predio.

PRECAUCIONES NECESARIAS ANTES DE ADQUIRIR EL TÍTULO

[2] En cuanto se haya decidido obtener alguna propiedad y la congregación haya aprobado una resolución al respecto, deben estudiarse detenidamente los posibles peligros ambientales y la reglamentación urbanística y las ordenanzas de construcción locales aplicables a la propiedad antes de comprometerse a comprarla. Debe determinarse si la reglamentación urbanística permite que la propiedad se utilice para una iglesia o lugar de culto. Además, debe examinarse la documentación que acompaña al título de la propiedad para ver si hay alguna cláusula contractual vigente que imposibilite su uso como Salón del Reino. Aun si puede usarse solo con fines religiosos, esto puede hacerla inaceptable, ya que algunas personas o instituciones quizás no estén dispuestas a prestar dinero para comprarla o construir en ella; además, tal restricción pudiera impedir su venta posteriormente si la congregación deseara hacerlo. Deben estudiarse las ordenanzas de construcción para determinar la clase, el estilo, la colocación y el posible coste mínimo del edificio que tales ordenanzas permitirían construir. También debe averiguarse si hay requisitos que exijan la construcción de un estacionamiento privado. Uno de los hermanos debe obtener un ejemplar de la reglamentación local en el departamento de ordenación urbana o el de construcción. Deben utilizarse estos servicios gratuitos antes de presentar el proyecto a un abogado local para pedirle asesoramiento.

ADQUISICIÓN DEL TÍTULO DE PROPIEDAD

[3] No es apropiado que una congregación adquiera el título de propiedad de un Salón del Reino a nombre de la Sociedad. Solo en caso de recibir instrucciones específicas de la Sociedad debería inscribirse dicha propiedad a nombre de Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania o International Bible Students Association. De lo contrario, la Sociedad no desea ser propietaria de los Salones del Reino ni permite que se inscriban a su nombre.

[4] El título de la propiedad que se compre para la congregación no debe estar a nombre de uno de sus superintendentes u otros ministros.

[5] Las congregaciones funcionan como asociaciones no incorporadas. En muchos estados, una asociación de esa clase no puede ser propietaria de bienes inmuebles, y por eso es necesario constituir una junta de administradores o una entidad incorporada. En los lugares donde se ha obtenido un seguro de título debe tenerse presente que una transferencia de título más adelante, tal vez a otra congregación cuando la titular parta para construir o utilizar otro Salón del Reino, puede invalidar la cobertura de dicho seguro.

DOS MANERAS DE ADQUIRIR EL TÍTULO DE PROPIEDAD

[6] En términos generales, una congregación puede adquirir el título de una propiedad de dos maneras: 1) mediante una junta de administradores que represente a la congregación, o 2) formando una corporación o sociedad. Nuestras observaciones son de índole general, reconociendo que hay considerables diferencias de un estado a otro, lo cual puede significar que en algunos casos una entidad sea más deseable que la otra en vista de las leyes estatales. Su abogado puede ayudarlos a determinar qué procedimientos serían más ventajosos.

No se puede establecer un contrato de compra de bienes inmuebles ni se pueden inscribir estos a nombre de una junta de administradores o una corporación hasta que se hayan nombrado debidamente los administradores o se haya constituido legalmente la corporación.

UNA JUNTA DE ADMINISTRADORES

[8] Si la congregación decide que una junta de administradores figure como propietaria en representación de ella, será preciso que nombre los miembros de la junta. La manera de hacerlo es presentando una resolución a la congregación en la que se nombre administradores a tres individuos. Debe escogerse a ministros maduros que probablemente no se muden de la comunidad. Es aconsejable, aunque no necesario, elegir como administradores a superintendentes o siervos ministeriales de la congregación. Si se relevara de su función de anciano o siervo ministerial a algún miembro de la junta, no habría que reemplazarlo a menos que se mudara, fuera expulsado o se hiciera inactivo.

[9] Una vez nombrada la junta, se podrá hacer la escritura de propiedad a nombre de los administradores designados con esta condición preliminar añadida: "como junta de administradores en representación de [el nombre de la congregación]". En la escritura de propiedad debe introducirse un párrafo que autorice a la congregación para reemplazar a cualquier miembro de la junta que fallezca, dimita de su puesto o que ya no reúna los requisitos para desempeñar tal función. La fraseología de la "declaración de fideicomiso" que firme la junta de administradores debe manifestar pleno reconocimiento de la autoridad que tiene la congregación para sustituir a los administradores. Debe redactarse de igual manera el certificado de nombramiento de la junta de administradores que firme el Comité de Servicio de la Congregación.

[10] Cuando sea menester nombrar un sustituto, debe hacerse mediante una resolución debidamente aprobada por la congregación. Cuando se nombre un sustituto para la junta de administradores, es aconsejable guardar con la escritura de propiedad una copia certificada o notariada de la resolución de nombramiento. El sustituto no tiene que registrar dicho cambio, pero, cuando se vaya a transferir la propiedad, será necesario tener a mano las resoluciones certificadas que indiquen quiénes componen la junta en ese momento. Esto se hace a fin de mantener en orden la documentación que acompaña al título de propiedad y evitar complicaciones.

[11] Consulten con su abogado sobre la fraseología que debe usarse en el documento de nombramiento de los administradores y en el de los sustitutos (cuando estos sean necesarios). Pídanle a su abogado que los asesore si hay que dejar constancia escrita en el registro inmobiliario cuando se reemplaza a uno de los administradores.

[12] Todo administrador o sustituto nombrado debe firmar ante notario una "declaración de fideicomiso", es decir, un documento legal escrito formalmente en el que se indique que es titular de la propiedad en calidad de miembro de la junta de administradores y que no tiene personalmente ningún derecho a la propiedad que se le ha transferido ni título de ella ni interés por ella. También debe declararse que, en caso de que él fallezca, ni su patrimonio sucesorio ni sus herederos tienen interés alguno por la propiedad. No hay que registrar tal documento, pero debe guardarse bien en los archivos de la congregación. El abogado que represente los intereses de la congregación en lo que toca a la propiedad puede orientarlos en cuanto a la fraseología que ha de usarse en la declaración susodicha para que la congregación quede plena y legalmente protegida por las leyes locales. Si optan por tener el título del Salón del Reino a nombre de una junta de administradores, deben comunicarse con el Departamento de Asuntos Legales, el cual ha redactado algunos modelos para juntas de administradores. En cuanto consigan dichos documentos, deben comunicarse con el Comité Regional de Construcción, que tal vez pueda ayudarles a encontrar un abogado local cualificado.

UNA CORPORACIÓN O SOCIEDAD

[13] Los trámites para formar una corporación o sociedad varían de un estado a otro, por lo que tendrán que recurrir a un abogado local para constituirla. Es probable que les aconseje instituirla siguiendo las leyes estatales referentes a organizaciones religiosas o asociaciones no lucrativas. Si les aconsejara seguir otro derrotero, avísennos e infórmennos por

qué les ha recomendado obrar de tal manera, o pídanle que nos lo explique él.

14 El nombre de la corporación o sociedad debe ser el mismo que el de la congregación.

15 Para formar una corporación, es necesario que un abogado prepare debidamente una carta constitucional (o las cláusulas de incorporación) y que se la registre en la oficina estatal del funcionario público correspondiente. La corporación no quedará constituida a menos que la carta constitucional se apruebe y registre en la oficina del secretario estatal o la oficina del secretario del condado, según lo exija la ley.

16 Puesto que la congregación forma la corporación o sociedad con el propósito de adquirir el título de propiedad de un Salón del Reino, la carta constitucional debe exponer de manera específica dicho propósito: adquirir y tener el título de la propiedad inmueble para que la congregación local de los testigos de Jehová la utilice como lugar de reunión y culto. También se puede incluir el derecho de aceptar donaciones y legados de bienes muebles e inmuebles y de hipotecar su propiedad. Si las leyes que rigen las corporaciones o sociedades requieren que en las cláusulas de incorporación se designe una organización que haya de recibir los bienes de la corporación en caso de que esta se disuelva, nombren a: Watchtower Bible and Tract Society of New York, Inc.

17 Después que se haya registrado la carta constitucional, puede que también sea necesario que su abogado redacte los estatutos. Si la ley del estado los exige en el caso de una corporación o sociedad como la que ustedes han formado, esta debe adoptarlos. Averigüen mediante su abogado si dichos estatutos son necesarios.

18 A menos que se cuente con la aprobación específica de la Sociedad, la corporación no puede ser titular del Salón del Reino de otra congregación, aunque esta se lo solicite. Es preferible que cada congregación tenga a su nombre el título de propiedad de su salón, salvo cuando dos o más congregaciones compartan el mismo Salón del Reino. En tal caso, la corporación será instrumento de solo una de las congregaciones, preferiblemente una de las que tiene el territorio donde está el Salón del Reino; esto último no es absolutamente necesario, con tal de que la congregación que haya formado la corporación titular se reúna en el mismo Salón del Reino.

19 Si optan por formar una corporación o sociedad, pueden comunicarse con el Departamento de Asuntos Legales, el cual ha redactado algunos modelos de cartas constitucionales, así como de estatutos, que se conforman a las leyes de su estado. En cuanto reciban dichos documentos, deben comunicarse con el Comité Regional de Construcción, que tal vez pueda ayudarles a encontrar un abogado local cualificado con experiencia en la formación de corporaciones en su estado. El uso de dichos modelos reducirá el trabajo del abogado.

FINANCIACIÓN DEL SALÓN DEL REINO

20 La responsabilidad de financiar la compra o la construcción de un Salón del Reino recae sobre toda la congregación. Antes de finalizar los planes de obtención de un Salón del Reino, la congregación debe determinar cuánto dinero puede contribuir a ese fin. Si no contaran con suficientes donaciones, determinen cuánto dinero tendrían que tomar prestado y a cuánto ascendería el préstamo que la congregación podría pagar razonablemente a plazos mensuales. Por consiguiente, debe determinarse: 1) cuánto dinero se puede recaudar de los miembros de la congregación en contribuciones incondicionales, 2) cuánto en préstamos personales, 3) qué cantidad será menester y aconsejable tomar prestada de otra fuente, y 4) cuánto puede contribuir la congregación mensualmente a fin de liquidar todos los préstamos. Para determinar tales sumas de dinero, se pueden distribuir hojas de papel de modo que todos tengan el privilegio y la oportunidad de indicar las cantidades que pueden aportar.

21 Se pueden expedir pagarés a los miembros de la congregación que presten dinero. El Comité de Servicio de la Congregación puede firmar dichos pagarés sin caución, en reconocimiento de que la congregación promete liquidarlos.

22 Si a pesar de los esfuerzos diligentes de la congregación no se puede financiar un Salón del Reino sin ayuda externa, pueden pedir al Comité Regional de Construcción un *Kingdom Hall Loan Survey* (S-83). Es importante que se presente prueba de que la congregación apoya el proyecto, con el fin de ayudar a la Sociedad a ver cuánto se necesita su asistencia económica.

SOLICITUD DE EXENCIÓN DE IMPUESTOS

23 Casi todos los estados eximen del pago de impuestos sobre los bienes inmuebles a las congregaciones que los usan como lugares de reunión o culto. La solicitud de exención de impuestos debe hacerse al tiempo y de la manera que estipula la ley y la práctica locales. Infórmense acerca de esto en la oficina del tasador de hacienda o recaudador de impuestos local. En algunos estados, la ley no permite la exención de impuestos a menos que la propiedad esté a nombre de una corporación. Además, si se alquila a alguien una parte de la propiedad, puede que no se conceda tal exención, pero esta puede solicitarse para la parte de la propiedad que la congregación utiliza. Por lo general la ley permite que un ministro o un custodio resida en la propiedad sin que ello afecte la exención, siempre que no se le cobre alquiler. Pregunten al tasador de hacienda en cuanto a esto. Tal vez prefieran que su abogado se encargue del asunto en nombre de la congregación. Aun después que se haya obtenido la exención de impuestos, inquieran anualmente en la oficina de recaudación para cerciorarse de que la propiedad del Salón del Reino todavía está exenta del pago de impuestos y de que no se le ha impuesto ningún gravamen.

24 Si la congregación opta por utilizar parte del edificio como vivienda para sus ministros, recomendamos que sea solo para los de tiempo completo, preferiblemente ancianos, de la congregación que utiliza con regularidad el Salón del Reino. No debe haber ningún compromiso escrito u oral de pagar alquiler por la vivienda. Se aceptan contribuciones para la congregación, pero estas deben ser voluntarias y de ningún modo deben estar relacionadas con la vivienda que se provee para ciertos miembros de la congregación. Todos los ocupantes deben comprender claramente que no se paga alquiler por la vivienda. Este entendimiento recalca lo necesario de escoger a ocupantes con un alto nivel de espiritualidad que aprecien dicha provisión. Según este acuerdo, no se derivan ingresos de una propiedad que ha sido renovada o adquirida mediante una deuda con una entidad crediticia.

RELACIÓN ENTRE LA CONGREGACIÓN Y LOS TITULARES

25 Los titulares, o hermanos a nombre de quienes está la escritura de propiedad (sean miembros de una junta de administradores o de una corporación), tienen la misma relación con la congregación que cualquier otro instrumento, equipo o propiedad que se requiera para llevar a cabo su obra. Todos estos instrumentos se utilizan para servir a la congregación de acuerdo con el sistema teocrático.

26 El simple hecho de que se haya formado una corporación jurídica o establecido una junta de administradores no significa que se haya formado una organización distinta que pueda funcionar aparte de la congregación ni que se la pueda usar para guiar y dirigir sus normas. Los titulares son sencillamente siervos especiales de la congregación a quienes se les ha conferido el título perfecto de la propiedad del Salón del Reino. Ellos, en sí, no obran como parte del Comité de Servicio de la Congregación con respecto a la administración del Salón del Reino ni dirigen los asuntos de la congregación. No tienen absolutamente nada que ver con el uso que se dará a la propiedad ni determinan quiénes habrán de vivir en la propiedad ni qué clase de trabajo se hará en ella.

27 La administración del Salón del Reino, las reparaciones y mejoras, el pago de gastos y obligaciones, y cualquier otro asunto relacionado con la posesión y el mantenimiento de la propiedad están, todos, bajo la dirección de la organización teocrática, representada por los ancianos y los siervos ministeriales que ha nombrado la Sociedad. Consideren el consejo y las instrucciones que la Sociedad ha proporcionado para guiarlos en asuntos de servicio y de organización. Si los titulares tienen que desempeñar ciertas funciones que la ley estipula, deben obrar de acuerdo con la dirección del Comité de Servicio de la Congregación y estar dispuestos a cooperar con este.

28 El dinero para el pago de gastos, el coste del mantenimiento, los pagarés y todas las otras obligaciones financieras que se contraigan debido a la posesión y el mantenimiento del Salón del Reino debe provenir de los fondos que la congregación contribuye del modo acostumbrado. De hecho, en la práctica, la corporación o sociedad (si hay una) nunca tendrá fondos, ya que todo el dinero pertenece a la congregación y se ha de depositar en la cuenta bancaria regular que la congregación haya abierto como asociación no incorporada, aun cuando tenga una corporación que le sirva de titular.

29 Debe quedar claro que ninguno de los hermanos que contribuyan o presten sumas de dinero, sean grandes o pequeñas, para la adquisición y el mantenimiento del Salón del Reino tiene voz en su administración, aparte de la que tiene como miembro de la congregación. Los hermanos que presten dinero tienen derecho a esperar que se salde su préstamo y que se administren bien los asuntos económicos. Si se utiliza una corporación o sociedad, sus directores no recibirán ningún salario, pero tendrán derecho, como cualquier otro miembro de la congregación, a un simple reembolso de los gastos que la congregación haya autorizado.

Si alguna congregación que esté pensando adquirir la propiedad de su Salón del Reino tiene otras preguntas después de haber analizado detenidamente lo antes expuesto, con toda libertad puede escribir a la Sociedad para pedir la información adicional que necesite. Nos interesan muchísimo sus esfuerzos por tener buenos Salones del Reino.

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00170

EXHIBIT 25

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

October 15, 1996

TO: ALL BODIES OF ELDERS

Re: Kingdom Hall Assistance Arrangement

Dear Brothers:

The purpose of this letter is to present you with an annual report on the KHAA. We are pleased to inform you that this is the seventh year that the KHAA is able to provide assistance without increasing the suggested contribution amounts. This is the result of the conscientious manner in which you brothers care for Kingdom Hall properties, property losses, and accidents. A fine spirit is manifest when congregations give loving care to accident victims and provide volunteer labor to repair/replace property losses. Realizing that KHAA funds are not "insurance money," but contributions, many congregations return KHAA funds that were not actually needed to repair/replace their loss.

Please continue to give attention to potential hazards at your Kingdom Hall. Some hazards that have caused serious accidents in the past year are: snow, ice or debris on sidewalks, poorly maintained sidewalks with cracks or uneven surfaces, running children, water tracked into the Kingdom Hall, bookbags in aisles, and trees with dead limbs or hollow trunks. Please be alert to these or any other hazards with a view to correcting them and avoiding possible injuries. To assist, please find enclosed a *Loss Control Checklist*. Please review this checklist and assign its completion to an elder who will be alert to note potential hazards. Keep a copy of the completed checklist in the congregation's file.

If you experience a loss or an accident, please review the letter *Key Facts About the Kingdom Hall Assistance Arrangement* of October 15, 1995, carefully follow the instructions outlined therein, and complete a *Property Loss Report* or *Accident Notice* and forward it to the Society immediately. **If an injured person requires medical treatment or if property loss exceeds $5,000, please telephone the Society's Risk Management Office immediately at the above telephone number.**

The suggested KHAA contribution will appear on the October 1996, New York Corporation Statement. It would be appreciated if your congregation would contribute the entire amount when the statement is received. If this is not possible, please forward as much as you can afford and then forward the remainder when you are able to do so. This should be cared for by September 1997.

Please accept our warm Christian love and best wishes.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosure

WTPA 00186

EXHIBIT 26

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600 FAX (718) 875-7446

October 15, 1997

TO: BODIES OF ELDERS PARTICIPATING IN THE KINGDOM HALL ASSISTANCE ARRANGEMENT

Dear Brothers:

We are pleased to inform you that it is again possible this year for the Society to provide comprehensive all-risk coverage through the Kingdom Hall Assistance Arrangement. Since 1989 this program has used designated contributed funds to provide assistance for property damage and general liability losses experienced by congregations. The generosity and cooperation of Jehovah's people have contributed greatly to the success of this program.

As of October 1997, there has been an adjustment in the way the Kingdom Hall Assistance Arrangement is being administered. Attached is the suggested contribution for KHAA for your congregation(s) covering the accounting period of October 1, 1997, to October 1, 1998. This amount will no longer appear as a charge on the New York Corporation Statement. Therefore, when remitting these funds, list your contribution on the blank line of the *Contribution Remittance Form (S(d)-20)* with the notation: "Kingdom Hall Assistance Arrangement (KHAA)." Or, if your congregation is now using the Watchtower Electronic Funds Transfer System (WEFTS), enter your contribution at the prompt designated KHAA. Please **DO NOT** include this contribution with any payments on your Congregation Account. If your congregation is able to contribute the entire amount now, this would be greatly appreciated. If this is not possible, please forward as much as you can afford and then any additional amounts when you are able to do so.

This is not a commercial insurance program. The Society administers these donated funds. Thus, if all other available avenues of aid are pursued first when a loss occurs, the KHAA funds remain available for cases of genuine need. A fine spirit is shown when we give loving support to accident victims and provide volunteer labor for property repairs.

Another way to support this arrangement is by giving increased attention to **safety matters.** During the past year a number of publishers were seriously injured by falling on snow- or ice-covered pavement or uneven sidewalks. Others sustained severe injuries falling from ladders or scaffolds while assisting with construction and maintenance projects. At meetings, we can show consideration for others by eliminating trip hazards. For example, are we accustomed to leaving our bookbag in the aisle? While it may be convenient, it creates a hazard and in many areas it is a violation of regulations. Young ones running in the aisles after the meeting have also been involved in serious accidents with older ones. With the foregoing examples in mind, let each of us consider how we can personally contribute to making attending meetings and working around the hall as safe as possible.

The Society feels privileged to be able to administer the KHAA in behalf of the congregations. We join you in praying for Jehovah's blessing on our efforts to properly care for our Kingdom Halls and all who gather therein to praise Jehovah. Be assured of our warm Christian love and best wishes.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

P.S. Please note that paragraph two applies only to the congregation which holds title to the property and makes remittances to the Society in connection therewith.

WTPA 00187

EXHIBIT 28

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600 FAX (718) 875-7446

December 22, 1997

TO ALL BODIES OF ELDERS IN THE UNITED STATES

Dear Brothers:

We thank all of you for your individual contributions in making the Kingdom Hall Assistance Arrangement (KHAA) so effective. We appreciate very much the efforts the local and Regional Building Committees have made in rebuilding damaged properties and the loving way in which you have cared for those who have been injured while working on Kingdom Halls or while attending meetings. The long-range, positive effects of such sincere effort in caring for Kingdom Halls and Jehovah's sheep cannot be overestimated.

Some property losses have involved Kingdom Halls where the congregations have not updated their property values as listed with the Society for many years. At this time we are requesting that all congregations provide us with an updated appraisal of the value of their Kingdom Hall. If help is needed in making the appraisal, one elder from the congregation or congregations should be selected to take the lead in contacting the Regional Building Committee for assistance. After all of the features of the Kingdom Hall have been noted and appraised, please report the correct figure to the *Risk Management Office* using the revised Property Description Form (T-50) sent to you in November.

Also enclosed is an Accident Information sheet. Please take a few minutes to familiarize yourselves with these procedures before filing this information where it will be readily accessible in the event that an accident takes place at your Kingdom Hall.

Thank you for your attention to this important matter of updating Kingdom Hall values. We pray for Jehovah's continued blessing upon the Kingdom Hall Assistance Arrangement and thank you for your loyal support.

Your brothers,

Watch Tower B.&T. Society
OF PENNSYLVANIA

Encl.

cc: Regional Building Committees

WTPA 00192

ACCIDENT INFORMATION

KINGDOM HALL ASSISTANCE ARRANGEMENT

(PLEASE KEEP THIS IN AN ACCESSIBLE PLACE FOR READY REFERENCE IN CASE OF AN ACCIDENT)

ACCIDENTS AT KINGDOM HALLS OR ASSEMBLY HALLS:

1. Please ensure that the injured party receives appropriate medical attention as soon as possible. In most instances it is best to call for an ambulance if transport to a medical facility is necessary.

2. If **any medical treatment is required,** please phone the Society's *Risk Management Office* at (718) 625-3600 **within 48 hours** to report the accident. This should be done even if the individual has personal insurance and will not be submitting any bills to the congregation.

3. Keep in close touch with the injured party and his family to see what further assistance may be needed in the home, etc. If the injured is not one of Jehovah's Witnesses, kindly offer to provide additional assistance and make needed arrangements. Show genuine Christian love and concern.

4. Do not make any statements of responsibility or liability about the cause of the accident to the injured or any other party, including governmental officials.

5. Appoint an experienced, mature elder to ensure that matters are cared for as outlined in the letter *Key Facts About the Kingdom Hall Assistance* of October 1995.

6. Complete an *Accident Notice Report* (T-5) within one week. To provide necessary information on the *Accident Notice Report*, please ask the following:

   a) What were you doing when the accident occurred?
   b) How did the accident happen?
   c) What injury did you suffer?
   d) Do you have any type of medical coverage (including Medicare or Medicaid)?

7. If the injured party has personal insurance, encourage him to present his medical expenses to his insurance program. Kindly explain that the Kingdom Hall Assistance Arrangement is based on donated funds and that all expenses incurred are borne by the congregations.

8. Report the accident by phone if there is any threat or mention of legal action. Generally this would only occur if a worldly person happened to injure himself on your property. If this should happen, please obtain his name and address as well as the names and addresses of any witnesses, along with a full description of the incident.

PROPERTY DESCRIPTION FORM

Please fill out one copy of this form for *each separate building* you are listing with the Kingdom Hall Assistance Arrangement.

Cong. Number | Cong. Name | Cong. City | Cong. State

Street Address of Building

City | State | ZIP

Use of Building (meetings, storage, apt.) | Year Built | Year of Last Major Renovation

Total Square Footage | Number of Floors | Seating Capacity

Please circle appropriate response for the following questions

1 2 3 4 5 6 7 8 9 10
Fire Protection Code
(choose from list on back)

0 1 2 3 4 5 6 7 8 9
Construction Code
(choose from list on back)

Is it rented from others? (If rented, fill in replacement cost for contents only.)	Yes	No
Is there an underground storage tank on the property?	Yes	No
Is there a fire or smoke alarm installed?	Yes	No
Do you have a loan with someone other than Watch Tower for this property? (Please provide details on back.)	Yes	No

Building Value | Contents Value

These two values combined represent the total cost of rebuilding a similar structure. Items permanently attached are generally considered part of the "building," not "contents," but the choice is not critical. Assume volunteer labor. Do not include the price of the land.

Other congregations meeting in the Kingdom Hall:

Name: Congregation Number:

Name: Congregation Number:

Name: Congregation Number:

T-6CHE 8/02 Printed in U.S.A.

WTPA 00194

Class	Description
1	Possesses all features of Class 2 and conforms with practically all standard requirements set for same.
2	Public water system of merit. May have auxiliary high pressure system in the congested value district. A heavily manned, well trained, full-paid fire department, numerous pieces of standard equipment of all types. Municipal fire alarm system.
3	Public water system of merit. Adequately manned, well trained, full-paid fire department, numerous pieces of standard pumping, aerial ladder, and minor equipment. Municipal fire alarm system.
4	Public water system is somewhat more extensive than Class 5. Full-paid fire department; numerous pieces of standard pumping equipment and reasonably adequate aerial ladder equipment. Municipal fire alarm system.
5	Public water system capable of supplying maximum consumption plus fire demands for ten hours; may be volunteer but usually full-paid fire department; several pieces of standard pumping equipment and fairly adequate aerial ladder equipment. Municipal fire.
6	Public water system considered fairly adequate and reliable under most ordinary conditions. Fire department on a volunteer or part-paid basis. Minimum of two well-equipped pumpers of 750 gallons per minute capacity.
7	Somewhat more adequate and reliable public water system than Class 8. Volunteer or part-paid fire department with pumping equipment of 500 gallons per minute capacity and at least 1,500 feet of 2 1/2 inch fire hose.
8	Water capable of delivering at least 500 gpm for a minimum of five hours (this is two standard hose streams of 250 gpm each). Volunteer fire department with pumping equipment of 500 gpm capacity and at least 1,500 feet of fire hose.
9	Water supply inadequate. Volunteer fire department with pumping equipment of 50 gpm at 150 psi capacity, and water tank with at least 300 gallon capacity. Also it must have 300 feet of one-inch fire hose.
10	No recognized protection of value, having no apparatus with pumping capacity of at least 300 gallons; or having unacceptably long response time.

Code	Simple Description	Detail
0	Unknown	
1	Frame	Exterior walls of wood or other combustible materials, with combustible or non-combustible veneer.
2	Joisted Masonry	Self-supporting exterior walls of non-combustible, masonry materials. Roof and floors are more combustible.
3	Non-Combustible	Exterior walls and floors made of and supported by non-combustible materials such as concrete or metal.
4	Masonry Non-Combustible	Like non-combustible, but with roof also non-combustible.
5	Modified Fire Resistive	Exterior walls, floors, and roof are of masonry or other non-combustible material that will maintain structural integrity in a fire for 1 hour, but not for 2 hours.
6	Fire Resistive	Like modified fire-resistive, but will maintain structural integrity in a fire for at least 2 hours.
7	Heavy Timber Joisted Masonry	Joisted masonry building where the entire roof is at least 2 inches thick and is supported by timbers at least 6 inches wide and thick.
8	Superior Non-Combustible	Non-combustible building where the entire roof is of 22 gauge metal or heavier on steel supports; or, where the entire roof is of 2 inch or thicker masonry on steel supports.
9	Superior Masonry Non-Combustible	Masonry non-combustible buildings where the entire roof is of 22 gauge metal or heavier on steel supports; or, where the entire roof is of 2 inch or thicker masonry on steel supports.

Lien Holder Information (if other than Watch Tower):

Name of Bank or Lender

Attn: or Reference #:

Address

City, State, ZIP

Signatures of service committee or operating committee members:

Date: _____

Mail Signed Form to: Risk Management, 25 Columbia Heights, Brooklyn, NY 11201-2483

WTPA 00195

EXHIBIT 29

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
25 Columbia Heights
Brooklyn, NY 11201-2483
OFFICE OF THE SECRETARY AND TREASURER
RISK MANAGEMENT OFFICE
Phone (718) 625-3600
Fax (718) 560-6877

KEY FACTS ABOUT THE KINGDOM HALL ASSISTANCE ARRANGEMENT

September 1, 1998

(Replaces letter of October 1, 1995, which should be discarded)

WHAT IS THE KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)?

The Society uses contributions designated for the KHAA to pay for property damage to Kingdom Halls as well as expenses and liability claims arising from accidents/incidents at Kingdom Halls. ***This is not a commercial insurance program.*** The Society's Risk Management Office administers the KHAA fund, using these contributions to make all payments. In addition, the fund is used to purchase commercial "excess" insurance to protect congregations and the Society from possible catastrophic losses.

If all other available avenues of aid are pursued first when a loss occurs, the KHAA funds remain available for cases of genuine need. A fine spirit is shown by those who give loving support to accident victims and provide volunteer labor for property repairs. Generally, family heads provide for their family's health needs, including accident-related expenses (w97 8/15 19,22). However, the Society is pleased to be able to render assistance when needed.

HOW DO WE PARTICIPATE IN THE KHAA?

Contributions Each year you will receive a letter suggesting a contribution amount based upon the needs of all those supported by the KHAA. Please send your contribution as soon thereafter as possible.

Existing Kingdom Halls The replacement costs for existing structures are reported to the Society on the *Property Description Form (T-50)*. All congregations that own property were asked to update their values in 1997 by filling out one of these forms. If you have not already done so, please send a completed form to Risk Management at the above address. The Regional Building Committee may be able to help you calculate the replacement cost of your building.

Construction Prior to beginning construction, you should complete a *Kingdom Hall Under Construction Form (T-56)* available from Risk Management. If performance or other bonds are needed, please contact Risk Management. If the building project is canceled, please inform us in writing.

Purchased Buildings and Vacant Lots For newly purchased buildings, you should complete a *Property Description Form (T-50)*. **Vacant** lots are automatically covered by your existing account.

Apartments Modest apartments on Kingdom Hall property, used by traveling ministers or special pioneers, can be included by request in the KHAA.

A Specific Certificate of Insurance may be obtained for certain cases, such as:

- General Liability coverage for rented facilities (such as are used by some congregations for the Memorial). Also, property damage assistance for contents owned by the congregation.
- Rental equipment damage, up to $10,000 per reported rental

In order for any special coverage to be in effect or for certificates to be issued, Risk Management needs to be **notified in advance** in writing.

WTPA 00196

Canceling KHAA Assistance If you wish to cancel your participation in the KHAA arrangement, please notify Risk Management in writing, providing the termination date. Your participation will not be automatically canceled due to failure to make the suggested contribution, so please provide cancellation notification in writing.

WHAT CAN WE DO TO KEEP KHAA COSTS DOWN?

Preventive maintenance is the key to controlling costs. Each year you will receive an *Annual Congregation Property Documents & Safety Inspection Worksheet (T-34)*. Its purpose is to help you identify potential areas of property damage or accidents that could result in losses. Please take immediate action in correcting any noted problems and document the action taken. Please file the completed checklist in the file of the congregation that holds title to the property.

Of course, more is required to prevent losses than filling out a checklist once each year. Elders should take the lead in spotting and correcting potential problems and safety hazards. It is our fine attitude towards safety and maintaining our properties in good repair that enables us to operate the KHAA at a cost much lower than would be possible for other organizations through commercial insurance. Since the losses of all those that participate affect the balance of the KHAA fund, it is in everyone's interest to reduce losses.

Often steps can be taken to keep costs to a minimum after a loss does occur. In the case of **property damage**, quick action can go far in preventing further loss. For example, if a storm causes damage that results in a leak, fixing the leak prevents further damage and reduces the amount needed from the fund to care for the incident. The use of Regional Building Committees and volunteer labor can save valuable contributed funds. Careful shopping for high quality materials will prove economical in the long run.

In the case of **bodily injury**, prompt, loving care to the injured will ensure as full and quick a recovery as is possible.

HOW TO REPORT ACCIDENTS RESULTING IN BODILY INJURY

1. **Please ensure that the injured party receives appropriate medical attention as soon as possible.** In most instances of serious injury it is best for an ambulance to transport the injured to a medical facility.
2. **Appoint an experienced, mature elder to handle the accident.** This will include ensuring that all the steps outlined in this arrangement are followed. The elder should review the information in this letter and complete an *Accident Report (T-5)* within one week. Have two brothers present while documenting the information for the form. While filling out the report, please follow the questions provided therein. **Please do not ask any other questions such as who or what may have been at fault or the cause of the accident. Furthermore, do not make any reference to any legal action.**
3. Report the accident by phone **immediately** if there is any mention of legal action or correspondence comes from an attorney. Generally, this would only occur if a worldly person was injured on your property. If this should occur, please obtain his/her name and address as well as the names and addresses of any witnesses, along with a full description of the incident.
4. **Do not make any statements of fault, responsibility or liability** about the cause of the accident to the injured or any other party, including governmental officials.
5. If **any professional medical treatment is given**, please call Risk Management at (718) 625-3600 **within 48 hours** to report the accident. This should be done even if the individual has personal insurance and will not be submitting any bills to the congregation. Please have the following information when calling: the *date* of the accident, the *name* of the injured, the *name* of the congregation, the *name* of the coordinating elder, his *telephone number*, and his *address*. You will be assisted with reminders concerning these procedures and we will be available to provide answers concerning any questions you may have.

6. Keep in close touch with the injured party and their family to see what further assistance may be needed in the home, etc. If the injured is not one of Jehovah's Witnesses, kindly offer to provide additional assistance and make needed arrangements. Show genuine Christian love and concern.

After you complete the *Accident Report (T-5)*, make a copy for the congregation files and send the original to Risk Management. When you receive any correspondence or bills related to the accident, please make a copy for the congregation files and forward the original to Risk Management.

The Society or its legal representative may contact the coordinating elder. Please keep in contact with the injured person if possible and notify Risk Management of any significant changes in the injured's status.

HOW TO REPORT INCIDENTS INVOLVING PROPERTY DAMAGE

1. Appoint an experienced elder to take the lead in managing the situation.

2. Protect the property from further damage, loss, or break-in.

3. Immediately report acts of theft and vandalism to the police. Please include a copy of the Police Report with the *Property Loss Report (T-55)* when this is sent to the Society.

4. In the event of a loss for which KHAA funds may be used, please contact Risk Management for recommendations on how to proceed.

5. Within 30 days after you discover the damage or loss, please send us bills or written estimates you obtained for all repairs or replacements made necessary by the loss along with the completed *Property Loss Report (T-55)*. If you cannot do this within 30 days, contact Risk Management. (Loss estimates should not include labor costs if you are planning to use volunteers to do the work.)

In conclusion, we thank you for your careful review of the foregoing information. We are confident that all will continue to make a diligent effort to apply the suggestions set forth so that accidents, property losses and their associated costs will be kept to a minimum. May Jehovah bless our united efforts in promoting the interests of his Kingdom.

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosures
: Regional Building Committees
Traveling Ministers

WTPA 00198

PROPERTY LOSS REPORT

Congregation Number: _____ Date Loss Occurred: _____

Congregation Name: _____
(Name) (City) (State)

Loss Information

☐ Burglary ☐ Fire ☐ Glass ☐ Vandalism ☐ Vehicle ☐ Windstorm/Hail ☐ Water Damage ☐ Other

Has Regional Building Committee been contacted to provide skilled workers, if necessary ? ☐ Yes ☐ No

Property Damaged: (List each item, *giving the cost to repair*. Please attach written estimates or bills for each.)

Property Stolen: (List each item, *giving the cost to replace*. Please attach written estimates or bills for each.)

TOTAL AMOUNT OF CLAIM: $ _____
(Must equal total of attached estimates and bills.)

If burglary, vandalism, or vehicle damage, please report to the police and attach a copy of their report. Also, if it was a burglary, please send details of what loss control measures have been taken or planned to minimize the chance of reoccurrence.

Is identity of one responsible for damage known to you or the police? ☐ Yes ☐ No

Name and phone number of two elders who may be contacted during business hours:

_____ (Name) _____ (Name)

_____ (Phone) _____ (Phone)

_____ (Date completed) _____ (Signature of Presiding Overseer)

Return completed form with written estimates/bills and a copy of the police report (if applicable) to:

Watchtower
Attn: Risk Management Office
25 Columbia Heights
Brooklyn, NY 11201-2483

T-65 7/98

WTPA 00199

KINGDOM HALL UNDER CONSTRUCTION FORM

(Please complete one form for each building under construction)

Congregation Information

Congregation Number: _____

Congregation Name: _____
(Name) (City) (State)

Kingdom Hall Address: _____
(Street Address)

_____
(City) (State) (ZIP)

Construction Information

Type of Construction ☐ New Construction ☐ Major Renovation ☐ Minor Renovation

If this is a "quick build" construction project, please provide dates assigned: _____

When do you break ground (excavation, pouring foundation, etc.)? _____

Replacement cost of completed Kingdom Hall: $ _____
(Materials only, do not include labor costs)

For Your Information

If optional coverage is needed for the use of nearby parking areas or off-site storage of materials, please notify the Risk Management Office as soon as possible. If certificates for optional coverage are required, these should be requested, in writing, at least a week in advance.

For additional information, please consult the letter in your congregation files, "Key Facts About the Kingdom Hall Assistance Arrangement".

As soon as you begin meeting in this Kingdom Hall, please complete a *Property Description Form* (T-50) and return it to our office.

Signatures of Local Building Committee

_____ _____

_____ _____
(Date Signed)

Return Completed Form To:

Watchtower
Attn: Risk Management Office
25 Columbia Heights
Brooklyn, NY 11201-2483

Phone: 718-625-3600 **FAX: 718-560-8877**

T-56 3/98

WTPA 00200

1. This Accident Report (T-5-E) should be completed for all accidents, regardless of the amount of medical care required. Please send it to Risk Management within one week, keeping a copy for your file. If you receive accident-related correspondence or bills, retain copies for your file and send the originals to Risk Management.

2. Please ensure that the injured person receives appropriate medical attention promptly. If the injury appears serious, it may be best to call for an ambulance.

3. Appoint an experienced elder to coordinate all postaccident matters. He should keep in close touch with the injured person to see if any help may be needed, even if the injured person is not one of Jehovah's Witnesses. Christian love and concern will move us to be especially kind and helpful.

4. If medical treatment is required beyond first-aid, please call Risk Management at (718) 560-5000 within 24 hours, even if it appears that no funds are needed to pay bills. Failure to report accidents promptly may jeopardize financial assistance or insurance coverage. Please provide the accident date, the injured person's name, the congregation name, and the coordinating elder's name, phone number and address.

5. If financial help is requested or if there are questions about medical bills or other costs, please contact Risk Management promptly. We are pleased to assist as needed.

6. Do not discuss fault or liability with anyone other than a Risk Management representative. If there is talk of legal action or if you receive an attorney's letter, please contact Risk Management immediately. If you receive a phone call from someone representing the injured person, do not discuss the matter with them. Note their name, address, and phone number and explain that someone will contact them; then call Risk Management immediately.

Information About the Injured Person

Name: _____ (Phone Number)

Address: _____ (Street) (City) (State) (Zip)

Age: ____ ☐ Male ☐ Female ☐ Baptized ☐ Elder ☐ Ministerial Servant ☐ Pioneer ☐ Other _____

Occupation: _____ Employer: _____ Health Insurance Co. _____

Location of Accident

Facility Name: _____

Address: _____ (Street) (City) (State) (Zip)

Date of Accident: _____ Time of Accident: _____

Activity When Accident Occurred: _____

Description of Injury

For *Description of Injury* and *Injured Person's Account* sections: Ask the injured party what happened. Have two brothers present while documenting the comments, questions, and answers. The following questions should be asked. 1. What were you doing when the accident occurred? 2. How did the accident happen? 3. What injury did you suffer?

Description of Injury: _____

How was it treated? ☐ Doctor's Office ☐ Hospital Outpatient ☐ Hospital Inpatient

If hospitalized, how taken to hospital? _____ Expected recovery duration: _____

T-5-E 2/02 Printed in U.S.A.

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600 FAX (718) 875-7446

DATOS IMPORTANTES SOBRE EL PROGRAMA DE ASISTENCIA PARA LOS SALONES DEL REINO

1 de septiembre de 1998

(Sustituye a la carta del 1 de octubre de 1995, que debe desecharse)

¿QUÉ ES EL PROGRAMA DE ASISTENCIA PARA LOS SALONES DEL REINO (PASR)?

La Sociedad emplea las contribuciones aportadas para este programa con el fin de pagar los daños materiales sufridos por los Salones del Reino y los gastos y las reclamaciones de responsabilidad civil que surgen a raíz de accidentes e incidentes ocurridos en los Salones. ***No se trata de un seguro comercial.*** La *Risk Management Office* de la Sociedad administra el fondo, y utiliza estas contribuciones para hacer todos los pagos. El fondo se emplea, además, para contratar un seguro complementario con el fin de proteger a las congregaciones y a la Sociedad de posibles pérdidas catastróficas.

Si en caso de siniestro se recurre primero a todas las demás ayudas disponibles, los fondos del programa se reservarán para los casos de verdadera necesidad. Quienes dan apoyo amoroso a los accidentados y trabajan de voluntarios en la reparación de la propiedad manifiestan un excelente espíritu. Por lo general, los cabezas de familia se encargan de los gastos médicos de su casa que incluyen los gastos debidos a accidentes (w97-S 15/8 19, 22). No obstante, la Sociedad se complace en poder ayudar cuando se necesita.

¿CÓMO PARTICIPAMOS EN EL PROGRAMA?

Contribuciones. Todos los años recibirán una carta en la que se sugerirá una contribución cuyo importe se basará en las necesidades de todos los que están cubiertos por el programa. Una vez que reciban la carta, envíen su contribución lo antes posible.

Salones del Reino existentes. Los costos de reposición de estructuras existentes se informan a la Sociedad en el *Property Description Form (Formulario de descripción de la propiedad) (T-50).* En 1997 se pidió a todas las congregaciones que son dueñas de una propiedad que llenaran uno de estos formularios para actualizar sus valores. Si aún no lo han hecho, envíen un formulario rellenado a *Risk Management,* a la dirección que aparece más arriba. El Comité Regional de Construcción quizá pueda ayudarles a calcular los costos de reposición de su edificio.

Construcción. Antes de empezar la construcción deben rellenar un formulario *Salón del Reino en construcción (T-56-S),* que pueden pedir a *Risk Management.* Si necesitan una fianza de cumplimiento de contrato u otras fianzas, pónganse en contacto con *Risk Management.* Si cancelan la construcción, infórmennos por escrito.

Edificios comprados y solares. En el caso de los edificios recién comprados, deben llenar un *Property Description Form (T-50).* Su cuenta actual cubre automáticamente los solares.

Apartamentos. Los modestos apartamentos ubicados en la propiedad del Salón del Reino y que utilizan los ministros viajantes o los precursores especiales pueden incluirse en el programa previa solicitud.

WTPA 00202

Puede conseguirse un certificado de s [redacted] específico en ciertos casos, como por e[redacted]o:

- Cobertura de responsabilidad general para instalaciones alquiladas (como las que utilizan algunas congregaciones con motivo de la Conmemoración). También, asistencia por daños materiales para el contenido que es propiedad de la congregación.
- Daños ocasionados a un equipo de alquiler, hasta un límite de 10.000 dólares por alquiler informado

Para que esté en vigencia toda cobertura especial o se emitan los certificados, ha de notificarse con antelación y por escrito a *Risk Management.*

Cancelación del programa. Si no desean participar más en este programa, notifíquenlo por escrito indicando la fecha de terminación, a *Risk Management.* Dado que no enviar la contribución sugerida no implica la baja automática del programa, notifiquen por escrito la cancelación.

¿QUÉ HACER PARA MANTENER BAJOS LOS COSTOS DEL PROGRAMA?

El mantenimiento preventivo es la clave para controlar los costos. Todos los años recibirán un formulario *Annual Congregation Property Documents & Safety Inspection Worksheet* (Documentación anual de la propiedad de la congregación y hoja de trabajo de la revisión de seguridad) *(T-34).* Está concebido para ayudarles a identificar los lugares donde puede haber daños materiales o accidentes que resulten en pérdidas. Corrijan de inmediato los problemas que hayan observado y documenten lo que han hecho. Guarden la lista de control rellenada en el archivo de la congregación que tiene el título de propiedad.

Claro está, los siniestros no se previenen únicamente llenando una lista de control una vez al año. Los ancianos deben tomar la iniciativa en descubrir y corregir los posibles problemas y peligros para la seguridad. Nuestra buena actitud hacia la seguridad y mantener las propiedades en buen estado es lo que nos permite gestionar el programa con un costo mucho menor de lo que les es posible a otras organizaciones con seguros comerciales. Como los siniestros de todos los participantes en el programa repercuten en el balance del fondo, la reducción de las pérdidas beneficia a todos.

Muchas veces, pueden adoptarse medidas para mantener los costos al mínimo tras ocurrir el siniestro. En el caso de daños materiales, actuar con rapidez será muy útil para impedir más pérdidas. Por ejemplo, si los desperfectos debidos a una tormenta causan una gotera, arreglarla impedirá un daño mayor y reducirá la cantidad de dinero del fondo que se necesitará para hacer frente al incidente. Recurrir a los comités regionales de construcción y a mano de obra voluntaria ahorra valiosas cantidades contribuidas al fondo. Buscar cuidadosamente los artículos de mejor calidad resultará a la larga en un ahorro.

En el caso de **daños personales,** atender al afectado amorosamente y sin demora asegurará una recuperación lo más completa y rápida posible.

CÓMO INFORMAR LOS ACCIDENTES QUE RESULTAN EN DAÑOS PERSONALES

1. **Asegúrense de que la parte afectada recibe la atención médica adecuada lo antes posible.** En la mayoría de los casos de heridas graves, es mejor que el transporte del afectado hasta un centro médico se haga en ambulancia.
2. **Designen a un anciano maduro y experimentado para que se ocupe del accidente.** Entre sus labores estará asegurarse de que se adoptan todas las medidas que se indican en este plan. Debe repasar esta carta y rellenar la *Notificación de accidente (T-5-S)* en menos de una semana. Cuando documente los datos del formulario, ha de haber dos hermanos presentes. Al rellenar la notificación, hagan las preguntas que aparecen en ella. **No planteen ninguna otra pregunta, como por ejemplo, de quién fue la culpa del accidente ni qué lo causó. Además, no hagan ninguna referencia a una acción legal.**
3. Comuniquen el accidente telefónicamente **de inmediato** si se hace mención de tomar acción legal o reciben correspondencia de un abogado. Normalmente, solo ocurrirá si quien se accidentó en su propiedad es una persona del mundo. Si este es el caso, pídanle el nombre y la dirección, y consigan el nombre y la dirección de los testigos del suceso, junto con una narración completa del incidente.

4. **No hagan ninguna declaración o [redacted]ponsabilidad** tocante a la causa del ac[redacted]nte ni a la persona afectada ni a ninguna otra, ni siquiera a funcionarios civiles.

5. **En caso de que se dé tratamiento médico profesional, notifiquen el accidente** a *Risk Management*, llamando al teléfono (718) 625-3600, **en las cuarenta y ocho horas siguientes.** Deben hacerlo así hasta en el caso de que la persona tenga un seguro y no vaya a remitir ninguna factura a la congregación. Cuando llamen, cuenten con los siguientes datos: *fecha* del accidente, *nombre* del accidentado, *nombre* de la congregación, *nombre* del anciano coordinador, su *número de teléfono* y su *dirección*. Se les dará ayuda recordándoles estos procedimientos, y estaremos a su disposición para responder las preguntas que tengan.

6. Manténganse en contacto directo con la parte afectada y su familia para ver qué más ayuda necesitan en su hogar, etc. Si el accidentado no es testigo de Jehová, ofrézcanle amablemente más asistencia y adopten las medidas necesarias. Demuestren verdadero amor e interés cristiano.

7. Tras rellenar la *Notificación de accidente (T-5-S)*, hagan una copia para los archivos de la congregación y envíen el original a *Risk Management*. Cuando reciban correspondencia o facturas relacionadas con el accidente, hagan una copia para los archivos de la congregación y remitan los originales a *Risk Management*.

La Sociedad o su representante legal tal vez se comunique con el anciano coordinador. Si es posible, manténganse en contacto con la persona accidentada y notifiquen a *Risk Management* cualquier cambio importante en su estado.

CÓMO INFORMAR INCIDENTES QUE CAUSAN DAÑOS MATERIALES

1. Nombren a un anciano experimentado para que tome la iniciativa en tratar la situación.

2. Protejan la propiedad de más daños, pérdidas o robos.

3. Denuncien de inmediato los robos o actos vandálicos a la policía. Adjunten una copia del informe de la policía al *Property Loss Report* (Informe de pérdida de propiedad) *(T-55)* cuando lo envíen a la Sociedad.

4. En el caso de un siniestro para el que posiblemente haya que usar fondos del programa, pónganse en comunicación con *Risk Management* para que se les recomiende cómo proceder.

5. Menos de treinta días después de haber descubierto el desperfecto o la pérdida, envíennos las facturas o los presupuestos escritos que tengan de todas las reparaciones o reposiciones necesarias junto con el *Property Loss Report (T-55)* rellenado. Si no pueden hacerlo en menos de treinta días, pónganse en contacto con *Risk Management*. (Las estimaciones de pérdidas no deben incluir la mano de obra si piensan emplear voluntarios para hacer el trabajo.)

Finalmente, les agradecemos su atento repaso de esta información. Confiamos en que todos continúen esforzándose con diligencia por poner en práctica las sugerencias dadas a fin de que los accidentes, los daños materiales y los costos relacionados sean los menos posibles. Que Jehová bendiga nuestros esfuerzos unidos por fomentar los intereses de su Reino.

Watch Tower B.&T. Society
OF PENNSYLVANIA

Anexos
cc: Comités regionales de construcción
Ministros viajantes

WTPA 00204

EXHIBIT 30

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

25 Columbia Heights
Brooklyn, NY 11201-2483

OFFICE OF THE SECRETARY AND TREASURER
RISK MANAGEMENT OFFICE

Phone (718) 625-3600
Fax (718) 560-8877

October 15, 1998

TO: ALL BODIES OF ELDERS PARTICIPATING IN THE KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)

Dear Brothers:

The inspired Bible record of the early Christian congregation informs us of several instances where true worshipers in one area who found themselves in financial need due to unforeseen occurrences were assisted by fellow believers who lived elsewhere. This is in harmony with the principle found at 2 Cor. 8:14,15, where Paul explains how one congregation's surplus might offset another's deficiency.

In our day there has been a tremendous increase in the size of the organization while at the same time the world has grown increasingly unstable and dangerous. Wisdom therefore dictates that we now plan ahead for "unforeseen occurrence" and prepare to assist one another. One provision by means of which this assistance is rendered is the KHAA.

We are entering the tenth year of this arrangement through which designated contributed funds are used to pay for property damage to Kingdom Halls as well as expenses and liability claims arising from incidents at Kingdom Halls. These funds are also used to purchase catastrophe coverage to protect the Society's assets here at headquarters and other major locations. Jehovah's blessing on the fine spirit of cooperation and conscientious support that all have shown makes it possible to continue to provide this assistance without any change in the amount of the suggested contributions since the program's inception.

Attached is the suggested contribution for the KHAA for your congregation(s) covering the accounting period of October 1, 1998, to October 1, 1999. When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. This prompt is accessed under the "other donations or payments" menu. Please **do not** include this contribution with any payments on your Congregation Account. If your congregation is able to contribute the entire amount now, this would be greatly appreciated. If this is not possible, please forward as much as you can afford and then any additional amounts when you are able to do so.

The Society is pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to properly care for our buildings and all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

P.S. Please note that the next to last paragraph applies only to the congregation which holds title to the property and makes remittances to the Society in connection therewith.

c: Traveling overseers

WTPA 00205

EXHIBIT 31

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

25 Columbia Heights
Brooklyn, NY 11201-2483

OFFICE OF THE SECRETARY AND TREASURER
RISK MANAGEMENT OFFICE

Phone (718) 560-5000
Fax (718) 560-5877

October 15, 1999

TO: BODIES OF ELDERS OF TITLE HOLDING CONGREGATIONS PARTICIPATING IN THE KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)

Dear Brothers:

We are now entering the eleventh year of the Kingdom Hall Assistance Arrangement through which designated contributed funds are used to pay for property damage to Kingdom Halls as well as expenses and liability claims arising from incidents on Kingdom Hall property. Jehovah's blessing on the fine spirit of cooperation and conscientious support that all have shown makes it possible to continue to provide this assistance without any change in the amount of the suggested contribution.

Attached is the suggested contribution for the KHAA for your Kingdom Hall property covering the accounting period of October 1, 1999, to October 1, 2000. When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. This prompt is accessed under the "other donations or payments" menu. Please **do not** include this contribution with any payments on your Congregation Account.

Please note that the contribution must be forwarded by using the titleholder's congregation account and not any other account such as the operating committee's fund. If your congregation is able to contribute the entire amount now, this would be greatly appreciated. If this is not possible, please forward as much as you can afford at this time and then the additional amount when you are able to do so.

The Society is pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to properly care for our buildings and all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00206

EXHIBIT 36

WATCH TOWER
Bible and Tract Society of Pennsylvania
Risk Management Office
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5000 Fax: (718) 560-8877

October 15, 2001

TO: BODIES OF ELDERS OF TITLEHOLDING CONGREGATIONS PARTICIPATING IN THE KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)

Dear Brothers:

We are now entering the thirteenth year of the Kingdom Hall Assistance Arrangement through which designated contributed funds are used to pay for property damage to Kingdom Halls as well as expenses and liability claims arising from incidents on Kingdom Hall property. Jehovah's blessing on the fine spirit of cooperation and conscientious support that all have shown makes it possible to continue to provide this assistance without any change in the amount of the suggested contribution.

Attached is the suggested contribution for the KHAA for your Kingdom Hall property covering the accounting period of October 1, 2001, to October 1, 2002. When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. This prompt is accessed under the "other donations or payments" menu. Please **do not** include this contribution with any payments on your Congregation Account.

Please note that the contribution must be forwarded by using the titleholder's congregation account and not any other account such as the operating committee's fund. If your congregation is able to contribute the entire amount now, this would be greatly appreciated. If this is not possible, please forward as much as you can afford at this time and then the additional amount when you are able to do so.

The Society is pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to properly care for our buildings and all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

WTPA 00216

EXHIBIT 37

WATCH TOWER
Bible and Tract Society of Pennsylvania
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5000 Fax: (718) 560-5101

December 1, 2002

TO ALL BODIES OF ELDERS IN THE UNITED STATES:

Dear Brothers:

The Kingdom Hall Assistance Arrangement uses designated contributed funds to pay for property damage to Kingdom Halls and for expenses and liability claims arising from incidents at Kingdom Halls. Jehovah's blessing on the fine support that all have shown have made it possible to provide this assistance all these years without any change in the suggested contributions.

Previously, the suggested contributions were derived from a formula based on the value of each Kingdom Hall. Thus, brothers in areas where there is only one congregation per Kingdom Hall were contributing much more than those meeting in Kingdom Halls with several, often larger congregations. Consequently, to allow an "equalizing to take place," we are implementing an adjusted way for congregations to contribute, based on the number of publishers.—2 Corinthians 8:14.

If each congregation contributed $4.50 per publisher per year, the total would approximate the amount contributed the previous year by all of the congregations combined. To avoid burdening the brothers with one large expense, we recommend that each congregation pass a resolution to contribute monthly based upon the number of its publishers. (For example, $4.50 x (No. of Publishers) ÷ 12 months = $ per month). Please note that your previous annual contribution covered the period ending October 1, 2002, so you may want to include amounts for three months with your December 2002 contribution. Since this will be a monthly donation, it should be cared for by each congregation instead of by the operating committee in the case of congregations that share a Kingdom Hall.

When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. This prompt is accessed under the "Other Donations or Payments" menu. Please **do not** include this contribution with any payments on your Congregation Account.

We are pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to care properly for our buildings and to accommodate all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

cc: Traveling Overseers

WTPA 00217

EXHIBIT 38

WATCH TOWER
Bible and Tract Society of Pennsylvania
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5000 Fax: (718) 560-5101

October 6, 2003

TO ALL BODIES OF ELDERS IN THE UNITED STATES

Dear Brothers:

The Kingdom Hall Assistance Arrangement (KHAA) uses designated contributed funds to pay for property damage to Kingdom Halls and for expenses and liability claims arising from incidents at Kingdom Halls. Jehovah's blessing on the fine support that all have shown has made it possible to provide this assistance all these years without any change in the suggested contributions.

To properly fund the KHAA, we suggest that each congregation once again contribute $4.50 per publisher for this year. To avoid burdening the brothers with one large expense, we recommend that each congregation pass a resolution to contribute monthly based upon the number of its publishers. (For example, $4.50 x (number of publishers) ÷ 12 months = $ per month.) Since this will be a monthly donation, it should be cared for by each congregation instead of by the operating committee in the case of congregations that share a Kingdom Hall. If you prefer to send the entire annual amount at once, you may do so.

When remitting your contribution via the Watchtower Electronic Funds Transfer System (WEFTS), enter the amount at the telephone prompt designated Kingdom Hall Assistance Arrangement. Please **do not** include this contribution with any payments on your Congregation Account.

We are pleased to administer this arrangement by which all congregations can share in assisting one another. We join you in praying for Jehovah's blessing on our efforts to properly care for our buildings and all those who turn to such centers of true worship to learn more about our Grand Creator.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

cc: Traveling overseers

WTPA 00218

WATCH TOWER
Bible and Tract Society of Pennsylvania
25 Columbia Heights, Brooklyn, NY 11201-2483, U.S.A.
Phone: (718) 560-5000 Fax: (718) 560-5101

6 de octubre de 2003

A LOS CUERPOS DE ANCIANOS DE ESTADOS UNIDOS

Estimados hermanos:

El Programa de Asistencia para los Salones del Reino (PASR) emplea los fondos que recibe con el fin de pagar los daños materiales sufridos por los Salones del Reino y los gastos y las reclamaciones de responsabilidad civil que surgen a raíz de accidentes ocurridos en tales salones. La bendición de Jehová sobre el magnífico apoyo que ustedes han dado ha permitido suministrar esta cobertura durante los pasados años sin la necesidad de aumentar las contribuciones sugeridas.

Para aportar fondos al programa, volvemos a sugerir que cada congregación contribuya este año 4,50 dólares por publicador. Para no cargar a los hermanos con un gasto grande, recomendamos que cada congregación presente una resolución para efectuar dicha donación mensual. (Ejemplo: $4,50 x [número de publicadores] ÷ 12 meses = $ al mes.) Como se trata de una contribución mensual, cada congregación deberá hacerse cargo de ella, en vez del comité de mantenimiento (en el caso de que varias congregaciones compartan el mismo salón). Si desean enviar la cantidad total de una sola vez, pueden hacerlo.

Al remitir su contribución mediante el Sistema Watchtower de Transferencia Electrónica de Fondos (WEFTS, por sus siglas en inglés), introduzcan la cantidad cuando la grabación telefónica llegue al apartado *Kingdom Hall Assistance Arrangement* (Programa de asistencia para los Salones del Reino). No incluyan esta contribución junto con ningún pago de la cuenta de su congregación.

Nos complace administrar este programa mediante el cual todas las congregaciones se apoyan entre sí. Pedimos a Jehová, al igual que ustedes, que bendiga nuestros esfuerzos por cuidar adecuadamente de nuestros edificios y de quienes acuden a estos centros de adoración pura para aprender más de nuestro Magnífico Creador.

Sus hermanos,

Watch Tower B. & T. Society
OF PENNSYLVANIA

cc superintendentes viajantes

WTPA 00219

EXHIBIT 39

Watch Tower Bible and Tract Society of Pennsylvania

Current Directors

10/5/00-present	D. A. Adams	President
	R. W. Wallen	Vice President
	W. F. Malenfant	Vice President
	R. E. Abrahamson	Secretary and Treasurer
	D. L. Bland	Assistant Secretary and Assistant Treasurer
	P. D. Wilcox	Assistant Secretary and Assistant Treasurer
	J. N. Wischuk	Assistant Secretary and Assistant Treasurer

EXHIBIT 40

Watch Tower Bible and Tract Society of Pennsylvania

Former Directors

1970	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
1973-1974	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	J. O. Groh	Assistant Secretary—Treasurer
	W. K. Jackson	Director
1975	N. H. Knorr	President
	F. W. Franz	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1976	N. H. Knorr	President
	F. W. Franz	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
	M. G. Henschel	Director
	L. A. Swingle	Director
1977-81	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	W. K. Jackson	Assistant Secretary—Treasurer
1982-83	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	G. Suiter	Secretary and Treasurer
	L. A. Swingle	Assistant Secretary—Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Director

1984-92	F. W. Franz	President
	M. G. Henschel	Vice President
	W. L. Barry	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	T. Jaracz	Assistant Secretary—Treasurer
1993-95	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	J. C. Booth	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer
1996-10/5/2000	M. G. Henschel	President
	W. L. Barry	Vice President
	T. Jaracz	Vice President
	L. A. Swingle	Secretary and Treasurer
	J. E. Barr	Assistant Secretary—Treasurer
	A. D. Schroeder	Assistant Secretary—Treasurer
	D. Sydlik	Assistant Secretary—Treasurer

EXHIBIT 49

REMITTANCE FORM

Name of Congregation _____ Date _____ Cong. No. [ ]

City _____ State _____

Enclose ONE CHECK FOR THE TOTAL of items below:

Contributions for Society Kingdom Hall Fund $ _____

Contributions for the Society's Worldwide Work $ _____

Contributions for Relief Fund $ _____

Contributions for: _____ $ _____

Payments for Property Insurance $ _____

Payments for Property Loan No. 1 Number of Payments ____ $ _____

Payments for Property Loan No. 2 Number of Payments ____ $ _____

_____ Check No. _____ TOTAL $ _____
Secretary

Make check payable to:

WATCH TOWER BIBLE AND TRACT SOCIETY
OF PENNSYLVANIA

T-51 9/90 Printed in U.S.A.

WTPA 00236

EXHIBIT 50

AUTHO[redacted]ATION AGREEMENT FOR DEBIT/CREDIT TRANSACTIONS

New ☐ Revision ☐

CONG./ACCOUNT NO.:_____ DATE_____

NAME of CONGREGATION _____

_____

We hereby authorize Watch Tower Bible and Tract Society of Pennsylvania and Watchtower Bible and Tract Society of New York, Inc., hereinafter called **WATCH TOWER**, to initiate debit/credit entries, electronically or by any other commercially accepted method, and to initiate, if necessary, by any such method, credit entries and adjustments for any debit entries in error to our account(s) indicated below and the depository named below, hereinafter called **DEPOSITORY**, to debit and/or credit the same to such account. We have attached a voided check (if a checking account is to be debited) to verify account and routing information.

PRIMARY ACCOUNT

DEPOSITORY: This *Primary Account* is a ☐ Checking ☐ Savings account. (select one)

NAME OF BANK _____

BRANCH ADDRESS _____

CITY _____ STATE _____ ZIP _____-_____

TRANSIT/ABA NO. ⌊_⌊_⌊_⌊_⌋ ⌊_⌊_⌊_⌊_⌋ ⌊_⌋ ACCOUNT NO. _____

EXACT ACCOUNT NAME _____

This *Primary Account* will be debited for all fund transactions and donations processed by EFT.

BANK ACH CONTACT: _____ _____ (___)_____-_____

Name of Bank Official *Title* *Phone Number*

SIGNATURES: ***(At least two must be authorized signers on the above account to authorize these EFT transactions.)***

_____ _____ _____

Presiding Overseer or Authorized Signer *Secretary or Authorized Signer* *Service Overseer or Authorized Signer*

☐ *We would like to use this optional* **SECONDARY ACCOUNT** *for Property Loan Payments.*

DEPOSITORY: This *Secondary Account* is a ☐ Checking ☐ Savings account. (*select one*)

NAME OF BANK _____

BRANCH ADDRESS _____

CITY _____ STATE _____ ZIP _____-_____

TRANSIT/ABA NO. ⌊_⌊_⌊_⌊_⌋ ⌊_⌊_⌊_⌊_⌋ ⌊_⌋ ACCOUNT NO. _____

EXACT ACCOUNT NAME _____

This *Secondary Account* will be debited for all Property Loan Payments *ONLY* processed by EFT.

BANK ACH CONTACT: _____ _____ (___)_____-_____

Name of Bank Official *Title* *Phone Number*

SIGNATURES: ***(At least two must be authorized signers on the above account to authorize these EFT transactions.)***

_____ _____ _____

Presiding Overseer or Authorized Signer *Secretary or Authorized Signer* *Service Overseer or Authorized Signer*

This authority is to remain in full force and effect until **WATCH TOWER** has received written notification from us of its termination in such time and in such manner as to afford **WATCH TOWER** and **DEPOSITORY** a reasonable opportunity to act upon the revised instruction.

IMPORTANT: ATTACH VOIDED CHECK(s) FOR EACH CHECKING ACCOUNT THAT WILL BE DEBITED TO CONFIRM CORRECT TRANSIT/ABA AND ACCOUNT NUMBERS.

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EXHIBIT 51

RECORD OF ELECTRONIC FUNDS TRANSFER

CONGREGATION NAME: _____ **CONG. NUMBER:** _____

INSTRUCTIONS: ***BEFORE CALL:*** Complete this *Record of Electronic Funds Transfer* form. Enter the amount in each category for which you will be making a remittance. Enter the total in the space provided. Double-check all calculations. Be sure that this amount is available in your bank account, including any deposited checks which may require time to clear. This form should be properly signed. ***CALL WEFTS:*** (*Watchtower Electronic Funds Transfer System*) For security reasons, do not use a cordless telephone. Follow the script provided to make your funds transfer. The total stated by *WEFTS* at the conclusion of your call should equal the total which you calculated. ***If the two totals do not agree, DO NOT AUTHORIZE THE TRANSFER.*** Hang up, recalculate the figures, and call again. When you authorize a funds transfer you will be given a confirmation number which will also appear on your next Society statement(s). Record this number in the space provided. ***AFTER CALL:*** Attach this record to your monthly *Accounts Sheet*. Your bank statement(s) will show each ACH debit made from your account(s). Please notify the Society of any discrepancies.

NOTE: Following each amount that you enter into *WEFTS* you must press the pound (#) key to complete the entry. To bypass a particular prompt or to enter a zero amount, you may press the pound (#) key without entering any amount.

1. Society's Worldwide Work (includes $ _____ congregation resolution) $ _____
2. Society Kingdom Hall Fund (includes $ _____ congregation resolution) $ _____
3. 1998 Convention Fund (*After April 1, 1998 include with Worldwide Work*) $ _____
4. Payment on Congregation Account $ _____
5. Payment for Property Loan *(*See note below*) $ _____
6. Kingdom Hall Assistance Arrangement $ _____
7. Traveling Overseers' Automobile and Insurance Program $ _____
8. Relief Fund $ _____

• Additional Contributions or Payments: _____ $ _____
WEFTS will provide appropriate prompts

• Additional Contributions or Payments: _____ $ _____
WEFTS will provide appropriate prompts

TOTAL STATED BY *WEFTS*: $ _____ **TOTAL** $ _____

Transaction Date: ___/___/___ **Time:** ___:___ *am/pm* **Confirmation Number:** ☐☐☐☐☐☐

NAME OF PERSON MAKING THIS TRANSFER: _____

***NOTE ON PROPERTY LOAN PAYMENTS:** If a secondary bank account has been specified from which these payments are to be made, a separate ACH debit will be made from that account for the amount you enter on this line. Please check with the brother responsible for overseeing this secondary account to verify that these funds are in the account and available for transfer, including any deposited checks which may require time to clear. All property loan payments will be acknowledged on your Pennsylvania Corporation Statement.

_____ _____

Accounts Servant **Secretary**

T(d)-62 8/97 Printed in U.S.A.

EXHIBIT 52

INSTRUCTIONS FOR WATCHTOWER ELECTRONIC FUNDS TRANSFER SYSTEM

GENERAL INSTRUCTIONS

1. *Watchtower Electronic Funds Transfer System* (*WEFTS*) is available 24 hours a day, 7 days a week.
2. When making the call, please have the *Record of Electronic Funds Transfer Form* (*T(d)-62*) filled out and this script with you for reference.
3. Verify sufficient funds are available for transfer, including time for deposited checks to clear.
4. You must use a touch-tone telephone. For security reasons do not use a cordless phone.
5. All amounts are entered in dollars and cents followed by the pound key (#). For example, to enter $5.03, you would press "503#".
6. To enter a zero amount or bypass a prompt, simply press the pound key (#).
7. For faster entry, once you identify the prompt, you may enter the amount without listening to the complete message.
8. If you hang up before authorizing the funds transfer, it is simply cancelled. No transaction will occur.
9. To exit the system or complete the funds transfer, press the star key (*) after the standard prompts are played. *WEFTS* will indicate the point from which the (*) key may be used.
10. Always record the confirmation number given after you authorize any transfer. If it is necessary to contact the Society about a transfer, you will need this confirmation number.
11. In the event of a rejection of the funds transfer due to insufficient funds in your bank account, please refer to the *Revisions to S(d)-27 New Paragraph 27a* for further instructions.

WHAT DOES IT MEAN WHEN I HEAR . . .

☐ "The information you have entered is invalid."

An incorrect congregation number or an incorrect authorization code was entered; try entering the information again.

☐ "We are sorry you are experiencing difficulties. Please contact the Society's offices during regular working hours."

After three opportunities to enter the correct congregation number and authorization code, you will hear this message if you still have not entered a valid combination. If you feel that you have been entering the correct information, you will need to contact the Society's offices so we can determine why you are not able to use the Watchtower Electronic Funds Transfer System.

☐ "No transfer will be made."

You did not enter any donation or payment amounts to be transferred.

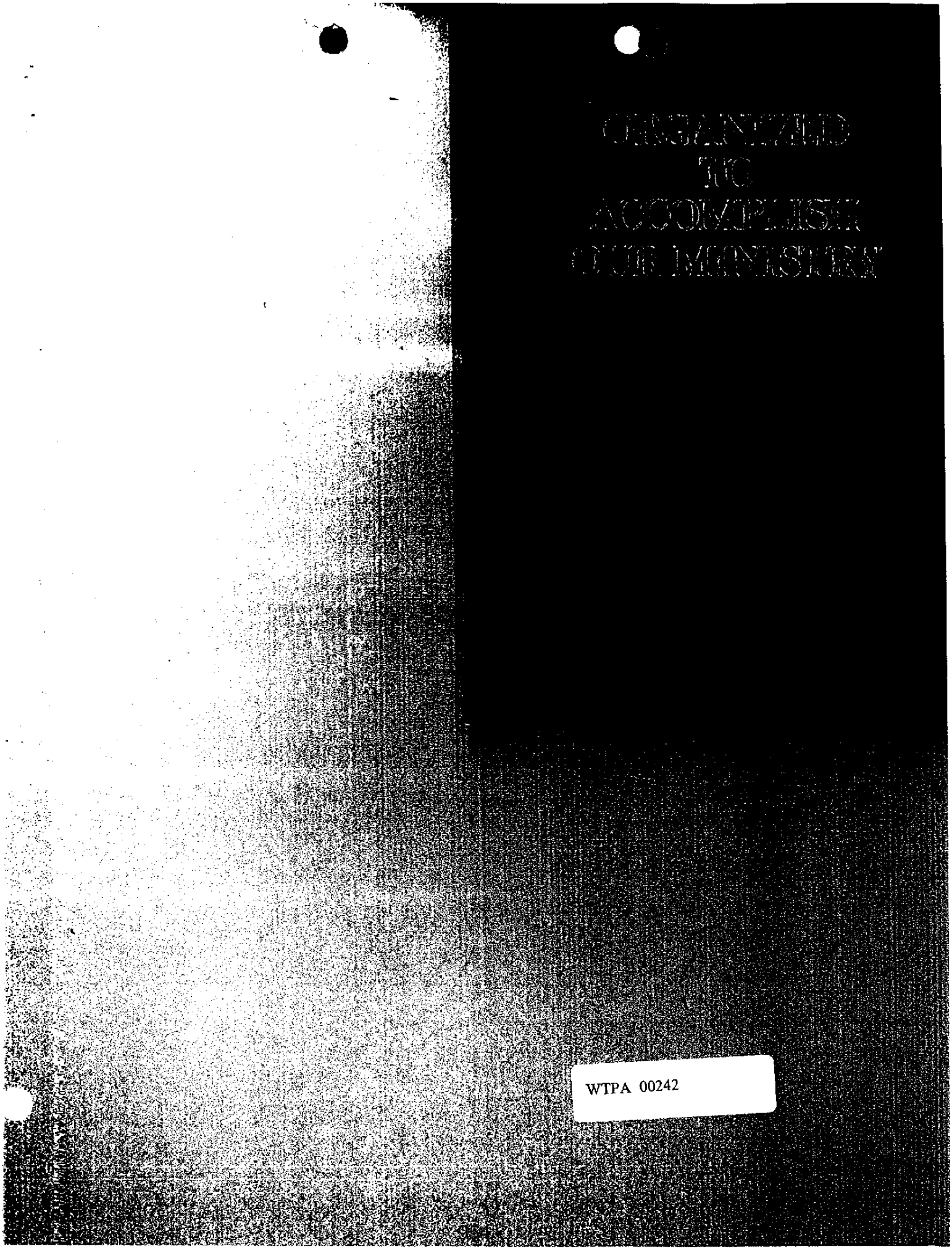
☐ "Thank you for calling the Watchtower Electronic Funds Transfer System. We regret that the system is not available. Please try again at a later time."

WEFTS is not available due to a temporary problem. Try calling a few hours later.

☐ A busy signal.

Try calling again. If you continue to hear a busy signal, try calling a few hours later.

EXHIBIT 54



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Organized to Accomplish Our Ministry
English (om-E)

Made in the United States of America

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and to care for all His "belongings," or Kingdom interests on earth. (Matt. 24:45-47; Luke 12: 42-44) Rather than being an individual Christian, the 'faithful slave' today is the remnant, still living on earth, of the composite body of Christ's anointed footstep followers. Such remaining ones are a part of spiritual Israel, the anointed congregation of God. (Gal. 6:16; compare Isaiah 43: 10.) This remnant is faithfully discharging the responsibilities of the "slave" during this time of the end by taking the lead in the preaching of "this good news of the kingdom" throughout all the earth and by providing spiritual food at the proper time for the household of faith.—Matt. 24:14.

USE OF RELIGIOUS CORPORATIONS

During these last days of the present wicked system of things, the "belongings" of the Master have increased abundantly throughout all the earth. This has placed a heavy responsibility on the 'faithful slave.' In discharging its responsibility to provide spiritual food at the proper time and in order to get the good news of the Kingdom preached before the end comes, the remnant on earth, as "the faithful and discreet slave" class, has formed certain agencies, or legal entities. It has proved to be the course of wisdom for the 'faithful slave' to organize certain corporations that are recognized by the laws of various countries. These religious corporations own and operate printing facilities that produce and distribute Bibles and Bible literature on a worldwide basis for use in the Kingdom ministry.

The first in time and the principal corporation used in this way is the Watch Tower Bible and Tract Society of Pennsylvania. This nonprofit religious society was incorporated in 1884, is made

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up of dedicated, baptized Christians and is exclusively devoted to advancing the interests of tr worship in the earth. The Watch Tower Soci has extended its works worldwide, establishi branch offices in various countries. Also, in compliance with local governmental regulations, a number of other religious societies have been legally formed, such as the Watchtower Bible and Tract Society of New York, Inc. (1909) and the International Bible Students Association in London, England (1914). All these legal instrumentalities cooperate with one another. These and other legal corporations are used by the modern-day Governing Body of Jehovah's Witnesses to facilitate the preaching of the good news worldwide and to care for the spiritual needs of the entire congregation of God in all parts of the earth.

STRUCTURE UNDER BRANCH ORGANIZATION

Whenever a branch office is established, Branch Committee of three or more elders appointed to care for the various responsibi ties involved in looking after the work in the country or countries under the jurisdiction of that particular branch. One member of the committee serves as the coordinator of the Branch Committee.

Local congregations under each branch organization are arranged into circuits and a number of circuits make up a district. Circuits and districts may be of various sizes depending on geographical and language considerations, as well as the number of congregations within the area assigned to a branch. A circuit overseer is appointed to serve the congregations in each circuit. District overseers visit the different circuits, serve at circuit assemblies and spend some time serving

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	03/04/1997	088527	$1,055.50	03/06/1997		12/10/19
	12/03/2001	401757	$10,980.65	12/04/2001		10/01/20
	10/17/2001	401678	$10,448.09	10/24/2001		
	07/27/1998	89656	$2,195.00	07/28/1998		01/30/19
	01/29/1999	400128	$21,731.99	02/02/1999		
	06/30/1999	400368	$93.75	07/01/1999		12/23/19
	01/10/2000	400713	$1,026.54	01/14/2000		12/23/19
	07/21/2000	401008	$41.00	07/25/2000		12/23/19
	08/09/2001	401590	$493.60	08/14/2001		06/30/20
	09/05/2001	401619	$259.00	09/10/2001		06/30/20
	03/09/1998	89394	$798.67	03/10/1998		01/11/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/21/1997	88506	$246.30	02/25/1997		01/02/19
	01/20/2003	402430	$2,136.00	01/27/2003		12/22/20
	02/24/2003	402527	$2,136.00	02/27/2003		12/22/20
	03/31/2003	402624	$2,136.00	04/01/2003		12/22/20

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09/22/2001	401643	$500.00	09/25/2001	05/06/20
09/05/2002	ACH	$175.00	09/05/2002	
10/11/2002	ACH-2000181	$1,132.25	10/16/2002	

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	10/04/1999	400529	$300.00	10/08/1999		08/17/19
	10/08/1999	400539	$234.00	10/12/1999		08/17/19
	10/26/1999	400568	$41.00	10/28/1999		08/17/19
	12/07/1999	400664	$568.00	12/09/1999		08/17/19
	03/16/2000	400831	$5,625.00	03/21/2000		08/17/19
	01/17/2002	401846	$355.28	01/28/2002		08/10/20
	05/04/2001	401439	$700.00	05/09/2001		04/08/20
	03/17/1999	400204	$179.88	03/18/1999		10/01/19
	05/21/1999	400307	$3,225.00	05/25/1999		10/01/19
	09/29/1999	400515	$1,881.00	09/30/1999		10/01/19
	10/27/1999	400565	$1,531.00	10/28/1999		10/01/19
	12/24/1999	400688	$941.75	12/28/1999		10/01/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/18/2000	400771	$15,000.00	02/22/2000		10/01/19
	02/21/2000	400780	$1,675.00	02/24/2000		10/01/19
	03/22/2000	400844	$1,375.00	03/28/2000		10/01/19
	03/22/2000	400844	$881.00	03/28/2000		10/01/19
	04/19/2000	400881	$2,281.00	04/25/2000		10/01/19
	04/19/2000	400881	$819.00	04/25/2000		10/01/19
	02/05/1998	89351	$420.00	02/11/1998		10/01/19
	08/26/1998	89372	$145.00	08/28/1998		10/01/19
	06/09/1998	89574	$1,550.75	06/12/1998		10/01/19
	10/21/1998	89849	$700.00	10/27/1998		10/01/19
	12/01/1998	400022	$570.00	12/03/1998		03/15/19
	02/12/1999	400160	$15.50	02/16/1999		03/15/19
	05/07/1999	400280	$68.07	05/11/1999		03/15/19
	04/22/1997	88648	$3,775.50	04/24/1997		03/15/19
	07/16/1997	88846	$712.00	07/17/1997		03/15/19
	09/17/1997	89003	$525.34	09/18/1997		03/15/19
	11/26/1997	89169	$556.25	11/27/1997		03/15/19
	11/26/1997	89173	$498.00	11/27/1997		03/15/19
	11/26/1997	89174	$230.00	11/27/1997		03/15/19
	12/02/1997	89195	$125.00	12/04/1997		03/15/19
	12/12/1997	89222	$630.00	12/16/1997		03/15/19
	12/12/1997	89223	$164.40	12/16/1997		03/15/19
	01/28/1998	89332	$85.00	01/29/1998		03/15/19
	05/04/1998	89512	$110.00	05/06/1998		03/15/19
	05/13/1998	89521	$75.00	05/15/1998		03/15/19
	06/05/1998	89566	$75.00	06/10/1998		03/15/19
	07/24/1998	89661	$1,505.00	07/28/1998		03/15/19
	07/24/1998	89662	$7,545.75	07/28/1998		03/15/19
	09/01/1998	89754	$95.00	09/04/1998		03/15/19
	09/22/1998	89796	$29.75	09/24/1998		03/15/19
	10/19/1998	89835	$80.00	10/20/1998		03/15/19
	12/08/2000	401176	$1,171.34	12/12/2000		11/14/20
	01/03/2003	ACH 2000220	$2,000.00	01/13/2003		08/12/20
	01/03/2003	ACH-2000218	$75.00	01/08/2003		08/12/20

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	09/27/2001	2129	-$464.66	09/27/2001		03/15/20
	04/16/2001	401403	$1,672.00	04/17/2001		03/15/20
	01/09/2003	ACH 2000220	$9,620.69	01/13/2003		08/16/20
	01/30/2003	0	-$9,620.69	02/03/2003		08/16/20
	01/09/2003	ACH 2000222	$9,620.69	01/29/2003		08/16/20
	01/07/1999	400091	$80.00	01/12/1999		03/27/19
	03/02/1999	400187	$210.00	03/04/1999		03/27/19
	03/02/1999	400188	$498.34	03/04/1999		03/27/19
	11/25/1999	400636	$125.00	11/30/1999		03/27/19
	02/22/2000	400779	$25,000.00	02/24/2000		03/27/19
	06/30/2000	400987	$84.05	07/05/2000		03/27/19
	04/22/1997	88649	$180.00	04/24/1997		03/27/19
	04/22/1997	88650	$755.60	04/24/1997		03/27/19
	05/21/1997	88712	$577.13	05/22/1997		03/27/19
	04/22/1997	88713	$60.00	05/22/1997		03/27/19
	05/21/1997	88714	$226.00	05/22/1997		03/27/19
	07/16/1997	88838	$225.00	07/17/1997		03/27/19
	07/16/1997	88841	$361.00	07/17/1997		03/27/19
	07/16/1997	88848	$40.00	07/17/1997		03/27/19
	08/18/1997	88937	$465.00	08/21/1997		03/27/19
	10/08/1997	89050	$149.00	10/09/1997		03/27/19
	06/29/1998	89603	$125.00	07/03/1998		03/27/19
	07/24/1998	89658	$1,069.20	07/28/1998		03/27/19
	07/24/1998	89663	$960.00	07/28/1998		03/27/19
	09/04/1998	89760	$305.00	09/08/1998		03/27/19
	06/23/1998	89561	$569.33	06/25/1998		04/13/19
	01/04/1997	062245	$1,880.06	01/07/1997		12/01/19
	02/21/1997	088504	$1,008.15	02/25/1997		12/24/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	07/16/2002	ACH 2000000	$1,551.61	07/18/2002		05/06/20
	05/24/1996	58868	$1,186.20	05/23/1996		03/01/19
	02/18/1999	400176	$750.00	02/23/1999		11/05/19
	10/28/1999	400579	$350.00	11/02/1999		11/05/19
	03/04/2000	400792	$1,312.75	03/07/2000		12/01/19
	02/24/1997	088510	$1,235.00	02/27/1997		12/07/19
	03/31/1999	400230	$5,891.00	04/01/1999		01/13/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	06/01/2002	402011	$4,882.13	06/05/2002		01/24/20
	09/05/2002	ACH	$333.00	09/05/2002		
	09/11/2002	ACH- 2000167	$1,476.50	09/12/2002		
	09/11/2002	ACH- 2000167	$1,124.00	09/12/2002		
	10/11/2002	ACH-2000181	$25.00	10/16/2002		
	11/04/2002	ACH-2000189	$50.00	11/06/2002		
	01/03/2003	ACH-2000218	-$25.00	01/08/2003		
	12/30/1998	400064	$5,051.37	12/31/1998		12/05/19
	05/23/1997	88716	$6.00	05/27/1997		09/01/19
	07/30/1997	88874	$8,500.00	07/31/1997		09/01/19
	10/15/1997	89065	$160.00	10/17/1997		08/01/19
	02/13/2003	1	$114.46			10/19/20
	06/16/2003	402769	$462.20	06/19/2003		10/19/20
	10/05/1998	89813	$400.00	10/08/1998		02/12/19
	02/06/2001	401276	$535.00	02/09/2001		12/02/20
	02/06/2001	401277	$248.00	02/09/2001		12/02/20
	02/06/2001	401278	$30.00	02/09/2001		12/02/20
	06/26/2002	500409	$1,646.30	06/27/2002		04/03/20
	09/05/2002	ACH	$1,100.00	09/05/2002		04/03/20
	09/11/2002	402116	$33,086.39	09/12/2002		04/03/20
	10/09/2002	ACH-2000181	$361.00	10/16/2002		04/03/20
	10/09/2002	ACH-2000181	$25,260.00	10/16/2002		04/03/20
	10/09/2002	ACH-2000181	$10,691.30	10/16/2002		04/03/20
	10/11/2002	ACH-2000181	$575.00	10/16/2002		04/03/20
	11/04/2002	ACH-2000189	$850.00	11/06/2002		04/03/20
	11/22/2002	402298	$23,613.50	11/26/2002		04/03/20
	11/22/2002	402298	$23,189.25	11/26/2002		04/03/20
	11/25/2002	ACH - 200019	$4,695.65	11/27/2002		04/03/20
	12/06/2002	ACH - 200020	$200.00	12/11/2002		04/03/20

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Reimbursing

Date Req	Number	Amount	Date Issue	Payee	Incident
01/03/2003	ACH-2000218	-$575.00	01/08/2003		04/03/20
01/03/2003	ACH-2000218	$200.00	01/08/2003		04/03/20
01/24/2003	ACH - 200022	$1,433.75	01/29/2003		04/03/20
01/24/2003	402457	$10,590.05	01/29/2003		04/03/20
02/07/2003	ACH - 200023	$450.00	02/12/2003		04/03/20
02/10/2003	ACH - 200023	$2,150.70	02/12/2003		04/03/20
03/07/2003	ACH - 200024	$225.00	03/13/2003		04/03/20
05/04/2001	401440	$498.01	05/09/2001		01/10/20
04/04/1998	3005	-$990.46	03/19/1998		02/02/19
02/19/1998	89380	$6,337.00	02/27/1998		02/02/19
08/12/1996	059116	$498.61	08/15/1996		07/02/19

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	04/09/1996	058767	$1,166.16	04/16/1996		02/01/19
	09/17/1996	59262	$1,260.00	09/19/1996		05/21/19
	12/01/1999	400655	$11,000.00	12/07/1999		04/30/19
	12/29/1999	400691	$3,331.86	12/30/1999		04/30/19
	09/05/2002	ACH	$375.00	09/05/2002		
	09/11/2002	ACH- 2000167	$1,093.63	09/12/2002		
	12/23/2002	ACH 2000209	$938.38	12/27/2002		
	05/29/2000	400942	$1,020.16	06/01/2000		04/24/20

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Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	02/20/2001	401298	$6.00	02/23/2001		12/22/20
	03/22/2001	401371	$3,000.00	03/29/2001		12/22/20
	03/22/2001	401371	$94.80	03/29/2001		12/22/20
	05/05/2001	401441	$1,721.51	05/09/2001		12/22/20
	03/15/2002	401908	$1,654.18	03/19/2002		12/22/20
	12/21/1998	400056	$210.00	12/24/1998		12/05/19
	01/13/1999	400100	$172.00	01/15/1999		12/05/19
	01/13/1999	400102	$361.00	01/15/1999		12/05/19
	11/24/1998	400015	$925.00	11/26/1998		04/27/19
	01/03/2003	ACH-2000218	$125.00	01/08/2003		12/28/20
	01/24/2003	ACH - 200022	$4,219.51	01/29/2003		12/28/20
	02/06/2003	ACH - 200023	$700.00	02/12/2003		12/28/20
	03/07/2003	ACH - 200024	$575.00	03/13/2003		12/28/20
	10/05/1999	400525	$545.93	10/08/1999		07/04/19
	08/11/1999	400436	$155,000.0	08/12/1999		08/22/19
	09/30/1998	89805	$836.00	10/06/1998		08/22/19
	04/04/1996	19827	$50,000.00	02/14/1996		01/01/19
	11/12/1996	247183	$260.99	11/15/1996		02/19/19

WTPA 00259

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident

WTPA 00260

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	08/21/2002	500499	$500.00	08/27/2002		08/06/20
	07/16/1997	88842	$290.92	07/17/1997		03/07/19
	10/18/2001	401683	$6,739.60	10/24/2001		09/22/20
	10/31/2001	401699	$39.00	11/01/2001		09/22/20
	12/19/2001	401793	$70.00	12/20/2001		09/22/20
	01/04/2002	401826	$1,120.00	01/10/2001		09/22/20
	01/16/2002	401833	$345.00	01/17/2002		09/22/20
	03/20/2002	401918	$1,563.00	03/21/2002		09/22/20
	07/09/2002	500431	$137.72	07/11/2002		09/22/20
	04/10/2001	401400	$1,629.00	04/12/2001		01/24/20
	08/30/2001	401620	$575.00	09/10/2001		01/24/20

WTPA 00261

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	05/05/1997	88681	$255.00	05/08/1997		03/23/19
	05/27/1997	88723	$472.81	05/29/1997		03/23/19
	09/18/2000	401084	$1,600.00	09/22/2000		07/14/20
	03/20/2000	400838	$11,750.00	03/23/2000		12/28/19
	06/30/1999	400372	$350.00	07/01/1999		04/10/19
	11/22/1999	400621	$234.47	11/24/1999		04/10/19
	11/10/2000	401149	$2,624.75	11/14/2000		10/11/20
	02/18/1998	89373	$10,080.91	02/20/1998		01/01/19
	09/05/2002	ACH	$50.00	09/05/2002		
	08/24/2001	401610	$1,751.28	08/28/2001		07/13/20
	08/24/2001	401611	$563.00	08/28/2001		07/13/20
	09/04/2001	401623	$529.00	09/10/2001		07/13/20
	10/02/2001	401657	$94.00	10/05/2001		07/13/20

WTPA 00262

Reimbursing	Date Req	Number	Amount	Date Issue	Payee	Incident
	03/01/2001	401319	$1,848.49	03/07/2001		01/29/20
	11/06/2001	401713	$2,125.00	11/08/2001		05/30/20
	05/05/2003	ACH-2000270	$100.00	05/07/2003		01/01/20
	02/07/2003	ACH - 200023	$325.00	02/12/2003		01/01/20

WTPA 00263

Reimbursing

Date Req	Number	Amount	Date Issue	Payee	Incident
02/24/2003	ACH - 200023	$2,996.30	02/27/2003		01/01/20
03/07/2003	ACH - 200024	$375.00	03/13/2003		01/01/20
01/16/2002	401833	$168.00	01/17/2002		04/10/20
03/15/2002	401909	$365.69	03/19/2002		05/12/20
07/09/2002	500430	$385.52	07/11/2002		05/12/20
07/12/1999	1478	-$998.39	07/09/1999		02/07/19
02/16/1999	400164	$3,030.00	02/18/1999		02/07/19
03/30/2000	400862	$1,633.99	04/04/2000		10/30/19
09/11/2002	402129	$2,500.00	09/18/2002		11/11/20
03/22/2001	401371	$6.00	03/29/2001		11/24/20
04/27/2001	401427	$795.00	05/01/2001		11/24/20
07/24/2001	401573	$115.00	07/27/2001		11/24/20
02/15/2002	ACH - 200000	$115.00	02/19/2002		11/24/20
12/24/2001	ACH - 200005	$1,312.81	12/27/2001		11/24/20

WTPA 00264

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Termites / Mold / Asbestos		Arden - Sacremento, CA (21170)			$10,448.	$0.00
	Broke into the shed of KH.		Bayview San Francisco, CA (130930)			$21,731.	$0.00
	Pipe burst flooding KH		Dumas, TX (129866)			$3,135.5	$0.00
	Mold		East - Sacramento, CA			$1,307.2	$0.00
	Mold		Las Plumas - Oroville CA # 20164			$3,008.5	$0.00
	Mold		Northgate - Sacramento CA # 21261			$2,407.0	$0.00
			Vasona Park - Santa Cruz CA			$50.00	$0.00
	Elder misconduct	01/01/1989	Red Bluff Cong, CA	$50,000.	$0.00		
	Vehicle collision at stop sign	07/01/1994	Mira Loma Assembly Hall	$36,738.	$0.00		
	Windstorm damaged roof	02/01/1996	North Red Bluff CA (20727)			$1,166.1	$0.00
	Fell on driveway	02/19/1996	Reseda CA Cong	$10,000.	$0.00		
	Tripped over bookbag	03/01/1996	Green Haven Cong Sacramento CA	$1,200.0	$0.00		
	Fell on wheelchair ramp	05/21/1996	North Spanish Cong, Turlock, CA	$0.00	$0.00		

WTPA 00265

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Fall on steps	06/28/1996	Fort Worth Convention	$600.00	$0.00		
	Stolen Lawnmower and trimmer	07/02/1996	Merced, CA East (19067)			$498.61	$0.00
	Fall on stairs	09/01/1996	Long Beach Convention	$8,500.0	$0.00		
	Burglar stole sound equipment	12/01/1996	English-Marina, CA (18960)			$1,880.0	$0.00
	trees fell into creek	12/10/1996	Aptos, CA (13433)			$5,000.0	$0.00
	KH broken into	12/24/1996	English-Marina, CA (18960)				
	KH flooded other property	01/01/1997	Tahoe City, CA (16592)	$0.00	$0.00	$4,433.0 $620.00 $807.00 $440.00 $280.00	$0.00 $0.00 $0.00 $0.00 $0.00
	Slip & fall	01/02/1997	Central Cong, Ventura, CA	$246.00	$0.00		
	Lost balance & fell	03/07/1997	Serramonte Spanish Cong, Daly City, CA	$291.00	$0.00		
	Fall from ladder	03/15/1997	Encino Cong, Los Angeles, CA	$17,470.	$0.00		
	Chair section collapsed	03/23/1997	Spanish Cong, Heber, CA	$727.00	$0.00		
	Fall through sheetrock ceiling	03/27/1997	English Cong, Carpenteria CA	$31,495.	$0.00		
	Lost balance and fell	04/27/1997	Point Arena Cong, CA	$0.00	$0.00		

WTPA 00266

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Burglary	06/15/1997	Santee, CA (22947)			$4,204.8	$0.00
	Trip & fall over barricade	08/01/1997	Long Beach Convention	$160.00	$0.00		
	Unlawful tree trimming	10/01/1997	Encino Cong, CA	$28,674.	$0.00		
	Windstorm tree on roof	12/07/1997	La Canada, CA (16600)			$1,235.0	$0.00
	Heart attack	01/11/1998	Central Cong, Huntington Beach, CA	$798.67	$0.00		
	Slip & fall in mud	01/30/1998	Artesia Congregation, CA	$2,195.0	$0.00		
	Windstorm tore off part of roof.	02/02/1998	McFarland Spanish CA (19034)			$5,346.5	$0.00
	Cut leg on broken glass tubing	02/12/1998	Manhattan Beach Cong, CA	$400.00	$0.00		
	Burglary	04/13/1998	English, Gridley, CA (16121)			$569.33	$0.00
	Fall from ladder	08/22/1998	Ramona Cong, CA	$155.83	$0.00		

WTPA 00267

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Hit by protruding pipe	11/05/1998	Hollywood Cong, Los Angeles, CA	$1,100.0	$0.00		
	Flooded w/ sewage on several occasions.	12/05/1998	Las Plumas Oroville, CA (20164)			$5,051.3	$0.00
	Struck by falling ladder	12/05/1998	Pearland Cong, Palmdale, CA	$6,743.0	$0.00		
	Slip & fall on ice	12/23/1998	Bear Creek Cong, Murrieta, CA	$1,161.0	$0.00		
	Fall in parking lot	01/13/1999	Laguna Beach Cong, CA	$5,891.0	$0.00		
	Vandals became theives	02/07/1999	West, Barstow, CA (13847)			$3,030.0	$0.00
	Moving heavy equipment	04/10/1999	Sycamore Creek Cong, Vista, CA	$585.00	$0.00		
	KH infected w/ mold	04/30/1999	North, Sacramento, CA (21253)			$14,331.	$0.00
	Slip & fall on tile floor	07/04/1999	Prunedale Cong, Salinas, CA	$546.00	$0.00		
	Trip & fall over chairs	08/17/1999	East Cong, Lynwood, CA	$6,768.0	$0.00		

WTPA 00268

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Fall from roof	10/30/1999	Willow Creek Cong, CA	$1,634.0	$0.00		
	Rusted gate caused dmg. to car	12/01/1999	Hollywood Congregation, Los Angeles CA (17889)	$0.00	$0.00	$1,312.7	$0.00
	Cut self with hedge trimmer	12/24/1999	North Cong, Chino, CA	$792.00	$0.00		
	Water damage	12/28/1999	Sunland, Los Angeles, CA (18432)			$11,750.	$0.00
	Defective KH gate closed on car	04/24/2000	Northgate, CA (21261)	$0.00	$0.00	$1,020.1	$0.00
	Gate fell onto child	07/14/2000	Spanish Cong, Roseville, CA	$1,600.0	$0.00		
	Mold, termites	10/01/2000	Arden - Sacramento (21170)			$10,980.	$9,100.00
	3 AC units stolen	10/11/2000	Sylvan Park, Redlands, CA (20750)			$2,624.7	$0.00
	Stolen sound equipment	11/14/2000	English - Adelanto, CA (104133)			$1,171.3	$0.00
	#Trip & fall on entrance mat	11/24/2000	Woodley Spanish, Los Angeles, CA	$2,228.8	$0.00		

WTPA 00269

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Finger caught in door	12/02/2000	Mar Vista Congregation, Los Angeles, CA	$850.00	$0.00		
	Alleged beating at KH	12/22/2000	Parkside Cong, Lompoc, CA	$6,476.0	$0.00		
	Auto hit fence.	01/10/2001	Marina, Vallejo, CA (23583)			$498.01	$0.00
	Trip & fall over briefcase	01/24/2001	South Cong, Norwalk, CA	$2,204.0	$0.00		
	Burglary	01/29/2001	Weaverville, CA (130757)			$1,848.4	$0.00
	Stepped into sprinkler hole	04/08/2001	Elsie Spanish - Sacramento, CA	$700.00	$0.00		
	Trip & fall on mat	04/10/2001	West Cong, Garden Grove, CA	$168.00	$0.00		
	Wrought iron gate stolen	05/06/2001	East - Palmdale, CA (20180)			$500.00	$0.00
	Jumping off backhoe	05/12/2001	West Congregation - Ukiah, CA (23762)	$366.00	$0.00		
	Car hit KH wall/fence	05/30/2001	West - Barstow, CA (13847)			$2,125.0	$0.00
LeBeau, Jeremiah David - Hand injury	Cut by metal binding	06/30/2001	Central - Santa Barbara, CA (22640)	$752.00	$0.00		
Peraza, Rosie - Dislocated elbow	Trip over curb stop in parking lot	07/13/2001	Villa Bonita Spanish, CA (111336)	$3,000.0	$0.00		
Ward, Jeffrey - Back injury	Fall from roof	08/10/2001	East Cong, Ukiah, CA	$355.00	$0.00		

WTPA 00270

Reported	Brief Description	Incident	Insured	BI Incu	BI Out.	PD Inc	PD Out.
	Cement propelled into eye	09/22/2001	Shadow Ridge, Vista, CA (23986)	$10,000.	$0.00		
	Slip and fall on ramp	11/11/2001	Woodland Hills Convention Center, CA	$2,500.0	$0.00		
	Trip & fall on tile floor	01/24/2002	Lake Earl, Crescent City, CA (101949)	$4,882.1	$0.00		
	Mold	04/03/2002	Marina - Vallejo, CA #23853			$142,256	$0.00
	Water damage	05/06/2002	Grandview - La Puente, CA (16899)			$1,551.6	$0.00
	Wind storm causes tree to fall on fence	08/06/2002	Seabright Congregation	$500.00	$500.00		
	Water damage - Urinal overflowed causing dmg.	08/12/2002	English - Greenfield, CA # 16097			$2,075.0	$0.00
	Water damage	08/16/2002	English - Solvang, CA (23176)			$9,620.6	$0.00
	Mold	12/28/2002	Port Hueneme - Oxnard CA # 20123			$5,619.5	$0.00
	Mold	01/01/2003	West - Santa Rosa, CA #22939			$3,696.3	$0.00

WTPA 00271

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FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: L. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES FORM INTERROGATORIES

Date: 4/8/05
Time: 9:30 AM
Dept. B

Trial Date: None

FORM INTERROGATORIES, SET ONE

FORM INTERROGATORY NO. 4.1:

At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**? If so, for each policy state:

(a) the kind of coverage;

(b) the name and **ADDRESS** of the insurance company;

(c) the name, **ADDRESS**, and telephone number of each named insured;

(d) the policy number;

(e) the limits of coverage for each type of coverage contained in the policy;

(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and

(g) the name, **ADDRESS**, and telephone number of the custodian of the policy.

RESPONSE:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received

from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

FORM INTERROGATORY NO. 4.2:

Are you self-insured under any statute for the damages, claims or actions that have arisen out of the **INCIDENT**? If so, specify the statute.

RESPONSE:

Objection. This request is irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

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FILED

FEB - 4 2005

Clerk of the Napa Superior Court
By: L. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO REQUESTS FOR PRODUCTION, SET ONE

Date: 4-8-05
Time: 9:30 am
Dept. B

Trial Date: None

REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE

REQUEST FOR PRODUCTION NO. 1:

Please produce the Corporate Book relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Evidence regarding Watch Tower Pennsylvania's existence, set forth in their Corporate Book, is directly relevant to the issue of their contacts with California. The by-laws and internal rules and regulations of a corporation will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

The *Serbian* objection raised by Watch Tower Pennsylvania is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

REQUEST FOR PRODUCTION NO. 2

Please produce the Bylaws relating to your organization/operation.

RESPONSE:

See the attached documents Bates nos. WTPA 00001-4.

ARGUMENT:

Watch Tower Pennsylvania provided the 4 pages attached hereto as **Exhibit 1.** These 4 pages hardly reflect all of the by-laws of Watch Tower Pennsylvania, a multi-million dollar corporation. This response is incomplete and the remaining by-laws should be produced.

REQUEST FOR PRODUCTION NO. 3

Please produce the organizational meeting minutes relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Organizational meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 4

Please produce all Board of Director meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Board of Director meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 5

Please produce all shareholder or member meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Shareholder or member meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 6

Please produce all committee meeting minutes from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome.

ARGUMENT:

Committee meeting minutes will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 7

Please produce all resolutions from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome.

ARGUMENT:

Corporate resolutions will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with

California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 8

Please produce a complete list of shareholders and/or members from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad.

ARGUMENT:

A list of all shareholders and members since 1970 will provide background information regarding the individuals, and/or other corporations, that formulate policy making decisions or carry out the activities of the corporation. This evidence is directly relevant to the issue of their contacts with California, especially if such individuals reside in California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 9

Please produce any and all documents indicating corporate restructuring or reorganization from 1970 to the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's

Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad. Subject to and without waiving those objections, Watch Tower PA has no responsive documents, because there has been no corporate restructuring.

ARGUMENT:

Documents regarding corporate restructuring or reorganizing will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

Watch Tower Pennsylvania indicated in its response that there has been no restructuring but failed to identify whether there has been any reorganizing.

REQUEST FOR PRODUCTION NO. 10

Please produce all documents describing the hierarchical flow chart of positions/personnel from 1970 through the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, no responsive documents.

ARGUMENT:

The requested documents will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with

California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California. It seems implausible that a multi-million dollar corporation like Watch Tower Pennsylvania will not have documents describing how its personnel interacts with one another.

REQUEST FOR PRODUCTION NO. 11

Please produce all documents reflecting officers and directors from 1970 through the present relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome. Subject to and without waiving those objections, see Watch Tower PA's response to special interrogatory no. 10.

ARGUMENT:

Documents identifying officers and directors from 1970 to the present may assist in identifying who is responsible for governing the conduct of this statewide, national, and international corporation. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 14

Please produce all documents which indicate a relationship to or with other business or corporate entities relating to your organization/operation.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and vague. Subject to and without waiving those objections, Watch Tower PA will supplement this response if Plaintiff's clarify specifically what "other business or corporate entities" this request refers to.

ARGUMENT:

Plaintiff's counsel clarified to defense counsel that this request is an attempt for Plaintiffs to understand the relationship between Watch Tower Pennsylvania and "other business and corporate entities"; more specifically, any person, organization, corporation or entity that is somehow related to the Jehovah's Witnesses organization. Watch Pennsylvania never supplemented its response.

Documents regarding the relationship Watch Tower Pennsylvania has with other business or corporate entities will likely contain evidence regarding Watch Tower Pennsylvania's existence, which are directly relevant to the issue of their contacts with California. This information will shed light on their operations and the existence of a principal-agent relationship between various church bodies, their "religious workers" and their business operations within California.

REQUEST FOR PRODUCTION NO. 20

Please provide documents relating to financing or purchases of building(s) for use by assemblies and/or congregations in California, including but not limited to Kingdom Halls and Assembly Buildings.

RESPONSE:

Objection. This request is overly broad, vague, and unduly burdensome. Subject to and without waiving those objections, Watch Tower PA has provided funds to 197 congregations to build Kingdom Halls in California.

ARGUMENT:

These requested documents relate to Watch Tower Pennsylvania's business contacts with California. They are directly relevant to "minimum" contacts inquiry this Court will be asked to make as a result of Watch Tower Pennsylvania's Motion to Quash for lack of Personal Jurisdiction. Watch Tower Pennsylvania indicated in their response that they have provided funds to 197 Jehovah's Witnesses' congregations to build Kingdom Halls in California, but failed to provide any document referencing these loans. These documents should be produced.

REQUEST FOR PRODUCTION NO. 21

Produce all documentation that relates to monies you have received from California including but not limited to organizational financial statements from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad and unduly burdensome, and seeks private and confidential financial information in the form of financial statements for purposes of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower PA responds that contributions and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request. Further, Watch

Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 22

Produce all documentation that relates to monies you have received from California including but not limited to documents that indicate or reflect the origin of monies received by you.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO.23

Produce all documentation that relates to monies you have received from California including but not limited to documents that describe how monies from California congregations are received by you from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and violates privacy interests and privacy rights. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA receives contributions from approximately 1,997 congregations in California, which contributions are received by cash, checks and electronic transfers.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 24

Produce all documentation that relates to monies you have received from California including but not limited to treasurer summaries and reports from 1970 to the present

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, vague, and unduly burdensome, and seeks private and confidential documents for purpose of harassment. In addition, this request violates privacy interests and privacy rights of the persons who make donations to Watch Tower PA. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request. Further, Watch Tower PA responds that it receives contributions from approximately 1,997 congregations in California.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 25

Produce all documentation that relates to monies you have received from California including but not limited to tax returns and other government filings or reportings from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request violates privacy interests and privacy rights. This request is overly broad, unduly burdensome, and is intended to harass Defendant.

ARGUMENT:

The requested documents will reflect monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but

provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 26

Produce all documentation that relates to monies you have received from California including but not limited to documents that memorialize wire transfers or deposits from congregations in California from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 27

Produce all documentation that relates to monies you have received from California including but not limited to deposit summaries from individuals and/or congregations in California from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 28

Produce all documentation that relates to monies you have received from California including but not limited to bank statements reflecting amounts received from California by you from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, violates privacy interests and privacy rights, and is intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that contributions, and/or donations it receives are not segregated by state of origin, and it would therefore be unduly burdensome to attempt to respond to this request.

ARGUMENT:

The requested documents regarding monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

REQUEST FOR PRODUCTION NO. 29:

Produce all corporate and/or governmental filings (state or federal) from 1970 to the present.

RESPONSE:

Objection. This request seeks documents and information irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff

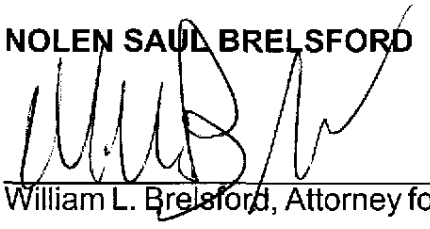
shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This request is overly broad, unduly burdensome, and intended to harass Defendant. Subject to and without waiving those objections, Watch Tower PA responds that there are none in California.

ARGUMENT:

The requested documents will likely reflect monies received by Watch Tower Pennsylvania from 1,997 California congregations is directly relevant to Watch Pennsylvania's "contact" with California. And while they indicated that they receive monies from 1,997 California congregations, they failed to provide any documents responsive to this request. They claim such information is somehow protected by privacy laws, but provide no legal reason for this alleged privacy. The requested information is hardly intended to harass this corporation. Rather, it is sought to establish their general and specific contacts with California to refute the motion to quash that they filed.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD



William L. Brelsford, Attorney for Plaintiffs

EXHIBIT 1

BYLAWS
OF
WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

ARTICLE I–MEMBERS

1.1 There shall be one class of members, and it shall consist of not more than 500 and not less than 300 members.

1.2 Members shall be only dedicated and baptized Jehovah's Witnesses who are serving or have served as elders and devoting (1) their full-time efforts to performance of one or more of the corporation's chartered purposes under its direction and by its authority or (2) their part-time efforts as active ministers of congregations of Jehovah's Witnesses. Notwithstanding the foregoing, any new member nominated and approved must be an elder.

1.3 Members of the corporation shall be those persons who have been nominated by a director or officer and who receive approval of the Governing Body of Jehovah's Witnesses.

1.4 The secretary shall issue a certificate of membership to each member of the corporation. Said certificate of membership shall be countersigned by at least one other officer of the corporation. The fact that the corporation is a nonprofit corporation shall be noted conspicuously on the face of each certificate.

1.5 All members shall be of the same class. Each member shall be entitled to one vote, in person or by proxy, at meetings of members of the corporation.

1.6 Membership shall not be transferable and shall automatically terminate on the date of a member's: death; voluntary resignation, removal under section 1.7; or disassociation from or disfellowshipping as one of Jehovah's Witnesses. If a member is deleted as an elder of Jehovah's Witnesses, his membership may be terminated at the sole discretion of the board of directors. If any member desires to resign, he shall do so by giving notice in writing to the president or secretary of the corporation to that effect.

1.7 Any member of the corporation may be removed from membership in the corporation for cause by a majority vote of the directors at an annual meeting of the directors or at a special meeting of the directors called for that purpose. Cause for removal shall include but not be limited to willful violations of the corporation's charter, bylaws, or reasonable rules adopted for its operations; willful conduct prejudicial to the interests of the corporation; and failure to meet and maintain the initial qualifications for membership in the corporation.

ARTICLE II–MEETINGS OF MEMBERS

2.1 An annual meeting of the members of the corporation will be held on the first Saturday or on a subsequent Saturday in October. Meetings of the members of the corporation may be held anywhere in the world. The Board of Directors shall fix the time and place of annual meetings.

2.2 Special meetings of the members may be called at any time by the Board of Directors and may be held anywhere in the world. Special meetings may also be called if at least fifty percent (50%) of the members so request. The Board of Directors shall direct the reasonable time and place of any special meeting.

2.3 Notice of annual or special meetings shall be given in writing at least ninety (90) days before the meeting and shall state the place, date, and hour of the meeting. In the case of special meetings, the notice shall be given in writing at least fifteen (15) days before the special meeting, state that it is being held by or at the request of the persons calling the meeting, and state the purpose for which the special meeting is called.

2.4 Notice of a meeting need not be given to any member who, in person or by proxy, submits a signed waiver of notice either before or after the meeting. The attendance, in person or by proxy, of any member at a meeting without protesting at or before its commencement the lack of notice of such meeting shall constitute a waiver of notice by him.

2.5 A majority of the members present either in person or by proxy shall constitute a quorum for any meeting of members. Voting shall be by written ballot. The affirmative vote on any matter of a majority of the members present, either in person or by proxy, at a meeting at which a quorum has been declared shall constitute the act of the members.

2.6 Every member entitled to vote at a meeting of members or to express consent or dissent without a meeting may authorize another member of the corporation to act for him by proxy. Every proxy must be in writing, signed by the member giving it, and filed with the secretary of the corporation.

2.7 Whenever members are required or permitted to take any action by vote, such action may be taken without a meeting on written consent that sets forth the action so taken and is signed by all of the members entitled to vote thereon.

ARTICLE III–DIRECTORS

3.1 The number of directors of the corporation shall be seven (7). Except as otherwise provided in section 3.2, each director shall be elected for a term of three years. Directors in office at the time that these bylaws are adopted shall continue to serve their existing terms. A director may be reelected for any number of consecutive terms.

3.2 Directors shall be elected by a majority of the votes cast at the annual meeting of members. A director must be a member of the corporation. If a director is terminated as a member, then he shall automatically be removed as a director without any further action by the members. Any director may be removed for any or no reason by the affirmative vote of two-thirds (2/3) of the members present, in person or by proxy, at an annual meeting or a special meeting called for that purpose.

3.3 A vacancy in the Board of Directors, arising from any cause, shall be filled by a majority vote of the remaining members of the Board of Directors, who shall meet for that purpose within thirty (30) days after the vacancy occurs. In the event that the directors fail to fill such vacancy, then the president or, if the office of the president be vacant, the vice-president performing the duties of the president, shall fill such vacancy by appointment. The person so elected or appointed shall hold office until the next annual meeting of members.

ARTICLE IV–MEETINGS OF DIRECTORS

4.1 The annual meeting of the Board of Directors shall be held each year in October at any place in the world designated by the Board of Directors. It shall be held after the annual meeting of members. A majority of the directors shall constitute a quorum for the transaction of business. The acts of a majority of the directors present at the annual meeting at which a quorum is present shall be the acts of the Board of Directors.

4.2 Special meetings of the Board of Directors may be called at any time by the president, and vice-president, or secretary or by a majority of the directors. Special meetings may be held anywhere in the world. Oral notice of at least twelve (12) hours shall be sufficient for any special meeting to be held at any of the corporation's properties in Brooklyn, New York. Written notice given at least five (5) days in advance shall be required for any special meeting to be held outside Brooklyn, New York. Notice of a meeting need not be given to any director who submits a signed waiver of notice, either before or after the meeting. The attendance of a director at a meeting without protesting at or before its commencement the lack of notice of such meeting shall constitute a waiver of notice. The notice of meeting or a waiver of notice need not specify the purpose of any special meeting of the directors. The acts of a majority of the directors present at the annual meeting at which a quorum is present shall be the acts of the Board of Directors.

4.3 Any director may participate in a meeting of the directors by means of a conference telephone or similar equipment that allows those participating in the meeting to hear one another at the same time. Participation by such means constitutes presence in person at such meeting.

4.4 Any action required or permitted to be taken by the directors may be taken without a meeting if all directors sign a consent in writing setting forth the action so taken and file the same with the secretary of the corporation.

ARTICLE V–OFFICERS

5.1 Officers of the corporation shall be chosen from among members of the Board of Directors. Officers shall be a president (who shall preside at the meetings of the Board of Directors), one or more vice presidents (any one of whom shall preside in the absence of the president), a secretary and a treasurer. The corporation may have such other officers and assistant officers as the Board of Directors shall authorize from time to time. At the option of the Board of Directors, the secretary may also hold the office of treasurer. Except for the offices of president and secretary, any two offices may be held by the same person.

5.2 The Board of Directors shall elect the president, vice presidents, the secretary and treasurer at the first meeting of directors, following the annual meeting of the members. Officers shall hold office for a term of one year, unless removed sooner by the Board of Directors.

5.3 Whenever a vacancy occurs in any office, within thirty (30) days after such vacancy occurs, the Board of Directors shall elect a successor from among the directors or other members of the corporation to fill the unexpired term.

ARTICLE VI–SEAL

6.1 The Board of Directors may authorize the use of a corporate seal, but a corporate seal shall not be required to validate acts of the corporation.

ARTICLE VII–MISCELLANEOUS

7.1 No officer or director of the corporation shall receive a salary.

7.2 Deeds and other instruments of conveyance, instruments to satisfy or release the lien of mortgages and deeds of trust or other security instruments, upon due authorization of the Board of Directors, shall be executed in behalf of the corporation by the president or any vice president and countersigned by the secretary, the treasurer, any assistant secretary, or any assistant treasurer.

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO SPECIAL INTERROGATORIES, SET ONE

Date: 4/8/05
Time: 9:30 AM
Dept. B

Complaint Filed:
Trial Date: None

SPECIAL INTERROGATORIES, SET ONE

INTERROGATORY NO. 1:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe your function/purpose within the Watchtower Society/Jehovah's Witnesses organization.

RESPONSE:

Objection. This interrogatory is overly broad, vague and ambiguous. The phrase "within the Watchtower Society/Jehovah's Witnesses organization" is vague and ambiguous. This interrogatory is overly broad in time and geographic scope. This interrogatory seeks information that is irrelevant to and not reasonably calculated to lead to the discovery of admissible evidence with respect to the limited issue of whether Defendant is subject to personal jurisdiction in California. See Court's Order on Defendant's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to, and without waiving those objections, Defendant Watch Tower Bible and Tract Society of Pennsylvania (Watch Tower PA") responds as follows: Watch Tower PA is a legal non-profit corporation that in the past has communicated with Governing Body's spiritual supervision to Branch Committees of Jehovah's Witnesses throughout the world. Watch Tower PA no longer does so. Watch Tower PA never communicated the Governing Body's spiritual counsel to the U.S. Branch Committee which went into operation in about April 2002. Watch Tower PA is the copyright holder for publications of Jehovah's Witnesses, holds funds donated for the world wide work of Jehovah's Witnesses and to the Kingdom Hall Building Fund, operates the Kingdom Hall Assistance Arrangement, and provides funds to branches and congregations of Jehovah's Witnesses throughout the world who may be in need of such funds.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness

organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 2:

With respect to Defendant Watch Tower Bible and Tract Society of Pennsylvania, Inc., please describe all of the changes to your function/purpose since 1970.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant refers Plaintiffs to the answer to No. 1 above.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they

operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 3:

If your answer to Interrogatory No. 2 is in the affirmative, why and when such changes were made.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant responds: Not applicable.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 4:

If your answer to Interrogatory No. 2 is in the affirmative, please state who made the changes.

RESPONSE:

Watch Tower PA here incorporates its objections to No. 1 above. Subject to and without waiving those objections, Defendant responds: Not applicable.

ARGUMENT:

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent (1) they are the holder of the copyright for Jehovah's Witnesses' publications (which are disseminated throughout California), (2) they communicated the Governing Body's counsel to the Branch Committees throughout the world (which include California) over an extended period of time, (3) they hold funds from congregations in California and worldwide, (4) they operate the Kingdom Hall Building Fund for congregations in California, (5) they operate the Kingdom Hall Assistance Arrangement for California congregations, and (6) they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 13:

Describe the relationship between you and Defendant Jehovah's Witnesses - Napa Congregation (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper *inquiry in civil courts and protected from discovery by the First Amendment to the U.S.* Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v.

Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with its own Napa based congregations.

INTERROGATORY NO. 14:

Describe the relationship between you and Defendant Jehovah's Witnesses - Oak Knoll Congregation (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal *ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper* inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in as sufficient detail to understand its relationship with its own Napa based congregations.

INTERROGATORY NO. 15:

Describe the relationship between you and Defendant Watchtower Bible and Tract Society of New York, Inc. (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving

those objections, Watch Tower PA responds as follows: No legal relationship, because Watchtower NY is a separate legal entity that is neither a parent corporation nor subsidiary of Watch Tower PA.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry out the essential purposes of this organization. Surprisingly, Defendant Watch Tower New York and Watch Tower Pennsylvania are located in the same building in the State of New York, but Watch Tower Pennsylvania filed a motion to quash for lack of personal jurisdiction, while Watch Tower New York did not. How these corporations operate in relation to one another will help address their contacts with California.

INTERROGATORY NO. 16:

Describe the relationship between you and Defendant Christian Congregation of Jehovah's Witnesses (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's

contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California.

INTERROGATORY NO. 17:

Describe the relationship between you and Watchtower Service Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Service Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Service Department is essential to understanding their contacts with California.

INTERROGATORY NO. 18:

Describe the relationship between you and Watchtower Legal Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in

relation to one another will help address their contacts with California. Based on information and belief, the Legal Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Legal Department is essential to understanding their contacts with California.

INTERROGATORY NO. 19:

Describe the relationship between you and Watchtower Writing Department (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA holds the copyright to writings published by the Writing Department of Jehovah's Witnesses in the United States.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in

relation to one another will help address their contacts with California. Based on information and belief, the Writing Department is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Writing Department is essential to understanding their contacts with California.

INTERROGATORY NO. 20:

Describe the relationship between you and Office of Public Information (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA is a client.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on information and belief, the Office of Public Information is a branch of a Jehovah's

Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Office of Public Information is essential to understanding their contacts with California. Their response that "Watch Tower PA is a client" is rather vague and further clarification should be provided.

INTERROGATORY NO. 21:

Describe the relationship between you and Public Affairs Office (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: The Public Affairs Office is now known as the Office of Public Information. See also response to No. 20 above.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

The Jehovah's Witnesses' organization is comprised of multiple corporations that carry the essential purposes of this organization. How these corporations operate in relation to one another will help address their contacts with California. Based on

information and belief, the Office of Public Information is a branch of a Jehovah's Witnesses' organization that help carry out its purposes. A description of this defendant's relation to the Office of Public Information is essential to understanding their contacts with California. Their response that "Watch Tower PA is a client" is rather vague and further clarification should be provided.

INTERROGATORY NO. 22:

Describe the relationship between you and Governing Body (including corporate, organizational and theocratic).

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: No legal relationship.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to

direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

INTERROGATORY NO. 23:

Please describe the relationship between the Board of Directors for Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Until October 1971, Watch Tower PA's board of directors consisted exclusively of individuals who later became members of the Governing Body. Since about October 2000, no Governing Body member is or has been on the Watch Tower PA board of directors.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

INTERROGATORY NO. 24:

Please describe the relationship between the officers of Watch Tower Bible and Tract Society of Pennsylvania and the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time

period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: See response to No. 23 above.

ARGUMENT:

The Serbian objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

INTERROGATORY NO. 25:

Please describe every way that the Governing Body used the Watch Tower Bible and Tract Society of Pennsylvania to help carry out the activities of Jehovah's Witnesses in the United States, including but not limited to the State of California, from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from

discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). This interrogatory is overly broad, vague and ambiguous as to what is specifically meant by the phrase "help carry out the activities of Jehovah's Witnesses." Subject to and without waiving those objections, Watch Tower PA responds as follows: Up until about 2001, Watch Tower PA was occasionally "used" to communicate with congregations in California by mail. Watch Tower PA has held, and still holds, copyrights to literature published by Jehovah's Witnesses and used by many publishers in California. See also response to No. 1 above.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it

appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

INTERROGATORY NO. 26:

Please describe how Watch Tower Bible and Tract Society of Pennsylvania has operated as the Service Committee of the Governing Body from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "used." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: Watch Tower PA has not operated as the Service Committee of the Governing Body.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its

relationship with Governing Body and how the Governing Body uses Watch Tower Pennsylvania, generally and specifically (in California), in light of the deposition testimony of Watch Tower Pennsylvania's person most knowledgeable that monies are held with Watch Tower Pennsylvania for loans, funding and insurance of California congregations.

Watch Tower Pennsylvania's response seems to indicates that the members of the Board of the Directors and Governing Body are somehow one in the same. If so, it appears the Board of Directors is also responsible for directing "congregational activities" as references in the affidavit of Don Adams. A further response should be provided.

INTERROGATORY NO. 27:

Please describe any and all involvement you have had with Kingdom Hall financing from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it has provided money to congregations upon request so that the congregations could build Kingdom Halls.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent they hold funds from congregations in California and worldwide, they operate the Kingdom Hall Building Fund for congregations in California, they operate the Kingdom Hall Assistance Arrangement for California congregations, and they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 29:

Please describe any and all involvement you have had with Kingdom Hall Assistance Arrangements (KHAA) from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct

limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that is has received annual contributions from congregations to fund the KHAA since about 1989 and has managed the funds in KHAA.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

This request covers the period of time that this corporation engaged in nefarious conduct as alleged in Plaintiff's Amended Complaint. The relevance of Watch Tower Pennsylvania's function and/or purpose within the context of the entire Jehovah's Witness organization is discussed in great detail in the concurrently filed Motion to Compel at pages 9-12.

The inadequate response they provided fails to explain how and to what extent they hold funds from congregations in California and worldwide, they operate the Kingdom Hall Building Fund for congregations in California, they operate the Kingdom Hall Assistance Arrangement for California congregations, and they provide funds to branches and congregations throughout the world, including California.

A more detailed response should be provided.

INTERROGATORY NO. 30:

Please describe any and all involvement you have had with risk management for California congregations and their respective Kingdom Halls from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's *motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct* limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds as follows: None.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 31:

Please describe your involvement with the purchase and/or financing of Kingdom Halls, generally, and the specific Kingdom Halls used by Defendant Napa Congregation of Jehovah's Witnesses and Defendant Oak Knoll Congregation of Jehovah's Witnesses.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "involvement." This interrogatory seeks information

concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that it provides money to congregations of Jehovah's Witnesses upon request in order to financially assist the congregations with building Kingdom Halls of Jehovah's Witnesses. Watch Tower PA was not involved in the purchase or building of the Kingdom Hall used by Defendants Napa and Oak Knoll Congregations of Jehovah's Witnesses and did not provide any monies to those two congregations for that purpose.

ARGUMENT:

The *Serbian* objection asserted by Watch Tower Pennsylvania is without merit, as discussed in extensive detail in the concurrently filed Motion to Compel at pages 3-9.

Other discovery uncovered by Plaintiff's counsel reveals there is a "financial" relationship between the congregations in Napa and Watch Tower Pennsylvania, as discussed in the concurrently filed Motion to Compel at page23.

At page 15 of the concurrently filed Motion to Compel, excerpts of an affidavit by Don Adams, Watch Tower Pennsylvania's current President, discusses in limited fashion that Watch Tower Pennsylvania is used by the Jehovah's Witnesses' Governing Body to direct "congregational activities." This should be explained. Watch Tower Pennsylvania should be ordered to respond to this request in sufficient detail to understand its relationship with its own Napa based congregations.

INTERROGATORY NO. 32:

Please describe the existence and operation of the Kingdom Hall Assistance Arrangement (KHAA) from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "describe the existence" of KHAA. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the KHAA was established in about 1989 to consolidate the insurance needs of congregations Jehovah's Witnesses throughout the United States. Each congregation may contribute to the fund. In turn, those monies are used to purchase a CGL insurance policy for all congregations and to cover certain claims for which there is no insurance.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and

California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 33:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide all of the functions of the Risk Management Office from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that the Risk Management Office of Watch Tower PA does not operate within the United States, except with respect to KHAA.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for

a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 34:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please provide who at the Watch Tower Bible and Tract Society of Pennsylvania oversaw/oversees the Risk Management Office from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by "organizational relationship" and by "theocratic relationship." This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons

and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 35:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe how the Society's Risk Management Office administers the KHAA Fund 1970 to the present.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal

jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 36:

With respect to the Risk Management Office of the Watch Tower Bible and Tract Society of Pennsylvania, please describe from 1970 to the present how the Risk Management Office purchases commercial excess insurance to protect congregations from catastrophic loss.

RESPONSE:

Objection. This interrogatory seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian

Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period").

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

INTERROGATORY NO. 37:

Please describe the input the Watch Tower Bible and Tract Society of Pennsylvania has in seeking contributions for the Kingdom Hall Assistance Arrangement from 1970 to the present.

RESPONSE:

Objection. This interrogatory is vague and ambiguous with respect to what is specifically meant by the word "input." This interrogatory seeks information concerning

religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976). This interrogatory seeks information irrelevant to and not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period"). Subject to and without waiving those objections, Watch Tower PA responds that Watch Tower PA informs congregations of Jehovah's Witnesses in the United States once each year of the need to support the KHAA and suggests to them a dollar amount per publisher in each congregation that they may wish to contribute toward the fund.

ARGUMENT:

As discussed in great detail in the concurrently filed Motion to Compel at pages 26-32, Watch Tower Pennsylvania collects monies from 1,997 California Congregations for a variety of reasons, including to purchase comprehensive general liability and umbrella insurance policies. Deposition testimony was proffered by Watch Tower Pennsylvania's person most knowledgeable that these policies provide coverage for California Kingdom Halls, California Assembly Halls, California Elders, California Circuit Overseers, and California Distract Overseers. These policies were purchased in part with monies received from approximately 2,000 California Congregations. Watch Tower Pennsylvania also self-insures itself and California entities for claims arising on property owned by Watch Tower Pennsylvania and arising from misconduct of their agents.

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Watch Tower Pennsylvania failed to provide any meaningful response to assess this corporation's intent to provide coverage for, and actually cover, claims arising within this State.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

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CHARISSA W. and NICOLE D.

FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

SEPARATE STATEMENT IN SUPPORT OF MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO PMK DEPOSITION AREAS OF INQUIRY

Date: 4/8/05
Time: 9:30 AM
Dept. B
Trial Date: None

FOURTH AMENDED NOTICE OF DEPOSITION OF PERSON MOST KNOWLEDGEABLE - INQUIRIES

INQUIRY NO. 1:

Organizational and corporate structure of Watch Tower PA from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the tine of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 700, 46 Cal.Rptr. 2d 888. In this case, the years of alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony relevant to the secular organizational structure of the Watch Tower PA corporation for the time periods of 1970 to 2003.

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ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the organizational and corporate structure of this "out-of-state" corporation since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

INQUIRY NO. 2:

The make up and function of the Governing Body from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. This request is not limited to Watch Tower PA, in that this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue

of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). Also, because the Governing Body is involved with spiritual and ecclesiastical matters related to the Jehovah's Witnesses religion, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected fro discovery by the First Amendment to the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's make up and function of the Governing Body.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the make up and function of the Governing Body of this "out-of-state" corporation since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch

Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

INQUIRY NO. 3:

Relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present (including but not limited to the Governing Body, Watchtower New York, Branch Committees, Christian Congregation of Jehovah's Witnesses, California District, California Circuits and California Congregations).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.,* (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Also, this line of questioning seeks information concerning religious doctrine and teachings and the internal ecclesiastical government of Jehovah's Witnesses, which is outside the scope of proper inquiry in civil courts and protected from discovery by the First

Amendment of the U.S. Constitution and its California analog. See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976).

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's relationship between Watch Tower PA and other entities.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the relationship between Watch Tower PA and the other Watchtower Society entities from 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

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INQUIRY NO. 4:

The Kingdom Hall Assistance Arrangement (KHAA) and its operation from 1970 to the present (including but not limited to amounts collected and amounts paid by the KHAA).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Further, furnishing details as to amounts collected and paid by the KHAA is unduly burdensome, an invasion of privacy, harassment, and is not reasonably calculated to lead to discovery of admissible evidence on the issue of whether Watch Tower PA is subject to personal jurisdiction in California.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to KHAA and its operation with respect to California in 2003. The KHAA did not come into existence until 1989.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants

through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's KHAA.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the KHAA since 1970 to the present in order to assess Watch Tower PA's contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

It appears the KHAA acts as a conduit for receiving monies from California and then purchasing insurance or acting as a self-insured retention fund to cover claims that occur in California. Accordingly, inquiry into the KHAA is proper to address the Watch Tower PA's minimum contacts with the State of California.

INQUIRY NO. 5:

The Risk Management Office and its operation from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. This line of questioning is not limited to Watch Tower PA, in that this request seeks information not

reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.,* (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony as to the scope of Risk Management's operations through Watch Tower PA in California, if any, from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's Risk Management Office.

Watch Tower PA should be compelled to provide a person most knowledgeable, preferably Don Adams, the President of Watch Tower PA, to testify regarding the Risk Management Office since 1970 to the present in order to assess Watch Tower PA's

contacts with the foreign state. Plaintiffs' alleged in their complaint that the sexual abuse perpetrated by an elder in the Watch Tower organization and the cover up by the Watch Tower entity Defendants occurred back in the 1970s. Accordingly, the time span and geographical scope are appropriate.

Watch Tower PA asserted a further objection to this area of inquiry premised on the First Amendment of the U.S. Constitution and its California analog in reliance on *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696. This objection is without merit as discussed in great detail in the concurrently filed Motion to Compel at pages 3-8.

It appears the KHAA acts as a conduit for receiving monies from California and then purchasing insurance or acting as a self-insured retention fund to cover claims that occur in California. Accordingly, inquiry into the KHAA is proper to address the Watch Tower PA's minimum contacts with the State of California.

INQUIRY NO. 6:

Kingdom Hall financing in California from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing in California from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Rainmueller. Mr. Rainmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

INQUIRY NO. 7:

Financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses (assemblies or congregation functions) from 1970 to the present (this category to include but not be limited to Kingdom Halls and Assembly Buildings).

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of

admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.,* (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California for use by Jehovah's Witnesses from 1970 to 2003.

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry

referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Rainmueller. Mr. Rainmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

INQUIRY NO. 8:

Financing, leasing and/or ownership of property/real estate in California from 1970 to the present.

RESPONSE:

Objection. This request is overly broad as to time and geographic scope. Further, this line of questioning seeks information not reasonably calculated to lead to discovery of admissible evidence on the limited issue of whether Watch Tower PA is subject to personal jurisdiction in California. See Court's Order dated December 2, 2003, on Watch Tower PA's motion to quash service of summons and complaint ("Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower PA's contacts in California during the relevant time period"). In analyzing general jurisdiction, the relevant time period is the defendant's contacts when the alleged conduct occurred and at the time of service of summons. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 128 Cal.Rptr.2d 683; *see also Boaz v Boyle & Co.*, (1995) 40 Cal.App.4th 700, 46 Cal.Rptr.2d 888. In this case, the years of the alleged abuse were 1972 to 1985, and the summons and complaint were filed and served in 2003. The scope of proper inquiry should therefore be limited to 1972 to 1985 and 2003.

Subject to and without waiving those objections, the designated representative of Watch Tower PA will provide testimony concerning Watch Tower PA with respect to Kingdom Hall financing, leasing and/or ownership of property/real estate in California from 1970 to 2003.

///

ARGUMENT:

Plaintiff's counsel attempted to obtain information about Watch Tower PA's structure and its inter-relationship with the Governing Body and other Watch Tower defendants through examination of Alexander Rainmueller, Watch Tower PA's designated person most knowledgeable. Defense counsel refused to permit Mr. Rainmueller from testifying regarding reporting relationships within the Jehovah's Witnesses' organization as to their ecclesiastical structure prohibiting full inquiry at the deposition regarding the organizational and corporate structure of Watch Tower PA from 1970 to the present. Mr. Rainmueller testified in his deposition at page 49, lines 2-24, attached as **Exhibit H** to the conconcurrently filed Motion to Compel that he was not the person with the most knowledge about the Watch Tower Society's organizational structure.

It appears that Watch Tower PA provides mortgages for the loans and financing of Kingdom Halls within the Watchtower organization. Approximately nine areas of inquiry referenced in the concurrently filed Motion to Compel at pages 24-26 were addressed at the deposition of Mr. Rainmueller. Mr. Rainmueller and Watch Tower PA's counsel failed to provide appropriate documentation and meaningful testimony to adequately respond to the nine areas of deposition injuries sought to be compelled. These areas of inquiry will shed further light on Watch Tower PA's minimum contacts with the State of California.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford, Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** February 4, 2005 **Clerk:** D. Rey **Reporter:** Barrie Hart **Cite/Report #:**

Appearances:

William Brelsford, Rudy Nolen Gregory and Gregory Love Attorneys for Plaintiffs
Robert Schnack, Attorney for Church Defendants
William Bernard, Attorney for individual Defendant, Carlos Vasquez via Court call
Craig Diamond, Attorney for individual Defendant, A.W. Harriman via Court call

Related Case: Tabitha H, vs. Watchtower Bible Tract Society of New York, LLC, et al
Case NO: 26-23929

This matter comes on at this date for case management conference.

The Court is informed of the following:

- That Defendant Timothy Silva filed a bankruptcy proceeding and therefore the case is dismissed.
- Out of the eight Sonoma cases, six have been dismissed and dismissal will be filed next week. Plaintiffs' counsel have no communication with the Defendants in the two remaining cases and will therefore proceed with a motion to withdraw.
- With the above stated dismissal of the other cases, that leaves to seven lawsuits and eleven plaintiffs left in these coordinated actions.

The Court makes the following rulings:

- As to Track I cases, response to written discovery is extended until March 4, 2005.
- As to Non-Track cases, response to written discovery is extended until June 3, 2005.
- Tehama County case (Wimberly et al vs. Watchtower Bible and Tract Society of New York, Inc., et al) is approved as Track I case.
- With regards to out-of-county cases, all filings must be done in the home county. The original documents will stay in the home county and copies will be sent to Napa Court.
- Motions and discovery are stayed for Non-track cases unless otherwise specified.
- Setting of trial is deferred to April 29, 2005.

The Court further orders that this matter shall be continued to April 29, 2005 at 9:30 am in Courtroom B for continued case management conference. TE: 1 hour. Parties in Non-Track cases are not required to be present at this hearing.

Ex parte application to extend page limit for memorandum of points an authorities in support of Plaintiffs' motion to compel Watchtower Pennsylvania's responses to form interrogatories, special interrogatories, request for production and PMK deposition responses is granted.

Motion to compel and any other motions are approved to be calendared on April 8, 2005 at 9:30 am in Courtroom B. TE: ½ days.

The following is the briefing schedule:

Replies to all motions are due by March 30, 2005
Responses are due by March 11, 2005

The Court executes the order in the form submitted.

The order is sent to Civil Division for filing.

-o0o-

-2. Dissy

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: L. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 ~~[PROPOSED] ORDER~~ **Date: February 4, 2005** **Time: 3:00 p.m.** **Dept: B**

I. ORDER

Having considered Plaintiffs' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Compel Watch Tower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Request for Production and PMK Deposition Responses, and finding good cause therefor,

IT IS HEREBY ORDERED THAT Plaintiffs' request to file a Memorandum of Points and Authorities in Support of their Motion to Compel of up to approximately 36 pages is GRANTED.

Dated: 2/4/[illegible]

By: _____
Judge of the California Superior Court
County of Napa

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 3, 2005, I caused the within **[PROPOSED] ORDER,** the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

XX **FACSIMILE** – On February 3, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2005, at Sacramento, California.

Susan Gilbert

****
*** TX REPORT ***
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TRANSMISSION OK

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CONNECTION TEL	8525777
SUBADDRESS	
CONNECTION ID	BULLIVANT HOUSER
ST. TIME	02/03 14:19
USAGE T	00'36
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RESULT	OK

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374

D1054

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: D. M. Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUEST FOR PRODUCTION AND PMK DEPOSITION RESPONSES** **Date: February 4, 2005** **Time: 3:00 p.m.** **Dept: B**

APPLICATION

Pursuant to California Rules of Court, Rule 313(d) Plaintiffs apply to the Court *ex parte* for an Order extending the page limit for their Memorandum of Points and Authorities in Support of their Motion to Compel Watchtower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Requests for Production and PMK Deposition Responses. Counsel for Plaintiffs advised Defendants' counsel in writing that this *ex parte* request will be made to this Court. Counsel for Plaintiffs requests permission to file a Memorandum of Points and Authorities in Support of their Motion to Compel of up to approximately 36 pages.

This application will be based upon the contents of this application, the Memorandum of Points and Authorities filed herewith, the declaration of William L. Brelsford, and other papers filed in the above-entitled action. Pursuant to the practice of this Court, no hearing has been set for this *ex parte* application. Should the Court subsequently schedule a hearing on this application, Plaintiffs will provide opposing counsel with the earliest possible notice of such hearing.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for CHARISSA W. and NICOLE D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 3, 2005, I caused the within **EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL WATCHTOWER PENNSYLVANIA'S RESPONSES TO FORM INTERROGATORIES, SPECIAL INTERROGATORIES, REQUEST FOR PRODUCTION AND PMK DEPOSITION RESPONSES,** the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

XX **FACSIMILE** – On February 3, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2005, at Sacramento, California.

Susan Gilbert

****
*** TX REPORT ***
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TRANSMISSION OK

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SUBADDRESS	
CONNECTION ID	BULLIVANT HOUSER
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
FEB - 4 2005
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.,

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT

Date: February 4, 2005
Time: 3:00 p.m.
Dept: B

I. INTRODUCTION

Plaintiffs, Charissa W. and Nicole D., identified in the concurrently filed *ex parte* application hereby request permission pursuant to California Rules of Court, Rule 313(d) to file a Memorandum of Points and Authorities in Support of Plaintiff's Motion to Compel Watchtower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Request for Production and PMK Deposition Responses of up to approximately 36 pages in length. Written notice of this application was made to Defendants' counsel on February 1, 2005.

II. REASONS NECESSITATING PAGE LIMIT

"A party may apply to the court *ex parte* but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application shall state the reasons why the argument cannot be made within the state limit." California Rules of Court, Rule 313(d).

Plaintiffs require up to approximately 36 pages to adequately address all of the necessary elements and legal authorities related to their Memorandum of Points and Authorities in Support of their Motion to Compel. The Memorandum of Points and Authorities involves, among other things, complex constitutional law issues involving jurisdictional issues of a "religious" entity. Specifically, Defendants' contend certain corporate entities under their control are not subject to the jurisdiction of the State. An extension to the page limit is needed to adequately explain why Watch Tower Pennsylvania should respond to voluminous discovery requests regarding their general and specific contacts with the State of California. Further Watch Tower Pennsylvania asserted objections to approximately 49 separate discovery requests claiming that the First Amendment precludes Plaintiffs from obtaining responses to their discovery.

Additionally, if Plaintiffs are not granted the extension to adequately explain why Watch Tower Pennsylvania is required to provide the pertinent discovery responses, Plaintiffs risk losing the ability to hold culpable Watch Tower Pennsylvania liable for their tortuous behavior that injured Plaintiffs.

III. CONCLUSION

For each of the forgoing reasons, Plaintiffs respectfully request they be permitted to file a Memorandum of Points and Authorities in Support of their Motion to Compel up to approximately 36 pages in length.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for Charissa W. and Nicole D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 3, 2005, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT,** the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

XX **FACSIMILE** – On February 3, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2005, at Sacramento, California.

Susan Gilbert

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	2784
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SUBADDRESS	
CONNECTION ID	BULLIVANT HOUSER
ST. TIME	02/03 14:17
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RESULT	OK

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs,	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB - 4 2005

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF WILLIAM L. BRELSFORD OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** **Date: February 4, 2005** **Time: 3:00 p.m.** **Dept: B**

I, William L. Brelsford, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. On February 1, 2005, I sent a written notice to defendants' counsel, Robert Schnack, that Plaintiffs would file with the Court this *ex parte* application for an order to extend page limits pursuant to California Rules of Court, Rule 313 (d).

3. Attached as Exhibit A is a true and correct copy of my February 1, 2005, letter to defendants' counsel.

4. I have personally reviewed and evaluated the Motion to Compel.

5. Plaintiff's Motion to Compel raises complex jurisdictional and First Amendment issues as discussed in the concurrently filed memorandum of points and authorities in support of the ex parte application and requires a lengthy discussion regarding why Watch Tower Pennsylvania should provide meaningful responses to extensive discovery requests.

6. Plaintiffs reasonably require up to approximately 36 pages in order to adequately address and discuss the applicable legal authorities raised in Plaintiffs' Motion to Compel.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Dated: February 1, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford

EXHIBIT A

EXHIBIT A

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PHONE: (916) 564-9990 FAX: (916) 564-9991

February 1, 2005

Via Facsimile Only
Facsimile No. (916) 852-5777

Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Re: Charissa W., et al. v. Watchtower, et al. and all coordinated cases

Dear Mr. Schnack:

This is to inform you that we are filing an Ex Parte Application to Extend the Page Limit for Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Compel Watchtower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Request for Production and PMK Deposition Responses. We believe that because of the complexity of the case law involved in this matter, our briefing will consist of approximately 36 pages for our Memorandum of Points and Authorities.

Please call our offices immediately if you have any objections to this Ex Parte Application. We will be serving this Ex Parte Application to you tomorrow morning via facsimile.

On another note, could you please have your assistant e-mail to my assistant at sgilbert@nsb-law.com all of Watchtower Pennsylvania's responses to the Special Interrogatories and Request for Production.

Thank you for your courtesies in this matter. If you have any questions, please feel free to contact this office.

Very truly yours,

NOLEN SAUL BRELSFORD

William Brelsford

cc: Greg Love
Hartley Hampton

****
*** TX REPORT ***
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350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

February 1, 2005

Via Facsimile Only
Facsimile No. (916) 852-5777

Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Re: Charissa W., et al. v. Watchtower, et al. and all coordinated cases

Dear Mr. Schnack:

This is to inform you that we are filing an Ex Parte Application to Extend the Page Limit for Memorandum of Points and Authorities in Support of Plaintiffs' Motion to Compel Watchtower Pennsylvania's Responses to Form Interrogatories, Special Interrogatories, Request for Production and PMK Deposition Responses. We believe that because of the complexity of the case law involved in this matter, our briefing will consist of approximately 36 pages for our Memorandum of Points and Authorities.

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On another note, could you please have your assistant e-mail to my assistant at sgilbert@nsb-law.com all of Watchtower Pennsylvania's responses to the Special Interrogatories and Request for Production.

FAX COVER LETTER

FILE NAME: Consolidated Cases	
DOCUMENT TITLE: Letter to Mr. Schnack dated February 1, 2005	
DELIVER TO: Greg Love, Esq. Hartley Hampton, Esq.	
COMPANY:	
FAX NO.: 817-335-2912 713-751-0030	**DATE:** February 1, 2005
OPERATOR: Susan	**TIME: 2:30 p.m.**
TOTAL NUMBER OF PAGES INCLUDING THIS PAGE: 2	
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FAX SENT BY:

NOLEN SAUL BRELSFORD
Attorneys
350 University Avenue, Suite 280
Sacramento, California 95825

Phone: (916) 564-9990
Fax: (916) 564-9991

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*** TX REPORT ***
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FAX COVER LETTER

FILE NAME: Consolidated Cases	
DOCUMENT TITLE: Letter to Mr. Schnack dated February 1, 2005	
DELIVER TO: Greg Love, Esq. Hartley Hampton, Esq.	
COMPANY:	
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NOLEN SAUL BRELSFORD
Attorneys
350 University Avenue, Suite 280

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*** TX REPORT ***
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FAX COVER LETTER

FILE NAME: Consolidated Cases	
DOCUMENT TITLE: Letter to Mr. Schnack dated February 1, 2005	
DELIVER TO: Greg Love, Esq. Hartley Hampton, Esq.	
COMPANY:	
FAX NO.: 817-335-2912 713-751-0030	**DATE:** February 1, 2005
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FAX SENT BY:

NOLEN SAUL BRELSFORD
Attorneys

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 3, 2005, I caused the within **DECLARATION OF WILLIAM L. BRELSFORD OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT,** the original of which was produced on recycled paper, to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

XX **FACSIMILE** – On February 3, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 3, 2005, at Sacramento, California.

Susan Gilbert

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	2787
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CONNECTION ID	BULLIVANT HOUSER
ST. TIME	02/03 14:21
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PGS. SENT	9
RESULT	OK

Rudy Nolen, Esq., SBN 59808
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs,	CASE NO: 26-22191 Judicial Council Coordination

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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED
FEB 01 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **NOTICE OF CHURCH DEFENDANTS' MOTIONS TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINTS IN THE COORDINATED CASES** **Date:** TBA 2-28-05 **Time:** TBA 8:30 a.m. **Dept:** B **Trial Dates:** Not yet set
AND COORDINATED CASES	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on a date and time to be determined by the Honorable W. Scott Snowden in Dept. B of the above-entitled Court, defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA[1], CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, and the various congregations of Jehovah's Witnesses named as defendants in the

[1] Defendant Watch Tower Pennsylvania specially appears herein, because it has pending or will file motions to quash service of summons and complaint in each of the coordinated cases based on lack of personal jurisdiction in California.

coordinated cases (collectively the "Church Defendants") will and hereby do move the Court for an Order striking those portions of plaintiffs' operative complaints in each of the coordinated cases specified below.

These motions to strike are based on this notice, CCP §§ 435 - 437, the supporting memorandum of points and authorities, all other papers on file in these coordinated cases, and such other oral and documentary evidence as may be submitted and properly considered by the Court.

Pursuant to Rule 329 of the Rules of Court, the portions of plaintiffs' currently operative complaints in each of the coordinated cases that the Church Defendants move herein to strike are specified as follows:

Javier C. v. Watchtower New York, et al

Placer County Superior Court no. SCV16723

A. The References To The Propriety Of Ecclesiastical Discipline, As Follows:

1. "Defendant Carlos Vasquez, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 60, lns. 27-28;

2. "Defendant Carlos Vasquez was a member in good standing," *Id.*, ¶ 60, lns. 4-5;

3. "Defendant Carlos Vasquez as a member in good standing," *Id.*, ¶ 61, lns. 15-16;

4. "[M]ember in good standing," *Id.*, ¶ 62, ln. 25;

5. "Defendant Carlos Vasquez was [a] member in good standing," *Id.*, ¶ 63, ln. 2;

6. "Defendant Carlos Vasquez ... as a member in good standing," *Id.*, ¶ 64, lns. 5-6;

7. "Defendant Carlos Vasquez ... [was] in good standing ... to be a member in good standing," *Id.*, ¶ 74, lns. 24-26;

8. "[A]ppointed agent who they held out to be in good standing," *Id.*, ¶ 78, lns. 18-19;

9. "The [Church] Defendants failed to take appropriate steps to hold their agent, Carlos Vasquez, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 27, lns. 12-14.

B. The Allegations Concerning Conspiracy, As Follows:

10. "The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint." *Complaint*, ¶ 9, lns. 8-13 (underlined portions to be struck);

11. "[C]onspiracy of concealment," *Id.*, ¶ 19, ln. 25;

12. "[C]onspiracy to conceal the sexual molestation," *Id.*, ¶ 25, ln. 18;

13. "[C]onspire to cover-up," *Id.*, ¶ 31, ln. 1;

14. "[C]onspire to conceal," *Id.*, ¶ 62, ln. 27.

C. The Negligent Appointment And Retention Allegations, As Follows:

15. "The [Church] Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, Carlos Vasquez, prior to appointing him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 37, lns. 10-12;

16. The Church Defendants negligently "appointed, retained" Vasquez. *Id.*, ¶ 40, lns. 22-23;

17. "[N]egligently retaining" Vasquez. *Id.*, ¶ 28(h), lns. 11.

18. "[T]he [Church] Defendants acted to continue to appoint these sexual offenders to positions of authority." *Id.*, ¶ 18, ln. 9.

D. Allegations Concerning Church Defendants' Failure To Report, As Follows:

19. Church Defendants "suppress[ed] information to cover-up and hide incidents of child molestation from law enforcement ...", *Complaint*, ¶ 18, lns. 14-16.

20. Files "were not disclosed or made available to law enforcement authorities or others for law enforcement to investigate...", *Id*, ¶ 19, lns. 21-24.

21. Church Defendants "fail[ed] to properly report complaints of sexual misconduct

to law enforcement authorities..." *Id.*, ¶ 19 lns. 25-26.

22. Church Defendants "chose not to report the abuse to law enforcement authorities..." *Id.*, ¶ 27, lns. 6-7.

23. Church Defendants "refus[ed] to report such sexual abuse, ... to law enforcement and government child welfare agencies, " *Id.*, ¶ 28(c), lns. 22-24.

Ken L. v. Watchtower New York, et al

Placer County Superior Court no. SCV16600

A. The References To The Propriety Of Ecclesiastical Discipline, As Follows:

1. "Defendant A. W. Harriman, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 60, lns. 23-25.

2. "Defendant A. W. Harriman was a member in good standing," *Id.*, ¶ 60, lns. 28, 1-2.

3. "Defendant A. W. Harriman as a member in good standing," *Id.*, ¶ 61, lns. 10-12.

4. "[M]ember in good standing," *Id.*, ¶ 62, ln. 20.

5. "Defendant A. W. Harriman was [a] member in good standing," *Id.*, ¶ 63, ln. 24.

6. "Defendant A. W. Harriman ... as a member in good standing," *Id.*, ¶ 64, lns. 27-28.

7. "Defendant A. W. Harriman ... [was] in good standing ... to be a member in good standing," *Id.*, ¶ 74, lns. 17-19.

8. "[A]ppointed agent who they held out to be in good standing," *Id.*, ¶ 78, lns. 10-11.

9. "The [Church] Defendants failed to take appropriate steps to hold their agent, A. W. Harriman, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 28, lns. 10-12.

10. "[T]hey disfellowshipped A. W. Harriman for having a 'poor attitude' but took no other steps to hold him accountable." *Id.*, ¶ 25, lns. 1, 5-6.

B. The Allegations Concerning Conspiracy, As Follows:

11. "The Defendant entities are collectively referred to herein as the "[Church]

Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint. *Complaint*, ¶ 9, lns. 8-13 (underlined language to be struck).

12. "[C]onspiracy of concealment," *Id.* ¶ 19, ln. 25.

13. "[C]onspiracy to conceal the sexual molestation," *Id.* ¶ 26, ln. 18.

14. "[C]onspire to conceal," *Id.* ¶ 62, ln. 22.

C. The Negligent Appointment And Retention Allegations, As Follows:

15. The Church Defendants "failed to adequately investigate, evaluate, and otherwise research the background of their agent, A. W. Harriman, prior to appointing him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 37, lns. 5-7.

16. The Church Defendants "negligently . . . appointed, retained" Harriman. *Complaint*, ¶ 40, ln. 18;

17. "[N]egligently appointing, retaining" Harriman. *Id.*, ¶ 29(l), ln. 12.

18. The Church "Defendants acted to continue to appoint these sexual offenders to positions of authority . . ." *Id.*, ¶18, lns. 9-10

D. Allegations Concerning Church Defendants' Failure To Report, As Follows:

19. Files "were not disclosed or made available to law enforcement authorities or others in order for law enforcement to investigate...," *Amended Complaint*, ¶ 19, lns. 21-24.

20. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities," *Id.*, ¶ 19, lns. 25-26.

21. Church Defendants "did not report the abuse to authorities," *Id.*, ¶ 25, ln. 8.

22. Church Defendants "chose not to report the abuse to law enforcement authorities," *Id.*, ¶ 28, lns. 5-6.

23. Church Defendants "refus[ed] to report such sexual abuse ... to law enforcement authorities," *Id.*, ¶29(c), lns. 20-22.

Daniel West, Shane Pence, et al v. Watchtower New York, et al

Yolo County Superior Court no. CV03-1439

A. References To The Propriety Of Ecclesiastical Discipline, As Follows:

1. "Defendant Timothy Silva, who remained . . . in good standing at all times mentioned herein," *First Amended Complaint*, ¶ 62, lns. 20-21;

2. "Defendant Timothy Silva was a member in good standing," *Id.*, ¶ 62, lns. 25-26;

3. "[A] leader and member, in good standing," *Id.*, ¶ 63, ln. 8-9;

4. "Defendant Timothy Silva was [a] member in good standing and an appointed leader," *Id.*, ¶ 65, ln. 22;

5. "Defendant Timothy Silva … as a leader and member in good standing," *Id.*, ¶ 66, lns. 26-27;

6. "Defendant Timothy Silva … [was] a leader and in good standing … to be a leader and member in good standing," *Id.*, ¶ 76, lns. 18-21;

7. "[T]heir agent and member who they held out to be in good standing," *Id.*, ¶ 80, ln. 12;

8. The Church Defendants "took no steps to . . . hold their agent, Defendant Timothy Silva, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 31, lns. 8-10.

B. Allegations Concerning Conspiracy, As Follows:

9. "The Defendant entities are collectively referred to herein as the 'Watchtower [Church] Defendants' and each is the alter ego of each other and operates as a single business enterprise. Each of the Watchtower Defendants was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint." *First Amended Complaint*, ¶ 12, lns. 26-3 (underlined portion to be struck);

10. "[C]onspiracy of concealment," *Id.*,¶ 21, ln. 10;

11. "[C]onspire to conceal," *Id.*,¶ 64, ln. 19.

C. **The Negligent Appointment and Retention Allegations, As Follows**:

12. "[Church] Defendants appointed Defendant Timothy Silva to a higher position of authority within the local congregation." *First Amended Complaint*, ¶22, lns 10-11;

13. "As part of this appointment ..." *Id.* ¶22 ln. 11;

14. [Silva] used his appointed position of leadership ..." *Id.* ¶22, lns. 15-16.

15. "[Church] Defendants elevated their agent, Defendant Silva, to a position of increased authority ..."*Id.* ¶29, lns. 9-10;

16. Church Defendants "failed to adequately investigate, evaluate, and otherwise research the background of . . . Defendant Timothy Silva prior to their appointing him to leadership positions [in the church] and entrusting children to his care." *Id.*, ¶41, lns. 28-3;

17. "Defendant Timothy Silva was retained by [Church] Defendants ..." *Id.* ¶42, lns. 4-5;

18. Church Defendants "negligently investigated, appointed, retained . . . Defendant Timothy Silva in the organization ..." *Id.*, ¶44, lns. 14-16; and

19. "Defendant Timothy Silva was . . . an appointed leader [in the church] ..." *Id., ¶65, ln. 22.*

D. **Allegations Concerning Church Defendants' Failure To Report, As Follows:**

20. "[Church] Defendants engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement . . .." *First Amended Complaint*, ¶21, lns. 27-28 and 1-3;

21. "The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others . . .." *Id.* ¶21, lns. 6-9;

22. "[Church] Defendants . . . fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities . . .." *Id.*, ¶21, lns. 9-12;

23. "Victim/accusers were not permitted to report suspected abuse to outside authorities . . ., despite secular laws and duties regarding the reporting of sexual abuse." *Id.*, ¶21, lns. 16-19;

24. "[Church] Defendants took no action to report the abuse to authorities . . .." *Id.*,

¶22, lns. 6-9;

25. "[Church] Defendants did not notify authorities [of alleged abuse of Plaintiff Daniel West]." *Id.*, lns. 2-3;

26. "[Church] Defendants did not report the abuse to authorities . .. ." *Id.*, ¶26, lns. 20-22;

27. "Rather than taking any steps to report [the alleged abuse] by Defendant Timothy Silva to authorities . . .." *Id.*, ¶27, lns. 28 and 1-3;

28. "[Church] Defendants refused to notify anyone [of the alleged abuse by Defendant Silva]." *Id.*, ¶29, lns. 13-15;

29. "[Church] Defendants . . . instructed [Plaintiffs] . . . not to disclose the abuse to . . . outside authorities." *Id.*, ¶30, lns. 24-27;

30. "[Church] Defendants did not report the abuse to law enforcement authorities . . .." *Id.*, ¶31, lns. 3-6.

31. "[Church] Defendants . . . negligently fail[ed] to report such sexual abuse . . . to law enforcement and governmental child welfare agencies . . .." *Id.*, ¶32c., lns. 12-14 and 18-20;

32. "[Church] Defendants . . . negligently fail[ed] to train . . . to . . . report child abuse." *Id.*, ¶32e, lns. 12-14 and 26-28;

33. "[Church] Defendants . . . negligently fail[ed] . . . [in] reporting the abuse to outside authorities . . .." *Id.* ¶32i., lns 12-14; and

34. All allegations concerning the Child Abuse and Neglect Reporting Act, or CANRA, and the failure to report contained in the sixth cause of action. *Id.*, ¶¶55-60.

Jocelyn A., et al v. Watchtower New York, et al

Sonoma County Superior Court no. 234320

A. Allegations Concerning Church Defendants' Failure To Report, As Follows:

1. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities," *Complaint*, ¶ 23, lns. 23-24;

2. Church Defendants "chose not to report the abuse to law enforcement

authorities," *Id.*, ¶ 34, lns. 15, 15;

3. Church Defendants "refus[ed] to report such sexual abuse … to law enforcement and governmental child welfare agencies," *Id.*, ¶ 35, lns. 1, 2.

B. <u>The References To The Propriety of Ecclesiastical Discipline, As Follows</u>:

4. "Defendant Donald Glew, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 67, ln. 16;

5. "Defendant Donald Glew was a member in good standing," *Id.*, ¶ 67, ln. 21;

6. Glew was a "member in good standing," *Id.*, ¶ 69, ln. 13;

7. "Defendant Donald Glew was [a] member in good standing," *Id.*, ¶ 70, ln. 17;

8. "Defendant Donald Glew … as a member in good standing," *Id.*, ¶ 71, ln. 20;

9. "Donald Glew … [was] in good standing … to be a member in good standing," *Id.*, ¶ 81, lns. 12-14;

10. Glew was an "appointed agent who they held out to be in good standing," *Id.*, ¶ 85, lns. 7, 8.

11. "[Church] Defendants failed to take appropriate steps to hold their agent, Donald Glew, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 34, lns. 21.

C. <u>The Allegations Concerning Conspiracy, As Follows</u>:

12. The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and <u>each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint</u>. *Complaint*, ¶ 13, lns. 6-11 (underlined portion to be struck);

13. Church Defendants' "conspiracy of concealment," *Id.*, ¶ 23, lns. 23;

14. Church Defendants' "conspiracy to conceal the sexual molestation," *Id.*, ¶ 32, ln. 23;

15. Church Defendants "conspired to conceal," *Id.*, ¶ 69, ln. 15.

D. The Negligent Appointment And Retention Allegations, As Follows:

16. All references to negligent *appointment* and negligent *retention* in the third cause of action and elsewhere in the complaint, including, without limitation, the following:

17. "The [Church] Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, Donald Glew, prior to *appointing* him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 44, lns. 26-28 (emphasis added);

18. Church Defendants negligently "appointed, retained" Glew. *Complaint*, ¶ 47, lns. 11;

19. Church Defendants "negligently retaining" Glew. *Id.*, ¶ 35(j)).

20. The general allegations about appointment: "[T]he [Church] Defendants acted to continue to *appoint* these sexual offenders to positions of authority." *Id.*, ¶ 22, lns. 6, 7 (emphasis added).

Danielle A. v. Watchtower New York, et al

Sonoma County Superior Court no. 234140

A. Allegations Concerning Church Defendants' Failure To Report, As Follows:

1. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities," *Complaint*, ¶ 19, lns. 25-26;

2. Church Defendants "chose not to report the abuse to law enforcement authorities," *Id.*, ¶ 28, lns. 7-8;

3. Church Defendants "refus[ed] to report such sexual abuse … to law enforcement and governmental child welfare agencies," *Id.*, ¶ 29(c), lns. 22-23; and

4. Church Defendants "negligently fail[ed] to … report child abuse," *Id.*, ¶29(e), lns. 1-3.

B. References To The Propriety Of The Ecclesiastical Discipline, As Follows:

5. Reference to "members and agents in good standing," *Complaint*, ¶ 52, ln. 12;

6. "Defendant Shawn Appling, who remained in good standing at all times mentioned herein," *Id.*, ¶ 60, lns. 27-28;

7. "Defendant Shawn Appling was a member in good standing," *Id.*, ¶ 60, lns. 4-5;

8. "Defendant Shawn Appling as a member in good standing," *Id.*, ¶ 61, lns. 14-15;

9. "Shawn Appling, ... was held out to Plaintiff to be a member in good standing," *Id.*, ¶ 62, lns. 23-24;

10. Defendant Shawn Appling was "[a] member in good standing," *Id.*, ¶ 63, ln. 2;

11. "Defendant Shawn Appling ... as a member in good standing," *Id.*, ¶ 64, lns. 5-6;

12. "Defendant Shawn Appling ... [was] in good standing ... to be a member in good standing," *Id.*, ¶ 74, lns. 22-25; and

13. Appling was an "appointed agent who they held out to be in good standing," *Id.*, ¶ 78, lns. 15-16.

14. "[Church] Defendants failed to take appropriate steps to hold their agent, Shawn Appling, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 28, lns. 12-14.

C. <u>The Allegations Of Conspiracy, As Follows</u>:

15. "The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent and alter ego of each other and operates as a single business enterprise. Each of the Watchtower [Church] Defendants was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and <u>each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint</u>." *Complaint*, ¶ 9 (mistakenly mislabeled ¶ 12), lns. 9-13 (underlined portions to be struck);

16. Church Defendants' "conspiracy of concealment," *Id.* at ¶ 19, ln. 25;

17. Church Defendants' "conspiracy to conceal the sexual molestation," *Id.* at ¶ 26, lns. 16-17;

18. Church Defendants "conspired to conceal," *Id.* at ¶ 62, ln. 26.

D. <u>Allegations Of Negligent Appointment And Retention, As Follows</u>:

19. "The [Church] Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, Shawn Appling, prior to *appointing* him to

leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 37, lns. 12-14;

20. Church Defendants negligently "appointed, retained" Appling. *Id.*, ¶ 40, ln. 25;

21. Church Defendants' "negligently retaining" Appling. *Id.*, at ¶ 29(j) ln. 18; and

22. "[Church] Defendants acted to continue to appoint these sexual offenders to positions of authority." *Id.*, ¶ 18, lns. 8-9.

Dennis S., et al v. Watchtower New York, et al

Sonoma County Superior Court no. 234168

A. Allegations Concerning Church Defendants' Failure To Report, As Follows:

1. Church Defendants "suppress[ed] information to cover-up and hide incidents of child molestation from law enforcement . . ." *First Amended Complaint*, ¶21, lns. 1-3.

1. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities," *Complaint*, ¶ 22, lns. 12, 13;

2. Files "were not disclosed or made available to law enforcement authorities . . ." *Id.*, ¶ 22, lns. 8-11.

3. Church Defendants "chose not to report the abuse to law enforcement authorities," *Id.*, ¶ 32, lns. 16, 17;

4. Church Defendants "refus[ed] to report such sexual abuse … to law enforcement and governmental child welfare agencies," *Id.*, ¶ 33, lns. 3, 4.

B. The References To The Propriety of Ecclesiastical Discipline, As Follows:

5. "Defendant Donald Glew, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 65, ln. 1, 2;

6. "Defendant Donald Glew was a member in good standing," *Id.*, ¶ 65, ln. 71;

7. "member in good standing," *Id.*, ¶ 66, ln. 18 ;

8. "Defendant Donald Glew was [a] member in good standing," *Id.*, ¶ 68, ln. 4;

9. "Defendant Donald Glew … as a member in good standing," *Id.*, ¶ 69, ln. 7;

10. Defendant "Donald Glew … [was] in good standing … to be a member in good standing," *Id.*, ¶ 79, lns. 26, 27;

11. Donald Glew was an "appointed agent who they held out to be in good standing," *Id.*, ¶ 83, lns. 18, 19;

12. "[Church] Defendants failed to take appropriate steps to hold their agent, Donald Glew, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 32 , lns. 21-23.

C. The Allegations Concerning Conspiracy, As Follows:

13. The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint. *Complaint*, ¶ 12, lns. 24-26 (underlined portions to be struck);

14. Church Defendants' "conspiracy of concealment," *Id.* at ¶ 22, lns. 11;

15. Church Defendants' "conspiracy to conceal the sexual molestation," *Id.* at ¶ 30, ln. 27-28; and

16. Church Defendants "conspired to conceal," *Id.* at ¶ 67, ln. 2.

D. The Negligent Appointment And Retention Allegations, As Follows:

17. "[T]he Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, Donald Glew, prior to *appointing* him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 42, lns. 20-23 (emphasis added);

18. Church Defendants negligently "appointed, retained" Glew. *Id.*, ¶ 45, lns. 3, 4;

19. Church Defendants "negligently retain[ed]" Glew. *Id.*, ¶ 33(j)

20. "[T]he [Church] Defendants acted to continue to appoint these sexual offenders to positions of authority." *Id.*, ¶ 21, lns. 24, 25.

Charissa W., et al v. Watchtower New York, et al

Napa County Superior Court no. 26-22191

A **References To The Propriety of Ecclesiastical Discipline, As Follows**:

1. "Known molesting leaders were reaffirmed as leaders in good standing." *Amended Complaint*, ¶ 20, lns. 11-12.

2. "The [Church] Defendants failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or assist him in addressing his propensities." *Id.*, ¶ 32, lns. 20-22.

3. "Edward Villegas and other appointed agents were leaders in good standing ..." *Id.*, ¶ 52, lns. 27-28.

B. **The Allegations Concerning Conspiracy, As Follows**:

4. "The Defendant entities are collectively referred to herein as "[Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this Complaint." *Amended Complaint*, ¶ 10, lns. 19-24 (underlined portions to be struck.)

5. "The [Church] Defendants furthered this conspiracy of concealment..." *Id*, ¶ 20, ln. 9.

6. "[C]onspiracy to conceal the sexual molestation," *Id.*, ¶ 27, ln. 6-7.

7. "[C]onspired to intentionally conceal ..." *Id.*, ¶ 54, lns. 18-19.

8. "[Church] Defendants ... conspired to conceal ... committed at least one act in furtherance of the conspiracy," *Id.*, ¶ 55m lns. 20-24.

C. **The Negligent Appointment and Retention Allegations, As Follows**:

9. The Church Defendants "continued to appoint these sexual offenders to positions of authority ..." *Amended Complaint*, ¶ 19, lns. 20-21.

10. "Church Defendants failed to remove molesting leaders, ..." *Id.*, ¶20, lns. 10-11.

11. Church Defendants "appointed Edward Villegas to the leadership position ..."

Id., ¶ 23, lns. 27-28.

12. Church Defendants "enabled Edward Villegas … by appointing him to positions of authority," *Id*, ¶ 27, lns. 1-2.

13. "The [Church] Defendant's privately reproved their agent for his conduct but took no other steps to hold him accountable." *Id.*, ¶30, lns 20-22.

14. "Negligently retaining … Edward Villegas." *Id.*, ¶ 33(j), ln. 27.

15. "Edward Villegas was appointed … [and Church] Defendants failed to adequately investigate, evaluate, monitor … their agent." *Id.*, ¶ 39, lns. 4-7.

16. "[Church Defendants] negligently investigated, appointed, retained … Edward Villegas," *Id.*, ¶ 41, lns. 13-14.

D. <u>Allegations Concerning Church Defendants' Failure To Report, As Follows</u>:

17. The Church Defendants "suppress[ed] information to cover-up and hide incidents of child molestation from law enforcement." *Amended Complaint*, ¶ 19, lns. 26-28.

18. Files "were not disclosed or made available to law enforcement authorities, " *Id.*, ¶ 20, lns. 5-7.

19. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities." *Id.*, ¶ 20, lns. 9-10.

20. The Church Defendants "chose not to report the abuse to law enforcement authorities …" *Id.*, ¶ 32, lns. 15-16.

21. Church Defendants "intentionally fail[ed] to report such sexual abuse … to law enforcement and governmental child welfare agencies, " *Id.*, ¶ 33(c), lns. 2-4.

<u>Tabitha H. v. Watchtower New York, et al</u>

Napa County Superior Court no. 26-23929

A. <u>The References To The Propriety of Ecclesiastical Discipline, As Follows</u>:

1. "Edward Villegas, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 58, lns. 26-28;

2. "Edward Villegas was a member in good standing," *Id.*, ¶ 58, lns. 3-4;

3. "Edward Villegas as a member in good standing," *Id.*, ¶ 59, lns. 13-14; ¶ 4.

4. Villegas was a "member in good standing," *Id.*, ¶ 60, ln. 23;

5. "Edward Villegas was [a] member in good standing," *Id.*, ¶ 61, ln. 27;

6. "Edward Villegas ... as a member in good standing," *Id.*, ¶ 62, ln. 2;

7. "Edward Villegas ... [was] in good standing ... to be a member in good standing," *Id.*, ¶ 72, lns. 21-23;

8. "[A]ppointed agent who they held out to be in good standing," *Id.*, ¶ 76, lns. 13-15;

9. "The [Church] Defendants failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 29, lns. 26-28;

10. "[T]hey privately reproved Edward Villegas for his conduct but took no other steps to hold him accountable[.]" *Id.*, ¶ 25, lns. 12-13.

B. <u>The Allegations Concerning Conspiracy, As Follows</u>:

11. "The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and <u>each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint."</u> *Complaint*, ¶ 9, lns. 8-13 (underlined portion to be struck);

12. "[C]onspiracy of concealment," *Id.* ¶ 19, ln. 27;

13. "[C]onspiracy to conceal the sexual molestation," *Id.*, ¶ 26, lns. 26-27;

14. "[C]onspire to conceal," *Id.*, ¶ 60, ln. 25.

C. <u>The Negligent Apportionment And Retention Allegations, As Follows</u>:

15. The Church Defendants "failed to adequately investigate, evaluate, and otherwise research the background of their agent, Edward Villegas, prior to *appointing* him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 35, lns. 8-10 (emphasis added);

16. The Church Defendants "negligently ... appointed, retained" Villegas. *Id.*, ¶ 38,

ln. 21;

17. The Church Defendants "negligently retaining" Villegas. *Id.*, ¶ 30(j), ln. 5;

18. The Church Defendants "acted to continue to appoint these sexual offenders to positions of authority[.]" *Id.*, ¶ 18, ln. 11.

D. <u>Allegations Concerning Church Defendants' Failure To Report, As Follows</u>:

19. Church Defendants "suppress[ed] ...information to cover-up and hide incidents of child molestation from law enforcement ..." *Amended Complaint*, ¶ 18, lns. 16-18.

20. Files "were not disclosed or made available to law enforcement authorities or others in order for law enforcement to investigate ..." *Id.*, ¶ 19, lns. 23-26.

21. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities ..." *Id.*, ¶ 19, lns. 26-28.

22. Church Defendants "chose not to report the abuse to law enforcement authorities ..." *Id.*, ¶ 29, lns. 21-22.

23. Church Defendants "intentionally fail[ed] to report such sexual abuse, ... to law enforcement and governmental child welfare agencies," *Id.*, ¶ 30(c), lns 8-10.

<u>Julianne Wimberly Gutierrez, et al v. Watchtower New York, et al</u>

Tehama County Superior Court no. 52598

A. <u>The References To The Propriety of Ecclesiastical Discipline, As Follows</u>:

1. "Defendants James Henderson and Alvin Heard, who remained in good standing at all times mentioned herein, ... were members in good standing." *Second Amended Complaint,* ¶ 61, lns. 22-24, 28-1;

2. "Defendants James Henderson and Alvin Heard as members in good standing," *Id.,* ¶ 62, lns. 11-12,"

3. "Defendants James Henderson and Alvin Heard, who at all times mentioned herein were held out to Plaintiffs to be a members in good standing," *Id.,* ¶ 63, lns. 23-25;

4. "[B]elieving them to be ... in good standing," *Id.,* ¶ 75, lns. 28, 1;

5. "[H]olding out Defendants James Henderson and Alvin Heard to be members in good standing," *Id.,* ¶ 75, lns. 1-3;

6. "[H]eld out to Plaintiffs to be in good standing," *Id.*, ¶ 79, lns. 21-22;

7. The Church Defendants "took no steps to hold their agents, Defendants Alvin Heard and James Henderson, accountable for their conduct or to assist them in addressing their propensities..." *Id.*, ¶ 29, lns. 18-20;

8. "No steps were taken with respect to their agent Alvin Heard," *Id.* ¶ 29, lns. 18-20.

9. Defendants James Henderson and Alvin Heard were members in good standing ..." *Id.*, ¶ 64, lns. 1-3.

10. "Defendants James Henderson and Alvin Heard ... as members in good standing ..." *Id.*, ¶ 65, lns. 6-7.

11. "Molesting leaders were allowed to remain as leaders in good standing in the organization," *Id*, ¶ 20, lns. 7-9.

12. "Defendant James Henderson was also an appointed leader in good standing," *Id.*, ¶ 22, lns. 27-28.

B. <u>The Allegations Concerning Conspiracy, As Follows</u>:

13. "The Defendant entities are collectively referred to herein as the 'Watchtower Defendants' and each is the agent and alter ego of each other and operates as a single business enterprise. Each of the Watchtower Defendants was acting within the scope and course of his or his authority as agent, servant, and/or alter ego of the other and <u>each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.</u>" *Second Amended Complaint,* ¶ 11, lns. 20-25 (underlined portion to be struck);

14. [C]onspiracy of concealment," *Id.*, ¶ 20, line 5;

15. "[C]onspired to conceal," *Id.*, ¶ 63, ln. 26;

16. "[C]onspired to misrepresent," *Id.*, ¶ 79, ln. 19;

17. "By concealing such information, the [Church] Defendants and each of them committed at least one act in furtherance of the conspiracy." *Id.* ¶ 79, lns. 22-25.

C. <u>The Negligent Appointment And Retention Allegations, As Follows</u>:

18. The Church Defendants "continued to appoint Defendant Alvin Heard to

positions of leadership ...and even elevated him to positions of higher authority" *Id.*, ¶ 23, lns 11-14;

19. The Church Defendants "continued to appoint Defendants James Henderson and Alvin Heard to leadership positions," *Id.*, ¶ 27, lns. 20-21;

20. "Defendants Alvin Heard and James Henderson were retained," *Id.*, ¶ 39, ln. 7;

21. The Church Defendants "negligently ... appointed, retained ... Defendants Alvin Heard and James Henderson," *Id.*, ¶ 41, lns. 17-18;

22. The Church "Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agents, Defendants Alvin Heard and James Henderson, prior to their appointing him [sic] to leadership positions and entrusting children to their care." *Id.*, ¶ 38, lns. 2-5.

23. "Defendant Alvin Heard was an appointed leader ... [The Church Defendants] affirmatively placed him in positions with authority ..." *Id.*, ¶ 21, lns. 23-26.

24. "Defendant James Henderson was also an appointed leader ... [The Church Defendants] affirmatively placed [him] with authority ..." *Id.*, ¶ 22, lns. 27-1.

25. The Church Defendants "vested him with the authority ..." *Id.*, ¶ 26, lns. 6-7.

26. "That leaders appointed by [The Church Defendants] were dangerous sexual predators," *Id.*, ¶ 26, lns. 12-13.

27. The Church Defendants "continued to appoint Defendants James Henderson and Alvin Heard to leadership positions in their local congregations," *Id.*, ¶ 27, lns. 20-22.

28. "[A]llowing [Defendants Heard and Henderson] to maintain positions of authority in the organization," *Id.*, ¶62, lns. 12-13.

D. <u>Allegations Concerning Church Defendants' Failure To Report, As Follows</u>:

29. Church Defendants "suppress[ed] information to cover-up and hide incidents of child molestation from law enforcement, ..." *Second Amended Complaint*, ¶ 20, lns. 22-24.

30. Files "were not disclosed or made available to law enforcement ..." *Id.*, ¶ 20, lns. 1-3.

31. Church Defendants "fail[ed] to properly report complaints of sexual misconduct to

law enforcement authorities," *Id.*, ¶ 20, lns. 4-6.

32. Church Defendants "took no action to report the abuse to authorities," *Id.*, ¶ 23, ln. 7.

33. Church Defendants "did not notify any authorities," *Id.*, ¶ 26, lns. 8-9.

34. Church Defendants "did not report the abuse to law enforcement authorities," *Id.*, ¶ 29, lns. 13-14.

35. The Church Defendants "negligently fail[ed] to report such sexual abuse including abuse by Defendant Alvin Heard, to law enforcement and governmental welfare agencies," *Id.*, ¶ 30(c), lns. 4-6.

Tim W. v. Watchtower New York, et al

Tehama County Superior Court no. 52594

A. The References To The Propriety of Ecclesiastical Discipline, As Follows:

1. "Molesting leaders were allowed to remain as leaders in good standing in the organization," *First Amended Complaint*, ¶ 18, ln. 28.

2. "Defendant James Henderson was also an appointed leader in good standing ..." *Id.*, ¶ 19 lns. 14-15.

3. The Church Defendants "took no steps to hold their agent, James Henderson, accountable for his conduct or to assist them [sic] in addressing their propensities." *Id.*, ¶ 25, lns. 10-12.

4. "James Henderson who remained in good standing at all times mentioned herein, ... was a member in good standing," *Id.*, ¶ 58, ln. 18, ¶ 58, lns. 18-23.

5. "James Henderson as a member in good standing, " *Id.*, ¶ 59, lns. 5-6.

6. "James Henderson, who at all times, mentioned was held out ... to be a member in good standing," *Id.*, ¶ 60, lns. 14-15.

7. "James Henderson was a member in good standing," *Id.*, ¶ 61, ln. 19.

8. "Defendant James Henderson ... as a member in good standing," *Id.*, ¶ 62, lns. 22-23.

a. "James Henderson ... in good standing ... to be a member in good standing," *Id.*,

¶ 72, lns. 13-15.

B. The Allegations Concerning Conspiracy, As Follows:

9. "The Defendant entities are collectively referred to herein as the "[Church] Defendants " and each of them is the agent and alter ego of each other and operates as a single business enterprise. Each of the [Church] Defendants was acting within the scope and course of his or its authority as an agent, servant and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in the Complaint." *First Amended Complaint*, ¶ 9, lns. 14-19 (underlined language to be struck);

10. The Church Defendants "furthered this conspiracy of concealment," *Id.*, ¶ 18, ln. 25.

11. "[C]onspired to misrepresent," *Id.*, ¶ 76, ln. 5.

12. Church Defendants "committed at least one act in furtherance of the conspiracy." *Id.*, ¶ 76, lns. 9-11.

C. The Negligent Appointment And Retention Allegations, As Follows:

13. The Church Defendants "continued to appoint Defendant James Henderson to the position of Elder in good standing ..." *First Amended Complaint*, ¶ 20, lns. 27-1.

14. The Church Defendants "continued to appoint Defendant James Henderson to leadership positions," *Id.*, ¶ 23, lns. 15-16.

15. "The [Church] Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, James Henderson, prior to his *appointment* to leadership positions [in the church] and entrusting children to his care." *Id.*, ¶ 34, lns. 21-24 (emphasis added).

16. Church Defendants "negligent investigated, appointed, retained" Henderson," *Id.*, ¶ 37, lns. 7-8.

17. Church Defendants "negligently" investigated, hired, retained, Henderson." *Id.*, ¶ 38, lns. 13-14.

D. Allegations Concerning Church Defendants' Failure To Report, As Follows:

18. The Church Defendants "suppress[ed] information to cover-up and hide incidents of child molestation from law enforcement," *Id.*, ¶ 18, lns. 15-17.

19. Files "were not disclosed to … law enforcement authorities," *Id.*, ¶ 18, lns. 22-23.

20. The Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities." *Id.*, ¶ 18, lns. 26-27.

21. The Church Defendants "took no action to report the abuse to authorities," *Id.*, ¶ 20, lns. 23-24.

22. The Church Defendants "did not report the abuse to law enforcement authorities," *Id.*, ¶ 25, lns. 5-6.

23. The Church Defendants "negligently fail[ed] to report such sexual abuse … to law enforcement and governmental child welfare agencies," *Id.*, ¶ 26, lns. 22-24.

CERTIFICATE OF CONFERENCE

Defense counsel hereby certifies that he and plaintiffs' counsel complied with the "meet and confer" requirements before filing these motions to strike.

DATED: January 25, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

4117608.1

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 25, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF CHURCH DEFENDANTS' MOTIONS TO STRIKE PORTIONS OF PLAINTIFFS' COMPLAINTS IN THE COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document,

via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 25, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Robert J. Schnack, SBN 191987
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Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

FILED
FEB 01 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTIONS TO STRIKE PORTIONS OF COMPLAINTS IN COORDINATED CASES** **Date:** TBA 2-28-05 **Time:** TBA 8:30 A.M **Dept:** B **Trial Dates: Not yet set**
AND COORDINATED CASES	

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. ("WTNY"), WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA ("Watch Tower PA"), CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES ("CCJW"), and the various congregations of Jehovah's Witnesses named as defendants in these coordinated cases (collectively the "Church Defendants"),[1] through their attorneys of record,

[1] This appearance is *not* made on behalf of any individual defendants in these coordinated cases. Additionally, Defendant Watch Tower PA only makes a special appearance herein, pending this Court's resolution of its previously filed motions to quash service for lack of personal jurisdiction in the coordinated cases.

submit this memorandum of points and authorities in support of Church Defendants' motions to strike portions of plaintiffs' complaints in each of the coordinated cases.[2]

PLAINTIFFS' COMPLAINTS

The alleged facts in these coordinated cases relevant to the motions to strike are straightforward. These cases concern sexual abuse allegedly committed by an individual defendant against each plaintiff. (Each plaintiff alleges that only one person allegedly abused him or her, and each individual defendant has been sued in only one or two cases.) The complaints generally allege that the alleged abusers were each in an appointed position with a local congregation when the abuse occurred.

Plaintiffs each essentially allege nine causes of action against the Church Defendants. Each of the causes of action is based on and related to: (1) the underlying alleged sexual abuse of each plaintiff by an individual defendant; (2) the Church Defendants' alleged failure to report that abuse, and/or to prevent, protect, or warn each plaintiff about the alleged abuser's claimed propensity toward child abuse; and, (3) the Church Defendants' internal policies, procedures, and actions regarding childhood sexual abuse.

However, each of the operative complaints in the coordinated cases also contains allegations outside the subject matter jurisdiction of this Court. The areas challenged by these motions to strike in each of the coordinated cases include the language in each complaint that describes: (1) the propriety of the ecclesiastical discipline rendered to the alleged abuser in each

[2] The Court directed counsel for Church Defendants to file this single brief in support of the motions to strike covering all of the remaining 10 coordinated cases.

case; (2) the existence of a conspiracy between and among the corporate Church Defendants, which plaintiffs uniformly allege constitute a single business enterprise; (3) the proposed causes of action for negligent appointment and negligent retention of a minister by a religious organization; and (4) references to the Church Defendants' alleged failure to report alleged child abuse to law enforcement or other government agencies.

As set forth more fully below, this Court should grant the Church Defendants' motions to strike the language of each of the complaints in these coordinated cases that concerns these four issues. By doing so, the Court will properly simplify the complaints in each case and appropriately reduce the number of outstanding issues in these matters.

STANDARD OF REVIEW

Any party may move to strike any type of pleading, including a complaint. CCP §435(b)(1). A motion to strike may be directed toward an entire pleading or any part thereof. *Id.* Thus, a motion to strike may be brought against a portion of a cause of action, a phrase, or even a single word.

The purpose of a motion to strike is to eliminate any "irrelevant, false, or improper matter inserted in any pleading." CCP §436(a). "Immaterial allegation[s]" or "irrelevant" matter, as used in the context of motions to strike, means allegations not essential to the statement of a claim or defense, CCP §431.10(b)(1), or allegations "neither pertinent to nor supported by an otherwise sufficient claim or defense." CCP §431.10(b)(2).

Finally, because "[a] demurrer does not lie to a portion of a cause of action," a defendant must use a motion to strike when challenging only part of a stated cause of action. *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682, 40 Cal.Rptr.2d 169, 171 ("We conclude that

when a substantive defect is clear from the face of a complaint … a defendant may attack that portion of the cause of action by filing a motion to strike").

ARGUMENT

I. The References To Ecclesiastical Discipline And Standing In The Church Should Be Struck As "Irrelevant Matter" Inserted Into The Pleadings.

The complaint in each of the coordinated cases contains various references to the alleged inadequacy of the ecclesiastical discipline administered to the individual defendant or alleged abuser by the Church Defendants. By way of example, in the coordinated case of *Javier C. v. Watchtower New York, et al*, Placer County Superior Court no. SCV16723, the complaint refers to "Defendant Carlos Vasquez, who remained in good standing at all times mentioned herein," *Complaint*, ¶ 60, lns. 27-28; "Defendant Carlos Vasquez was a member in good standing," *Id.*, ¶ 60, lns. 4-5; "Defendant Carlos Vasquez as a member in good standing," *Id.*, ¶ 61, lns. 15-16; "member in good standing," *Id.*, ¶ 62, ln. 25; "Defendant Carlos Vasquez was [a] member in good standing," *Id.*, ¶ 63, ln. 2; "Defendant Carlos Vasquez … as a member in good standing," *Id.*, ¶ 64, lns. 5-6; "Defendant Carlos Vasquez … [was] in good standing … to be a member in good standing," *Id.*, ¶ 74, lns. 24-26; and "appointed agent who they held out to be in good standing," *Id.*, ¶ 78, lns. 18-19. Finally, the complaint in *Javier C.* also alleges that "[t]he [Church] Defendants failed to take appropriate steps to hold their agent, Carlos Vasquez, accountable for his conduct or to assist him in addressing his propensities." *Id.*, ¶ 27, lns. 12-14. Very similar allegations are made in the complaints in each of the other coordinated cases. *See* the concurrently filed Notice of Church Defendants' Motions to Strike.

Again using the *Javier C.* case as an example, the question of whether or not Mr. Vasquez was, or should have been, a "member in good standing" in the Church Defendants' religion is an issue beyond the jurisdiction of this secular Court. Only an ecclesiastical tribunal may determine whether one of its members was in "good standing" or not. Could we imagine a civil tribunal or secular court finding or holding otherwise, *i.e.*, that an individual should have

been considered a member in "bad standing" (or some other category of "standing") according to the scriptural standards set forth by the Bible or as interpreted by a religious organization?

The California Supreme Court recently reiterated that state courts do not have subject matter jurisdiction over religious matters. As the Court stated:

> "[W]henever ... *questions of discipline, or of faith, or ecclesiastical rule, custom, or law* have been decided by the highest of [the] church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." [Citation.]

Catholic Charities of Sacramento, Inc. v. Superior Court (2004) 32 Cal.4th 527, 10 Cal.Rptr.3d 283, 294 (emphasis added). Furthermore, the Supreme Court warned: "Courts have no expertise in religious matters, and courts 'so unwise' as to attempt to decide them 'would only involve themselves in a sea of uncertainty and doubt....' [Citation]." *Id.*

In *Paul v. Watchtower Bible and Tract Society of New York, Inc.* (9th Cir. 1987) 819 F.2d 875, the Ninth Circuit Court of Appeals held that courts cannot constitutionally second-guess matters of religious discipline. In *Paul*, a former disassociated member of the Jehovah's Witnesses brought an action against the church entities for "shunning" her. The court concluded:

> "Courts generally do not scrutinize closely the relationship among members (or former members) of a church. *Churches are afforded great latitude when they impose discipline on members or former members.* We agree with Justice Jackson's view that '[r]eligious activities which concern only members of the faith are and ought to be free--as nearly absolutely free as anything can be.' Prince v. Massachusetts, 321 U.S. 158, 177, 64 S.Ct. 438, 445, 88 L.Ed. 645 (1944) (concurring)."

Paul, 819 F.2d at 883 (emphasis added). Thus, the Church Defendants' practices of religious discipline in *Paul* were upheld under both the First Amendment to the U.S. Constitution and the Washington state constitution. *Id.*

In these coordinated cases, and again using the *Javier C.* case by way of example, regardless of what type of ecclesiastical discipline was administered to Mr. Vasquez by one or more of the Church Defendants, this Court cannot constitutionally second-guess the discipline rendered. Thus, whether or not Vasquez "remained a member in good standing," as alleged by

the complaint, is a purely religious matter protected from scrutiny of the civil courts by the federal and state constitutions. U.S. Const. amend. 1; Cal. Const. art. 1, § 4.

Alternatively, this Court does not have to reach the constitutional issues raised in *Catholic Charities of Sacramento* and *Paul* because the propriety of the discipline rendered to Vasquez and the other individual defendants or alleged abusers is not relevant to these cases. The challenged allegations are neither essential nor pertinent to any of the claims alleged in the plaintiffs' complaints. CCP §§ 431.10(b)(1), (2).

Thus, this Court should grant the Church Defendants' motions to strike the language cited in the Notice of Church Defendants' Motions to Strike concerning ecclesiastical discipline and standing.

II. The Allegations Concerning Conspiracy Should Be Struck As "Irrelevant Matter" Inserted Into The Pleadings.

The complaint in each of the coordinated cases alleges a cause of action for conspiracy, but also contains several other references to an alleged "conspiracy" among and between the Church Defendants. While the Church Defendants have demurred to the causes of action alleging conspiracy, they move herein to strike the other "conspiracy" references found in the complaints.

Again by way of example, the complaint in the *Javier C.* case contains the following references to an alleged "conspiracy" between and among the Church Defendants:

> The Defendant entities are collectively referred to herein as the "Watchtower [Church] Defendants" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.

Complaint, ¶ 9, lns. 8-13; *see also* "conspiracy of concealment," *Id.* At ¶ 19, ln. 25; "conspiracy to conceal the sexual molestation," *Id.* at ¶ 25, ln. 18; "conspire to cover-up," *Id.* at ¶ 31, ln. 1; and "conspire to conceal," *Id.* at ¶ 62, ln. 27. Very similar allegations are made in the complaints

in each of the other coordinated cases. *See* the concurrently filed Notice of Church Defendants' Motions to Strike.

The references to conspiracy should be struck because under California law, "agents and employees cannot be held liable for conspiring with their own principals" under the "agent's immunity rule." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 512, 28 Cal.Rptr.2d 475, 479. The agent's immunity rule provides: "Agents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 72, 35 Cal.Rptr. 652, 665.

The rule "derives from the principle that ordinarily corporate agents and employees acting for and on behalf of the corporation cannot be held liable for inducing a breach of the corporation's contract since being in a confidential relationship to the corporation their action in this respect is privileged." *Id.,* 223 Cal.App.2d at 72-73, 35 Cal.Rptr. at 665. The California Supreme Court has "endorsed and applied" the agent's immunity rule. *Applied Equip. Corp.*, 7 Cal.4th at 512 n.4, 28 Cal.Rptr.2d at 479 n.4.

Again using the *Javier C.* case as an example, the complaint there alleges that the Church Defendants are operating as the "agent, servant and alter ego of each other" and as a "single business enterprise." *Complaint*, ¶ 9, lns. 9-10. Also, each of the Church Defendants is alleged to have acted within the "scope and course" of its authority as an "agent, servant, and/or alter ego of the other and each of them" when they allegedly "conspired" to commit the activities in the complaint. *Id.*, ¶ 9, lns. 11-13. Thus, the complaint in *Javier C.* and the complaints in the other coordinated cases allege that the Church Defendants essentially function as a single corporation.

While the Church Defendants dispute that characterization, if those allegations are presumed to be true, as the Court must consider them for these motions to strike, it would mean that the church allegedly conspired with itself, a conclusion barred as a matter of law by the agent's immunity rule. As the Court of Appeal stated, "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation." *Wise*, 223 Cal.App.2d at 72, 35 Cal.Rptr. at 665.

Thus, as pled by plaintiffs, an allegation of "conspiracy" made against them is superfluous and legally immaterial under the agent's immunity rule. For these reasons, this Court should grant the Church Defendants' motions to strike the references to "conspiracy" contained in each of the complaints.

III. The Negligent Appointment And Negligent Retention Allegations Should Be Struck From The Complaints For Failure To State A Claim.

Each complaint in the coordinated cases pleads a cause of action against the Church Defendants for "negligent appointment, retention, and supervision." However, this Court should strike the language concerning negligent *appointment* and negligent *retention* for lack of subject matter jurisdiction. Because a "demurrer does not lie to a portion of a cause of action," these two unconstitutional allegations must be addressed by a motion to strike. *PH II, supra,* 33 Cal.App.4th at 1682, 40 Cal.Rptr.2d at 171.[3]

Again using the *Javier C.* case by way of example, the third cause of action in the complaint alleges that the Church Defendants improperly appointed and retained Vasquez. For example, the complaint states that "[t]he [Church] Defendants failed to adequately investigate, evaluate, and otherwise research the background of their agent, Carlos Vasquez, prior to

[3] Contrary to what plaintiffs may argue, the Church Defendants do not presently move against the negligent *supervision* allegations at this pleading stage of the cases.

appointing him to leadership positions [in the church] and entrusting children to his care." *Complaint*, ¶ 37, lns. 10-12 (emphasis added). Further, the complaint alleges that the Church Defendants negligently "appointed, retained" Vasquez. *Complaint*, ¶ 40, lns. 22-23; *see also Id.*, at ¶ 28(h) ("negligently retaining" Vasquez). The complaint also makes general allegations about appointment: "[Church] Defendants acted to continue to appoint these sexual offenders to positions of authority." *Id.*, ¶ 18, ln. 9.

The Church Defendants adamantly dispute those allegations. However, the causes of action for negligent *appointment* and negligent *retention* cannot be brought against a religious entity as a matter of law. Both the federal and California constitutions prohibit a civil tribunal from determining what *standards* a religious organization should use to appoint, retain, or remove a minister.

The Supreme Court of the United States long ago established that civil courts cannot interfere with the appointment or hiring decisions of a church. In *Gonzalez v. Roman Catholic Archbishop* (1929) 280 U.S. 1, the Court stated:

> Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.

Id. at 16-17. Furthermore, the Court added in *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, that "[f]reedom to select the clergy ... must now be said to have *federal constitutional protection* as a part of the free exercise of religion against state interference." *Id.* at 116 (emphasis added).

California is in accord with this position. In *Schmoll v. Chapman Univ.* (1999) 70 Cal.App.4th 1434, 83 Cal.Rptr.2d 426, the Court of Appeal prohibited the imposition of civil restrictions on the hiring or firing practices of churches. In a "case of first impression," the Court of Appeal stated:

> It is irrelevant whether the action involves *hiring*, *firing* or *discipline* or simply changes the terms and conditions of the employment. The rule is about as absolute as a rule of law can be: The First Amendment guarantees to a religious institution the right to decide matters affecting its ministers' employment, free from the scrutiny and second-guessing of the civil courts.

70 Cal.App.4th at 1436, 83 Cal.Rptr.2d at 427 (emphasis added). As the Court of Appeal stated, the "rule is about as absolute as a rule of law can be," religious institutions have a First Amendment right to make their own decisions, free from civil interference, about who qualifies to serve or remain as a minister.

As the foregoing cases make clear, the question of who becomes or remains a minister in a religious organization is an ecclesiastical matter in which courts may not interfere. Because the appointment process is a "canonical act," churches alone may decide "what the essential qualifications of a chaplain are and whether the candidate possesses them." *Gonzalez*, 280 U.S. at 16. Also, the Church Defendants alone may decide matters affecting the "hiring, firing or discipline" of their ministers "free from the scrutiny and second-guessing of the civil courts." *Schmoll*, 70 Cal.App.4th at 1436, 83 Cal.Rptr.2d at 427. Any civil limitations imposed by law on a religious organization for the acts of appointment or retention of a minister face a steep constitutional burden.

Because a civil tribunal is constitutionally not permitted to impose standards for the appointment or retention of religious ministers on a religious organization, this Court should grant the Church Defendants' motions to strike the language cited in the Notice of Church Defendants' Motions to Strike concerning negligent appointment and retention.

IV. The Allegations Concerning The Church Defendants' Failure To Report Should Be Struck As Irrelevant Matter and For Failure To State A Claim.

Some of the complaints in these coordinated cases make various allegations regarding the Church Defendants' failure to report the alleged abuse to law enforcement officials. For example, the complaint in the case of *Jocelyn A., et al v. Watchtower New York, et* al, Sonoma County Superior Court no. 234320, states that the Church Defendants "fail[ed] to properly report complaints of sexual misconduct to law enforcement authorities," *Complaint*, ¶ 23, lns. 23-24; "chose not to report the abuse to law enforcement authorities," *Id.*, ¶ 34, lns. 15, 15; "refus[ed] to report such sexual abuse ... to law enforcement and governmental child welfare agencies," *Id.*, ¶ 35, lns. 1, 2. The complaints in the other coordinated cases contain similar allegations of alleged failure to report. *See* the concurrently filed Notice of Church Defendants Motion to Strike.

These allegations should be struck for three reasons: 1) the corporate Church Defendants, if considered to be clergy, were under no duty to report the alleged abuse at the time it took place under the reporting statute (California Child Abuse and Neglect Reporting Act ("CANRA"), Calif. Penal Code §§ 11164-74); 2) no California court has ever allowed a civil cause of action against a church for its failure to report alleged child abuse; and, in any event, 3) church *entities* and religious *corporations* simply are not mandated reporters under CANRA.

In 1963, under former Penal Code § 11161.5 (*i.e.*, CANRA), the mandatory reporting obligations were applicable only to physicians and surgeons. *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-71, 45 Cal.Rptr.2d 475, 477. In 1996, the Legislature amended CANRA to add "clergy members" to the list of mandated reporters. Stats.1996, ch. 1081, § 3.5, codified at Penal Code § 11165.7(a)(32). That amendment became effective, as a matter of law, on January 1, 1997.

In the *Jocelyn A.* case, for example, the complaint alleges that plaintiffs were born on March 3, 1987, April 20, 1985, February 6, 1982, and November 16, 1978, respectively, and that the abuse took place between 1985 and 1989. *Complaint*, ¶¶ 1-4 and 28-31. Even assuming,

arguendo, the allegations of the *Jocelyn A.* complaint are true, the corporate Church Defendants, assuming they fall within the definition of "clergy member[s]" in CANRA, then had no duty to report under CANRA; instead, that duty was first imposed upon "clergy member[s]" some eight to twelve years later, in 1997.

Furthermore, even if, *arguendo,* a statutory duty to report was somehow imposed on the Church Defendants before 1997, no California court has ever held that CANRA creates a private right of action to sue for damages resulting from a failure to report. As the Court of Appeal has stated:

> Adoption of a regulatory statute does not automatically create a private right to sue for damages resulting from violations of the statute. Such a private right of action exists only if the language of the statute or its legislative history clearly indicates the Legislature *intended* to create such a right to sue for damages. If the Legislature intends to create a private cause of action, we generally assume it will do so "directly [,] ... in clear, understandable, unmistakable terms...."

Vikco Ins. Serv., Inc. v. Ohio Indem. Co. (1999) 70 Cal.App.4th 55, 62-63 (citations omitted) (emphasis in original).

Moreover, because CANRA and its predecessors have been repeatedly amended, "if the Legislature had intended to create such a private action, it would have done so by clear and direct language." *Schaefer v. Williams* (1993) 15 Cal.App.4th 1243, 1248, 19 Cal.Rptr.2d 212 (citations omitted); C.C.P. § 1858 (when interpreting statutes, court is "to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted").

Finally with respect to the failure to report allegations, and just as significantly, church *entities* and religious *corporations* are not mandated reporters under CANRA. Those persons who are mandated reporters under CANRA are listed in Penal Code § 11165.7(a), and "clergy member[s]" are listed as mandated reporters at sub-section (a)(32). The definition of "clergy member" in sub-section (a)(32) as a mandated reporter "means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or

organization." That definition refers only to *individuals* and does not include church *entities* or religious *corporations* as mandated reporters. Here, plaintiffs expressly plead in each of the coordinated cases that the Church Defendants are each a corporation and thus, as a matter of law, they do not qualify as mandated reporters under CANRA and Penal Code § 11165.7(a).

Because the Church Defendants were not required to report by CANRA, because no private cause of action exists for alleged violations of CANRA, and because the Church Defendants do not qualify as mandated reporters under CANRA, this Court should grant the Church Defendants' motions to strike the language concerning a failure to report contained in the complaints in these coordinated cases, as cited in the Notice of Church Defendants' Motions to Strike.

CONCLUSION

For each of the reasons set forth above, this Court should grant Church Defendants' motions to strike the allegations in each of the coordinated cases concerning: (1) ecclesiastical discipline; (2) conspiracy; (3) negligent appointment and retention; and (4) references to the Church Defendants' alleged failure to report alleged child abuse that are set forth in the complaints.

DATED: January 24, 2005

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack
Attorneys for Church Defendants

4117614.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 25, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTIONS TO STRIKE PORTIONS OF COMPLAINTS IN COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 25, 2005, at Gold River, California.

By Claudia Pohlman

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FILED
FEB 01 2005
Clerk of the Napa Superior Court
By: J Blodel
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES

DATE: TBA 2-28-05
TIME: TBA 8:30 A.M.
DEPT.: B
TRIAL DATES: Not yet set

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. ("WTNY"), WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA ("Watch Tower PA"), CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES ("CCJW"), and the various congregations of Jehovah's Witnesses named as defendants in these coordinated cases (hereinafter collectively the "Church Defendants"),[1] submit this memorandum

[1] This appearance is *not* made on behalf of the individual defendants. Additionally, Defendant Watch Tower PA has filed motions to quash service of summons and complaint for lack of personal jurisdiction in California and, therefore, only specially appears herein.

of points and authorities in support of the Church Defendants' demurrers against plaintiffs' currently operative complaints in each of the coordinated cases.

STANDARD OF REVIEW

For the purposes of a demurrer, "the rule is that we accept as true all the material allegations of the complaint." *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7, 276 Cal.Rptr. 303, 305. The Court thus treats a demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. Demurrers do not test the truth of a plaintiff's allegations or the accuracy with which they describe a defendant's alleged conduct. *E.g., Baltins v. James* (1995) 36 Cal.App.4th 1193, 1196-97, 42 Cal.Rptr.2d 896, 898.

ARGUMENT

I. Church Defendants Cannot Be Held Vicariously Liable For The Alleged Sexual Battery Committed By An Individual Defendant, So The Cause of Action For Sexual Battery Is Thus Subject To Demurrer Under CCP § 430.10(e).

It is well settled in California that employees or agents who commit sexual assaults, apart from police officers in certain situations, act outside the scope of their employment or agency as a matter of law. *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 218 n. 11, 285 Cal.Rptr. 99, 108 n.11. Thus, in "an action against a religious institution based on allegations of childhood sexual abuse perpetrated by one of its clergy [,] ... the abuse is committed outside the scope of the cleric's employment [and] the doctrine of respondeat superior is not available." *Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609, 79 Cal.Rptr.2d 73, 77; *see also Richelle L. v. Roman Catholic Archbishop of San Francisco* (2003) 106 Cal.App.4th 257, 283 n.15, 130 Cal.Rptr.2d 601, 619 n. 15.

By way of example in these coordinated cases, the complaint in *Javier C. v. Watchtower New York, et al.*, Placer County Superior Court no. SCV 16723, alleges that defendant Vasquez sexually abused plaintiff. *Complaint*, ¶ 23; *see also* Civil Code § 1708.5. Accordingly, the First Cause of Action for "sexual battery" was pled against defendant Vasquez. *Complaint*, ¶ 30. But the complaint also alleges that each of the Church Defendants "was in the chain of command and acted pursuant to the authority granted to them as agents and alter ego of the Governing Body and each other, [and] utilized such leadership and authority to carry out and/or aid, abet, ratify, cover-up, and conspire to cover-up the sexual abuse of plaintiff by Defendant Carlos Vasquez." *Complaint*, ¶ 31. Thus, it appears that plaintiff in *Javier C.* (and the other coordinated cases) is alleging that the Church Defendants are vicariously liable for the "sexual battery" allegedly committed by defendant Vasquez.

However, as a matter of law, a religious organization cannot be held vicariously liable for sexual battery committed by one of its ministers or agents, because such sexual battery is outside of the scope of the minister's employment or agency. *Mark K.*, 67 Cal.App.4th at 609, 79 Cal.Rptr.2d at 77. Thus, this Court should dismiss with prejudice the sexual battery cause of action apparently pled against the Church Defendants in eight of the coordinated cases.

II. The Conspiracy Cause of Action Is Subject To Demurrer Under CCP § 430.10(e) Because It Is Not Recognized As A Separate Cause Of Action In California And Because, As Pled By Plaintiffs In Their Complaints, The Agent's Immunity Rule Precludes A Conspiracy Claim.

Plaintiffs have pled a cause of action for conspiracy in each of the coordinated cases. However, conspiracy itself is not a separate cause of action in California. Rather, it is a *theory of vicarious liability* under which certain defendants may be held liable for torts committed by others.

The California Supreme Court has stated: "Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511, 28 Cal.Rptr.2d 475, 478; *see also Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 263, 45 Cal.Rptr.2d 90, 101. This is not a new concept, because the California Supreme Court has adopted this position for at least the last 140 years. *Herron v. Hughes* (1864) 25 Cal. 555, 560 ("A simple conspiracy, however atrocious, unless it results in actual damage to the party, never was the subject of a civil action.").

In addition, the conspiracy cause of action fails under California law because, as pled by plaintiffs in each of the coordinated cases, "agents and employees cannot be held liable for conspiring with their own principals" under the "agent's immunity rule." *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 512, 28 Cal.Rptr.2d 475, 479. The agent's immunity rule provides: "Agents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage." *Wise v. Southern Pacific Co.* (1963) 223 Cal.App.2d 50, 72, 35 Cal.Rptr. 652, 665.

The rule "derives from the principle that ordinarily corporate agents and employees acting for and on behalf of the corporation cannot be held liable for inducing a breach of the corporation's contract since being in a confidential relationship to the corporation their action in this respect is privileged." *Id.*, 223 Cal.App.2d at 72-73, 35 Cal.Rptr. at 665. The California Supreme Court has "endorsed and applied" the agent's immunity rule. *Applied Equip. Corp.*, 7 Cal.4th at 512 n.4, 28 Cal.Rptr.2d at 479 n.4.

By way of example, the complaint in the *Javier C.* case alleges that the Church Defendants are operating as the "agent, servant and alter ego of each other" and as a "single business enterprise." *Complaint*, ¶ 9, lns. 9-10. The complaint in *Javier C.* further alleges that each of the Church Defendants acted within the "scope and course" of its authority as an "agent, servant, and/or alter ego of the other and each of them" when they allegedly "conspired" to commit the activities in the complaint. *Id.*, ¶ 9, lns. 11-13. Thus, the complaint in *Javier C.* (and the complaints in the other coordinated cases) alleges that the Church Defendants essentially function as a single corporation.

While the Church Defendants dispute that characterization, if those allegations are presumed to be true, as the Court must consider them for these demurrers, it would mean that the church allegedly conspired with itself, a conclusion barred by the agent's immunity rule. As the Court of Appeal stated, "[a]gents and employees of a corporation cannot conspire with their corporate principal or employer where they act in their official capacities on behalf of the corporation." *Wise*, 223 Cal.App.2d at 72, 35 Cal.Rptr. at 665.

Thus, as pled by plaintiffs, the allegations of "conspiracy" alleged against the Church Defendants in the conspiracy cause of action are superfluous and legally immaterial under the agent's immunity rule. For these reasons also, this Court should grant the Church Defendants' demurrers to the conspiracy cause of action alleged in each of the complaints.

III. The Fraud Causes Of Action Fail To Meet The Strict Pleading Requirements For Alleging Fraud Claims Against Corporate Entities And Are Thus Subject to Demurrer Under CCP § 430.10(e).

Plaintiffs in each of the coordinated cases allege causes of action based on the tort of fraud. The Civil Code defines several types of actual fraud:

> A deceit [fraud] ... is either: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; 3. The

> suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact ....

Civil Code §§ 1710(1)-(3). Plaintiffs allege two separate species of fraud, one for intentional misrepresentation, *see* Civil Code § 1710(1), and the other for fraudulent concealment. *See* Civil Code § 1710(3). However, those causes of action have not been pled here with the specificity required by California law and are thus subject to demurrer.

The common law elements of fraud have been long established and include: "(1) misrepresentation of a material fact (consisting of false representation, concealment or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to deceive and induce reliance; (4) justifiable reliance on the misrepresentation; and (5) resulting damage." *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 481, 80 Cal.Rptr.2d 329, 354; *Gonsalves v. Hodgson* (1951) 38 Cal.2d 91, 100-01, 237 P.2d 656, 662.

Fraud actions are subject to a stricter pleading standard than other actions: "In California, fraud must be pled specifically; general and conclusory allegations do not suffice." *Lazar v. Superior Court of Los Angeles* (1996) 12 Cal.4th 631, 645, 49 Cal.Rptr.2d 377, 385. The reason for the strict pleading requirements for allegations of fraud is that such allegations "'involve a serious attack on character, and fairness to the defendant demands that he should receive the fullest possible details of the charge in order to prepare his defense.' [Citation.]" *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, 197 Cal.Rptr. 783, 795. Indeed, the pleading of fraud is the "last remaining habitat of the common law notion that a complaint should be sufficiently specific that the court can weed out nonmeritorious actions on the basis of the pleadings." *Committee on Children's Television,* 35 Cal.3d at 216-17, 197 Cal.Rptr. at 795.

Every element of the cause of action for fraud must be alleged in *"full, factually and specifically."* *Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1331, 231 Cal.Rptr. 355, 358 (emphasis added). The policy of "liberal construction" of pleading will not be invoked to sustain a pleading defective in any material respect. *Id.* The particularity requirement means that the complaint must set forth facts that "'show *how, when, where, to whom, and by what means* the representations were tendered.'[Citation.]" *Lazar*, 12 Cal.4th at 645, 49 Cal.Rptr.2d at 385 (emphasis added).

A plaintiff's burden in alleging a fraud claim against a corporation is even greater. In such cases, the plaintiff must "'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.'" *Lazar*, 12 Cal.4th at 645, 49 Cal.Rptr.2d at 385 (*quoting Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157, 2 Cal.Rptr.2d 861, 862-63).

In these coordinated cases, the causes of action for fraud are alleged against the Church Defendants, which consist of several religious corporations. They include defendant Watchtower PA, an international, non-profit, religious corporation; defendants WTNY and CCJW, two national, non-profit religious corporations; and the local congregations of Jehovah's Witnesses, which are California non-profit corporations. (For example, in the *Javier C.* case, *see Complaint,* ¶¶ 2-5.

By way of example, in the *Javier C.* case, the complaint alleges that the Church Defendants made intentional misrepresentations and actively concealed material facts. *Complaint*, ¶¶ 60, 71, 72. The complaints in the other coordinated cases contain similar, if not identical allegations. However, the complaint does not state "'*how, when, where, to whom, and*

by what means the representations were tendered.'" *Lazar*, 12 Cal.4th at 645, 49 Cal.Rptr.2d at 385 (emphasis added). Additionally, because all of the Church Defendants are corporations, the complaint fails to allege "the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." *Id.*

Thus, plaintiffs have *not* alleged their fraud causes of action with the specificity required by California law. Accordingly, this Court should grant Church Defendants' demurrers.

IV. The Cause Of Action For Intentional Infliction Of Emotional Distress Fails To State Facts Sufficient To Constitute A Claim for Relief And Thus Is Subject to Demurrer Under CCP § 430.10(e).

The complaints allege a cause of action for the tort of "intentional infliction of emotional distress" ("IIED"). The elements of a prima facie IIED claim are: "(i) outrageous conduct by defendant, (ii) an intention by defendant to cause, or reckless disregard of the probability of causing, emotional distress, (iii) severe emotional distress, and (iv) an actual and proximate causal link between the tortious conduct and the emotional distress." *Nally v. Grace Community Church*, (1988) 47 Cal.3d 278, 300, 253 Cal.Rptr. 97, 110. "Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Cervantez v. J.C. Penney Co., Inc.* (1979) 24 Cal.3d 579, 593, 156 Cal.Rptr. 198, 206.

The tort of IIED also requires that the alleged conduct must be directed *primarily at a particular individual* and be intended to cause *that particular individual* severe emotional distress. As the California Supreme Court reasoned:

> It is not enough that the conduct be intentional and outrageous. It must be conduct *directed at the plaintiff*, or occur in the presence of a plaintiff of whom the defendant is aware. The requirement that the defendant's conduct be *directed primarily at the plaintiff* is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury.

Potter v. Firestone Tire and Rubber Co. (1993) 6 Cal.4th 965, 1002, 25 Cal.Rptr.2d 550, 574-75 (citations and internal quotations omitted) (emphasis added); *see also Christensen v. Superior Court* (1992) 54 Cal.3d 868, 906, 2 Cal.Rptr.2d 79, 102 ("Plaintiffs here have not alleged that the conduct of any of the defendants was directed *primarily at them*, was calculated to cause *them* severe emotional distress, or was done with *knowledge of their presence* and of a *substantial certainty that they would suffer* severe emotional injury." [emphasis added]).

By way of example, plaintiff in the *Javier C.* case has broadly alleged an IIED cause of action based on the alleged "inaction" of Church Defendants to protect plaintiff. *Complaint*, ¶ 56. However, the complaint does not explain how that alleged inaction, or omission, was *primarily directed* at plaintiff, as opposed to other children or even the public in general. The complaints in *Javier C.* and the other coordinated cases do not state who made the omission, when they made this omission, or what authority the person(s) had to act on behalf of each of the corporate Church Defendants. Furthermore, even if plaintiff Javier C. was "present" at the time of the alleged omission, as claimed in the *Javier C.* complaint in paragraph 56, the complaint fails to identify who, by their inaction, had a "substantial certainty that [Plaintiff] would suffer severe emotional injury." *Christensen*, 54 Cal.3d at 906, 2 Cal.Rptr.2d at 102. The same is true of the pleadings in the other coordinated cases.

Because the complaints in the coordinated cases fail to allege facts sufficient to support all essential elements of an IIED cause of action, the Church Defendants' general demurrer on the IIED causes of action should be granted.

V. The Causes Of Action For Common Law Negligence, Gross Negligence - Willful Misconduct, And Breach of Fiduciary Duty Are Uncertain And Ambiguous As Pled And Thus Subject To Demurrer Under CCP § 430.10(f).

Those three claims alleged in each of the complaints are uncertain and ambiguous as pled and thus subject to demurrers. CCP § 430.10(f).

In pleading, the general rule is that the facts must be alleged with sufficient clarity to inform defendants of the issues to be met. *Ludgate Insurance Co. v Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608, 98 Cal.Rptr.2d 277, 288 (a plaintiff is required to allege "the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source, and extent of his cause of action" [citation omitted]); *see also Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537, 151 Cal.Rptr. 828, 832 ("It is settled law that a pleading *must allege facts and not conclusions*, and that material facts must be alleged directly and not by way of recital." [emphasis added]). The *Ankeny* court also stated that "the essential facts upon which a determination of the controversy depends should be stated with *clearness and precision so that nothing is left to surmise*." *Id.* (emphasis added). Finally, "[t]hose recitals, references to, or allegations of material facts which are left to surmise are subject to special demurrer for uncertainty." *Id.*

A. The Cause Of Action For Common Law Negligence Is Uncertain And Ambiguous As Pled.

By way of example, in *Javier C.* the second cause of action is entitled "Common Law Negligence," but plaintiff has "left to surmise" the key material fact necessary for this claim. As a basis for this cause of action, the *Javier C.* complaint makes the wholly conclusory allegation of law that the Church Defendants "assumed a duty to protect Plaintiff." *Complaint*, ¶ 34. The complaints in the coordinated cases make similar, if not identical, allegations. However, this cause of action fails to allege any specific or particular *facts* that would support such a legal conclusion about having "assumed a duty to protect" the plaintiff.

This is an important distinction, because the outcome of the negligence cause of action will depend in large part on the nature of the relationship between each of the Church Defendants and each plaintiff. As the Court of Appeal has noted, "'[a] person is ordinarily not liable for the

actions of another and is under no duty to protect another from harm, in the absence of a special relationship of custody or control.' [Citation.]" *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1078-79, 107 Cal.Rptr.2d 801, 809; *see also Garcia v. Superior Court* (1990) 50 Cal.3d 728, 734, 268 Cal.Rptr. 779, 782 ("A special relationship is a prerequisite for liability based on a defendant's failure to act.").

This basic concept is known as the "no duty to aid rule" and is a "fundamental and long-standing rule of tort law." *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727, 90 Cal.Rptr.2d 549, 558-559. Furthermore, "[a]bsent a 'special relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party." *Id.*; *see Totten v. More Oakland Residential Housing, Inc.* (1976) 63 Cal.App.3d 538, 541, 134 Cal.Rptr. 29, 32 ("As a basic general principle, in the absence of a special relationship or circumstance, a private person has no duty to protect another from a criminal attack by a third person.").

Merely alleging that Church Defendants "assumed a duty to protect Plaintiff," *i.e.* pleading the ultimate legal conclusion necessary for this cause of action without alleging the necessary facts, is insufficient for this cause of action. Plaintiffs must also set forth the essential facts with "clearness and precision" concerning each of their alleged relationships with the corporate Church Defendants. *Ankeny*, 88 Cal.App.3d at 537, 151 Cal.Rptr. at 832. Thus, the Court should grant Church Defendants special demurrers against the common law negligence cause of action alleged in each of the coordinated cases.

B. The Cause Of Action For Gross Negligence/Willful Misconduct Is Uncertain And Ambiguous As Pled.

Again using *Javier C.* as an example, the fourth cause of action entitled "Gross Negligence/Willful Misconduct" suffers from the same inadequacies as the cause of action for common law negligence. The gross negligence or willful misconduct cause of action also leaves

ambiguous a key material fact necessary for this claim. Again, the complaints in the coordinated cases make the wholly conclusory allegation that Church Defendants had a "duty to protect the *children entrusted to their ... care and custody.*" *See, e.g., Complaint* in *Javier C.*, ¶ 43 (emphasis added). However, the complaints in each case are ambiguous in their explanation about how each plaintiff was somehow entrusted into the care of any of the corporate Church Defendants.

Like the cause of action for common law negligence, this cause of action will turn in large part on the nature of the relationship between each plaintiff and each of the Church Defendants. Absent a "special relationship" between them, this cause of action will not stand. *Romero*, 89 Cal.App.4th at 1079, 107 Cal.Rptr.2d at 809. Plaintiffs are required to plead the *facts* that support each plaintiff's conclusory assertion that he or she was somehow "entrusted" into the Church Defendants' care.

Thus, the gross negligent/willful misconduct cause of action alleged in each of the coordinated cases is also subject to a special demurrer for uncertainty for its failure to clearly allege facts setting forth the nature of each plaintiff's relationship with each of the corporate Church Defendants.

C. The Cause Of Action For Breach Of Fiduciary Duty Is Uncertain And Ambiguous As Pled And Thus Subject to Demurrer.

The cause of action is entitled "Breach of Fiduciary Duty" is alleged in each of the coordinated cases but again does not clearly allege the *facts* necessary to support that cause of action. Obviously, to plead a cause of action for breach of fiduciary duty, particular facts must be alleged that establish the existence of a fiduciary relationship between a plaintiff and a defendant. If the fiduciary relationship element is absent, any cause of action for breach of fiduciary duty must be dismissed.

What is the alleged basis for this fiduciary relationship in each of the cases? For example, the complaint in *Javier C.* states that by "undertaking the religious instruction and spiritual and emotional counseling of Plaintiff, the [Church] Defendants, created a fiduciary relationship with Plaintiff." *Complaint*, ¶ 47. Again, what does "undertaking the religious instruction and spiritual and emotional counseling" mean in this context? The attempt to hold a religious organization liable for "ecclesiastical teachings" and "spiritual counseling" has been constitutionally prohibited by the California Supreme Court as the classic fact pattern for prohibited clergy malpractice claims. *Nally,* 47 Cal.3d at 299, 253 Cal.Rptr. at 109 (unconstitutional to impose a duty of care on a church for counseling). Thus, plaintiffs' allegations about religious instruction and counseling will *not* support any claimed fiduciary duty in these cases.

Because the allegations in each of the coordinated cases do not state any factual basis that would support an alleged fiduciary relationship between each of the Church Defendants and each plaintiff, the breach of fiduciary duty cause of action is subject to a special demurrer for uncertainty.

VI. The Sixth Cause Of Action In *Daniel West, et al* (Yolo County Case) Based On Alleged Violations Of CANRA Fails To State A Cause Of Action And Is Thus Subject to Demurrer.

In *Daniel West, et al v. Watchtower New York, et al*, Yolo County Superior Court no. CV03-1439, plaintiffs allege a sixth cause of action for common law negligence and negligence *per se* based solely on alleged violations of the California Child Abuse and Neglect Reporting Act, or CANRA. That cause of action is subject to demurrer because: (i) the corporate Church Defendants, if considered to be clergy members, were under no duty to report the alleged abuse at the time it took place under the reporting statute (CANRA, which is codified at Penal Code §§ 11164-74); (ii) no California court has ever allowed a civil cause of action against a church entity

for its failure to report alleged child abuse; and, in any event, (iii) church *entities* and religious *corporations* simply are not mandated reporters under CANRA.

In 1963, under former Penal Code § 11161.5 (*i.e.*, CANRA), the mandatory reporting obligations were applicable only to physicians and surgeons. *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-71, 45 Cal.Rptr.2d 475, 477. In 1996, the Legislature amended CANRA to add "clergy member[s]" to the list of mandated reporters. Stats.1996, ch. 1081, § 3.5, codified at Penal Code § 11165.7(a)(32). That amendment became effective, as a matter of law, on January 1, 1997.

Thus, even assuming, *arguendo*, that the allegations of the *Daniel West* complaint are true and that the corporate Church Defendants qualify as clergy members under CANRA, the Church Defendants had no duty to report until after January 1, 1997.

Furthermore, even if, *arguendo,* a statutory duty to report was somehow imposed on any of the Church Defendants before 1997, no California court has ever held that CANRA creates a private right of action to sue for damages resulting from a failure to report. As the Court of Appeal has stated:

> Adoption of a regulatory statute does not automatically create a private right to sue for damages resulting from violations of the statute. Such a private right of action exists only if the language of the statute or its legislative history clearly indicates the Legislature *intended* to create such a right to sue for damages. If the Legislature intends to create a private cause of action, we generally assume it will do so "directly [,] ... in clear, understandable, unmistakable terms...."

Vikco Ins. Serv., Inc. v. Ohio Indem. Co. (1999) 70 Cal.App.4th 55, 62-63 (citations omitted) (emphasis in original).

Moreover, because CANRA and its predecessors have been repeatedly amended, "if the Legislature had intended to create such a private action, it would have done so by clear and direct language." *Schaefer v. Williams* (1993) 15 Cal.App.4th 1243, 1248, 19 Cal.Rptr.2d 212 (citations

omitted); C.C.P. § 1858 (when interpreting statutes, court is "to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted").

Finally with respect to the failure to report allegations, church *entities* and religious *corporations* simply are not mandated reporters under CANRA. Those persons who are mandated reporters under CANRA are listed in Penal Code § 11165.7(a), and "clergy member[s]" are listed as mandated reporters at sub-section (a)(32). The definition of "clergy member" in sub-section (a)(32) as a mandated reporter "means a priest, minister, rabbi, religious practitioner, or similar functionary of a church, temple, or recognized denomination or organization." That definition refers *only* to *individuals* and does not include church *entities* or religious *corporations* as mandated reporters. Here, the named Church Defendants are each a church entity or religious corporation. (*See Complaint* in *Daniel West, et al* at ¶¶ 4 – 8, which alleges that each of the Church Defendants is "a corporation....") Thus, as a matter of law, the Church Defendants do not qualify as mandated reporters under CANRA and Penal Code § 11165.7(a), and the sixth cause of action in *Daniel West, et al* should be dismissed with prejudice.

For each of the reasons discussed, this Court should grant the Church Defendants' demurrer to the sixth cause of action in *Daniel West, et al,* and in any of the other coordinated cases in which such claims might be alleged without leave to replead.

DATED: January 25, 2005

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack
Attorneys for Church Defendants

4117665.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 25, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS IN ALL COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document,

via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 25, 2005, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
FEB 01 2005
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANTS' NOTICE OF DEMURRERS IN COORDINATED CASES

DATE: TBA 2-28-05
TIME: TBA 8:30 A.M.
DEPT.: TBA
TRIAL DATES: Not yet set

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on a date and time to be determined by the Honorable W. Scott Snowden in Dept. B of the above-entitled Court, Defendants Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania,[1] Christian Congregation of Jehovah's Witnesses, and the various congregations of Jehovah's Witnesses named as defendants in one or more of the coordinated cases (collectively hereinafter "Church Defendants"), will and hereby do move the Court under California Code of Civil Procedure

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower Pennsylvania") appears specially herein, because it has filed motions to quash service of summons and complaint based on lack of personal jurisdiction in California. Those motions are still pending.

("CCP") §§ 430.10(e), (f) and 430.30(a) for an Order granting or sustaining their demurrers to the causes of action alleged in plaintiffs' operative complaints in each of the coordinated cases, on the grounds that plaintiffs' pleadings do not allege facts sufficient to constitute the causes of action alleged. Those demurrers are more particularly described, as follows:

The Church Defendants cannot be held vicariously liable for the sexual battery cause of action that is alleged in all coordinated cases except *Charissa W., et al* and *Tabitha H.* (Napa County cases).

Plaintiffs' causes of action for common law negligence, gross negligence – willful misconduct, and breach of fiduciary duty, as pled in each of the 10 remaining coordinated cases, fail to allege any facts that would support the requisite element of a special, confidential, or fiduciary relationship between each plaintiff and each of the Church Defendants.

The cause of action for intentional infliction of emotional distress pled in nine of the 10 remaining coordinated cases (*i.e.*, all except the Napa County case of *Charissa W.*) fails to allege facts sufficient to constitute all requisite elements of that claim.

The causes of action for fraud – intentional misrepresentation and fraud - concealment pled in each of the 10 remaining coordinated cases are not alleged with the specificity required by California law.

The cause of action for conspiracy, as pled by plaintiffs in each of the 10 remaining coordinated cases, is precluded by the agent's immunity rule and also fails to state a claim under California law.

The cause of action pled in *Daniel West, et al* (Yolo County case) alleging common law negligence and negligence *per se* based on alleged violations of the California Child Abuse and Neglect Reporting Act ("CANRA") fails as a matter of law for each of the following independent reasons: (1) the Church Defendants were not required to report by CANRA during the time frame at issue, (2) no private cause of action exists for alleged violations of CANRA, and, in any event, (3) none of the Church Defendants qualify as a mandated reporter under CANRA.

These demurrers are based on this notice, the supporting joint memorandum of points

and authorities, all papers and records on file in these coordinated cases, and such other oral and documentary information and evidence as may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel hereby certifies that he has met and conferred with plaintiffs' counsel concerning these demurrers before filing them with the court.

DATED: January 25, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al

4117932.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 25, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANTS' NOTICE OF DEMURRERS IN COORDINATED CASES

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each

complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 25, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

open 1-28-05

Robert J. Schnack, SBN 191987
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Attorneys for The Church Defendants

FILED
JAN 12 2005
Clerk of the Napa Superior Court
By: A. M. Hunter
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 **NOTICE OF ENTRY OF DISMISSAL OF COORDINATED CASE OF LISA H. V. WATCHTOWER, ET AL. Monterey County Superior Court no. M68295**

TO: The Court And All Parties

NOTICE is hereby given that the coordinated case styled Lisa H. v. Roes 1 through 100, inclusive and Does 110 through 120, inclusive, Monterey County Superior Court no. M68295, has been dismissed with prejudice. An endorsed copy of the request for dismissal of the Lisa H. case is attached hereto.

DATED: January 5, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

4117231.1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Rudy Nolen, Esq., SBN 59808 William L. Brelsford, Esq., SBN 202839 NOLEN SAUL BRELSFORD 350 University Avenue, Suite 280 Sacramento, CA 95825	(916) 564-9990	FILED DEC 0 3 2004 LISA M. GALDOS CLERK OF THE SUPERIOR COURT DEPUTY
ATTORNEY FOR (Name): LISA H.		
Insert name of court and name of judicial district and branch court, if any: Monterey County Superior Court		
PLAINTIFF/PETITIONER: LISA H. DEFENDANT/RESPONDENT: ROES 1 through 100, inclusive and DOES 110 through 120, inclusive		
REQUEST FOR DISMISSAL [X] Personal Injury, Property Damage, or Wrongful Death [ ] Motor Vehicle [X] Other Sexual Abuse [ ] Family Law [ ] Eminent Domain [ ] Other (specify):		CASE NUMBER: M68295

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:
   a. (1) [X] With prejudice (2) [ ] Without prejudice
   b. (1) [X] Complaint (2) [ ] Petition
      (3) [ ] Cross-complaint filed by (name): on (date):
      (4) [ ] Cross-complaint filed by (name): on (date):
      (5) [ ] Entire action of all parties and all causes of action
      (6) [X] Other (specify):* Dismissal for waiver of costs; each side to bear their own attorneys fees and costs.

Date:

William L. Brelsford, SBN 202839
(TYPE OR PRINT NAME OF [X] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)
Attorney or party without attorney for: Lisa H.

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

[X] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**
Date:

▶ _____
(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)
(SIGNATURE)
Attorney or party without attorney for:

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

(To be completed by clerk)
3. [X] Dismissal entered as requested on (date): DEC 0 3 2004
4. [ ] Dismissal entered on (date): as to only (name):
5. [ ] Dismissal not entered as requested for the following reasons (specify):
6. [X] a. Attorney or party without attorney notified on (date): DEC 0 3 2004
   b. Attorney or party without attorney not notified. Filing party failed to provide
      [ ] a copy to conform [ ] means to return conformed copy

Date: DEC 0 3 2004 LISA M. GALDOS Clerk, by ERIKA D. DUNN, Deputy

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 5, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF ENTRY OF DISMISSAL

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
Attorneys for defendant Russ King Ralph W. Thompson, III The Thompson Law Office 580 Calle Principal, 1st Flr. Monterey, CA 93940	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 5, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
JAN 7 - 2005
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 **JOINT STATUS REPORT** **DATE:** **January 7, 2005** **TIME:** **9:30 a.m.** **DEPT.:** **B** **Honorable W. Scott Snowden**

At the hearing held on December 9, 2004 in these coordinated cases, the Court directed counsel for plaintiffs and the Church Defendants to "meet and confer" concerning certain case management and coordination issues.. After meeting and conferring, counsel for plaintiffs and the Church Defendants respectfully submit this joint status report to the Court in advance of the January 7, 2005 court conference.

Plaintiffs and the Church Defendants have reached agreement on the following issues:

A. Written Discovery

1. Plaintiffs will propound written discovery on defendants in Track I cases within five days after the stay is lifted. Responses will be due per Code, subject to any extensions agreed to by the parties.

2. The Church Defendants will propound form interrogatories on plaintiffs in Track I cases within seven days after the stay is lifted. Responses will be due per Code, subject to any extensions agreed to by the parties.

3. The Church Defendants will propound first sets of other written discovery (special interrogatories, requests for production of documents, and/or requests for admission) on plaintiffs in Track I cases within 30 days after the stay is lifted. Responses will be due per Code, subject to any extensions agreed to by the parties.

4. Within 30 days after the stay is lifted, the Church Defendants will respond to written discovery propounded by plaintiffs in the Charissa W. case before the stay was imposed.

5. Written discovery can proceed in all of the coordinated cases once the stay is lifted. Plaintiffs will then propound written discovery on defendants in non-Track I cases within five days after the stay is lifted. Responses will be due per Code, subject to any extensions agreed to by the parties. The Church Defendants will then propound form interrogatories on plaintiffs in non-Track I cases within seven days of the stay being lifted. Responses will be due per Code, subject to any extensions agreed to by the parties. The Church Defendants may propound other written discovery in non-Track I cases at their discretion.

B. Discovery Motions

1. Counsel for plaintiffs and the Church Defendants propose that the Court now schedule a hearing during late April 2005 to address any then still outstanding issues concerning written discovery.

2. The parties will meet and confer on other discovery issues as they arise and, if appropriate, can schedule properly noticed discovery motions in advance of the late April 2005 hearing date proposed above in ¶B.1.

3. If, in ruling on a discovery motion, the Court should order that additional discovery responses and/or document production is required, the responding party shall have 30 days after entry of such order to provide such additional responses and/or document production.

C. **Depositions**

1. Depositions of plaintiffs and witnesses identified in written discovery in Track I cases may commence after the stay is lifted but shall begin not later than August 2005.

2. Counsel for plaintiffs and the Church Defendants agree to try and set aside seven to ten weekdays each month starting in August 2005 for depositions in Track I cases.

3. Depositions of plaintiffs in Track I cases will take place at the law offices of Nolen Saul Brelsford in Sacramento, unless counsel for plaintiffs and the Church Defendants jointly agree on a different location.

4. Depositions of PMK's for the local congregation defendants in the Track I cases will take place at the law offices of Bullivant Houser Bailey PC in Gold River, unless counsel for plaintiffs and the Church Defendants jointly agree on a different location.

5. Depositions of PMK's of the so-called national Church Defendants in Track I cases will take place in Brooklyn, New York, unless counsel for plaintiffs and the Church Defendants jointly agree on a different location.

6. Depositions of individual defendants in Track I cases will be taken at any reasonable location agreed to by counsel for those individual defendants.

7. The parties taking the depositions shall arrange for the court reporters for the depositions. All deposition exhibits shall be numbered sequentially from deposition to deposition so as to avoid confusion.

8. For any deposition taken outside of California, if objections are interposed with instructions to the witness not to answer a question or series of questions, and if the inquiring party then successfully moves to compel answers to the question or series of questions, the responding party shall be required to incur the expense of bringing the witness to Sacramento to complete the deposition.

D. **Dispositive Motions On 'Key' Liability Issues**

1. The filing deadline for dispositive motions (i.e., motions for summary judgment or summary adjudication) on so-called "key" liability issues in Track I cases shall not be less than 30 days after all depositions necessary to support the motions are concluded. The parties

acknowledge that flexibility may be required with respect to any filing deadline for such dispositive motions.

2. Counsel for plaintiffs and the Church Defendants presently agree to target the filing of such dispositive motions in Track I cases for November 15, 2005; plaintiffs' responses shall be due about 60 days after the dispositive motions are filed; and Church Defendants' replies would be due from 14 to 21 days after the responses are filed. The parties propose that the Court set a hearing as soon thereafter as possible, at the Court's discretion.

3. A trial setting conference for Track I cases would be held only after the Court rules on the above-referenced dispositive motions.

Plaintiffs and the Church Defendants did NOT reach agreement on the following issues:

A. Watchtower Pennsylvania motions challenging personal jurisdiction

1. Plaintiffs desire to "meet and confer" on discovery issues with respect to personal jurisdiction and anticipate a discovery motion in that regard. Watchtower Pennsylvania requests that a hearing be scheduled for late January 2005 on the motions challenging personal jurisdiction for all coordinated cases. Such a setting would provide ample time for plaintiffs to submit any supplemental briefing they might desire on the personal jurisdiction issue, with time for a further reply from Watchtower Pennsylvania, if such a reply is warranted.

B. Demurrers and Pleading Motions

1. Counsel for plaintiffs propose that the complaints in the Javier C. and Ken L. cases be their so-called form complaints for all coordinated cases. The Church Defendants do not agree and thus request that the demurrers and motions to strike be heard as to each of the coordinated cases.

2. The parties propose that at the January 7, 2005 conference, the Court and the parties discuss the best method of facilitating early scheduling of the hearings on the demurrers and pleading motions, including providing direction to the courts in the counties in which each

of the coord nated cases was originally filed as to how the physical file in each could should be handled.

C. Writ ten Discovery

1. Plaintiffs propose that the Church Defen dants have only 15 days in which to interpose ob ections to plaintiffs' written discovery requests on the basis, among others, that such a deadl ne will facilitate earlier resolution of discovery disputes. The Church Defendants oppose such a deadline on the basis, among others, that such a deadline would likely lead to a "piecemeal" meet and confer and discovery process and that the proposed 15 days is less than the time allo ved by Code.

2. Watchtower Pennsylvania proposes that it not be required to respond to general written discc very in any of the coordinated cases until a ruling is issued on its motions challenging personal jurisdiction.

D. Depo sitions

1. Plaintiffs propose that depositions of the Church Defendants in Track I cases may commer ce as soon as the stay is lifted. The Church Defendants oppose commencing such depositions until after all demurrers and pleading motions are ruled on by the Court, the pleadings are set or at issue, and written discovery is completed.

DATED: Jar uary 6, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

NOLEN SAUL BRELSFORD

By _____
Rudy Nolen
William Brelsford
Attorneys for Plaintiffs

Error! Unknown di cument property name.

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 6, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

STATUS REPORT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695 Fax: 530-668-7640
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

___ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on January 5, 2005and received verification of each

complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 6, 2005, at Gold River, California.

By _____
Claudia Pohlman

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** January 7, 2005 **Clerk:** D. Rey **Reporter:** Barrie Hart **Cite/Report #:**

Appearances:

William Brelsford, Rudy Nolen Gregory and Gregory Love Attorneys for Plaintiffs
Robert Schnack, Attorney for Church Defendants
William Bernard, Attorney for individual Defendant, Carlos Vasquez
Craig Diamond, Attorney for individual Defendant, A.W. Harriman

Related Case: Tabitha H. vs. Watchtower Bible & Tract Society of NY, et al
Case NO: 26-23929

This matter comes on at this date for case management conference.

The Court directs the Judicial Assistant to file the Joint Status Report of Plaintiffs and Church Defendants.

Court and counsel hold discussions regarding unresolved issues as mentioned in the Joint Status Report.

The Court issues rulings on a number of issues as stated on the record.

The matter is continued to January 28, 2005 at 9:30 am in Courtroom B for continued case management conference.

The following issues will be addressed at the next hearing:

- Counsel to confirm whether Jocelyn A., Dennis S. and Danielle A. are still active parties to the case.
- Possible setting of motion to quash
- Status of discovery re personal jurisdiction
- Court to inform counsel re assignment of case number to out-of-county case files.
- Setting of Defendants' demurrers and motions to strike
- Possible setting of trial date

The Court orders that all original case files in the coordinated actions filed in other Courts be transmitted to Napa Superior Court. The case filed in Monterey County is excluded per information provided by counsel.

The Judicial Assistant is directed to contact the Courts involved in the coordinated actions.

Mr. Diamond's opposition to Mr. Love and Mr. Hartley's Application to appear Pro Hac Vice is argued.

The Court rules that said application is granted to all cases and to the Ken L. case while they are still in active litigations and the issue may be re-raised at a later time.

-o0o-

Law Offices of
MICHAEL W. JANSEN
James I. Collins, Esq.
State Bar No. 099199
1301 College Street
Woodland, CA 95695
(530) 668-7600
FAX (530) 668-7640
Attorney for Defendant, TIMOTHY SILVA, only.

FILED
JAN 04 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

CLARISSA W. et al.

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED CASES

Case No. 26-22191

NOTICE OF BANKRUPTCY FILING

JCCP no. 4374

Yolo County
Case No. CV03 – 1439

TO CLARISSA W., PLAINTIFF AND PLAINTIFF'S ATTORNEY:

PLEASE TAKE NOTICE that defendant TIMOTHY SILVA, has filed bankruptcy. Attached hereto and incorporated herein by reference are documents indicating Mr. SILVA filed a petition under Chapter 13.

DATED: December 27, 2004

LAW OFFICES OF MICHAEL W. JANSEN

RECEIVED
DEC 29 2004
Clerk of the Napa Superior Court

By Michael W. Jansen
Michael W. Jansen
Attorney for Defendant
TIMOTHY SILVA

PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of Yolo, California, that I am over the age of eighteen, and that I am not a party to the within cause. My business address is 1301 College Street, Woodland, California, 95695. On this date I served:

NOTICE OF BANKRUPTCY FILING

☐ by placing a true and correct copy thereof enclosed in a sealed envelope placed for collection and mailing on the above date following ordinary business practices, with postage thereon fully prepaid, at Woodland, California, addressed as set forth below.

Rudy Nolan, Esq.
NOLAN, SAUL AND BRELSFORD
350 University Ave. Suite 280
Sacramento, CA 95825

Gregory S. Love
Love & Norris
314 Main Street, Suite 300
Fort Worth, TX 76102

Ralph W. Thompson, III
The Thompson Law Office
580 Calle Principal, 1st Floor
Monterey, CA 93940

Craig Diamond
Diamond, Baker, Phillips & Walters LLP
P.O. Box 1147
Cedar Ridge, CA 95924

William E. Bernard
1624 Santa Clara Drive, #210
Roseville, CA 95661

Donald Glew
P.O. Box 424245
San Francisco, CA 94142

James Henderson
25 Gilmore Road, #17
Red Bluff, CA 96080

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 28, 2004, at Woodland, California.

K. Jansen
KRISTINA JANSEN

(Official Form 1) (12/03)

FORM B1	**United States Bankruptcy Court** **Northern District of California**	**Voluntary Petition**

Name of Debtor (if individual, enter Last, First, Middle): Silva, Timothy	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all). xxx-xx-6664	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all):
Street Address of Debtor (No. & Street, City, State & Zip Code): 1481 Laurel Street #2 Napa, CA 94558	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
County of Residence or of the Principal Place of Business: Napa	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
Location of Principal Assets of Business Debtor (if different from street address above):	

Information Regarding the Debtor (Check the Applicable Boxes)

Venue (Check any applicable box)

- ■ Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- ☐ There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

Type of Debtor (Check all boxes that apply)

- ■ Individual(s)
- ☐ Corporation
- ☐ Partnership
- ☐ Other
- ☐ Railroad
- ☐ Stockbroker
- ☐ Commodity Broker
- ☐ Clearing Bank

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)

- ☐ Chapter 7
- ☐ Chapter 11
- ■ Chapter 13
- ☐ Chapter 9
- ☐ Chapter 12
- ☐ Sec. 304 - Case ancillary to foreign proceeding

Nature of Debts (Check one box)

- ■ Consumer/Non-Business
- ☐ Business

Chapter 11 Small Business (Check all boxes that apply)

- ☐ Debtor is a small business as defined in 11 U.S.C. § 101
- ☐ Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

Filing Fee (Check one box)

- ■ Full Filing Fee attached
- ☐ Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

Statistical/Administrative Information (Estimates only)

- ■ Debtor estimates that funds will be available for distribution to unsecured creditors.
- ☐ Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

THIS SPACE IS FOR COURT USE ONLY

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	☐	☐	■	☐	☐	☐

Estimated Assets	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	■	☐	☐	☐	☐	☐	☐	☐

Estimated Debts	$0 to $50,000	$50,001 to $100,000	$100,001 to $500,000	$500,001 to $1 million	$1,000,001 to $10 million	$10,000,001 to $50 million	$50,000,001 to $100 million	More than $100 million
	■	☐	☐	☐	☐	☐	☐	☐

Open New Bankruptcy Case

U.S. Bankruptcy Court

Northern District of California

Notice of Bankruptcy Case Filing

The following transaction was received from Jeffrey, Thomas F. entered on 11/19/2004 at 4:11 PM PST and filed on 11/19/2004

Case Name: Timothy Silva
Case Number: 04-12756
Document Number: 1

Docket Text:
Chapter 13 Voluntary Petition, Fee Amount $194, Filed by Timothy Silva. Order Meeting of Creditors due by 12/20/2004. Chapter 13 Plan due by 12/6/2004. (Jeffrey, Thomas)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:C:\ECF\SILVA\Petition.PDF
Electronic document Stamp:
[STAMP bkecfStamp_ID=1017961465 [Date=11/19/2004] [FileNumber=2276275-0] [5ee9c1856cc2fcfc96a798e9bf849b523a76c9412620c430a2e933a843d558c335defcd1e5a55d65c85c4b1a907721e2c09840194985050d37bca5ec1a1b465b]]

04-12756 Notice will be electronically mailed to:

Thomas F. Jeffrey tomjeffrey@earthlink.net

04-12756 Notice will not be electronically mailed to:

Law Office of Thomas F. Jeffrey
50 Santa Rosa Avenue, Suite 515
Santa Rosa, CA 95404-4952
Telephone: (707) 543-8530
Facsimile: (707) 543-8549
E-Mail: tomjeffrey@earthlink.net

December 8, 2004

Via Facsimile To: (916) 564-9991

Rudy Nolen
Nolen Saul Brelsford
350 University Avenue, Suite 280
Sacramento, CA 95825

Re: West v. Tim Silva, Watchtower Bible, et. al.
Yolo County Superior Court Case No.: CV03-1439
Bankruptcy Case No. 04-12756 (Northern Dist. Of Cal.)

Dear Mr. Nolen,

Enclosed is a copy of a bankruptcy petition and notice of Electronic filing concerning Tim Silva, confirming that he filed a Chapter 13 bankruptcy on November 19, 2004, in the Santa Rosa Division of the Northern District of California.

As I'm sure you know, this imposes an automatic stay of the Daniel West case against Mr. Silva.

Very truly yours,

Thomas F. Jeffrey

cc:
Robert J. Schnack
Bullivant Houser Bailey
Via Facsimile To: (916) 852-5777

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** December 9, 2004 **Clerk:** M. Dombach **Reporter:** Karen Kronquest **Cite/Report #:**

Related case: 26-23929

Appearances:
William Brelsford, Counsel for Plaintiff
Rudy Nolan, Counsel for Plaintiff
Greg Love, Counsel for Plaintiff
Robert Schnack, Counsel for Watchtower Defendants
Craig Diamond, Counsel for Defendant Harriman
William Bernard, Counsel for Defendant Vasquez

This matter comes before the Court at this time for Case Management Conference.

After hearing comments of Counsel the Court directs Counsel to meet and confer as to:

- Cases selected for Track One processing
- A stipulation regarding finalize pleadings or a plan and schedule for same
- A stipulation regarding a schedule for exchange of written discovery necessary for the summary judgment motions on Track One cases
- A stipulation regarding a schedule for deposition discovery necessary for summary judgment motions on Track One cases.
- Dates for summary judgment motions to be filed and heard on Track One cases. If no agreement the Court will make orders in that regard.
- Position on the activity to be occurring on non-Track One cases while the Track One cases are going forward

The Court orders this matter continued to January 7, 2005 at 9:30am in Department B for further Case Management Conference/to lift stay and to resolve, set or accept stipulations as to the items mentioned above.

The stay remains in effect until the next hearing date.

-o0o-

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
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Kenneth Fibich, Esq., SBN 06952600
Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON, LEEBRON &
GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs

FILED
DEC 09 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. et al.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 26-22191

PLAINTIFFS' REPLY TO: DEFENDANTS' JOINT STATEMENT RE EXTENT OF COORDINATION AND BRIEF RE EXTENT OF COORDINATION

DATE: December 9, 2004
TIME: 1:30 p.m.
DEPT: B

Reviewing the Brief and Joint Statement, the Church defendants are taking the opportunity to make an "end run" at objecting again to the Order of coordination rather than responding to the Court's direction to give guidance to management of the litigation. It strikes our side as inappropriate. It was the purpose of the hearing, as we understood it, to attempt to reach agreement on the management of discovery. The effort was a failure. Our concerns with defendants' position are expressed below.

Brief Re Extent of Coordination: Coordination is ordered when actions are deemed complex, requiring the court to manage lawsuits for the convenience of parties, witnesses and counsel. Coordination provides a structure to avoid inconsistent rulings, economical use of judicial resources and avoidance of duplication of effort. To illustrate our point, counsel's brief at page 2 contains a heading which reads as follows: "Only Certain Written Discovery and Depositions are Subject to Coordination." This heading graphically demonstrates why our respective sides achieved nothing in our discussions to reach a consensus on a "joint statement". Frankly, it is our position that a statement like this is wholly inconsistent with the purpose of coordination which is to manage *all* discovery and depositions, not just "certain" discovery and depositions. In fact, it is our understanding that this hearing is not about the "extent" of coordination, instead it is about complete coordination. Dividing this hearing into a discussion about "coordination" and "case management issues" flies in the face of the order ~~of entire coordination.~~ COORDINATION

Joint Statement Re Extent of Coordination: Again, counsel for the Church defendants attemps to distinguish between "coordination" and "case management". Since the avoidance of duplication, convenience to counsel and parties and consistent rulings are the very fabric of the coordination process, how in the world can defense counsel divide his remarks into "the extent of coordination" and "case management"? Plaintiffs' statement gave the court and opposing counsel very specific suggestions to manage the litigation. Those points need not be reiterated here. All counsel for the Church defendants has done is state time and time again that the case involves a number of plaintiffs, different Kingdom Halls and three different Church defendants. At no point does he give a single

factual reason why these obvious statistics are an impediment to the management of the lawsuit. In the interest of judicial economy, for example, plaintiffs suggest that the court manage the cases so as to expedite discovery pertaining to anticipated summary judgment motions. Why is it unreasonable to ask the Church defendants to identify and take the depositions which they feel are necessary to prepare their motion or motions? We tried to make that suggestion and got no response.

CONCLUSION

It is abundantly clear to our side that the difficult decisions of managing this litigation will not be made jointly by counsel. We are prepared at the hearing to make specific suggestions to assist the Court in the management of the lawsuit and to establish a reasonable and efficient timetable to bring these cases to trial. The conduct which gave rise to our clients' injuries occurred many years ago and it is time for the judicial system to act efficiently to address their claims.

These cases can be made lengthy and cumbersome or can be streamlined and focused. We contend the latter is achievable and in the bets interests of our clients, counsel and the Court.

Dated: December 2, 2004

NOLEN SAUL BRELSFORD

Rudy Nolen
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On December 2, 2004, I caused the within **PLAINTIFF'S REPLY TO JOINT STATEMENT AND BRIEF RE EXTENT OF COORDINATION** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On December 2, 2004 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

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(In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 2, 2004, at Sacramento, California.

Penny Hile

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Attorneys for The Church Defendants

FILED
DEC 02 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **CHURCH DEFENDANTS' REPLY RE EXTENT OF COORDINATION** **JCCP no. 4374** **DATE:** **December 9, 2004** **TIME:** **1:30 p.m.** **DEPT.:** **B**
AND COORDINATED CASES	

INTRODUCTION

Plaintiffs' "preamble" presents a one-sided view of the parties' attempt to meet and confer regarding extent of coordination issues. First, as plaintiffs' submission makes crystal clear, plaintiffs propose extensive and detailed case management but largely fail to address to extent of coordination issues, and that fact was discussed at length with plaintiffs' counsel.

Second, plaintiffs' "preamble" imputes some improper tactic or motive to the short delay involved in defendants' "draft [that] arrived November 13, 2004." (See p. 2 of plaintiffs' submission at line 9.) However, plaintiffs' attorneys were expressly made aware that the short

delay was occasioned by defense counsel Schnack's metastatic cancer condition. Thus, for plaintiffs to now suggest some improper tactic or motive is not only misleadingly inaccurate, but disappointing on both a personal level and a professional level.

Third, plaintiffs' case management proposal ignores plaintiffs' lead counsel Brelsford's own prior statement to the Court that upwards of 80 depositions will be taken in the coordinated cases. Indeed, plaintiffs' proposed case management timeline is patently unrealistic for the ten coordinated cases, given the extent of anticipated written discovery, the anticipated discovery motions, the large number of depositions that will be taken, the anticipated summary judgment motions in each of the ten cases, etc. In the same vein, given that most of the Church Defendants' motions for summary judgment or summary adjudication will turn on facts developed in discovery and depositions in each case, plaintiffs' proposed March 15, 2005 deadline for the Church Defendants to file such motions is, also, patently unrealistic.

DISCUSSION

Plaintiffs' submission does not address the extent of coordination issues discussed in the defendants' joint statement or in the Church Defendants' accompanying brief. The Church Defendants, therefore, will not reiterate here the defense positions on extent of coordination.

With respect to case management issues, plaintiffs do not set forth any achievable timelines. Plaintiffs instead spill a good quantity of ink describing arbitrarily short and unrealistic timelines (such as summary judgment motions being filed just three months from now), arbitrary limitations on the number and scope of permissible discovery requests (with fewer discovery requests for defendants but more for the plaintiffs!), and suggesting that trial setting conferences can be held just seven months from now. (Plaintiffs' counsel even goes so far as to propose that all parties use plaintiffs' counsel's favorite court reporter for all of the

numerous depositions that will be taken in these coordinated cases. All such minutiae are clearly not an extent of coordination issue.)

Defendants must have the right to pursue written discovery that is appropriate for these coordinated cases. Setting arbitrarily short timelines and setting arbitrary limitations on the number of discovery requests that defendants (and plaintiffs) are allowed to propound will not advance either the goals of coordination or the ends of justice.

The number of depositions to be taken (as detailed in the prior defense submissions) include 18 plaintiffs, each of the 18 plaintiffs' parents and family members, the individual defendants, the PMKs of each local congregation, the PMKs of the three national religious corporation defendants, the percipient witnesses, etc. Thus, plaintiffs' proposal that the Church Defendants file summary judgment motions just three months from now is simply absurd.

The Church Defendants agree that addressing certain preliminary legal issues will serve to facilitate the progress of these coordinated cases, and the demurrers and motions to strike should help serve that purpose by narrowing the number of plaintiffs' causes of action and their underlying legal theories. (See defendants' proposal in that regard in the Joint Statement at pp. 3-4.) However, plaintiffs' apparent suggestion that issues of notice, legal duty, and various First Amendment defenses, among other issues, are capable of resolution on summary judgment or summary adjudication without conducting any significant written discovery and depositions is fanciful at best, because the Church Defendants would be unfairly and unduly prejudiced by such a case management procedure.

Moreover, the scheduling of the number of depositions that will be required for summary judgment motions in each case will likely extend through all of 2005, and perhaps beyond. Indeed, scheduling even seven to ten depositions each month starting in perhaps March or early April of 2005 (thus consuming up to half of the weekdays in each month) would likely

be a "best case" scenario, given the usual problems all attorneys encounter in scheduling depositions in cases involving multiple parties and multiple counsel. Thus, plaintiffs' proposed case management schedule is so impractical that it could not reasonably be implemented, even if the court were, hypothetically, to order it.

CONCLUSION

The Court should order the coordination outlined in defendants' Joint Statement and in the Church Defendants' previously filed accompanying brief. Once the extent of coordination has been ruled on by the Court, the designated "coordination judge" can address case management issues at a later case management conference. In any event, plaintiffs' case management proposals suggest arbitrarily unrealistic and unachievable timelines, as is apparent from defendants' discussion of those issues in defendants' Joint Statement and in the Church Defendants' accompanying brief.

DATED: December 1, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

4116209.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On December 1, 2004, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' REPLY RE EXTENT OF COORDINATION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
Attorneys for defendant Russ King Ralph W. Thompson, III The Thompson Law Office 580 Calle Principal, 1st Flr. Monterey, CA 93940	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on December 1, 2004, at Gold River, California.

By _____
Claudia Pohlman

open 12-9

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Attorneys for The Church Defendants

FILED
NOV 29 2004
Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

DEFENDANTS' JOINT STATEMENT RE EXTENT OF COORDINATION

JCCP no. 4374

DATE: **December 9, 2004**
TIME: **1:30 p.m.**
DEPT.: **B**

The Church Defendants and the individual defendants who are represented by counsel ("individual defendants") respectfully submit this joint statement regarding extent of coordination issues. The Church Defendants also concurrently submit a brief addressing some of the extent of coordination issues. (The parties had planned to meet and confer regarding extent of coordination issues after exchanging proposed joint statements. However, after doing so, plaintiffs' counsel then chose not to further discuss with defense counsel the issues presented, suggesting instead that all parties simply submit their proposals and briefs to the court on extent of coordination issues.) A stay has been imposed on all proceedings pending the court's rulings on the extent of coordination.

WRITTEN DISCOVERY

The Church Defendants submit that written discovery, and in particular special interrogatories, requests for production of documents, and requests for admissions, are not susceptible to coordination in the ten coordinated cases.[1] As the plaintiffs' pleadings reveal, there are 18 different plaintiffs involved in the ten cases, at least nine different local congregations, and seven different individual defendants (an eighth individual who allegedly committed sex abuse on some of the plaintiffs is deceased). There are different allegations in each case relating to the circumstances of alleged abuse of each plaintiff and regarding the time periods of alleged abuse of each plaintiff. Those time frames range variously from the early 1970s in one case, in the late 1970s or the 1980s in various other cases, and the 1990s in yet other cases. Thus, for those reasons, among others, special interrogatories, requests for production of documents, and requests for admissions are not reasonably susceptible to coordination in all ten cases.

With respect to form interrogatories, the responses of defendants Watchtower New York, Watch Tower Pennsylvania,[2] and Christian Congregation of Jehovah's Witnesses to form interrogatories nos. 3.1 – 3.5 would be the same in all cases, because those interrogatories concern the form of legal entity of each of those defendants. However, the Church Defendants submit that the other form interrogatories would be case specific and thus not susceptible to coordination, given the discussion above about the different parties in each of the cases, the different events and circumstances, and the different time frames at issue.

---

[1] Plaintiffs' counsel recently advised that they will dismiss the Lisa H. case with prejudice (Monterey County Superior Court no. M68295). Thus, there remain ten coordinated cases.

[2] Watch Tower Pennsylvania has motions pending in the cases that challenge personal jurisdiction. Watch Tower Pennsylvania thus specially appears herein and with respect to all proceedings that occur before the court rules on those motions.

The individual defendants submit that all written discovery with respect to them is not susceptible of coordination, because the individual defendants are each involved in only one case. The Church Defendants and individual defendants submit that the same is true of discovery directed to each of the 18 plaintiffs. Thus, such discovery must necessarily be case specific.

LAW AND MOTION

Discovery Motions. The Church Defendants and the individual defendants submit that the procedures set forth in the California Code of Civil Procedure ("CCP") should govern all discovery motions, such as the deadline for such motions after a party's responses are served, the meet and confer requirements before filing a discovery motion, etc.

In order to promote uniformity and consistency in decisions and rulings on discovery motions, the Church Defendants and individual defendants propose that a "coordination judge" be assigned to hear all discovery motions for the coordinated cases. However, given that much of the written discovery is not susceptible to coordination, as discussed above, such motions would likely have to be case specific.

Pleading Motions and Motions to Quash Service. The Church Defendants have demurrers and motions to strike pending in a number of the coordinated cases. At least one individual defendant (defendant Harriman in the Ken L. case, Placer County Superior Court no. SCV 16600) also has demurrers pending. As noted in footnote 2, defendant Watch Tower Pennsylvania also has filed motions to quash service of summons and complaint in each case based on the personal jurisdiction defense.

To resolve the Church Defendants' demurrers and in order to save the court and the parties substantial time and effort, the Church Defendants have proposed the following: First, in each case plaintiffs would voluntarily file an amended complaint that is consistent with the

currently operative second amended complaint in the Charissa W. case (Napa County Superior Court no. 26-22191), which alleges five causes of action against the Church Defendants. [3]

Second, the Church Defendants' motions to strike certain allegations from plaintiffs' pleadings pursuant to CCP §§ 435-37 that currently are pending in a number of the cases would then be applied to and heard by the court with respect to each of the then-operative amended complaints in all ten of the coordinated cases. The individual defendants would also have the opportunity to file demurrers and motions to strike against any such amended complaints that they deem appropriate.

In conjunction with the above procedure and in order to promote uniformity and consistency in decisions and rulings, the Church Defendants and individual defendants propose that a "coordination judge" be assigned to hear the Watch Tower Pennsylvania motions to quash service, the above-referenced Church Defendants' motions to strike, and any pleading motions and demurrers filed by any of the individual defendants. (The Watch Tower Pennsylvania motions could be jointly heard or coordinated in all ten cases.)

The procedure proposed above involving plaintiffs filing amended complaints, etc., would save the court and the parties substantial time and effort, because the alternative would be to set each of the now pending demurrers and motions to strike for hearing in each case.

Motions for Summary Judgment and Summary Adjudication. The Church Defendants and individual defendants submit that motions for summary judgment and summary adjudication will depend on the various facts developed in discovery and in depositions in each

[3] Plaintiffs and the Church Defendants would stipulate, with court approval, that in the other nine coordinated cases, the "coordination judge" would have ruled consistently with the prior rulings of the Napa County Superior Court in Charissa W. on the Church Defendants' demurrers in each case. Such a stipulation would be intended to preserve any and all appeal rights that the Church Defendants and plaintiffs may have with respect to the rulings on demurrers in each of the other nine coordinated cases.

of the ten coordinated cases. Thus, motions for summary judgment and summary adjudication need to be case specific and are not reasonably susceptible to being coordinated in all ten cases.

However, the Church Defendants and individual defendants propose that, in order to promote uniformity and consistency in decisions and rulings on any similar legal issues that may arise in such motions, a "coordination judge" be assigned to hear all summary judgment and summary adjudication motions filed in each of the coordinated cases.

DEPOSITIONS

Depositions of "Persons Most Knowledgeable" or PMKs of Watchtower New York, Watch Tower Pennsylvania, and Christian Congregation of Jehovah's Witnesses. The Church Defendants and individual defendants propose that depositions of the so-called PMKs for defendants Watchtower New York, Watch Tower Pennsylvania (if it remains in these cases), and Christian Congregation of Jehovah's Witnesses could be coordinated for all ten cases for certain topics truly common to all of the cases. (Such depositions are referred to below as "coordinated PMK depositions.")

However, separate depositions for each of the cases should be required with respect to those so-called national corporate defendants' knowledge of the other parties in the case, alleged notice issues to those defendants in each case, etc. Depending on the topics identified by the noticing party (likely the plaintiffs) under CCP § 2025(d)(6), the same persons might be designated as the PMK as for the separate depositions as for the coordinated PMK depositions. Therefore, the separate depositions could be taken consecutively on the same day, but the deposition in one case would terminate and then a new deposition would begin on the next case, and so on, such that the parties would have separate transcripts for each case dealing only with the particular allegations and the particular facts and circumstances of each case.

Such a procedure would avoid potentially unnecessary and duplicative travel expense for all parties. (Although the proposed deposition procedure is arguably a "case management" issue as opposed to an "extent of coordination" issue, the Church Defendants and individual defendants believe that it is appropriate to consider the proposed procedure within the ruling on extent of coordination.)

Other Depositions. The Church Defendants and individual defendants submit that depositions of parties other than the three national corporate defendants and of percipient or fact witnesses are not susceptible to coordination. Again, in the remaining ten coordinated cases there are 18 different plaintiffs, seven different individual defendants, and at least nine local congregations who are parties. The alleged facts and circumstances of each plaintiff's alleged abuse will certainly differ from each of the other 17 plaintiffs' alleged facts and circumstances. The relationships between each plaintiff, each plaintiff's parents, each plaintiff's other family members, each individual defendant, and each local congregation defendant will certainly differ in each case. Thus, the depositions of the 18 plaintiffs, the parents and family members of each of the 18 plaintiffs, the seven individual defendants, the individual defendants' witnesses, and the PMKs of each of the local congregation defendants, which reasonably could total some 60 to 70 or more depositions, simply are not susceptible to coordination.

Similarly, the depositions of percipient or fact witnesses with respect to each case are not susceptible to coordination, and the total number of such percipient witnesses realistically could exceed 40 to 50 (which would only be about four or five such persons for each of the ten cases). For reasons similar to those addressed above, each case will present different circumstances and events that largely will not share any common facts with the other cases such that coordination of the depositions of plaintiffs, the individual defendants, the PMKs of congregation defendants, and percipient witnesses would not be reasonable.

Trials. The Church Defendants and defendants Silva, Vasquez, and Appling oppose any single, unified trial of all of the ten coordinated cases. Among other reasons, a unified trial would not result in efficient judicial administration or enhance judicial economy or efficiency, nor would a unified trial be convenient for the plaintiffs, the individual defendants, the local congregation defendants, or the percipient or fact witnesses in each of the remaining ten cases.

Instead, the Church Defendants and individual defendants Silva, Vasquez, and Appling submit that each case be tried separately, in the county in which it was filed. Such separate trials in the local counties where each case was filed will, among other things, promote the convenience of the local congregation defendants, the individual defendants, and the percipient or fact witnesses in each case, as well as the plaintiffs themselves.

Defendant Harriman opts for a single coordinated trial. However, if all ten cases are not coordinated into a single unified trial such that the Ken L. case in Placer County in which Mr. Harriman is a named defendant will be tried separately or independently, then Mr. Harriman submits that his trial should be in the venue in which the Ken L. action was filed, i.e., Placer County.

CASE MANAGEMENT ISSUES

The Church Defendants and individual defendants submit that many of the issues proposed by plaintiffs (in their proposed joint statement earlier sent to defense counsel) are purely "case management" issues rather than "extent of coordination" issues appropriate for ruling at the December 9, 2004 hearing. Instead, defendants submit that the "case management" issues should be addressed after extent of coordination issues are ruled upon at the December 9th hearing and after a coordination judge is assigned by the court to oversee the ten coordinated cases. However, because plaintiffs apparently disagree with that (and out of an abundance of

caution), the Church Defendants and individual defendants here briefly address the case management issues.

Overall Case Management. The Church Defendants and individual defendants submit that flexibility in case management will be required, given several factors that include, without limitation, the number of parties and counsel involved in the ten cases (as well as three pro se defendants), that there likely will be in excess of 100 depositions, as discussed above, that there will be a number of legal issues addressed in pleading motions that have not yet been heard by the court, and that the parties anticipate discovery motions in some cases and defense motions for summary judgment and summary adjudication in each case.

The Church Defendants and individual defendants all propose that instead of following the procedures contained within the CCP, under which the trial date assigned to a case governs the timing and deadlines for discovery and dispositive motions, the coordination judge should adopt the case management style often followed in federal district courts. That would involve setting a deadline to complete discovery and depositions followed by a later deadline for dispositive motions (i.e., motions for summary judgment and summary adjudication). See Rule 1541 of the California Rules of Court. The coordination judge could extend the discovery and dispositive motion deadlines as prudent or necessary.

Then, only after all dispositive motions are ruled upon and decided, the coordination judge would set trial dates for each of the cases in the local counties where each case was filed. To the extent that the Church Defendants remain in the case after the dispositive motions, the trial dates would have to be staggered because counsel for plaintiffs and the Church Defendants are the same for each case.

Proposed Case Management Deadlines. Given the different facts and circumstances in each case, the anticipated written discovery to be propounded by the parties, and the fact that

in excess of 100 depositions likely will be taken in the ten coordinated cases (plaintiffs counsel earlier advised the court that some 85 depositions would likely be taken), among other reasons, the Church Defendants and individual defendants initially propose the following case management schedule and deadlines:

- December 31, 2005 -- Discovery deadline (including completion of all written discovery, depositions, and rulings on discovery motions). The Church Defendants and individual defendants also are amenable to a reasonable deadline for a "first round" of written discovery once the stay on all proceedings is lifted in the coordinated cases.
- April 15, 2006 -- Deadline for filing dispositive motions.
- May 31, 2006 -- Deadline for oppositions to dispositive motions.
- June 30, 2006 -- Deadline for all replies in support of dispositive motions.
- July – August 2006 -- Court hearings on dispositive motions.
- September 2006 -- Trial Setting Conference held, with staggered trials beginning in November 2006.

DATED: November 23, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

4115580.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On November 23, 2004, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANTS' JOINT STATEMENT RE EXTENT OF COORDINATION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
Attorneys for defendant Russ King Ralph W. Thompson, III The Thompson Law Office 580 Calle Principal, 1st Flr. Monterey, CA 93940	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on November 23, 2004, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Open 12-9

Robert J. Schnack, SBN 191987
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Attorneys for The Church Defendants

FILED
NOV 29 2004
Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 **CHURCH DEFENDANTS' BRIEF RE EXTENT OF COORDINATION** **JCCP no. 4374** **DATE:** **December 9, 2004** **TIME:** **1:30 p.m.** **DEPT.:** **B**

The Church Defendants respectfully submit this brief to supplement the "Defendants' Joint Statement Re Extent of Coordination." (The Church Defendants include three national non-profit religious corporations that have been named in each case, i.e., Watchtower Bible and Tract Society of New York ("Watchtower NY"), Christian Congregation of Jehovah's Witnesses ("CCJW"), Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA")[1], and at least nine local congregations of Jehovah's Witnesses that have been sued in the coordinated cases that remain.[2])

[1] Watch Tower PA appears specially herein, because it has pending motions to quash service of summons and complaint based on the lack of personal jurisdiction in California.

[2] Plaintiffs' counsel recently advised that they will dismiss the Lisa H. case (Monterey County) with prejudice in exchange for a waiver of costs by defendants. Thus, ten cases remain.

ONLY CERTAIN WRITTEN DISCOVERY AND DEPOSITIONS ARE SUBJECT TO COORDINATION

Each of the ten remaining coordinated cases alleges claims arising out of alleged sex abuse of minors. However, as the defendants' Joint Statement discusses, the events and circumstances surrounding the alleged abuse of each of the18 plaintiffs will largely be different, such that only certain of the written discovery and depositions are reasonably susceptible to coordination as envisioned by CCP §§404, et seq. Although three national non-profit religious corporations are defendants in each of the cases (Watchtower NY, CCJW, and Watch Tower PA), plaintiffs also have sued at least nine different local congregations, as well as seven different individual defendants (an eighth individual who allegedly committed sex abuse is deceased). In addition, each plaintiff claims that only one individual defendant abused him or her, and none of the congregations and none of the individual defendants have been sued in more than one county. The time frames allegedly involved in the alleged sex abuse also vary from case to case, from the early 1970s in one, in the late 1970s and early 1980s in others, and into the 1990s in yet others.

To demonstrate that the facts, circumstances, and events underlying the alleged sex abuse in each case will obviously differ, the Church Defendants provide the following examples. In West, et al. v. Watchtower NY, et al. (Yolo County), plaintiffs' verified interrogatory responses (response to special interrogatory no. 3 propounded by the individual defendant) state that their alleged abuse occurred at the individual defendant's Woodland, California apartment, on a trip to Hawaii, and perhaps even in Europe. In Tim W. v. Watchtower NY, et al. (Tehama County), defense counsel understands that the alleged sex abuse allegedly occurred on one or more non-church related business trips on which plaintiff accompanied the individual defendant. In Charissa W., et al. v. Watchtower NY, et al. (Napa County), plaintiffs allege they were abused at a daycare that was privately owned and operated by the now deceased individual who allegedly abused plaintiffs at the private Napa County home of that individual and his wife. In Jocelyn A., et al. v. Watchtower NY, et al. (Sonoma

County), some of the plaintiffs are the individual defendant's children and/or stepchildren who, at the time of the alleged abuse, resided at the home of individual defendant (and his wife, the plaintiffs' mother). Those are merely some of the examples of how each case will differ and involve different witnesses and different facts, circumstances, and events.

Also, because the primary element of each plaintiff's claimed damages will likely be emotional distress damages, the particular facts underlying each plaintiff's claimed damages will certainly differ. Abelson v. Nat. Union Fire Ins. Co. (1994) 28 Cal.App.4th 776, 786, 36 Cal.Rptr.2d 13, 20 ("'Damages for emotional distress are inextricably related to the conduct causing that distress[,] obviously includ[ing] the conduct of the defendant.' [Citation omitted.]").

Equally important, discovery in each of the ten coordinated cases will delve into the differing relationships between and among the various parties in each particular case, including (i) each plaintiff's particular relationship with his or her own parents and family members, (ii) each plaintiff's particular relationship with the individual defendant involved in each case, (iii) each plaintiff's particular relationship with the local congregation in each case, (iv) each individual defendant's particular relationship with the local congregation in each case, (v) each plaintiff's relationships with the three national corporate defendants (Watchtower NY, CCJW, and Watch Tower PA), and (vi) each individual defendant's relationships with each of the three national corporate defendants.

The facts underlying each of those relationships will differ depending on the particular facts and circumstances surrounding each case. For example, because the complaint in each case alleges that each plaintiff was a minor at the time of the alleged abuse, each plaintiff's own particular family situation will likely supply discoverable and relevant facts in each case.[3]

[3] E.g., Quigley v. First Church of Christ, Scientist (1998) 65 Cal.App.4th 1027, 76 Cal.Rptr.2d 792, in which the plaintiff, who was the mother a child who had committed suicide after receiving spiritual counseling, sued a church based on an alleged duty of care owed by the church to the child. As is relevant here, the Court of Appeal in *Quigley* stated that the father who had legal custody of the child at issue owed the child a duty of care and that the child's dependency was thus on his father and not the defendant church. *Id.*, 65 Cal.App.4th at 1034-35. Thus, facts regarding each plaintiff's family situation will be, at a very minimum, discoverable in each case. Such facts also will necessarily differ from plaintiff to plaintiff in the ten cases involving 18 different plaintiffs.

In addition, based on the allegations in the plaintiffs' various complaints, plaintiffs apparently believe that each individual defendant's relationship with the local congregation in each case is relevant. For example, plaintiffs allege in the various complaints that some of the individual defendants were elders in a local congregation, that another was a ministerial servant in a local congregation, that one was a presiding overseer in a local congregation, etc. Further, it appears that in four of the ten cases [Jocelyn A., Danielle A., and Dennis S. (Sonoma County) and Wimberly (Tehama County)], the individual defendants never held any position of authority in any congregation of Jehovah's Witnesses, and that in another three of the ten cases [Javier C. (Placer County), Charissa W. (Napa County), and Tabitha H. (Napa County)], the individuals allegedly involved were not in a position of authority during the period of the alleged abuse. In addition, one plaintiff [Javier C. (Placer County)] apparently has a criminal record that will be admissible to challenge his credibility, including on the issue of whether the alleged sex abuse ever occurred. Those examples demonstrate that each case will have different factual settings underlying each plaintiff's claims.

Thus, although coordination of certain written discovery and certain depositions of PMKs from the three national religious corporations who are defendants in each of the ten cases will assist in streamlining these cases, the different facts, circumstances, and events surrounding each particular plaintiff's case and the allegations in each plaintiff's case preclude any wholesale coordination like that proposed by plaintiffs.

THE PARTICULAR FACTS OF EACH CASE WILL LARGELY DETERMINE MOTIONS FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION.

Although similar legal issues may be raised in each of the ten cases, including whether an actionable legal duty is owed by each of the corporate entity Church Defendants to each plaintiff, notice issues regarding the alleged abuse of each plaintiff, First Amendment limitations on each plaintiff's claims against each of the corporate entity Church Defendants, etc., the ultimate resolution of each of those legal issues will very likely depend on the particular facts developed in each plaintiff's particular case. As noted above, the particular facts and circumstances of each plaintiff's case will be different, including the facts and circumstances of

the alleged sex abuse of each of the 18 plaintiffs, each plaintiff's relationship with the individual defendant who allegedly committed the abuse, each plaintiff's own family situation, the facts regarding alleged notice to the local congregation defendant about each particular plaintiff's alleged abuse, the facts regarding alleged notice to each of the three national corporate defendants regarding each particular plaintiff's alleged abuse, and so on.

Thus, many of the legal issues, if not all of them, will turn on the particular facts developed in each case. Thus, coordination of motions for summary judgment or summary adjudication in the ten cases into a single set of motions covering all of the cases would not be appropriate. However, to promote uniformity and consistency in decisions and rulings, as envisioned by the CCP and the CRC governing coordination, the Church Defendants propose assignment of a coordination judge to hear all motions for summary judgment and summary adjudication (as well as discovery motions, as discussed in the defendants' Joint Statement).

A SINGLE, UNIFIED TRIAL OF THE TEN CASES WILL NOT RESULT IN EFFICIENT JUDICIAL ADMINISTRATION OR OTHERWISE ENHANCE JUDICIAL EFFICIENCY, NOR WILL A SINGLE UNIFIED TRIAL BE CONVENIENT FOR THE MANY NON-PARTY WITNESSES FROM EACH OF THE FIVE COUNTIES IN WHICH THE TEN CASES WERE ORIGINALLY FILED.

Plaintiffs have contended that a single, unified (or coordinated) trial should be conducted in these ten cases. However, coordinating the ten cases for a single, unified trial would not result in efficient judicial administration or enhance judicial efficiency, because each of the cases in the various counties is so factually unrelated (again, 18 different plaintiffs involving eight different alleged individuals, at least nine different local congregations, the distinct and different facts and circumstances in which the sex abuse of each plaintiff allegedly occurred, the different intra-family relationships for each plaintiff, the other relationships set forth above, etc.).

Plainly, separate juries would need to be seated for each plaintiff's case. It is not difficult to envision the logistical problems and judicial inefficiency that would be created by having to shuttle the several juries in and out of the courtroom from witness to witness in a single, unified trial.

Moreover, not only would a single, unified trial create severe logistical and case management problems for the court, but a unified trial almost inevitably would result in prejudicial and reversible error in many, if not all, of the ten cases. Thus, rather than enhance judicial efficiency, a single, unified trial would likely result in more judicial resources being required to adjudicate these ten cases, because most, if not all, of the cases would likely go up on appeal after a single, unified trial, and it is not unreasonable to suggest that several of the cases would have to be remanded for new trials after the appellate process had been concluded.

In addition, a single, unified trial would not be at all convenient for the witnesses in each of the ten cases because the majority of fact witnesses or percipient witnesses will be local to each case. As discussed above, the facts of each of the ten cases will be different with respect to the 18 different plaintiffs, the eight different individuals who are alleged to have committed the abuse, and the nine different local congregations. There are distinct and different facts concerning the circumstances in which the sex abuse of each plaintiff allegedly occurred, the circumstances involving each individual defendant's relationship with the particular plaintiff alleging claims against him, the circumstances involving each individual defendant's alleged relationship with the local congregation involved in each case, the issues of alleged notice to each local congregation of the alleged abuse by the individual defendant in each case, and so on. All of those facts will require local witnesses from each county in each case.

Thus, a single, unified trial will not be convenient for the majority of witnesses involved in each case in the five counties (or for the various plaintiffs from each of the five counties, for that matter). A single, unified trial simply will not promote the goals of coordination.

Finally in this regard, each plaintiff's claimed damages also militate against any single, unified trial. As discussed above, the primary element of each plaintiff's claimed damages resulting from the alleged sex abuse will be for claimed emotional distress damages. All claimed emotional distress damages necessarily will be unique to each plaintiff and completely dependent on the particular facts surrounding each individual plaintiff's alleged abuse. Abelson v. Nat. Union Fire Ins. Co., supra. This further supports the view that a single, unified trial would both be improper under the circumstances of these factually distinct cases and create a

great risk of prejudicial and reversible error.

CONCLUSION

The Church Defendants have demonstrated above and in the Joint Statement that certain coordination is appropriate for these cases, including certain written discovery and certain PMK depositions of the three national religious corporation defendants. Assignment of a coordination judge to hear all law and motion issues also will promote uniformity and consistency in the court's rulings in the ten cases. However, beyond coordinating those issues, the facts particular to each plaintiff's own case, including the facts relating to the alleged abuse of each plaintiff, each plaintiff's own family circumstances, the differing relationships between each individual defendant and each plaintiff, each individual defendant's relationship to the local congregation in each case, the alleged notice to each local congregation regarding each plaintiff's alleged abuse, etc., dictate that other discovery, other depositions, and the dispositive motions are not reasonably susceptible to coordination.

In addition, a single, unified trial like that which plaintiffs have proposed would not result in efficient judicial administration or otherwise enhance judicial efficiency, because each of the ten cases in the various counties is so factually unrelated (18 different plaintiffs, eight different individuals who allegedly committed the abuse, at least nine different local congregations, the distinct and different facts and factual settings in which the alleged sex abuse occurred, the different relationships between the parties in each particular case, etc.). For those and the other independent reasons discussed herein and in defendants' Joint Statement, a single coordinated trial should not be ordered.

DATED: November 23, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

4115742.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On November 23, 2004, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' BRIEF RE EXTENT OF COORDINATION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825	**Attorneys for defendant Timothy Silva** MICHAEL WAYNE JANSEN 1301 College St. Woodland, CA 95695
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102	**Defendant in pro per** Donald Glew PO Box 424245 San Francisco, CA 94142
Attorneys for defendant Russ King Ralph W. Thompson, III The Thompson Law Office 580 Calle Principal, 1st Flr. Monterey, CA 93940	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661	**In Pro Per** James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080
In Pro Per Alvin Heard 703 Delta Street Klamath Falls, OR 97601	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on November 23, 2004, at Gold River, California.

By _____
Claudia Pohlman

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Jonathan Saul, Esq., SBN 189271
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Attorneys for Plaintiffs

FILED
NOV 2 4 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. et al., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 **PLAINTIFFS' COORDINATION AND CASE MANAGEMENT PROPOSAL**

PREAMBLE

On October 25, 2004, plaintiffs proposed a Joint Statement of Counsel which was forwarded to defense counsel for review and comment. The following day, a meeting was convened at the law offices of Bullivant Houser Bailey to discuss the proposed statement. This meeting was unproductive. It was clear during the meeting, most of whom attended by telephone, that an agreement on even the most basic suggestions was not possible. At the meeting's conclusion, the defense attorneys indicated they would respond in writing with their own proposal.

Their draft arrived November 13, 2004. Their statement, in our opinion, read like another "opposition" to plaintiffs' coordination motion. It was our conclusion there was little attempt on the part of the defense to assist the Court in "managing" the litigation which we believed is fundamental to the coordination process. Their statement contained conclusionary positions without supporting facts. It was precisely this type of reaction that causes Plaintiffs to seek greater involvement on the part of the Court to manage the litigation.

Because of the foregoing, Plaintiffs, therefore, submit their Case Management Proposal seeking to have the Court involved in two important areas: (1) to assist in the discovery process by managing and controlling discovery so as to avoid duplication, unnecessary expenses and anticipated disruptions; and (2) to establish realistic dates for depositions, motions and trial. As can be seen from our proposal, Plaintiffs made very specific proposals to the defendants seeking limitations on written discovery, the scheduling and location of depositions, proposed use of court reporters and videographers, the suggestion of a discovery referee, proposed dates for dispositive motions, trial setting conference, etc. Each of these proposals drew no specific response, at least to the extent of advising plaintiffs why they were unworkable.

I. WRITTEN DISCOVERY

- **Form Interrogatories:** A single set of form interrogatories approved by the

Judicial Council may be served on each plaintiff on or before January 7, 2005. Plaintiffs will serve verified responses no later than February 12, 2005. The sections to be included in the form interrogatories are the following: 1.0, 2.0, 6.0, 8.0, 9.0, 10.0, 11.0, 12.0, 13.0 and 14.0.

Plaintiffs do not intend to serve defendants with form interrogatories.

- **Special Interrogatories:** Defendants may serve plaintiffs with one set of special interrogatories consisting of no more than 25 questions no later than January 7, 2005. Plaintiffs will serve verified responses no later than February 12, 2005.

In addition to special interrogatories which have already been served on the Watchtower defendants, plaintiffs may serve one additional set of special interrogatories consisting of no more than 50 questions no later than January 7, 2005. Defendants will serve verified responses no later than February 12, 2005.

If additional time is required to respond to written discovery, it shall be agreed to in writing and shall be no more than 15 days from the original agreed upon due date.

- **Request for Production of Documents:** Defendants may serve plaintiffs with one set of request for production of documents on each plaintiff on or before April 15, 2005. There shall be no more than 15 individual requests for each plaintiff. Verified responses to the document requests shall be served on defendants no later than May 20, 2005. The production of documents will occur at plaintiffs' counsel's office in Sacramento.

In addition to requests for production of documents which have already been served on the Watchtower defendants, plaintiffs shall serve one additional set of request for production of documents consisting of no more than 50 requests no later than January 7, 2005. Defendants will serve verified responses no later than February 12, 2005.

If additional time is required to respond to written discovery, it shall be agreed to in writing and shall be no more than 15 days from the original agreed upon due date.

- **Request for Admissions:** Defendants may serve plaintiffs with one set of request for admissions on each plaintiff on or before July 15, 2005. Form Interrogatory 17.1 shall accompany the requests for admissions. There shall be no more than 25

individual requests for each plaintiff. Verified responses to the document requests shall be served on defendants no later than August 20, 2005.

In addition to requests for admissions which have already been served on the Watchtower defendants, plaintiffs may serve one additional set of request for admissions consisting of no more than 25 requests no later than July 15, 2005. Defendants will serve verified responses no later than August 20, 2005.

If additional time is required to respond to written discovery, it shall be agreed to in writing and shall be no more than 15 days from the original agreed upon due date.

In the event any of the above discovery is served on opposing counsel *prior* to the dates set forth above, the time to respond will be accelerated in accordance with the Code of Civil Procedure.

II. MOTIONS TO COMPEL

After complying with meet and confer requirements and assuming agreement cannot be reached on further responses, motions to compel further responses to written discovery shall be filed with the coordination judge/discovery referee in accordance with the California Code of Civil Procedure.

III. SCHEDULING OF DEPOSITION TESTIMONY

- **Depositions of Plaintiffs:** All plaintiff depositions will occur at the law offices of Nolen Saul Brelsford and will commence at 10:00 a.m. and proceed until 5:00 p.m. with appropriate breaks. If a deposition is anticipated to last more than a single day, the noticing party shall inform plaintiff's counsel and arrangements will be made for the deposition to take place on consecutive days until completed.

- **Depositions of Witnesses:** Any non-party witnesses will be deposed pursuant to subpoena and will take place at a mutually agreeable location within the state of California to accommodate both counsel and the witness.

All depositions occurring within the state of California will utilize the services of Joann Hipp & Associates Court Reporters, located at 2398 Fair Oaks Blvd., Suite 8, Sacramento, CA 95825, phone number 916-646-3272. Hipp shall retain custody of all

original deposition transcripts and any documents produced in connection with the deposition testimony until they are requested for trial.

If any deposition is to be videotaped, notice shall be in compliance with the Code of Civil Procedure unless stipulated otherwise.

- **Depositions of Watchtower Witnesses:** Except for representatives from the individual Kingdom Halls, all depositions will take place in New York at the court reporting firm of _____, phone number _____. Custody of all original deposition transcripts and any documents produced in connection with the deposition testimony shall be forwarded to _____ until they are requested for trial.

If any deposition is to be videotaped, notice shall be in compliance with the Code of Civil Procedure unless stipulated otherwise.

Objections to questions posed during depositions outside the state of California shall be ruled upon immediately by an agreed upon discovery referee to avoid the time and expense of a return trip to the state of New York, or any other state where the depositions occur.

IV. DISCOVERY REFEREE

If circumstances arise that counsel cannot come to agreement on resolving objections to deposition testimony, and deponents and counsel are inconvenienced by delays in completing a deposition, consideration should be given to the appointment of a discovery referee. Should a referee be appointed by the coordination judge, the parties to this agreement agree to split the expenses on a *pro-rata* basis.

V. MOTIONS FOR SUMMARY JUDGMENT/ADJUDICATION

Since the Watchtower defendants intend to file one or more of motions which will likely not require discovery or only very specifically directed discovery, the following is suggested:

- Counsel for the Watchtower defendants notify plaintiffs' counsel of the specific discovery needed for the anticipated motion and this discovery shall be scheduled on a priority basis. Watchtower's counsel shall notify

plaintiffs' counsel of specific discovery requests no later than January 7, 2005.

- After the specific discovery requests have been identified, arrangements shall be made for the completion of that discovery no later than February 28, 2005.
- Thereafter, the Watchtower defendants shall file and serve their motion(s) by March 15, 2005. Plaintiffs shall file and serve an opposition no later than April 15, 2005. A reply shall be filed no later than April 22, 2005.

VI. TRIAL SETTING CONFERENCE

In the month of July, 2005, the court shall convene a trial setting conference to schedule one or more dates for trial. At that time, the court and counsel will determine the order in which cases will be tried, the location of trial and the judge who will preside.

A proposed order of trial is set forth below:

- Track I: *Charissa W.* and *Tabitha H.* - proposed trial date November, 2005;
- Track II: *Tim Ward* and *Julie Guterrez/Josh Wimberly* - proposed trial date February 2006.

The remaining cases most likely will have to be scheduled depending on the length of the Track I and Track II cases and the availability of counsel and witnesses.

VII. MANDATORY SETTLEMENT CONFERENCE/MEDIATION

At the trial setting conference, the court may set a date for a settlement conference(s) depending on input from all counsel regarding the probability that such a conference would be productive. Because settlement discussions will most likely be protracted, consideration will be given to scheduling more than one day and who would preside over these discussions. As an alternative to utilizing a superior court judge, private

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mediation should be evaluated depending on input from counsel. At this hearing, a briefing schedule will be established for the content and exchange of settlement statements.

Dated: November 24, 2004

NOLEN SAUL BRELSFORD

Rudy Nolen
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On November 24, 2004, I caused the within **PLAINTIFF'S COORDINATION AND CASE MANAGEMENT PROPOSAL,** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On November 24, 2004 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
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Donald Glew
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James L. Henderson
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Red Bluff, CA 96080
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Alvin Heard
703 Delta Street
Klamath Falls, OR 97601
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Attorneys for Danielle A.
Adrian L. Randolph
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Sacramento, CA 95814

Attorney for Timothy Silva
Michael W. Jansen
LAW OFFICES OF MICHAEL W. JANSEN
1301 College Street
Woodland, CA 95695

Attorney for Carlos Vasquez
William E. Bernard, Esq.
A Professional Corporation
1624 Santa Clara Dr., Ste 210
Roseville, CA 95661

Attorney for A.W. Harriman
Craig A. Diamond
DIAMOND BAKER PHILLIPS & WALTERS, LLP
P.O. Box 1147
Cedar Ridge, CA 95924-1147

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 24, 2004, at Sacramento, California.

Penny Hile

Craig A. Diamond (Bar No. 89361)
Stephen C. Baker (Bar No. 112324)
DIAMOND BAKER PHILLIPS & WALTERS, LLP
P.O. Box 1147
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Attorneys for Defendant A.W. HARRIMAN

FILED
OCT 22 2004
Clerk of the Napa Superior Court
By: Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

CHARISSA W. Plaintiff, KEN L. Plaintiff, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, COLFAX CONGREGATION OF JEHOVAH'S WITNESSES, A.W. HARRIMAN and DOES 1 through 20, inclusive, Defendants.	Case No. 26-22191 OBJECTION TO PLAINTIFF'S LITIGATION CASE COORDINATION PROPOSAL, Tracks 1-7 Placer County Case No. SCV16600

TO PLAINTIFFS HEREIN AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendant A.W. Harriman, a Defendant in the Placer County Superior Court Action, Case No. SCV16600 as coordinated in the Napa County action entitled Charissa W. et al. v. Watchtower Bible and Tract Society of New York, Inc., action number 26-22191 of the Napa County Superior Court, hereby objects to the *ex parte* Litigation Case Coordination Proposal Tracks 1-7

submitted by Greg Love, on behalf of the plaintiffs.

Mr. Love's appearance as it relates to the Ken L. matter was made prior to the granting of his application for appearance *pro hac vice* which has been objected to pursuant to California Rule of Court 983, citing the 13 matters in which Mr. Love has either appeared or requested permission to appear here in California. Additionally, Defendant Harriman objects as follows:

1. The document was not served on the defendants until after it was provided to the court, during the course of the hearing, effectively denying the Defendants the opportunity to review the document, object to the document or otherwise respond to the document.

2. Plaintiff unilaterally represented to the court in Section "5" that "The *Ken L.* case involves a child that was molested by A.W. Harriman, a former Elder in the Colfax Congregation (Placer County)."

   To our knowledge, this is simply Plaintiff's allegation and has yet to be proven in any court of law. To represent this to the court in an *ex parte* fashion as if it were a fact established in the case, violates Rules of Professional Conduct Rule 5-300(B).

Dated: October 19, 2004

DIAMOND BAKER PHILLIPS & WALTERS, LLP

By: _____
CRAIG A. DIAMOND
Attorneys for Defendant
A.W. HARRIMAN

PROOF OF SERVICE BY ALL OPTIONS

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action; my business address is Diamond Baker Phillips & Walters, LLP, P.O. Box 1147, Cedar Ridge, CA 95924-1147.

On October 19, 2004, I served, in the manner indicated below, the foregoing document described as **PLAINTIFF'S OBJECTION TO PLAINTIFF'S LITIGATION CASE COORDINATION PROPOSAL, Tracks 1-7** on the interested parties as follows:

SEE ATTACHED MAILING LIST.

✔ **BY REGULAR MAIL**: I caused such envelopes to be deposited in the United States mail at Grass Valley, California, with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited in the United States Postal Service each day and that practice was followed in the ordinary course of business for the service.

_____ **BY FACSIMILE**: By causing a true copy thereof to be telecopied to the party(ies) at the facsimile number as set forth by their name(s). The facsimile machine I used complied with Rule 2003(3) and Rule 2003(6) and no error was reported by the machine. Pursuant to Rule 2005(I), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration. .[Rule 2008(e)]

_____ **BY FEDERAL EXPRESS/UNITED PARCEL SERVICE**: By placing a true copy thereof enclosed in a sealed Next Day Air envelope with postage fully prepaid at a facility regular maintained by Federal Express/United Parcel Service as set forth below.

_____ **BY PERSONAL SERVICE**: I caused such envelopes to be delivered by hand to the offices of the addressees.

✔ STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ FEDERAL: I declare that I am employed in the office of a member of the bar of this Court, at whose direction the service was made.

Executed on October 19, 2004, 2004, at Grass Valley, California.

Paula J. Farrell

MAILING LIST

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DR 10-18

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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 18 2004
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 **PROOF OF SERVICE**

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 7, 2004, I caused the within **ORDER ASSIGNING COORDINATION TRIAL JUDGE** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** – I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2004, at Sacramento, California.

Penny Hile

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Coordination Proceeding Special Title (Rule 1550(b))	)	
THE JEHOVAH'S WITNESS CASES	)	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. **4374**

ORDER ASSIGNING COORDINATION TRIAL JUDGE

THE PRESIDING JUDGE of the Superior Court of California, County of Napa, is hereby authorized to assign this matter to a judge of the court pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he or she finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

COORDINATED ACTIONS

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Napa	26-22191	Charissa W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Napa	26-23929	Tabitha H. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Monterey	M 68295	Lisa H. v. Watchtower Bible and Tract Society of New York, Inc.

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Placer	SCV 16600	Ken L. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16723	Javier C. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Sonoma	234 320	Jocelyn A. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Sonoma	SCV 234 168	Dennis S. v. Roes 1 through 100
Superior Court of California County of Sonoma	SCV 234 140	Danielle A. v. Roes 1 through 100
Superior Court of California County of Tehama	52598	Wimberley v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Tehama	52594	Tim W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Yolo	CV-03 1439	West v. Watchtower Bible and Tract Society of New York, Inc.

Pursuant to rule 1540, the clerk of each court in which a coordinated action is pending is directed to file this order in the coordinated action.

Pursuant to rules 1501(q) and 1540, every paper filed in a coordinated action shall be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:

Presiding Judge of the Superior Court
of California, County of Napa
825 Brown Street
Napa, CA 94559

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council shall be sent to the following address:

Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action.

Dated: September 23, 2004

Acting Chief Justice of California
and Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: **4374**	CASE NUMBER:

1. I am over the age of 18 and not a party to this legal action.

2. I am employed in the City and County of San Francisco and my business address is

455 Golden Gate Avenue
San Francisco, CA 94102-3688

3. On September 23, 2004, I served a copy of the following documents:

	ORDER ASSIGNING COORDINATION MOTION JUDGE
X	ORDER ASSIGNING COORDINATION TRIAL JUDGE
	ORDER ASSIGNING COORDINATION MOTION JUDGE AND SETTING DATE FOR HEARING
	AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
	AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
	OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 23, 2004

Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

Mr. Rudy Nolen
Mr. Jonathan Saul
Mr. William L. Brelsford
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

Mr. Kenneth Fibich
Mr. Artley Hampton
FIBICH, HAMPTON, LEEBRON & GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Mr. Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department C **Event:** Conference: Case Management/Motion to Quash **PID # :**	**Case #** 26-22191 **Event Date:** October 18, 2004 **Clerk:** D. Rey **Reporter:** Benita Duncan **Cite/Report #:**

Appearances:

William Brelsford, Rudy Nolen Gregory and Gregory Love Attorneys for Plaintiffs
Robert Schnack, Attorney for Church Defendants
William Bernard, Attorney for individual Defendant, Carlos Vasquez
Craig Diamond, Attorney for individual Defendant, A.W. Harriman
Ralph Thompson III, Attorney for individual Defendant, Russell King

Related Case: Tabitha H. vs. Watchtower Bible & Tract Society of NY, et al
Case NO: 26-23929

The issue of appointing a Coordinating Trial Judge for all purposes is discussed.

After hearing arguments and comments of counsel, the Court rules that a coordinating Trial Judge for all purposes shall not be assigned at this time.

Counsel stipulate to submit to the Court joint statements or briefs re case plan setting forth their agreements and disagreements by November 24, 2004. Further reply is due by December 3, 2004.

Counsel may submit Points and Authorities supporting issues of disagreements.

The Court orders that this matter shall be continued to December 9, 2004 at 1:30 PM in Courtroom B for continued case management conference. TE: 3hours.

Counsel to notify other counsel who are not present today of the briefing schedule as well as the next court date.

All discoveries shall stay pending resolution of the nature of coordination.

-o0o-

FILED
OCT 18 2004
Clerk of the Napa Superior Court
By: _____ Deputy

JEHOVAH'S WITNESSES LITIGATION
CASE COORDINATION PROPOSAL
TRACKS 1 – 7

A. CASE ORDER – "TRACKS"

1. *Charissa W.* and *Tabitha H.* consolidated into one case – deemed "Track 1"

The *Charissa W.* case has been designated as the lead case as recorded in the Yolo County Order of Coordination (by stipulation of the parties); also first case filed (July 24, 2003).

The *Charissa W.* and *Tabitha H.* cases were both originally filed in Napa County where this Court already has primary jurisdiction (not by virtue of the Coordination Order). In the event one or more Defendants wish to mandamus the Yolo County Court's Order of Coordination (which has been suggested), that mandamus would arguably only involve those cases that are impacted by the Order of Coordination (non-Napa County cases). The *Charissa W.* and *Tabitha H.* cases could proceed towards trial notwithstanding a coordination challenge.

Additionally, *Charissa W.* and *Tabitha H.* both involve molestation by the same Jehovah's Witness Elder – Edward Villegas. The discovery, trial testimony and witnesses would be identical.

A complete set of written discovery has been propounded on the defendants in the *Charissa W.* case; the Watchtower Defendants' responses are due and are delayed only by virtue of the present stay of proceedings.

2. *Tim W.* deemed "Track 2"

This case was part of the initial filing of those being coordinated (July 24, 2003).

The *Tim W.* case involves molestation by James Henderson, a former Elder and Presiding Overseer of the Red Bluff Congregation (Tehama County);

Defendants have expressed the potential of their challenge the constitutionality of the California Civil Statute that provided the one-year window to file civil lawsuits and their intention to request that the Napa Court issue a stay of proceedings pending an outcome of that judicial challenge. Plaintiffs are strongly opposed to any such interlocutory challenge or a stay pending such a challenge. In the event Defendants pursue a constitutional challenge, Plaintiffs recommend that the *Tim W.* case be deemed **Track 2** so as continue the forward movement of the litigation through a case that is not impacted

by a challenge to the California Civil Statute (the *Tim W.* case did not depend on the newly-enacted statute to be timely filed).

Plaintiffs have prepared a full set of discovery virtually identical to that set presently due from the Watchtower Defendants in the *Charissa W.* case.

3. **Julie Guiterrez/Josh Wimberly consolidated into one case and deemed "Track 3"**

This case was part of the initial filing of those being coordinated (July 24, 2003).

Julie Guiterrez and Josh Wimberly were molested by Alvin Heard, a person formerly in an appointed leadership position in the Red Bluff Congregation (Tehama County).

In the event the Defendants do not challenge the California Civil Statute, the Guiterrez/Wimberly case could easily be consolidated with the *Tim W.* case to gain efficiency in discovery (same Congregation, same time periods and many of the same witnesses).

4. **Daniel West/Amber West/Shane Pence case deemed "Track 4"**

This case was part of the initial filing of those being coordinated (July 24, 2003).

The *West/West/Pence* case involves three children who were molested by Tim Silva, a person formerly in an appointed leadership position in the Woodland Congregation (Yolo County).

Like the *Tim W.* case described above, *West/West/Pence* did not depend on the newly-enacted California statute to be filed timely.

5. ***Ken L.* case deemed "Track 5"**

This case was filed on December 31, 2003; it was the next-filed case after those filed on July 24, 2003.

The *Ken L.* case involves a child that was molested by A.W. Harriman, a former Elder in the Colfax Congregation (Placer County).

6. ***Javier C.* case deemed "Track 6"**

This case was filed on February 9, 2004; it was the next-filed case after *Ken L.'s* case

The *Javier C.* case involves a child that was molested by Carlos Vasquez, a former Elder in the Roseville Congregation (Placer County).

Like the *Tim W.* and the *West/West/Pence* cases described above, the *Javier C.* case did not depend on the newly-enacted California statute to be filed timely.

7. ***Dennis S.*, *Nicholas S.* and the *Jocelyn A.* cases should be consolidated and deemed "Track 7"**

The *Dennis S.* case was filed on December 31, 2003; the *Nicholas S.* and *Jocelyn A.* cases were both filed on February 9, 2004.

The *Dennis S.*, *Nicholas S.* and the *Jocelyn A.* cases involve children that were molested by Donald Glew, a person formerly in an appointed leadership position in the Santa Rosa Congregation (Sonoma County).

Based on information and issues being discussed with counsel for the Watchtower Defendants, counsel for Plaintiffs are closely evaluating the Sonoma County cases for dismissal of Watchtower Defendants.

8. **Other**

B. PROPOSED TRIAL SETTINGS – All cases set in Napa County

November 1, 2005	**Trial – Track 1 *Charissa W., Tabitha H.* case**
January 9, 2006	**Trial – Track 2 *Tim W.* case**
March 6, 2006	**Trial – Track 3 *Gutierrez/Wimberly* case**
May 9, 2006	**Trial – Track 4 *West/West/Pence* case**
July 11, 2006	**Trial – Track 5 *Ken L.* case**
September 12, 2006	**Trial – Track 6 *Javier C.* case**

C. DISCOVERY

The following discovery has already taken place:

Watch Tower Pennsylvania – all cases

1. Full set of written discovery to Watch Tower Pennsylvania (WTPA) in connection with its Special Appearance

   -responses have been provided and conference has been held regarding matters to be compelled

2. Oral deposition of "person most knowledgeable" about WTPA's California contacts

   -conference is necessary regarding deposition matters to be compelled

Watchtower Defendants – Charissa W. case (Napa County)

1. Full set of written discovery to Watchtower New York (WTNY)
2. Full set of written discovery to Christian Congregation of JW (CCJW)
3. Full set of written discovery to the Napa Congregation

   -discovery was served on these defendants on May 26, 2004; responses from all three entities are due subject to the stay related to the coordination of JW litigation; an extension has already been given

It is Plaintiffs recommendation that the Watchtower Defendants be required to fully answer the outstanding set of discovery presently due in the Charissa W. case. Plaintiff will agree to a similar set of initial discovery in all cases to allow coordination of the responses by the Watchtower Defendants and coordination in the handling of matters needing Court attention (motions to compel and deposition parameters).

Staggered discovery deadlines can be scheduled for all parties following the Track system described above. It is contemplated that discovery rulings in the **Track 1** case and the **Track 2** case will solve many of the issues that would otherwise arise in all cases individually.

Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

APPELLATE AND TRIAL COURT JUDICIAL SERVICES DIVISION

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4250 • Fax 415-865-4315 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

MARCIA M. TAYLOR
Director, Appellate and
Trial Court Judicial Services Division

RECEIVED
SEP 24 2004
COURT EXECUTIVE OFFICER

September 23, 2004

Hon. W. Scott Snowden
Presiding Judge of the Superior Court
of California, County of Fresno
825 Brown Street
Napa, CA 94559

Dear Judge Snowden:

Enclosed is the original order authorizing you to appoint a coordination trial judge in a proceeding given the special title of "The Jehovah's Witness Cases" and numbered 4374.

We are sending a copy of this letter to Judge Thomas E. Warriner of the Yolo Superior Court, who was coordination motion judge, with the request that he transmit to you the original papers relating to this proceeding.

The petitioner was directed to serve a copy of the order on all parties to the included coordinated actions and on the clerk of each court in which an included action is pending for filing in the included action.

If we can assist you in any way, please call Carlotta Tillman at (415) 865-7630.

Sincerely,

Marcia M. Taylor
Division Director

MMT:ct
Enclosure
cc: Hon. Thomas E. Warriner

FILED
YOLO COUNTY
SUPERIOR COURT

SEP 28 2004

By _____

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF YOLO

The Jehovah's Witness Cases	Judicial Council Coordination Proceeding Number 4374
	ORDER GRANTING PETITION FOR COORDINATION

On August 31, 2004, the court heard the plaintiffs' petition for coordination of The Jehovah's Witness Cases, Judicial Council Coordination No. 4374. Rudy Nolen and William Brelsford, Attorneys at Law, appeared for the plaintiffs. William Bernard, Attorney at Law, appeared for individual defendant Carlos Vasquez; Crystal Calloway, Attorney at Law, appeared for individual defendant Timothy Silva; Craig Diamond, Attorney at Law, appeared for individual defendant A.W. Harriman; and Robert Schnack, Attorney at Law, appeared for Watchtower Bible and Tract Society of New York, Inc.

Good cause appearing that the coordination of the included actions is appropriate under the standards specified in Code of Civil Procedure Section 404.1, it is ordered that the petition of the plaintiffs for the coordination of the following actions is granted:

Charissa W. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 26-22191 (Napa County)

Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 26-23929 (Napa County)

Danielle A. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234140 (Sonoma County)

ORDER

Jocelyn A. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234320 (Sonoma County)

Dennis S. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234168 (Sonoma County)

Wimberly et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52598 (Tehama County)

Tim W. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52594 (Tehama County)

West et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52594 (Yolo County)

Javier C. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number SCV16723 (Placer County)

Ken L. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number SCV16600 (Placer County)

Lisa H. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number M68295 (Monterey County)

The Napa Superior Court is designated as the site for the coordination proceedings. The parties have stipulated that the lead case is *Charissa W. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al.* Case Number 26-22191. Further, the Court of Appeal, the First Appellate District, is designated the reviewing court having appellate jurisdiction and the court in which any petition for a writ relating to any subsequent order in this proceeding shall be filed.

Dated: 9/3/04

The Honorable Thomas E. Warriner
Judge of the Superior Court
Coordination Motion Judge

ORDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET, #103
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: THE JEHOVAH'S WITNESS CASES

CASE NO: Judicial Council Coordination Proceeding #4374

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on 9/8/04, I served true and correct copies of the foregoing/attached by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

NOLEN, SAUL, BRELSFORD
350 UNIVERSITY AVE. #280
SACRAMENTO, CA. 95825

FIBICH, HAMPTON, LEEBRON & GARTH
FIVE HOUSTON CENTER
1401 MCKINNEY #1800
HOUSTON, TX 77010

LOVE & NORRIS
314 MAIN STREET #300
FORT WORTH, TX 76102-7423

BULLIVANT, HOUSE, BAILEY
11335 GOLD EXPRESS DR. #105
GOLD RIVER, CA. 95670-4491

DONALD GLEW
P.O. BOX 424245
SAN FRANCISCO, CA. 94142

DIAMOND, BAKER, PHILLIPS & WALTERS
P.O. BOX 1147
CEDAR RIDGE, CA. 95924

WILLIAM BERNARD
1624 SANTA CLARA DR. #210
ROSEVILLE, CA. 95661

MICHAEL JANSEN
1301 COLLEGE STREET
WOODLAND, CA. 95695

THE THOMPSON LAW OFFICE
580 CALLE PRINCIPAL 1ST FLOOR
MONTEREY, CA. 93940

ALVIN HEARD
703 DELTA STREET
KLAMATH FALLS, OR 97661

JAMES HENDERSON
265 GILMORE RD. #17
RED BLUFF, CA. 96080

SUPERIOR COURT
COUNTY OF MONTEREY
P.O. BOX 751
MONTEREY, CA. 93940
(M68295)

SUPERIOR COURT
COUNTY OF PLACER
101 MAPLE STREET
AUBURN, CA. 95603
(SVC16600, SVC16723)

SUPERIOR COURT
COUNTY OF SONOMA
600 ADMINISTRATIVE DR. RM 107-J
SANTA ROSA, CA. 95403
(SCV234 320, 234 168, 234 140)

SUPERIOR COURT
COUNTY OF TEHAMA
P.O. BOX 310
RED BLUFF, CA. 96080
(52594)

SUPERIOR COURT
COUNTY OF NAPA
825 BROWN ST.
NAPA, CA. 94559
(26-22191, 26-23929)

SUPERIOR COURT
COUNTY OF YOLO
725 COURT ST. #103
WOODLAND, CA. 95695
(CV03-1439)

CHAIR, JUDICIAL
COUNCIL OF CALIF.
AOC
ATTN: APPELLATE &
TRIAL COURT JUDICIAL
SERVICES
(CIVIL COORDINATION)
455 GOLDEN GATE AVE.
SAN FRANCISCO, CA.
94102-3688

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: 9/8/04

JAMES B. PERRY, CLERK

By: _____
CATHLEEN L. BERGER, Deputy

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-3688

FILED
SEP 2 8 2004
Clerk of the Napa Superior Court
By: Nora O'Doherty Deputy

Coordination Proceeding Special Title (Rule 1550(b))	
THE JEHOVAH'S WITNESS CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. **4374**

ORDER ASSIGNING COORDINATION TRIAL JUDGE

THE PRESIDING JUDGE of the Superior Court of California, County of Napa, is hereby authorized to assign this matter to a judge of the court pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he or she finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

COORDINATED ACTIONS

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Napa	26-22191	Charissa W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Napa	26-23929	Tabitha H. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Monterey	M 68295	Lisa H. v. Watchtower Bible and Tract Society of New York, Inc.

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Placer	SCV 16600	Ken L. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16723	Javier C. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Sonoma	234 320	Jocelyn A. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Sonoma	SCV 234 168	Dennis S. v. Roes 1 through 100
Superior Court of California County of Sonoma	SCV 234 140	Danielle A. v. Roes 1 through 100
Superior Court of California County of Tehama	52598	Wimberley v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Tehama	52594	Tim W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Yolo	CV-03 1439	West v. Watchtower Bible and Tract Society of New York, Inc.

Pursuant to rule 1540, the clerk of each court in which a coordinated action is pending is directed to file this order in the coordinated action.

Pursuant to rules 1501(q) and 1540, every paper filed in a coordinated action shall be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:

Presiding Judge of the Superior Court
of California, County of Napa
825 Brown Street
Napa, CA 94559

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council shall be sent to the following address:

Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action.

Dated: September 23, 2004

Acting Chief Justice of California
and Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: **4374**	CASE NUMBER:

1. I am over the age of 18 and not a party to this legal action.

2. I am employed in the City and County of San Francisco and my business address is

455 Golden Gate Avenue
San Francisco, CA 94102-3688

3. On September 23, 2004, *I* served a copy of the following documents:

	ORDER ASSIGNING COORDINATION MOTION JUDGE
X	ORDER ASSIGNING COORDINATION TRIAL JUDGE
	ORDER ASSIGNING COORDINATION MOTION JUDGE AND SETTING DATE FOR HEARING
	AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
	AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
	OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 23, 2004

Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

Mr. Rudy Nolen
Mr. Jonathan Saul
Mr. William L. Brelsford
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

Mr. Kenneth Fibich
Mr. Artley Hampton
FIBICH, HAMPTON, LEEBRON & GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Mr. Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

FILED

AUG 2 3 2004

Clerk of the Napa Superior Court
By: Nora O'Doherty
Deputy

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: November 16, 2004 **TIME:** 8:30 am **ROOM:** Department B

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 8/23/2004

Stephen A. Bouch, Court Executive Officer

By: Nora O'Doherty
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Persona.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

TO: Rudy Nolen
Nolen Saul Brelsford
350 University Avenue Ste. 280
Sacramento, CA 95825

FILED
AUG 2 3 2004
Clerk of the Napa Superior Court
By: Dora O'Doherty
Deputy

DATE: November 16, 2004 **TIME:** 8:30 am **ROOM:** Department B

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

FILED

AUG 23 2004

Clerk of the Napa Superior Court
By: Dora O'Doherty
Deputy

DATE: November 16, 2004 **TIME:** 8:30 am **ROOM:** Department B

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Motion: General has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

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Date: 8/23/2004

Stephen A. Bouch, Court Executive Officer

By: Dora O'Doherty
Deputy Court Executive Officer

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

FILED

AUG 23 2004

Clerk of the Napa Superior Court
By: _____ Deputy

TO: Rudy Nolen
Nolen Saul Brelsford
350 University Avenue Ste. 280
Sacramento, CA 95825

DATE: November 16, 2004 **TIME:** 8:30 am **ROOM:** Department B

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Motion: General has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

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Date: 8/23/2004

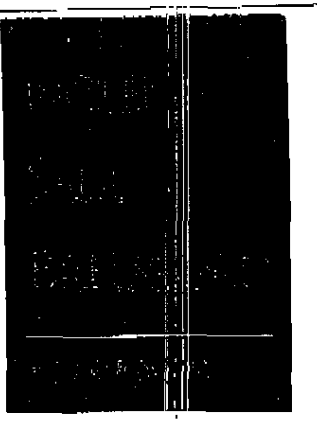
Stephen A. Bouch, Court Executive Officer

By: _____
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Persona.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.



650 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825
PHONE: (916) 564-9990 FAX: (916) 564-9991

August 19, 2004

Honorable W. Scott Snowden
Napa County Superior Court
Department B
825 Brown Street
Napa, CA 94559

Via Facsimile and U.S. Mail (707) 253-4229

Re: *Charissa W., et al. v. Watchtower, et al.*, Case No.: 26-22191
***Tabitha H. v. Watchtower, et al.*, Case No.: 26-23929**

Dear Judge Snowden:

This will clarify our August 17, 2004 correspondence, which we recently discussed with your clerk.

On August 31, 2004, the following hearings are scheduled in your court at 8:30 a.m.;

- Defendants' Motion to Quash Service of Summons for Lack of Personal Jurisdiction in *Charissa W., et al.*
- Defendants' Motion to Quash Service of Summons for Lack of Personal Jurisdiction, Demurrer, and Motion to Strike in *Tabitha H.*
- Case Management Conferences in *Charissa W., et al.* and *Tabitha H.*

Also scheduled on August 31, 2004 at 8:30 a.m. in the Yolo County Superior Court is plaintiffs' petition for coordination, which was filed with the Judicial Council, with copies filed in all counties where these cases have been instituted. We have conferred with Mr. Schnack who represents the defendants in the above referenced matters and we are both in agreement to postpone the hearings in your court on August 31, 2004. We request that the Court postpone all hearings currently scheduled in your courtroom for August 31, 2004 for approximately 60 days to November 16, 2004. Hopefully, by that time, we will have a ruling on the petition for coordination.

Enclosed for your review is a copy of the Judicial Council's order assigning the coordination motion judge, which was previously filed with the Napa County Superior Court on August 4, 2004. Also enclosed is the Yolo County order assigning the hearing date of August 31, 2004.

✓ done 8/23/04

RHUDOLPH NOLEN, JR.* JONATHAN A. SAUL** WILLIAM L. BRELSFORD, JR.**
*Member, American Board of Trial Advocates
**Also admitted in Colorado

Honorable W. Scott Snowden
Re: Charissa W., et al. and Tabitha H.
Date: August 19, 2004
Page: 2

We appreciate your consideration of this request. We will contact your clerk to determine whether we will need to file a proposed order.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

WB/dc

cc: Robert Schnack, Esq. *Via Facsimile 916-852-5777*

ENDORSED

AUG 0 4 2004

Clerk of the Napa Superior Court
By: V.L. HONSVICK
Deputy

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Kenneth Fibich, Esq., SBN 06952600
Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON, LEEBRON &
GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 **PROOF OF SERVICE**

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 Univers ty Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On July 27, 2004, I caused the within **ORDER ASSIGNING COORDINATION MOTION JUDGE** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** – I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 27, 2004, at Sacramento, California.

Penny Hile

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Coordination Proceeding Special Title (Rule 1550(b))	
THE JEHOVAH'S WITNESS CASES	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

ORDER ASSIGNING COORDINATION MOTION JUDGE

THE PRESIDING JUDGE of the Superior Court of California, County of Yolo, is hereby authorized to assign this matter to a judge of the court pursuant to Code of Civil Procedure section 404 and rule 1524 of the California Rules of Court to sit as coordination motion judge to determine whether the actions are complex, and if so, whether coordination of the included actions listed below is appropriate. If the coordination motion judge grants the petition for coordination, he or she is asked to (1) recommend a particular superior court for the site of the coordination proceedings, and (2) select the reviewing court having appellate jurisdiction if the actions to be coordinated are within the jurisdiction of more than one reviewing court.

Pursuant to section 404.5 and rule 1514, pending decision on the petition for coordination, the coordination motion judge may stay any action being considered for, or affecting an action being considered for, coordination.

INCLUDED ACTIONS

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Napa	26-22191	Charissa W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Napa	26-23929	Tabitha H. v. Watchtower Bible And Tract Society of New York, Inc.

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Monterey	M 68295	Lisa H. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16600	Keri L. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16723	Javier C. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Sonoma	234 320	Jocelyn A. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Sonoma	SCV 234 168	Dennis S. v. Roes 1 through 100
Superior Court of California County of Sonoma	SCV 234 140	Danielle A. v. Roes 1 through 100
Superior Court of California County of Tehama	52598	Wimberley v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Tehama	52594	Tim W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Yolo	CV-03 1439	West v. Watchtower Bible and Tract Society of New York, Inc.

Pursuant to rule 1524, the clerk of each court in which an included action is pending is directed to file this order in the included action.

Pursuant to rules 1501(q) and 1524, all documents required to be submitted to the coordination motion judge shall be transmitted to the court address designated below:

Presiding Judge of the Superior Court
of California, County of Yolo
725 Court Street
Woodland, CA 95695

Pursuant to rule 1511, a copy of every notice of opposition, application for stay order, stay order, notice of hearing on the petition, and order granting or denying coordination shall be transmitted to the Chair of the Judicial Council at the following address:

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action.

Dated: July 23, 2004

Chief Justice of California and
Chair of the Judicial Council

YOLO SUPERIOR COURT
STATE OF CALIFORNIA

FILED
YOLO COUNTY
SUPERIOR COURTS

AUG 11 2004

By Cathleen Berger
Deputy

Coordination Proceeding
Special Title [Rule 1550(b)]

THE JEHOVAH'S WITNESS CASES

Judicial Council Coordination
Proceeding No. 4374

ORDER ASSIGNING COORDINATION MOTION JUDGE

BY ORDER OF HONORABLE DONNA M. PETRE, Presiding Judge of Yolo Superior Court the above matter is assigned to the Honorable Thomas E. Warriner, Judge.

The matter is ordered set for hearing on:

TUESDAY, AUGUST 31, 2004@ 8:30A.M., IN DEPT. 11

All party(s) and/or attorney(s) of record are ordered to appear.

Date: 8-10-2004

Donna M. Petre, Presiding Judge

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET, #103
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: THE JEHOVAH'S WITNESS CASES

CASE NO: 4374

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on 8/11/04, I served true and correct copies of the foregoing/attached ORDER ASSIGNING COORDINATION MOTION JUDGE by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

NOLEN, SAUL, BRELSFORD
350 UNIVERSITY AVE. #280
SACRAMENTO, CA. 95825

FIBICH, HAMPTON, LEEBRON & GARTH
FIVE HOUSTON CENTER
1401 MCKINNEY #1800
HOUSTON, TX 77010

LOVE & NORRIS
314 MAIN STREET #300
FORT WORTH, TX 76102-7423

BULLIVANT, HOUSER, BAILEY
11335 GOLD EXPRESS DR., #105
GOLDRIVER, CA. 95670-4491

DONALD GLEW
P.O. BOX 424245
SAN FRANCISCO, CA. 94142

DIAMOND, BAKER, PHILLIPS & WALTERS
P.O. BOX 1147
CEDAR RIDGE, CA. 95924

WILLIAM BERNARD
1624 SANTA CLARA DR. #210
ROSEVILLE, CA. 95661

MICHAEL JANSEN
1301 COLLEGE STREET
WOODLAND, CA. 95695

THE THOMPSON LAW OFFICE
580 CALLE PRINCIPAL 1ST FLOOR
MONTEREY, CA. 93940

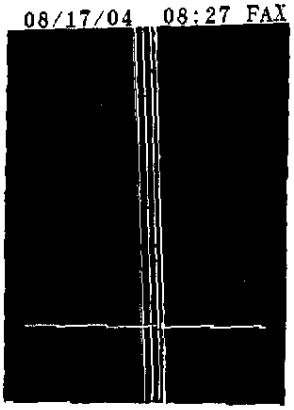
ALVIN HEARD
703 DELTA STREET
KLAMATH FALLS, OR 97601

JAMES HENDERSON
265 GILMORE RD. #17
RED BLUFF, CA. 96080

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: 8/11/04 JAMES B. PERRY, COURT EXECUTIVE OFFICER

By: _____
CATHLEEN L. BERGER, Deputy



350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

August 17, 2004

Honorable W. Scott Snowden
Napa County Superior Court
Dept. B
825 Brown Street
Napa, CA 94559
Via Facsimile and U.S. Mail (707) 253-4229

Re: *Charissa W., et al. v. Watchtower, et al.*, Case No.: 26-22191
Tabitha H. v. Watchtower, et al., Case No.: 26-23929

Dear Judge Snowden:

This is to inform you that the Yolo County Superior Court recently scheduled plaintiff's petition for coordination for August 31, 2004 at 8:30 a.m. The cases listed above are currently scheduled for case management conferences and defendants' motions on August 31, 2004 at 8:30 a.m. We respectfully request all hearings scheduled for August 31, 2004 be continued to a date following the hearing for the petition for coordination. All parties in this matter have agreed to continue the hearings.

We look forward to hearing from you in the near future.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

WB/dc

cc: Robert Schnack, Esq. *Via Facsimile 916-852-5777*

JAM 8-31

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
Robert J. Schnack, SBN 191987 BULLIVANT HOUSER BAILEY 11335 Gold Express Drive Suite 105 Gold River, CA 95670 TELEPHONE NO.: 916-852-9100 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): The Church Defendants	FILED AUG 18 2004 Clerk of the Napa Superior Court By: Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA STREET ADDRESS: 825 Brown Street MAILING ADDRESS: CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:	
PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D. DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	
CASE MANAGEMENT STATEMENT (Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)	CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: August 31, 2004 Time: 8:30 A.M. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* The Church Defendants (i.e., the entity defendants);
   b. [ ] This statement is submitted **jointly** by parties *(names):* Watch Tower Pennsylvania specially appears, because it has pending a motion challenging personal jurisdiction.

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):*
   b. [ ] The cross-complaint, if any, was filed on *(date):*

FILED
Clerk of the Napa Superior Court

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Claims alleged concerning sex abuse of minors.

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
The adult plaintiffs allege claims relating to sex abuse that allegedly occurred when they were minors. Plaintiffs allege various legal theories under which they contend the Church Defendants are vicariously liable for the alleged abuse. The Church Defendants deny plaintiffs' claims, and Watch Tower Pennsylvania also challenges personal jurisdiction.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* The Church Defendants have not decided whether to request a jury trial.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* See attachment.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 10-12
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [ ] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [X] Neutral case evaluation
    - (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

    g. [ ] This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court *(specify exemption):*

11. **Settlement conference**

    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

    a. [X] Insurance carrier, if any, for party filing this statement *(name):* Multiple.

    b. Reservation of rights: [ ] Yes [ ] No

    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):* The Church Defendants expect that some, if not all, of the insurers will either deny coverage or issue reservations of rights.

13. **Jurisdiction**

    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

    [ ] Bankruptcy [ ] Other *(specify):*

    Status:

14. **Related cases, consolidation, and coordination**

    a. [ ] There are companion, underlying, or related cases.
    - (1) Name of case:
    - (2) Name of court:
    - (3) Case number:
    - (4) Status:

    [ ] Additional cases are described in Attachment 14a.

    b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* See attachment for no. 6.b. above.

15. **Bifurcation**

    [X] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):* The Church Defendants will consider a motion to bifurcate liability from damages.

16. **Other motions**

    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):* Motions for summary judgment and/or summary adjudication.

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

17. ***Discovery***
    a. ☐ The party or parties have completed all discovery.
    b. [X] The following discovery will be completed by the date specified *(describe all anticipated discovery)*:

Party	Description	Date
Church Defendants	Written Discovery	October 2004
Church Defendants	Plaintiffs' Depositions	January 2005
Church Defendants	Plaintiffs' Witnesses	April 2005
Church Defendants	Expert Witnesses	Per Code

    c. [X] The following discovery issues are anticipated *(specify)*: The Church Defendants expect that plaintiffs will seek broad discovery from them concerning church or ecclesiastical hierarchy, church practices and policies, and other topics or issues protected from discovery by the federal and California constituti

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain)*:

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify)*:

21. **Case management orders**
    Previous case management orders in this case are *(check one)*: ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any)*: 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: August 17, 2004

Robert J. Schnack
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

Attachment to CMC Statement No. 6.b.:

Plaintiffs' counsel has filed a petition to coordinate several California cases filed against the Church Defendants involving different alleged abusers in different counties. Different local congregations in various counties are named as defendants in the various lawsuits. The Church Defendants have filed an opposition to coordination. A hearing on the petition for coordination is set for August 31, 2004 in Yolo County Superior Court.

4108806.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On August 17, 2004 the following ordinary business practice., I served the foregoing document(s) described as:

CASE MANAGEMENT CONFERENCE STATEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorney for Plaintiffs Rudy Nolen Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 17, 2004, at Gold River, California.

By _____
Claudia Pohlman

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
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Houston, TX 77010
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Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
AUG - 9 2004
Clerk of the Napa Superior Court
By: [signature]
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF PETITION FOR COORDINATION**

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I

INTRODUCTION

COMES NOW Plaintiffs who submit their reply to defendants' oppositions to plaintiffs' petition for coordination of the previously identified cases arising from the sexual

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ADMINISTRATIVE OFFICE OF THE COURTS

abuse and subsequent cover-up that plaintiffs were forced to endure for years. Coordination of these matters is proper as the actions are complex. One judge hearing all of the actions for all purposes in a selected site will promote the ends of justice when considering the common questions of fact and law predominating and significant to this litigation. Judicial economy will be served as these multiple actions will develop consistently without duplicative utilization of judicial facilities and resources. Further, coordination will avoid the disadvantages of duplicative and inconsistent rulings, orders or judgments.

All of these cases arise out of a common set of facts and circumstances. For years, child have been sexually abused by men holding positions of authority within the Watchtower Defendants' organization. Many of those children have boldly stepped forward in an attempt to seek justice for the sexual abuse they endured, only to be quashed by the Watchtower Defendants' organization. All plaintiffs have alleged that the Watchtower Defendants have systematically conspired to cover-up allegations of sexual abuse within its organization in order to avoid harm or injury to its reputation and in order to avoid civil and criminal liability.

II

REPLY TO DEFENDANTS' ARGUMENTS

1. Same Set of Facts and Circumstances

While it is true each plaintiff was abused by an individual defendant perpetrator, under separate circumstances, the Watchtower Defendants' response to handle each allegation of abuse has been virtually identical. The Watchtower Defendants contend that plaintiffs have not alleged the causes of action against the "same group of defendants." (See Watchtower Defendants opposition at page 4:1-13.) Essentially, Watchtower Defendants contend there are different congregation defendants in each separate case. Separate defendant congregations were sued based on the geographic location where the abuse occurred. Notably, each congregation is required to follow the same direction, policies and procedures mandated by the Governing Body, an unincorporated group of

men who dictate policy for the entire organization. Accordingly, each congregation looks up to the Governing Body, which directed, through a hierarchical system, how the allegations were to be handled.

2. Identical Causes of Action

Watchtower Defendants also contend the cases do not allege "identical cases of action." (See Watchtower Defendants opposition at page 4:14-28.) Two of the complaints originally filed, *Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.* (Napa County) and *Daniel West, et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.* (Yolo County) were demurred to and ruled upon in their respective counties. The rulings in both of those cases resulted in different causes of action being sustained and overruled. All of the other cases that have been filed have been demurred to by Watchtower Defendants and have yet to be ruled upon. Accordingly, all of the cases at this point, to one extent or another, contain separate causes of action based on the timing of the rulings on demurrers. This point is precisely one of the reasons why coordination is appropriate so that all of the cases will proceed with identical causes of action and theories of recovery.[1]

While it is true each case has its own individual fact pattern giving rise to the sexual abuse, how the complaints of the abuse were handled were virtually identical based on organizational policies, which predominate all of the cases. This is also true for the Sonoma County cases *Daniella A. v. Roes 1 through 100, et al.*, and *Dennis S., et al. v. Roes 1 through 100, et al.* These cases were filed December 31, 2003. The Sonoma County court has recently granted plaintiffs' ex parte applications for orders allowing plaintiffs to file amended complaints against the specific individual defendant entities and perpetrators in both cases. Plaintiffs are in the process of filing the amended complaints which will soon thereafter be served.

///

---

[1] Parenthetically, in both of the Napa county cases, (*Charissa W., et al.* and *Tabitha H.*) the perpetrator, Edward Villegas, is dead. Accordingly, those cases will not contain an allegation for sexual battery against the perpetrator while the remaining cases will contain a sexual battery cause of action against the individual perpetrator defendants who are still alive.

3. **Common Questions of Law**

Common questions of law also predominate all of the cases. Watchtower Defendants have filed demurrers in every case contending they are immune from liability due to alleged protections under the First Amendment of the United States Constitution. Originally, these arguments were overruled in part in the *Charissa W., et al.* (Napa county) and *Daniel West, et al.* (Yolo County) cases. In both of those cases, Watchtower Defendants then attempted to argue that the organizational defendants do not owe a duty to the plaintiffs to protect them from the sexual abuse plaintiffs were forced to endure. In *Charissa W., et al.*, the Napa County Superior Court overruled this argument, while in *Daniel West, et al.*, the Yolo County Superior Court has yet to rule on this issue. The hearing is scheduled for August 5, 2004. Watchtower Defendants have asserted the same theories of defense in all cases. All courts in which these cases have been filed will be called upon at one time or another to review the extensive case law and briefing on the same issues. Judicial efficiency and economy will be furthered if one court, such as Napa County, were to oversee all of these matters. Napa County is the most logical choice as it has already reviewed and ruled on two separate demurrers asserted by the Watchtower Defendants regarding their defenses premised on the first amendment and the duty issue.

Defendants assert that the nature of these cases differ from other cases that have been coordinated, such as breast or hip implant cases. In the breast and hip implant cases, all of the individual plaintiffs presumably contained separate factual backgrounds. Presumably, each plaintiff had different medical reasons for undergoing breast or hip implants. Individual healthcare providers performed separate surgeries on the individual plaintiffs. In those cases, theories of liability were premised on product defect theories against the manufacturer of the silicone and hip implant manufacturers.

In these cases, the individual plaintiffs were sexually abused by individual pedophiles. The Watchtower organizational defendants, analogous to the manufacturers of hip or silicone implants, chose to implement a course of conduct to handle complaints of the sexual abuse. Additionally, it has come to Plaintiffs' counsels' attention that a

Plaintiffs' Reply Brief in Support of Petition for Coordination

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On July 26, 2004, I caused the within **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen & Saul's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Counsel Pro Hac Vice for Plaintiffs
Gregory Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102

Hartley Hampton, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

Attorney for Carlos Vasquez
William E. Bernard, Esq.
A Professional Corporation
1624 Santa Clara Dr., Ste 210
Roseville, CA 95661

Attorney for A.W. Harriman
Craig A. Diamond, Esq.
DIAMOND BAKER PHILLIPS & WALTERS, LLP
P.O. Box 1147
Cedar Ridge, CA 95924-1147

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Ralph Thompson, Esq.
THE THOMPSON LAW OFFICE
580 Calle Principal, 1st Floor
Monterey, CA 93940-2812

Alvin Heard
703 Delta Street
Klamath Falls, OR 97601
(In Pro Per)

Donald Glew
P.O. Box 424245
San Francisco, CA 94142
(In Pro Per)

James L. Henderson
25 Gilmore Rd. # 17
Red Bluff, CA 96080
(In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 26, 2004, at Sacramento, California.

Deanna Czarnecki

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

AUG 04 2004

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive.

Defendants.

CASE NO: 26-22191

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Clerk of the Napa Superior Court

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On July 27, 2004, I caused the within **ORDER ASSIGNING COORDINATION MOTION JUDGE** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** – I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 27, 2004, at Sacramento, California.

Penny Hile

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Coordination Proceeding Special Title (Rule 1550(b))	)	
THE JEHOVAH'S WITNESS CASES	)	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

ORDER ASSIGNING COORDINATION MOTION JUDGE

THE PRESIDING JUDGE of the Superior Court of California, County of Yolo, is hereby authorized to assign this matter to a judge of the court pursuant to Code of Civil Procedure section 404 and rule 1524 of the California Rules of Court to sit as coordination motion judge to determine whether the actions are complex, and if so, whether coordination of the included actions listed below is appropriate. If the coordination motion judge grants the petition for coordination, he or she is asked to (1) recommend a particular superior court for the site of the coordination proceedings, and (2) select the reviewing court having appellate jurisdiction if the actions to be coordinated are within the jurisdiction of more than one reviewing court.

Pursuant to section 404.5 and rule 1514, pending decision on the petition for coordination, the coordination motion judge may stay any action being considered for, or affecting an action being considered for, coordination.

INCLUDED ACTIONS

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Napa	26-22191	Charissa W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Napa	26-23929	Tabitha H. v. Watchtower Bible And Tract Society of New York, Inc.

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Monterey	M 68295	Lisa H. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16600	Ken L. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16723	Javier C. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Sonoma	234 320	Jocelyn A. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Sonoma	SCV 234 168	Dennis S. v. Roes 1 through 100
Superior Court of California County of Sonoma	SCV 234 140	Danielle A. v. Roes 1 through 100
Superior Court of California County of Tehama	52598	Wimberley v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Tehama	52594	Tim W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Yolo	CV-03 1439	West v. Watchtower Bible and Tract Society of New York, Inc.

Pursuant to rule 1524, the clerk of each court in which an included action is pending is directed to file this order in the included action.

Pursuant to rules 1501(q) and 1524, all documents required to be submitted to the coordination motion judge shall be transmitted to the court address designated below:

Presiding Judge of the Superior Court
of California, County of Yolo
725 Court Street
Woodland, CA 95695

Pursuant to rule 1511, a copy of every notice of opposition, application for stay order, stay order, notice of hearing on the petition, and order granting or denying coordination shall be transmitted to the Chair of the Judicial Council at the following address:

Chair, Judicial Council of California
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action.

Dated: July 23, 2004



Chief Justice of California and
Chair of the Judicial Council

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
Rudy Nolen, Esq. SBN 59808 William L. Brelsford, Esq. SBN 202839 NOLEN SAUL BRELSFORD 350 University Avenue, Suite 280 Sacramento, CA 95825 TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Charissa W. and Nicole D.	FILED JUN 9 - 2004 Clerk of the Napa Superior Court By: D. Larsen Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa STREET ADDRESS: 825 Brown St. MAILING ADDRESS: P.O. Box 310 CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:	
PLAINTIFF/PETITIONER: Charissa W. and Nicole D. DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	
CASE MANAGEMENT STATEMENT (Check one): [X] **UNLIMITED CASE** (Amount demanded exceeds $25,000) [ ] **LIMITED CASE** (Amount demanded is $25,000 or less)	CASE NUMBER:<br~~52598~~ 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: ~~June 23, 2004~~ AUG 31, 2004 Time: 8:30 a.m. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* Plaintiffs
   b. [ ] This statement is submitted **jointly** by parties *(names):*

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):* July 24, 2003
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [X] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Childhood sexual abuse and related causes of action against Watchtower Bible and Tract Society of New York, Inc. and its agents for sexual abuse of minor plaintiffs.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	52598

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
This case arises from repeated acts of sexual abuse against the minor plaintiffs. Plaintiffs allege Watchtower defendants and their agents knew or should have known of the sexual abuse that was occurring, but they failed to prevent it. Further, plaintiffs allege Watchtower defendants conspired to cover up the issue of sexual abuse, thereby allowing plaintiffs to be further victimized. Plaintiffs claim damages for personal injuries, emotional distress, wage loss and medical expenses in an unknown amount. An order for punitive damages will be sought in the future.

[ ] *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request [X] a jury trial [ ] a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. [ ] The trial has been set for *(date):*
b. [X] No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* This case is complex and will not be ready for trial within 12 months. Extensive discovery will be required and plaintiff anticipates defendants to file motions regarding complex constitutional issues.
c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
Counsel is unavailable for the following dates due to prescheduled trials (continued to page 5).

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. [X] days *(specify number):* 20-25 days
b. [ ] hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial [X] by the attorney or party listed in the caption [ ] by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
[X] Additional representation is described in Attachment 8.

9. **Preference**
[ ] This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel [X] has [ ] has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. [ ] All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. [ ] The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	52598

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [X] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [ ] Neutral case evaluation
    - (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

    g. [X] This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court *(specify exemption):* Complex constitutional law issues regarding the First Amendment and amount in controversy exceeds $50,000.

11. **Settlement conference**

    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

    a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

    b. Reservation of rights: [ ] Yes [ ] No

    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

    [ ] Bankruptcy [ ] Other *(specify):*

    Status:

14. **Related cases, consolidation, and coordination**

    a. [X] There are companion, underlying, or related cases.
    - (1) Name of case: Tim W. v. Watchtower, et al.
    - (2) Name of court: Tehama County Superior Court
    - (3) Case number: 52594
    - (4) Status: Defendants' demurrer and motion to quash are scheduled to be heard June 23, 2004

    [X] Additional cases are described in Attachment 14a.

    b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* plaintiff

15. **Bifurcation**

    [ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):* Motions in limine, Motions to compel, Motion to amend to add claim for punitive damages

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	52598

17. **Discovery**
    a. [ ] The party or parties have completed all discovery.
    b. [X] The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Written discovery	February 2005
	Percipient Witness Depositions	May 2005
	Depositions of agents of defendant organizations	May 2005
	Expert discovery	Pursuant to CCP Section 2034

    c. [X] The following discovery issues are anticipated *(specify):* Plaintiffs anticipate defendants will exercise First Amendment privileges througout litigation requiring extensive law and motion. A special discovery master may be required.

18. **Economic Litigation**
    a. [ ] This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. [ ] This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    [X] The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):* Motion for complex litigation under Judical Council Rules.

20. **Meet and confer**
    a. [ ] The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* [X] none [ ] attached as Attachment 21.

22. Total number of pages attached *(if any):* 7

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: June 7, 2004

William Brelsford
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

[ ] Additional signatures are attached

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 6.c.

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

6-14-04 to 6-18-04 Rubitsky v. Sutter, Sacramento County
7-6-04 to 7-13-04 Lindley v. Morgan, Fresno County
7-12-04 to 7-16-04 Mannering v. McBride, Sacramento County
8-2-04 to 8-6-04 Chambers. v. Wattenberg, Sacramento County
8-6-04 to 8-13-04 Berkeley Ready Mix v. Schwing America, Alameda County
8-9-04 to 8-13-04 Annalie D. v. McDonalds, Orange County
9-22-04 to 10-1-04 Fire Insurance v. Black & Decker, USDC, Eastern District
9-28-04 to 10-1-04 Financial Pacific Insurance v. Palmer, Placer County
10-4-04 to 10-8-04 McClintock v. Enloe, Butte County
10-13-04 to 10-20-04 Sanchez v. CHP, Placer County
10-13-04 to 10-20-04 Gonzalez v. Kellogg, Nevada County
10-26-04 to 11-2-04 Cone v. American River, USDC, Eastern District
11-9-04 to 11-15-04 Wallace v. Cross, Shasta County
11-29-04 to 12-3-04 South Lake Tahoe Refuse v. USF, USDC, Eastern District
1-7-04 to 1-14-04 Cooper v. Encinitas, San Diego County
1-11-04 to 1-14-04 Snyder v. Foster, El Dorado County

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Tommy Fibich, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' Motion to Quash Service of Summons has been continued by the court.

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status: Defendants' Motion to Strike Portions of the Complaint, Motion to Quash Service of Summons and Demurrer are scheduled to be heard June 22, 2004.

1) Name of Case: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Monterey County Superior Court
3) Case Number: M68295
4) Status: Defendant's motion to quash, motion to strike and demurrer are scheduled for 6-18-04.

1) Name of Case: Danielle A. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Suprior Court
3) Case Number: 234140
4) Status: Case is not at issue.

1) Name of Case: Dennis S., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234168
4) Status: Case is not at issue.

1) Name of Case: Nathan D. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Tehama County Superior Court
3) Case Number: 53391
4) Status: Case is not at issue.

1) Name of Case: Jocelyn A.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234320
4) Status: Defendant's Motion to Quash is for 6-15-04 and Demurrer and Motions to Strike for 7-7-04.

1) Name of Case: Charissa W.,et al.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-22191
4) Status: Defendant's Motion to Quash Service of Summons is scheduled for June 23, 2004.

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status: All defendants' motions continued due to plaintiff's pending motion to coordinate.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On June 7, 2004 I caused the within **CASE MANAGEMENT STATEMENT**, the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On June 7, 2004 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 7, 2004, at Sacramento, California.

Deanna Czarnecki

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
350 University Ave, Suite 280
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Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

MAY 28 2004

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive.

Defendants.

CASE NO: 26-22191

NOTICE OF SUBMISSION OF PETITION FOR COORDINATION (California Rules of Court, rule 1522)

TO THE CLERK of the above-named court and to each party appearing in the within action:

NOTICE IS HEREBY GIVEN that on May 27, 2004, a petition for coordination was submitted by Charissa W. and Nicole D., through their attorneys, Rudy Nolen of Nolen Saul Brelsford, 350 University Avenue, Suite 280, Sacramento, California 95825, to the Chair of the Judicial Council, requesting assignment of a judge to determine whether coordination is appropriate of the action Charissa W., et al., v. Watchtower

Bible and Tract Society of New York, Inc., et al., action number 26-22191 of the Napa County Superior Court.

A copy of the petition for coordination, memorandum of points and authorities and declaration in support of the petition is attached to this notice, to be filed in the above-named court.

Notice is hereby given that any party intending to oppose the petition for coordination must serve and submit written opposition to it no later than 45 days after service of this notice.

Dated: May 27, 2004

NOLEN SAUL BRELSFORD

Rudy Nolen
Attorneys for Plaintiff

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 PETITION FOR COORDINATION DATE: TIME: DEPT: Trial Date: None Set

Request is hereby submitted to the Chair of the Judicial Council for assignment of a judge to determine whether coordination of the within action with the included actions referred to here is appropriate.

The request is made on the grounds set forth in Code of Civil Procedure section 404.1, namely, that the actions are complex; that one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice, taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of the parties, witnesses and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied, all as more particularly set forth in the accompanying affidavits, other supporting papers, and memorandum of points and authorities.

Proof of filing in each included action of a notice of submission of petition for coordination and a copy of this petition as required by Rule 1522 and proof of service upon each party appearing in each included action of the notice of submission of petition for coordination and the petition for coordination, memorandum of points and authorities and declaration in support of petition, as required by Rule 1523 is affixed to the original of this petition as Exhibit A.

Petitioners request that this motion be heard in Napa County because This county is located in close proximity to the law offices of plaintiffs and defendants. Witnesses reside throughout Northern California and this county would be as convenient as any in which to make appearances. This county probably has greater resources to accommodate the litigation proceedings. Therefore, coordination of the included actions will serve to protect the convenience of the parties, witnesses and counsel.

///

///

A hearing on this petition is requested.

Dated: May 27 2004

NOLEN SAUL BRELSFORD

Rudy Nolen
Attorneys for Plaintiffs

EXHIBIT A

The following are the actions to be included in the Petition for Coordination. In each matter, a Notice of Submission of the Petition for Coordination and a copy of the Petition has been filed with the respective court for each case.

1. *Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses and DOES 1 - 20, inclusive;* Napa County Superior Court case number 26-239929:

2. *Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses and DOES 1 - 20, inclusive*; Napa County Superior Court case number 26-22191.

3. *Javier C. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Roseville Congregation of Jehovah's Witnesses, Carlos Vasquez and DOES 1 - 20, inclusive;* Placer County Superior Court case number SCV16723.

4. *Ken L. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Colfax Congregation of Jehovah's Witneses, A.W. Harriman, and DOES 1 - 20, inclusive;* Placer County Superior Court case number SCV 16600.

5. *Lisa H. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Pacific Grove California Congregation of Jehovah's Witnesses, Russell King and DOES 1 - 20, inclusive;* Monterey Superior Court case number M68295.

6. *Tim W. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., Watchtower Associates, LTD., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson, and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 52594.

7. *Nathan D. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 53391.

8. *Julienne Wimberley Gutierrez and Joshua Kimberley v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., Watchtower Associates, LTD., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson, Alvin Heard and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 52598.

9. *Daniel West, Shane Pence and Amber Pence v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., Watchtower Associates, LTD., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses, Inc., Quincy; California Congregation of Jehovah's Witnesses, Inc., Timothy Silva and DOES 1 - 20, inclusive,* Yolo County Superior Court case number 031439.

10. *Jocelyn A., a minor, by and through her guardian ad litem, Joe A.; Rebecca G.; Michael G.; and Nicholas S.,* vs. *Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's*

Witnesses, Petaluma Congregation of Jehovah's Witnesses, Donald Glew and DOES 1 - 20, inclusive, Sonoma County Superior Court case number 234320.

11. *Danielle A. v. ROES 1 - 100, inclusive and DOES 110 - 120, inclusive,* Sonora County Superior Court case number 234140.

12. *Dennis S., Fred F. and Sherry D. v. ROES 1 - 100, inclusive and DOES 110 - 120, inclusive,* Sonoma County Superior Court case number 234168.

Conformed copies of the face sheet from each notice of submission will be provided to the Judicial Council upon receipt.

Attached hereto are proofs of service for each party appearing in each included action of the notice of submission of petition for coordination and petition for coordination.

CASE NAME: Tabitha H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-23929

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 27, 2004, I caused the within **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen & Saul's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 21, 2004 I caused the within **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

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____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 21, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Javier C., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Placer County Superior Court
CASE NO.: SCV 16723

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 21, 2004 I caused the within, **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

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____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack, Esq.
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Attorney for Carlos Vasquez
William E. Bernard, Esq.
A Professional Corporation
1624 Santa Clara Dr., Ste 210
Roseville, CA 95661

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 21, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Placer County Superior Court
CASE NO.: 16600

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 27, 2004, I caused the within **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

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____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
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Attorney for A.W. Harriman
Craig A. Diamond
DIAMOND BAKER PHILLIPS & WALTERS, LLP
P.O. Box 1147
Cedar Ridge, CA 95924-1147

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Monterey County Superior Court
CASE NO.: M68295

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 27, 2004 I caused the within **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

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___ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

___ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

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Gold River, CA 95670-6310

Russell King
239 Beach Road
Marina, CA 93933
(In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Tim W. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Tehama County Superior Court
CASE NO.: 52594

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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Red Bluff, CA 96080
(In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004 at Sacramento, California.

Penny Hile

CASE NAME: Nathan D. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Tehama County Superior Court
CASE NO.: 53391

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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Gold River, CA 95670-6310

James L. Henderson
25 Gilmore Rd. # 17
Red Bluff, CA 96080
(In Pro Per)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Guiterrez, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Tehama County Superior Court
CASE NO.: 52598

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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(In Pro Per)

Alvin Heard
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Klamath Falls, OR 97601
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Yolo County Superior Court
CASE NO.: 031439

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

CASE NAME: Jocelyn A. v. Watchtower, et al.
COURT: Sonoma County Superior Court
CASE NO.: 234320

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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Donald Glew
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(*In Pro Per*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 Jury Trial Demanded MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR COORDINATION DATE: TIME: DEPT: Trial Date: None Set

I

INTRODUCTION

Twenty plaintiffs seek to have their personal injury complaints for monetary damages arising from sexual molestations consolidated in compliance with Code of Civil Procedure §403 and §404 - 404.9. Fifteen separate complaints have been filed to date in six counties in Northern California. These include Placer, Tehama, Monterey, Sonora, Napa and Yolo counties. It is anticipated by plaintiffs' counsel that several more complaints will be filed in these and other counties in the next few months. Each complaint alleges identical causes of action against the same group of defendants, all of whom are part of the Jehovah's Witnesses religious organization.

II

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

Statement of Facts: Plaintiffs are all victims of child molestation. All were minor children of parents who were members of the Jehovah's Witnesses religious organization and attended services at Kingdom Halls in their respective communities when their molestations occurred. Each perpetrator of the molestations was a member of the Jehovah's Witnesses when the crimes were committed and each held positions of authority in the church organization. In all of the cases, persons of authority at the local Kingdom Halls learned about the sexual abuse and failed to take action to prevent further criminal conduct and instead chose to withhold their knowledge from law enforcement officials. The plaintiffs allege this criminal conduct was concealed from other members of the congregation whose children might be at risk and in some cases, the perpetrators remained in good standing as church leaders and were given unsupervised access to children in the organization.

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Procedural Background: The first of 17[1] complaints was filed in Napa County Superior Court on July 24, 2003. The most recent complaints were filed in Placer County and Sonoma County on February 9, 2004. In each case, the complaint was accompanied by a Civil Case Cover Sheet specifying the case was "complex" under rule 1800 of the California Rules of Court. This designation was based on the following: (1) the large number of separately represented parties; (2) extensive motion practice raising difficult or novel issues that will be time consuming to resolve; (3) the large number of witnesses; and (4) that related actions are pending in one or more courts.

Because a number of the plaintiffs were over 26 years of age, specific procedural steps were mandated by Code of Civil Procedure §340.1 before this petition could be prepared. These included:

- File with the court under seal a certificate of merit for each defendant
- File with the court under seal a certificate of merit by a licensed mental health practitioner
- File with the court a complaint designating all defendants as "Doe"
- File with the court an application for permission to amend the complaint to substitute the name of the defendants for the fictitious designation.

In each of the twelve complaints, these statutory requirements have now been met. Once the Watch Tower defendants were specifically identified as required by the aforementioned code section, service of summons and complaint was accomplished on all defendants.

Defendants' responses to the Napa and Yolo County complaints were demurrers to all twelve causes of action. The first ruling on defendants' demurrer was issued by Judge Snowden in Napa County sustaining it as to certain causes of action and overruling their arguments as to others. After a second demurrer was filed in response to a first amended complaint, the court allowed five causes of action to proceed. These included: negligence, negligent appointment, retention and supervision, gross negligence, breach

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[1] Two of the original 17 complaints have now been dismissed against the Church defendants only and are not included in this Petition. Three additional complaints have been dismissed in their entirety. Two of the remaining 12 cases are awaiting court approval for amendment to name the DOE defendants consistent with CCP § 340.1.

of fiduciary duty, and fraud. Defendants answered the First Amended Complaint on March 11, 2004.

A few weeks after Judge Snowden's initial order, Yolo County Superior Court Judge Warriner issued a tentative ruling *inconsistent* with the opinion of Judge Snowden. After extensive oral argument requested on the tentative ruling, Judge Warriner modified his original opinion and issued an order *consistent* with the Napa court's reasoning. A First Amended Complaint was then filed on March 4, 2004.

Defendants' responses to the two Tehama County complaints filed in July 2003, were demurrers to all twelve causes of action. The court has not yet heard either of these motions.

Motions to Quash: The first four of these motions were filed in various counties in October 2003. Since that time, there have been a series of hearings and extensions of time to complete limited discovery requested by plaintiffs. The most significant element of this discovery is the deposition of Richard Abrahamson scheduled for June 16, 2004, in New York.

Since these filings, defendants have filed the same motion in several more cases, necessitating similar oppositions. Presumably, defendants are taking this action to hopefully secure a different ruling than the one issued in Napa. They may also be using these motions to simply occupy plaintiffs' counsel with time consuming work and delay the initiation of discovery. In either case, this conduct demonstrates the importance of this Petition to eliminate needless, time consuming and duplicative law and motion. The cases in which identical motions to quash have been filed, and their hearing dates, are:

Jocelyn A., et al. v. Watchtower, et al.	TBA
Wimberley, et al. v. Watchtower, et al.	TBA
Tim W. v. Watchtower, et al.	TBA
West v. Watchtower, et al.	TBA
Javier C. v. Watchtower, et al.	June 8, 2004
Charissa W. v. Watchtower, et al.	June 23, 2004
Lisa H. v. Watchtower, et al.	June 18, 2004
Ken L. v. Watchtower, et al.	June 22, 2004

Demurrers: Notwithstanding defendants lack of success in Napa and Yolo counties, the same demurrers are awaiting hearings in several additional case. Oppositions virtually identical to the ones previously filed by plaintiffs have been filed in these jurisdictions. If inconsistent rulings are forthcoming, more delay may be occasioned to argue motions for reconsideration, draft amended complaints and possibly initiate appeals. The cases in which demurrers have been filed and their hearing dates are as follows:

Jocelyn A., et al. v. Watchtower, et al.	TBA
Wimberley, et al. v. Watchtower, et al.	TBA
Tim W. v. Watchtower, et al.	TBA
Javier C. v. Watchtower, et al.	June 8, 2004
Lisa H. v. Watchtower, et al.	June 18, 2004
Ken L. v. Watchtower, et al.	June 22, 2004
West v. Watchtower, et al.	TBA

Motions to Strike Portions of Complaint: Also, defendants have filed motions to strike portions of the complaint in the several actions. The cases and their hearing dates are as follows:

Javier C. v. Watchtower, et al.	June 8, 2004
Tabitha H. v. Watchtower, et al.	June 15, 2004
Lisa H. v. Watchtower, et al.	June 18, 2004
Ken L. v. Watchtower, et al.	June 22, 2004

Meet and Confer Requirement: In compliance with California Rules of Court, Rule 1500(a), counsel for plaintiffs, Rudy Nolen, wrote defendants' attorney, Robert Schnack, on February 18, 2004 requesting that he agree to consolidation and coordination of all cases recently filed. Mr. Schnack requested clarification about which cases plaintiffs intended to coordinate, and whether the coordination would be for all purposes, including trial. In a letter dated February 26, 2004, plaintiffs' counsel responded that they intended *all* cases to be coordinated for *all* purposes, including trial. Mr. Schnack responded on March 2, 2004, that his clients did not agree that coordination for all purposes was proper. Exception is taken to their position.

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III

LEGAL ARGUMENT

A. COORDINATION IS APPROPRIATE BECAUSE THE VARIOUS COMPLAINTS MEET REQUIREMENTS OF CCP § 403.

1. Common Questions of Fact and Law Predominate and are Significant in Each Action: Unquestionably, each plaintiff's molestation factually differs. The various perpetrators, all of whom were Jehovah's Witnesses who held leadership positions and who exercised authority over members of the congregation, each engaged in nefarious acts under different circumstances. However, crucial to every case, the molestations by these individuals became known to other church leaders at the local Kingdom Halls and eventually further into the church's organizational structure. Common to each case was a decision by church officials to keep these crimes from law enforcement officials. Common to each case was a decision to manage internally the criminal behavior of their fellow member by counseling the perpetrator within the church's structure. Common to each case was a concomitant decision not to tell other members of the congregation that one of their leaders was a sexual predator who had committed heinous and criminal acts on children of their fellow church members. Common to each case, the perpetrator/church leader continued to molest members' children after the perpetrator's criminal acts were known.

Each lawsuit asserts identical legal theories consisting of common law negligence; negligent appointment, retention, and supervision; gross negligence - wilful misconduct; breach of fiduciary duty; fraud - intentional misrepresentation; fraud - concealment; conspiracy; and intentional infliction of emotional distress. With the exception of *Charissa W., et al. v. Watchtower, et al.* and *Tabitha H. v. Watchtower, et al.* filed in Napa County, all of the lawsuits also assert a legal theory for sexual battery.[2] Unmistakably, the church intends to defend each lawsuit by claiming that its decision to handle the criminal behavior internally, and their corresponding inaction preventing further molestations and protecting

[2] Sexual battery was not alleged in the Napa County cases as the perpetrator is deceased.

their members' children, was conduct protected by the First Amendment. This common strategy will be utilized in every lawsuit and in view of the briefing already evident in the demurrers, motions for summary judgment/adjudication are a *fait accompli.*

2. **The Actions are Complex:** Each plaintiff is claiming emotional and psychological injuries caused by the trauma of the molestations. The injuries and damages, although complex and personal as to each individual, are no more involved than other tort actions claiming personal injuries. The complexity of these cases is related more to the number of injured individuals, their inter-family relationships in the context of their Jehovah's Witnesses beliefs and the control and influence the organization exercised over its members. This cult milieu demanded obedience to the church leadership, and a corresponding fear of ostrization if the leaders' directives were not followed. These facts allowed the events of these lawsuits to persist for years resulting in further injuries to a number of innocent children. Because the allegations involve a religious entity, unique issues of a constitutional nature are extant which are unlike those usually found in most tort claims. One need only review defendants' demurrers to appreciate the scholarly component of the theories promulgated against the Jehovah's Witnesses defendants.

3. **Convenience of Parties, Witnesses and Counsel:** Discovery will involve a number of depositions of church representatives, both local and out of state. Each plaintiff and close family members familiar with their trauma will be deposed along with health care providers knowledgeable about their injuries. It would be convenient to coordinate this discovery in an orderly and efficient manner here in Northern California and with a judge located near the law firms' offices in Sacramento. It is contemplated there will be numerous court filings regarding discovery issues and the less time spent by counsel traveling to a distant courthouse would benefit everyone.

4. **Coordination is Consistent With the Relative Development of the Action and the Work Product of Counsel:** The development of the lawsuits needs to be coordinated to avoid a duplication of effort, consistency in rulings on complex legal issues and managing the expense of prosecuting and defending the claims. The work product of

counsel would be well served by coordination to the extent a single repository of documents can be agreed upon coupled with the likelihood that documents produced by defendants will be subject to a protective order regarding dissemination outside of litigation.

5. Coordination Will Advance Efficient Use of Judicial Resources: Avoiding duplicate effort in several different counties seems self-evident. Consuming the time of a number of judges and their staffs with telephone calls, lengthy and complex briefs, time consuming law and motion hearings could all be avoided by a single judge presiding over the case. His or her familiarity with the case would certainly expedite these procedures and the amount of time devoted to each matter. Naturally, multiple jury trials would clearly consume an enormous amount of time and expense, particularly when the same legal theories will be tried in each case. Finally, it goes without saying that the cost savings to the litigants would be substantial if only a single trial were necessary.

6. Coordination Will Prevent Duplicative And Inconsistent Rulings, Orders, or Judgments: The parties have already received an inconsistent ruling on demurrers filed in Napa and Yolo Counties. It is likely, given the unique constitutional issues and the anticipated objections to discovery, the potential for several judges reaching different opinions is inevitable. Most importantly, since these cases will be the subject of motions for summary judgment and/or adjudication, a single briefing and hearing would best serve the interests of justice. The possibility that judges would issue different rulings on *in limine* motions and evidentiary objections during a trial is unmistakable. Whether collateral estoppel applies from one case to another is likely to be another contested matter. Appeals from these rulings, given the enormity of the claims, creates further consumption of judicial resources that can be avoided if a single trial were ordered.

It is difficult to assess at this nascent stage of litigation if settlement is a realistic prospect. Litigants usually expect a settlement effort at a time appropriate to the development of the evidence. We suggest that a single jurist knowledgeable of plaintiffs' injuries and damages, the defenses asserted by the defendants and who would be familiar with counsel so as to foster a greater probability of a global settlement.

B. THE BENEFITS OF COORDINATION OUTWEIGH THE POTENTIAL CONFLICTS OR INCONVENIENCE OF THE PARTIES

It is noteworthy that defendants expressed concern in correspondence about coordinating these cases for discovery purposes. The benefits to them are obvious. They do not want the same witnesses deposed in each of the lawsuits. The expense of litigating in several different counties is something the church defendants can absorb more readily with their greater resources. Choosing to file identical motions in different counties is a tactic available to the defendants where different rulings might work to their benefit. On the other hand, plaintiffs are less likely to engage in such tactics simply because the cost of doing so would be prohibitive. It seems evident that a single judge familiar with the cases and counsel would be more convenient and would engender an atmosphere in which matters might be resolved more efficiently and consume less of the court's time, particularly when the state's budget crisis has limited a number of counties' ability to handle civil matters.

Naturally, the defendants would like to avoid a single trial because of the number of plaintiffs who have made claims. While this is an understandable concern, the interests of justice and the economics of trying 20 to 40 cases is unwieldy and seemingly impractical. The benefits outlined above outweigh the concerns of the Church. After all, it is not the plaintiffs' fault that the instances of abuse was so pervasive within this organization so as to create the problem giving rise to these lawsuits.

Dated: May 21, 2004

NOLEN SAUL BRELSFORD

Rudy Nolen
Attorneys for Plaintiffs

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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 DECLARATION OF RUDY NOLEN IN SUPPORT OF PETITION FOR COORDINATION DATE: TIME: DEPT: Trial Date: None Set

I, RUDY NOLEN, declare as follows:

I am a member of the State Bar of California and attorney fo record for petitioners CHARISSA W. and NICOLE D.

2. The names of the parties to all included actions and the name and address of each party's attorney of record, along with the complete title of each included action, together with the title of the court in which the action is pending and the number of the action, are set forth below:

a. *Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses and DOES 1 - 20, inclusive;* Napa County Superior Court case number 26-239929:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Tabitha H.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670

b. *Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses and DOES 1 - 20, inclusive*; Napa County Superior Court case number 26-22191:

Plaintiff/Petitioner:	Attys for Plaintiff:	Defendant:	Attys for Defendant:
Charissa W. and Nicole D.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Napa Kingdom Hall now doing business as Napa Congregation of Jehovah's Witnesses, Oak Knoll Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670

c. *Javier C. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Roseville Congregation of Jehovah's Witnesses, Carlos Vasquez and DOES 1 - 20, inclusive;* Placer County Superior Court case number SCV16723:

Plaintiff/Petitioner:	Attys for Plaintiff:	Defendant:	Attys for Defendant:
Javier C.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Roseville Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		Carlos Vasquez	William E.Bernard 1624 Santa Clara Dr., Suite 210 Roseville, CA 95661

d. *Ken L. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Colfax Congregation of Jehovah's Witneses, A.W. Harriman, and DOES 1 - 20, inclusive;* Placer County Superior Court case number SCV 16600:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Ken L.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Colfax Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		A. W. Harriman	Craig Diamond Diamond, Baker, Phillips & Walters, LLP P.O. Box 1147 Cedar Ridge, CA 95924

e. *Lisa H. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Pacific Grove California Congregation of Jehovah's Witnesses, Russell King and DOES 1 - 20, inclusive;* Monterey Superior Court case number M68295:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Lisa H.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Pacific Grove California Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		Russell King	Russell King 239 Beach Road Marina, CA 93933 *(In Pro Per)*

f. *Tim W. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson, and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 52594:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Tim W.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc.	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		James Henderson	James L. Henderson 25 Gilmore Road, #17 Red Bluff, CA 96080 (*In Pro Per*)

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g. *Nathan D. v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 53391:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Nathan D.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, North Congregatin of Jehovah's Witnesses, Red Bluff, CA, Inc.	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		James Henderson	James L. Henderson 25 Gilmore Road, #17 Red Bluff, CA 96080 *(In Pro Per)*

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h. *Julienne Wimberley Gutierrez and Joshua Kimberley v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., James Henderson, Alvin Heard and DOES 1 - 20, inclusive;* Tehama County Superior Court case number 52598:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Julienne Wimberley Gutierrez and Joshua Kimberley	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc.	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		James Henderson	James L. Henderson 25 Gilmore Road, #17 Red Bluff, CA 96080 (*In Pro Per*)
		Alvin Heard	Alvin Heard 703 Delta Street Klammath Falls, OR 97601 (*In Pro Per*)

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i. *Daniel West, Shane Pence and Amber Pence v. Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses, Inc.; Quincy, California Congregation of Jehovah's Witnesses, Inc., Timothy Silva and DOES 1 - 20, inclusive,* Yolo County Superior Court case number 031439:

Plaintiff/Petitioner:	**Attys for Plaintiff:**	**Defendant:**	**Attys for Defendant:**
Daniel West, Shane Pence, Amber Pence	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses, Inc.; Quincy, California Congregation of Jehovah's Witnesses, Inc.	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		Timothy Silva	Michael W. Jansen Law Offices of Michael W. Jansen 1301 College Street Woodland, CA 95695

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j. *Jocelyn A., a minor, by and through her guardian ad litem, Joe A.; Rebecca G.; Michael G.; and Nicholas S.*, vs. *Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Inc., Christian Congregation of Jehovah's Witnesses, Petaluma Congregation of Jehovah's Witnesses, Donald Glew and DOES 1 - 20, inclusive,* Sonoma County Superior Court case number 234320:

Plaintiff/Petitioner:	Attys for Plaintiff:	Defendant:	Attys for Defendant:
Jocelyn A., a minor by and through her guardian ad litem, Joe A.; Rebecca G., Michael G., and Nichols S.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Society of Pennsylvania, Christian Congregation of Jehovah's Witnesses, Petaluma Congregation of Jehovah's Witnesses	Robert J. Schnack Bullivant Houser Bailey 11335 Gold Express Dr. Suite 105 Gold River, CA 95670
		Donald Glew	Donald Glew P.O. Box 424245 San Francisco, CA 94142 *(In Pro Per)*

k. *Danielle A. v. ROES 1 - 100, inclusive and DOES 110 - 120, inclusive,* Sonoma County Superior Court case number 234140:

Plaintiff/Petitioner:	Attys for Plaintiff:	Defendant:	Attys for Defendant:
Danielle A.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	ROES 1 - 100, inclusive and DOES 110 - 120, inclusive	Not yet amended to name ROE defendants nor served.

l. *Dennis S., Fred F. and Sherry D. v. ROES 1 - 100, inclusive and DOES 110 - 120, inclusive,* Sonoma County Superior Court case number 234168:

Plaintiff/Petitioner:	Attys for Plaintiff:	Defendant:	Attys for Defendant:
Dennis S., Fred F., and Sherry D.	Rudy Nolen William L. Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	ROES 1 - 100, inclusive and DOES 110 - 120, inclusive	Not yet amended to name ROE defendants nor served.

3. No other action is known to be pending in a court of this state that shares a common question of fact or law with the included actions.

4. Only one of the included actions has an answers to the Complaint on file. Limited discovery has commenced in the form of interrogatories and document requests, and a single deposition has been taken of a former ministerial servant/congregation secretary. Hearings have occurred, and are currently set, involving demurrers, motions to quash service and motions to strike pertinent poritions of the various complaints, which are outlined in detail at pages 4 and 5 of the memorandum of points and authorities in support of the petition. No trial dates have been ordered in any of the cases. Coordination is consistent with the relative development of the actions and the work product of counsel.

5. Based on information, research and belief, the included actions involve the following questions of fact and law: Various perpetrators, all of whom were Jehovah's Witnesses who held leadership positions and who exercised authority over members of the congregation, each engaged in nefarious acts under different circumstances. Crucial to every case, the molestations by these individuals became known to other church leaders at the local Kingdom Halls and eventually further into the church's organizational structure. Common to each case was a decision by church officials to keep these crimes from law enforcement officials. Common to each case was a decision to manage internally the criminal behavior of their fellow member by counseling the perpetrator within the church's structure. Common to each case was a concomitant decision not to tell other members of the congregation that one of their leaders was a sexual predator who had committed heinous and criminal acts on children of their fellow church members. Common to each case, the perpetrator/church leader continued to molest members' children after the perpetrator's criminal acts were known. Each lawsuit asserts identical legal theories consisting of common law negligence; negligent appointment, retention, and supervision; gross negligence - wilful misconduct; breach of fiduciary duty; fraud - intentional misrepresentation; fraud - concealment; conspiracy; and intentional infliction of emotional distress. With the exception of *Charissa W., et al. v. Watchtower, et al.* and *Tabitha H. v.*

Watchtower, et al. filed in Napa County, all of the lawsuits also assert a legal theory for sexual battery. These questions predominate and are significant in each action.

6. The actions are complex: Each plaintiff is claiming emotional and psychological injuries caused by the trauma of the molestations. The injuries and damages, although complex and personal as to each individual, are no more involved than other tort actions claiming personal injuries. The complexity of these cases is related more to the number of injured individuals, their inter-family relationships in the context of their Jehovah's Witnesses beliefs and the control and influence the organization exercised over its members. This cult milieu demanded obedience to the church leadership, and a corresponding fear of ostrization if the leaders' directives were not followed. These facts allowed the events of these lawsuits to persist for years resulting in further injuries to a number of innocent children. Because the allegations involve a religious entity, unique issues of a constitutional nature are extant which are unlike those usually found in most tort claims.

7. The trial of these common issues before one judge at one site will (1) advance the efficient use of judicial resources, (2) prevent duplicative and inconsistent rulings, orders and judgments, and (3) increase the likelihood of settlement: Consuming the time of a number of judges and their staffs with telephone calls, lengthy and complex briefs, time consuming law and motion hearings could all be avoided by a single judge presiding over the case. His or her familiarity with the case would certainly expedite these procedures and the amount of time devoted to each matter. Naturally, multiple jury trials would clearly consume an enormous amount of time and expense, particularly when the same legal theories will be tried in each case. It is likely, given the unique constitutional issues and the anticipated objections to discovery, the potential of several judges reaching different opinions is inevitable. Most importantly, since these cases will be the subject of motions for summary judgment and/or adjudication, a single briefing and hearing would best serve the interests of justice. The possibility that judges would issue different rulings on *in limine* motions and evidentiary objections during a trial is unmistakable. Whether

collateral estoppel applies from one case to another is likely to be another contested matter. Appeals from these rulings, given the enormity of the claims, creates further consumption of judicial resources that can be avoided if a single trial were ordered.

8. The included actions should be coordinated in Napa County. This county is located in close proximity to the law offices of plaintiffs and defendants. Witnesses reside throughout Northern California and this county would be as convenient as any in which to make appearances. This county probably has greater resources to accommodate the litigation proceedings. Therefore, coordination of the included actions will serve to protect the convenience of the parties, witnesses and counsel.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. This declaration was executed on May 27 2021 Sacramento, California.

Rudy Nolen

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 27, 2004 I caused the within **NOTICE OF SUBMISSION OF PETITION FOR COORDINATION, PETITION FOR COORDINATION, MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION IN SUPPORT OF PETITION FOR COORDINATION** the original of which was produced on recycled paper, to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 27, 2004, at Sacramento, California.

Penny Hile

of 6.23

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive
Suite 105
Gold River, CA 95670
TELEPHONE NO.: 916-852-9100 FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

FILED

MAY 14 2004

Clerk of the Napa Superior Court
By: [signature]
Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
STREET ADDRESS: 825 Brown Street
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.

DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: June 1, 2004 Time: 8:30 A.M. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* The Church Defendants (i.e., the entity defendants);
   b. [ ] This statement is submitted **jointly** by parties *(names):* Watch Tower Pennsylvania specially appears, because it has pending a motion challenging personal jurisdiction.

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):*
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Claims alleged concerning sex abuse of minors.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [New July 1, 2002]

CASE MANAGEMENT STATEMENT

1303

Legal Solutions Plus

Cal. Rules of Court, rule 212

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
The adult plaintiffs allege claims relating to sex abuse that allegedly occurred when they were minors. Plaintiffs allege various legal theories under which they contend the Church Defendants are vicariously liable for the alleged abuse. The Church Defendants deny plaintiffs' claims.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* The Church Defendants have not decided whether to request a jury trial.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* See attachment.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 10-12
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

10. d. The party or parties are willing to participate in *(check all that apply):*
    (1) [ ] Mediation
    (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    (4) [ ] Binding judicial arbitration
    (5) [ ] Binding private arbitration
    (6) [X] Neutral case evaluation
    (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
    g. [ ] This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court *(specify exemption):*

11. **Settlement conference**
    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**
    a. [X] Insurance carrier, if any, for party filing this statement *(name):* Multiple.
    b. Reservation of rights: [ ] Yes [ ] No
    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):* The Church Defendants expect that some, if not all, of the insurers will either deny coverage or issue reservations of rights.

13. **Jurisdiction**
    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.
    [ ] Bankruptcy [ ] Other *(specify):*
    Status:

14. **Related cases, consolidation, and coordination**
    a. [ ] There are companion, underlying, or related cases.
        (1) Name of case:
        (2) Name of court:
        (3) Case number:
        (4) Status:
        [ ] Additional cases are described in Attachment 14a.
    b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* See attachment for no. 6.b. above.

15. **Bifurcation**
    [X] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):* The Church Defendants will consider a motion to bifurcate liability from damages.

16. **Other motions**
    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):* Motions for summary judgment and/or summary adjudication.

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Church Defendants	Written Discovery	October 2004
Church Defendants	Plaintiffs' Depositions	January 2005
Church Defendants	Plaintiffs' Witnesses	April 2005
Church Defendants	Expert Witnesses	Per Code

    c. ☒ The following discovery issues are anticipated *(specify):* The Church Defendants expect that plaintiffs will seek broad discovery from them concerning church hierarchy, religious practices and policies, and other topics or issues protected from discovery by the federal and California constitutions.

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* 1

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 6, 2004

Robert J. Schnack
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

Attachment to CMC Statement No. 6.b.:

Plaintiffs' counsel apparently intends to file a motion to coordinate several California cases filed against the Church Defendants involving different alleged abusers in different counties. Different local congregations in various counties are named as defendants in the various lawsuits. The Church Defendants oppose coordination for purposes of trial but likely will not oppose coordination of certain discovery and other aspects of the cases that may be susceptible to coordination. However, until a petition for coordination is actually filed by plaintiffs' counsel, the Church Defendants cannot fully respond.

4108806.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 6, 2004 the following ordinary business practice., I served the foregoing document(s) described as:

CASE MANAGEMENT CONFERENCE STATEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorney for Plaintiffs Rudy Nolen Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 6, 2004, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☐ Amended Notice (If checked)

TO: Rudy Nolen
Nolen Saul Brelsford
350 University Avenue Ste. 280
Sacramento, CA 95825

DATE: June 1, 2004 **TIME:** 8:30 am **ROOM:** Department B

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Case Management Conference set in compliance with Rule of Court 212(b)(1). Case Management Conference Statement must be filed 15 days prior to Conference, Judicial Council Form CM-110.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 4/28/2004

Stephen A. Bouch, Court Executive Officer
By: M. Meyer
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Personna.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☐ Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: June 1, 2004 **TIME:** 8:30 am **ROOM:** Department B

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Case Management Conference set in compliance with Rule of Court 212(b)(1). Case Management Conference Statement must be filed 15 days prior to Conference, Judicial Council Form CM-110.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 4/28/2004

Stephen A. Bouch, Court Executive Officer

By: M. Mayer
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Personna.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 858-2263
E-mail: bob.schnack@bullivant.com

March 30, 2004

EK
4/6/04

Via FedEx

Honorable W. Scott Snowden
Napa County Superior Court
Dept. B
825 Brown Street
Napa, Ca 94559

Re: *Charissa W., et al v. Watchtower, et al*
Napa County Superior Court No. 26-22191

Dear Judge Snowden:

I represent the entity defendants in this action and write on behalf of both plaintiffs and defendants to request a continuance of the hearing currently set for April 14, 2004 at 8:30 a.m. on defendant Watch Tower Pennsylvania's motion to quash service based on the personal jurisdiction defense. As the Court may recall, plaintiffs have requested the deposition of Watch Tower Pennsylvania's 'person most knowledgeable,' or PMK, on the personal jurisdiction issue. I have been advised that Watch Tower Pennsylvania's PMK, Richard Abrahamson, recently had serious surgery and is still out recuperating. I am further advised that, as a result, it will be sometime in May, at the earliest, when he might be available for a deposition. (Defendant Watch Tower Pennsylvania will serve objections to plaintiffs' notice of PMK deposition, but those objections are not now an issue before the Court.)

Thus, the parties respectfully request that the April 14th hearing be continued to June 1, 2004, when a similar motion to quash service in *Tabitha H. v. Watchtower, et al*, case no. 26-23929, is scheduled. Thank you in advance for your consideration of this request.

Very truly yours,

Robert J. Schnack

RJS:mt
cc: Rudy Nolen, plaintiffs' attorney (via fax)
4107883.1

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
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Kenneth Fibich, Esq., SBN 06952600
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314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
MAR 30 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEFENDANT'S DEMURRER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** **Date: February 19, 2004** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants demur to each cause of action in Plaintiffs' second amended complaint was regularly scheduled for hearing on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. None of the parties to the action

requested a hearing regarding Defendants' demurrer and the tentative ruling was recorded as stated below.

TENTATIVE RULING: The demurrer is OVERRULED.

Plaintiffs' amended complaint contains causes of action for negligence, negligent appointment, retention and supervision, gross negligence, breach of fiduciary duty, and fraud. Defendants demur to the amended complaint on the ground that plaintiffs have failed to state facts to show that the defendants owed plaintiffs a legal duty of care to support each cause of action. A review of the complaint reveals that plaintiffs have stated facts that, if true, would impose a duty running from defendants to plaintiffs under ordinary negligence principles and under plaintiff's breach of fiduciary duty allegations.

As did the earlier complaint, the Plaintiffs' amended complaint alleges generally that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering severe sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of Edward Villegas, a Church Elder, and about the defendants' failure to provide the plaintiffs and their families with notice or warning regarding the past abuse inflicted by Villegas or take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so. The amended complaint alleges that the Church defendants used the

daycare center run out of the Villegas' home to attract new converts, that plaintiffs' families became new converts and placed their trust and confidence in Villegas and the church, and that Villegas used his position as a Church Elder to gain access to the plaintiffs and to sexually abuse them.

Defendants seek to go outside the complaint's allegations to assert that the day care center where the plaintiffs were allegedly molested was an in-home day care center that was not church-affiliated. The complaint's allegations assert otherwise, and must be accepted as true for purposes of ruling on a demurrer.

Under the reasoning expressed in *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377 and other cases cited by plaintiffs, this court concludes that the amended complaint states facts to support all of the asserted causes of action, including the required element of duty. Analyzing the allegations using the factors set down in Rowland v. Christian (1968) 69 Cal.2d 108 and considering the existence of duty imposed by a special relationship, as discussed in Richelle L. v. Roman Catholic Archbishop (2003) 106 Cal.App.4th 257, the complaint withstands demurrer.

Defendants shall answer within 20 days.

IT IS ORDERED as follows:

The Court will overrule defendants' demurrer. Defendants shall answer within 20 days.

The Church Defendants' Motion to Quash Service of Summons and Complaint also was heard on February 19, 2004 at 8:30 a.m. in Department B of the Napa County Superior Court. The Court having issued its Tentative Ruling on Watchtower Bible and Tract Society of Pennsylvania's Motion to Quash Service of Summons as to Watchtower Bible and Tract Society of Pennsylvania ruled on February 18, 2004 as follows:

TENTATIVE RULING: The motion to quash service of summons for lack of personal jurisdiction is GRANTED. On November 21, 2003, this court continued this motion to allow

plaintiffs to conduct discovery into Watch Tower Pennsylvania's contacts with California. Plaintiffs, who have the burden of proof, have submitted no supplemental evidence to support their opposition to defendant's motion. The defendant has submitted supplemental evidence and points and authorities in support of the motion. The court concludes from all of the evidence presented that moving defendant does not have the requisite substantial, continuous and systematic contacts with California to subject it to this State's general jurisdiction. There is also no basis for asserting personal jurisdiction over moving defendant, as none of the defendant's few contacts with this forum are related to the controversy in question. Finally, plaintiffs have provided no evidence to show that this defendant is the alter ego or that principal of other named defendants.

Counsel for Plaintiffs CHARISSA W. and NICOLE D. requested oral argument regarding the Court's ruling on defendant's Motion to Quash. Appearing for Plaintiffs CHARISSA W. and NICOLE D. was William Brelsford, Esq., of NOLEN SAUL BRELSFORD. Appearing for Defendants was Robert Schnack, Esq., of BULLIVANT HOUSER BAILEY, PC.

After oral argument by the parties, the Court having reviewed all pleadings on file with the Court regarding this motion, the Court ruled as follows:

IT IS ORDERED that the Motion to Quash Service of Summons for Lack of Personal Jurisdiction asserted by Watch Tower Bible and Tract Society of Pennsylvania is continued until April 14, 2004 at 8:30 a.m. in Department B to allow Plaintiffs additional time conduct discovery on the minimum contacts, if any, Watch Tower Bible and Tract Society of Pennsylvania has with California.

IT IS SO ORDERED.

Dated: 4, 4th, 2004

Judge of the Superior Court of California,
County of Napa

Approval as to form.

Dated: February ___, 2004

Robert J. Schnack, Esq., Attorney for Watchtower Defendants

Dated: ~~February~~ March 2, 2004

William L. ~~Brelsford~~, Esq., Attorney for Plaintiffs CHARISSA W. and NICOLE D.

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., ET AL.

FILED
MAR 12 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

CHURCH DEFENDANTS' ANSWER TO SECOND AMENDED COMPLAINT

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA CONGREGATION OF JEHOVAH'S WITNESSES, and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES (collectively hereinafter "Church Defendants")[1] answer the second amended complaint (hereinafter "complaint") of plaintiffs and admit, deny, and allege as follows:

Church Defendants generally deny each and every allegation of plaintiffs' complaint pursuant to California Code of Civil Procedure § 431.30 and specifically deny that plaintiffs are entitled to any damages. This answer to plaintiffs' complaint is filed without prejudice to these

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") specially appears, because its motion to quash service of summons and complaint based on lack of personal jurisdiction is still pending before the Court.

answering Church Defendants' right to file an amended answer, including additional affirmative defenses and/or cross-complaints, after conducting further investigation and discovery.

For their separate and distinct affirmative defenses, Church Defendant allege as follows:

FIRST AFFIRMATIVE DEFENSE

(First Amendment)

The complaint, and each cause of action thereof, is barred by the First Amendment to the U.S. Constitution and/or Article 1, §4 of the California Constitution.

SECOND AFFIRMATIVE DEFENSE

(Constitutional Proscriptions)

The complaint, and each cause of action thereof, characterizes church hierarchy, doctrine, policy, and practices to establish a foundational basis for liability in violation of federal and state constitutional proscriptions.

THIRD AFFIRMATIVE DEFENSE

(Failure To State A Claim)

The complaint, and each cause of action thereof, fails to state facts sufficient to constitute causes of action against each of these answering Church Defendants.

FOURTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The complaint, and each cause of action thereof, is barred by the applicable statutes of limitations set forth in California Code of Civil Procedure.

FIFTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs have unreasonably delayed in bringing this action to the prejudice of each of these answering Church Defendants and are therefore barred from bringing the action by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

(Mitigation of Damages)

To the extent that plaintiffs failed and neglected to use reasonable care to minimize and

mitigate their claimed losses, injuries, and damages complained of, if there are any, plaintiffs' damages, if any, are barred or subject to reduction.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to Plead Fraud with Particularity)

Plaintiffs have failed to plead the requisite elements of fraud and/or misrepresentation with sufficient particularity, pursuant to Civil Code sections 1709 and 1710, and all such claims must therefore be dismissed.

EIGHTH AFFIRMATIVE DEFENSE

(Punitive Damages)

The complaint, and each cause of action thereof, fails to state facts sufficient to constitute a cause of action against each of these answering Church Defendants for punitive damages.

NINTH AFFIRMATIVE DEFENSE

(Failure to Provide Notice)

Plaintiffs failed to give appropriate or timely notices required to bring their claims.

TENTH AFFIRMATIVE DEFENSE

(Waiver and/or Estoppel)

By their own conduct, plaintiffs have waived and are estopped from pursuing the claims alleged in their complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Third Parties)

The acts or omissions of third parties, individuals, or entities for which Church Defendants have no responsibility, either directly or indirectly, whether or not presently named parties to this action, were the sole, intervening, or contributing cause of the plaintiffs' claimed damages, if there are any. Such acts or omissions bar and/or proportionately reduce recovery, if any, by plaintiffs against the Church Defendants.

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TWELFTH AFFIRMATIVE DEFENSE

(Superceding Acts)

The alleged acts or omissions, if any, of Church Defendants were not a substantial factor in bringing about plaintiffs' claimed damages, if there are any, and thereafter were not a contributing cause thereof, but were superceded by the acts or omissions of other persons and/or entities, which were independent, intervening, and proximate causes of any damages suffered by plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Legal Duty)

None of the Church Defendants owed plaintiffs an actionable legal duty of care necessary to support the causes of action alleged in the complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Personal Jurisdiction)

Watch Tower PA lacks the contacts with California necessary for this Court to constitutionally exercise personal jurisdiction over it.

FIFTEENTH AFFIRMATIVE DEFENSE

(Punitive Damages Unconstitutional)

Plaintiffs' claims for punitive or exemplary damages violates rights provided under the First, Fifth, Sixth, Eighth, and/or Fourteenth Amendments to the U.S. Constitution and under the California Constitution.

WHEREFORE, Church Defendants each pray for judgment as follows:

1. That plaintiffs each take nothing by their complaint;

2. That Church Defendants each be dismissed with prejudice, with an award of costs; and

3. That Church Defendants each be awarded such other and further relief as the court deems just and proper.

DATED: March 11, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4107137.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On March 11, 2004, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' ANSWER TO SECOND AMENDED COMPLAINT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

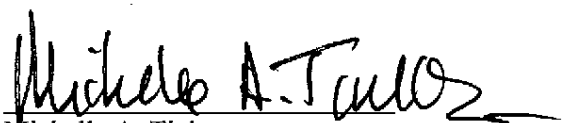
____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 11, 2004, at Gold River, California.

By 
Michelle A. Tinker

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Motion: General **PID # :**	**Case #** 26-22191 **Event Date:** February 27, 2004 **Clerk:** D. Rey **Reporter:** Karen Kronquest **Cite/Report #:**

Appearances:

William Brelsford, Attorney for Plaintiffs via Court call
Robert Schnack, Attorney for Defendants, Watchtower Bible and Tract Society of New York Inc., et al via Court call

This matter comes on at this date for motion to quash service of summons.

The Court hears arguments of counsel.

The Court orders that his matter shall be continued to April 14, 2004 at 8:30 AM in Courtroom B.

-o0o-

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Hearing: Demurrer/Motion/Case Management Conference **PID # :**	**Case #** 26-22191 **Event Date:** February 19, 2004 **Clerk:** D. Rey **Reporter:** Sue Straub **Cite/Report #:**

Appearances:

William Brelsford, Attorney for Plaintiffs
Robert Schnack, Attorney for Defendants, Watchtower Bible and Tract Society of New York Inc., et al

The Court hears arguments of counsel.

By order of the Court, the Tentative Ruling is adopted and incorporated in the minutes as follows:

DEMURRER TO AMENDED COMPLAINT

TENTATIVE RULING: The demurrer is OVERRULED.

Plaintiffs' amended complaint contains causes of action for negligence, negligent appointment, retention and supervision, gross negligence, breach of fiduciary duty, and fraud. Defendants demur to the amended complaint on the ground that plaintiffs have failed to state facts to show that the defendants owed plaintiffs a legal duty of care to support each cause of action. A review of the complaint reveals that plaintiffs have stated facts that, if true, would impose a duty running from defendants to plaintiffs under ordinary negligence principles and under plaintiff's breach of fiduciary duty allegations.

As did the earlier complaint, the Plaintiffs' amended complaint alleges generally that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of

suffering severe sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of Edward Villegas, a Church Elder, and about the defendants' failure to provide the plaintiffs and their families with notice or warning regarding the past abuse inflicted by Villegas or take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so. The amended complaint alleges that the Church defendants used the daycare center run out of the Villegas' home to attract new converts, that plaintiffs' families became new converts and placed their trust and confidence in Villegas and the church, and that Villegas used his position as a Church Elder to gain access to the plaintiffs and to sexually abuse them.

Defendants seek to go outside the complaint's allegations to assert that the day care center where the plaintiffs were allegedly molested was an in-home day care center that was not church-affiliated. The complaint's allegations assert otherwise, and must be accepted as true for purposes of ruling on a demurrer.

Under the reasoning expressed in *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377 and other cases cited by plaintiffs, this court concludes that the amended complaint states facts to support all of the asserted causes of action, including the required element of duty. Analyzing the allegations using the factors set down in *Rowland v. Christian* (1968) 69 Cal.2d 108 and considering the existence of duty imposed by a special relationship, as discussed in *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, the complaint withstands demurrer.

Defendants shall answer within 20 days.

Counsel are advised to meet and confer with regards to the pending discovery motion and motion to quash.

The Court orders that this matter shall be continued to February 27, 2004 at 8:30 AM in Courtroom B for. Counsel may appear via telephone on February 27, 2004.

-o0o-

2/19 SFAM

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
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Telephone: (916) 852-9100
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
FEB 13 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

CHURCH DEFENDANTS' REPLY IN SUPPORT OF DEMURRERS TO PLAINTIFFS' AMENDED COMPLAINT[1]

DATE: February 19, 2004
TIME: 8:30 a.m.
DEPT: B

INTRODUCTION

Plaintiffs do not appear to challenge that a special (or confidential or fiduciary) relationship is a required element of each of their remaining claims. Also, plaintiffs largely oppose the Church Defendants' demurrers on the basis of Juarez v. Boy Scouts of America, (2000) 81 Cal.App.4th 377, 97 Cal.Rptr.2d 12. However, that case dealt strictly with the liability of "youth organizations" like the Boy Scouts, not with church entities, for a volunteer Scoutmaster's sexual molestation of a minor plaintiff at officially sanctioned scouting events. The Juarez court also specifically limited its holding to the facts of the Juarez case.

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania specially appears with respect to this reply, because this defendant has pending a motion to quash service of summons and complaint based on the defense that the California courts lack jurisdiction over it.

The bottom line is that Juarez does not assist plaintiffs here, and plaintiffs' operative complaint does not allege any particular facts that establish the requisite relationships with the Church Defendants (special, confidential or fiduciary) to support the remaining five causes of action. The demurrers should each be sustained.

DISCUSSION

Juarez v. Boy Scouts of America. The Juarez case on which plaintiffs heavily rely is plainly distinguishable from this Charissa W. Case, because Juarez concerned "sexual acts [that] were committed during officially sanctioned scouting events [.]" Id., 81 Cal.App.4th at 385, 97 Cal.Rptr.2d at 17 (emphasis added). The perpetrator of the abuse was Jorge Francisco Paz, who was a Scoutmaster of the Boy Scout troop to which plaintiff belonged. Id., 81 Cal.App.4th at 384, 97 Cal.Rptr.2d at 16-17. Thus, the core facts underlying the rulings in the Juarez case were that Scoutmaster Paz sexually molested the minor plaintiff at "officially sanctioned" Boy Scout events.

Those facts alone distinguish Juarez from the allegations in this Charissa W. case. However, the Court of Appeal in Juarez went further, expressly stating that "[w]e do not intend our decision to serve as a manifesto by which lower courts are to impose duties of care upon all forms of charitable organizations engaged in volunteer youth programs [.]" Juarez, 81 Cal.App.4th at 409, 97 Cal.Rptr.2d at 35. Thus, the court's own words express that Juarez does not apply outside the context of the Boy Scouts and the particular facts of the Juarez case. Juarez thus does not apply to church entities or to factual scenarios like that pled in plaintiffs' operative complaint here (see Amended Complaint at ¶24 – the sexual abuse of plaintiffs by Edward Villegas occurred at a "daycare center run out of the Villegas home [.]"). Jaurez thus has no precedential value or application here.

It is also noteworthy that in Juarez, the Court of Appeal flatly rejected the plaintiff's claim that the Boy Scouts were in any way vicariously liable for Paz's sexual molestation of him. The court held that the doctrine of respondeat superior does not apply, because sexual misconduct falls outside the scope of any employment or agency role that Paz may have had

with the Boy Scouts. Id., 81 Cal.App.4th at 393-94, 97 Cal.Rptr.2d at 23-24.[2]

Finally with respect to Juarez, in discussing whether the Boy Scouts could be liable for its volunteer Paz's sexual molestation of the minor plaintiff at the "officially sanctioned scouting events," the Court of Appeal discussed the no duty to aid rule, i.e., the rule that liability for negligence "is not imposed for the failure to assist or protect another, absent some legal or special relationship between the parties giving rise to a duty to act." Id., 81 Cal.App.4th at 410, 97 Cal.Rptr.2d at 35 (citations omitted).

In Juarez, the court identified three instances in which children had been held to be in a "special relationship" with a defendant (significantly, none of those instances apply to this Charissa W. case): An operator of a daycare center or preschool had a special relationship to the children in attendance at the daycare; a school had a special relationship to a child during the time the child was in attendance at school, under an in loco parentis theory; and the wife of a sexual offender had a special relationship to children she invited to play in her house. Juarez, 81 Cal.App.4th at 410, 97 Cal.Rptr.2d at 35-36 (citations omitted). Similarly, in Romero v. Superior Court (2001) 89 Cal.App.4th 1068, 1080-81, 107 Cal.Rptr.2d 801, 810-11, the court held that an adult who invites a minor into his or her home assumes a "special relationship" with the minor.[3]

It is noteworthy that in each of those instances mentioned above, the children were physically present either in school or at a home such that the particular defendants had direct control over the children. Similarly in Juarez, the plaintiff was at "officially sanctioned scouting events," which led the court to find a special relationship may have existed with the Boy Scouts. In the case here, however, plaintiffs' allegations are that the sex abuse occurred at a daycare center in Edward Villegas' home, but not on church property, not at a church-sanctioned event,

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[2] The Juarez court's rejection of respondeat superior liability for sexual molestation of minors is consistent with cases earlier cited by the Church Defendants, including Mark K. v. Roman Catholic Archbishop (1998) 67 Cal.App.4th 603, 609, 79 Cal.Rptr.2d 73. See Church Defendants' opening memorandum at p. 13, lines 12-25.

[3] Notwithstanding the finding of a special relationship between the adult homeowners and the child in Romero, the Court of Appeal ordered that the adult homeowner's summary judgment be granted and the case dismissed. Id., 89 Cal.App.4th at 1096.

and not when any of the Church Defendants had direct control over plaintiffs or over the Villegas' home. See Amended Complaint at ¶24.

For each of the reasons stated, Jaurez does not establish or even support plaintiffs' view that the Church Defendants had a "special relationship" with them. Simply stated, Juarez does not assist plaintiffs here.

The Rowland analysis also does not assist plaintiffs here. Plaintiffs also argue in their opposition that the analysis articulated in Rowland v. Christian (1968) 69 Cal.2d 108, 70 Cal.Rptr. 97, 443 P.2d 561, dictates that plaintiffs were in a special relationship with the Church Defendants. However, Nally v. Grace Comm. Church of the Valley (1988) 47 Cal.3d 278, 253 Cal.Rptr. 97, 763 P.2d 948, is one of several cases that refute plaintiffs' arguments.

In Nally, the California Supreme Court considered the Rowland factors in determining whether a religious counselor providing nonprofessional guidance to another person could be held liable for the person's suicide. The Supreme Court in Nally held that a pastoral counselor who "had no control over the environment of the individual being counseled" (47 Cal.3d at 294) did not have a special relationship with the individual. 47 Cal.3d at 293-301.

In holding that the religious counselor did not have a special relationship with the individual being counseled, the Nally court expressed its concern about "extending liability to voluntary, noncommercial and noncustodial relationships [,]" because such liability would abrogate the no duty to aid rule. Id., 47 Cal.3d at 298.

The same analysis applies here. Plaintiffs were not in custodial relationships with the Church Defendants. Indeed, as alleged in ¶24 of the amended complaint, plaintiffs were not under the direct control of the Church Defendants when they were sexually abused by Villegas at his home. Plaintiffs have failed to allege facts that would establish that they were in a special relationship with any of the Church Defendants, and the demurrers should be granted.

Plaintiffs have not cited any cases which hold that a special, confidential, or fiduciary relationship exists between a church and its parishioners. Plaintiffs do not allege any facts that support the existence of a legal duty imposed on a church entity to generally protect its parishioners (or the parishioners' children) from sexual crimes committed away from

church premises. Indeed, plaintiffs have not cited any cases holding that a special relationship exists between a church and its parishioners.[4]

Here, plaintiffs specifically allege that the sexual abuse of them by Villegas occurred in a daycare center at Villegas' home. (Amended Complaint at ¶24). There are not any allegations that the daycare was operated by the Church Defendants, that the Church Defendants somehow had direct control over the Villegas home or of plaintiffs while they were at the Villegas' home, or that the sexual abuse occurred at an officially sanctioned church event.

Instead, plaintiffs allege only the conclusory statements (set forth in the Church Defendants' opening memorandum at p.2, line 2-p.3, line 1) that plaintiffs were somehow totally entrusted to the care of the Church Defendants. Plaintiffs thus ignore the fact that plaintiffs lived with their parents or other legal guardians and, at the time of the alleged abuse, were under the direct control of Villegas at his private home. Plaintiffs simply have not alleged any facts that would create the requisite special relationship (or confidential or fiduciary relationship) between a church and its parishioners for activities occurring away from church premises. As noted above, plaintiffs also do not allege that the Villegas' daycare center was an officially sanctioned church function or event.

Moreover, it would be a novel cause of action in California to impose a legal duty on churches to generally protect their parishioners, no matter where the parishioners might go and no matter what they are doing. Adopting such an expansive rule in California tort law would require churches to extensively screen each and every one of their parishioners, their parishioners' children, and perhaps even their parishioners' relatives and friends. Inquiries made during such a screening process would not only be untenable and unduly burdensome from a logistical viewpoint, but the inquiries also would invade privacy rights guaranteed by both the federal and California constitutions. See Roman Catholic Bishop v. Superior Court (1996) 42 Cal.App.4th 1556, 1566-67, 50 Cal.Rptr.2d 399, 405-06 (church employer precluded

[4] The only California case directly deciding the issue of whether a special relationship exists between a church and its parishioners is unpublished. Thus, under Rule 977(a) of the Rules of Court, that case cannot be cited or relied upon.

by an individual's constitutional privacy rights from investigating sexual practices of its employee; privacy right also "encompasses mental privacy" such that church employer could not constitutionally require employee to undergo psychological evaluation).

CONCLUSION

Plaintiffs' conclusory allegations in the amended complaint fail to allege facts that establish the requisite special relationship needed to support each of plaintiffs' five remaining causes of action. The demurrers should be sustained under CCP sections 430.10(e) and 430.30(a).

DATED: February 12, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On February 10, 2004, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' REPLY IN SUPPORT OF DEMURRERS TO PLAINTIFFS' AMENDED COMPLAINT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 10, 2004, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

JTM 2-19

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FILED

FEB 0 9 2004

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRER** **Date: February 19, 2004** **Time: 8:30 a.m.** **Dept: B**

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs, in the above-numbered and entitled cause, and opposes Watchtower Defendants' Demurrer to the Second Amended Complaint, as follows:

I

PROCEDURAL HISTORY

This case is about the child sexual abuse of Plaintiffs suffered at the hands of Watchtower Defendants' agent, Edward Villegas. Consistent with Code of Civil Procedure § 340.1, Plaintiffs filed a complaint due to the tortious conduct of the enumerated Watchtower Defendants [1] as Doe Defendants, and then filed an amended complaint specifically naming the Watchtower Defendants after receiving a Court order allowing them to do so. The Watchtower Defendants demurred to Plaintiff's Amended Complaint on a variety of grounds, which Plaintiffs opposed.

On November 20, 2003, this Court issued its Tentative Ruling. That tentative ruling overruled Defendants' demurrer to the following of Plaintiffs' causes of action: 2) Common Law Negligence, 3) Negligent Appointment, Retention, and Supervision, 4) Gross Negligence/Wilful Misconduct, 5) Breach of Fiduciary Duty, and 7) Fraudulent Concealment and Conspiracy; sustained Defendants' demurrer with leave to amend to the following of Plaintiffs' causes of action: 1) Respondeat Superior, 6) Negligence Per Se, 8) Ratification, and 9) Alter Ego/Single Business Enterprise; and sustained without leave to amend the following of Plaintiffs' causes of action: 10) Negligent Usurpation of Investigatory Function, 11) Violation of Penal Code section 182 and 12) Violation of Penal Code section 32.

Defendants did **not** request oral argument. Therefore, the Tentative Ruling became the Order of the Court, signed by the Honorable W. Scott Snowden on December 2, 2003 and filed by the Court on December 17, 2003, incorporated by reference herein. Most notably, this Court, by its Ruling to Defendants' initial demurrer, concluded that Plaintiffs' causes of action two through five and seven were viable and recognized by current tort law in California and nationwide, and were not barred barred by the First Amendment.

Accordingly, Plaintiffs filed a Second Amended Complaint consistent with this Court's earlier Ruling asserting the following five causes of action: 1) Common Law

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[1] Edward Villegas, the criminally convicted pedophile who sexually molested Plaintiffs and who was allowed to remain in a position of authority with Watchtower Defendants after Watchtower Defendants were advised of his criminal related behavior, was not named as defendant in this action because he is dead.

Negligence, 2) Negligent Appointment, Retention, and Supervision, 3) Gross Negligence - Wilful Misconduct, 4) Breach of Fiduciary Duty, and 5) Fraud, Fraudulent Concealment, and Conspiracy.

Now, Defendants demur to Plaintiffs' Second Amended Complaint alleging Plaintiffs' five causes of action, already ruled as viable by this Court, "fail to state facts" sufficient to constitute causes of action and that Watchtower Defendants owe no duty of care to the children entrusted to their organization. They further argue that the determination of the existence of any such duty violates the First Amendment as "clergy malpractice." As set forth in greater detail below, Defendants' arguments are without merit, mandating that this Second Demurrer be overruled in its entirety.

II

ARGUMENT

A. Watchtower Defendants Owed a Duty to Plaintiffs to Protect them From the Abuse of Watchtower Defendants' Agent, Edward Villegas.

As a backdrop, society's protection of children, by non-religious and religious entities alike, is of utmost priority:

> Our greatest responsibility as members of a civilized society is our common goal of safeguarding our children, our chief legacy, so they can grow to their full potential and can, in time, take our places in the community at large. The achievement of this objective is gravely threatened by sexual predators who prey on young children. The legislative judgment, which reflects a widely shared value of our society, is that the use of children as sexual objects is extremely harmful to their well-being. Its long-lasting injury often lies hidden in a victim's psyche until it works its insidious harm by impairing subsequent emotional development, if not by also crushing the victim's spirit.
>
> Public policy against the victimization of children is most evidence in our criminal laws, which exact a heavy toll from those who endanger our most precious asset. (Citations omitted.) So, too, it must be in our civil law. The interest of the state in protecting the health, emotional welfare and well-rounded growth of its young citizens, together with its undeniable interest in safeguarding the future of society as a whole, weigh strongly in favor imposing a duty in this case. *Juarez v. Boy Scouts of America* (2000) 81 Cal.App.4th 377, 407.

Plaintiffs do not dispute that to support a negligence based claim, a plaintiff must plead and later demonstrate that a defendant owes a duty to the plaintiff. Religious organizations, like any other organization, owe a duty to children entrusted to its care to protect them from sexual molestation when the organization knows, or has reason to know, its own agent presents a risk or danger to its child-member being sexually abused, as alleged in Plaintiffs' Complaint. California case law, other nationwide cases[2], and public policy support this Court in concluding Watchtower Defendants owed Plaintiffs duties to protect them from being sexually abused by Defendants' own agent, Edward Villegas, especially after being on notice Villegas was suspected of sexually molesting Plaintiffs and others.

1. **California Law Supports the Existence of a Duty Based upon Defendants' Conduct, as Pled by Plaintiffs**:

In order to prove facts sufficient to support a finding of negligence, a plaintiff must show that a defendant had a duty to use due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting injury. (Citations omitted.) *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 401.

In this state, the general rule is that all persons have a duty to use ordinary care to prevent others from being injured as a result of their conduct. *Randi W. v. Muroc Joint Unified School District* (1997) 14 Cal.4th 1066, 1077, citing *Rowland v. Christian* (1968) 69 Cal.2d 108, 112 and Civ. Code § 1714. The seminal case of *Rowland* enumerates the "multi-element duty assessment" in determining whether a defendant owed a tort duty to a plaintiff, including the following factors: (1) the foreseeability of harm to the injured party; (2) the degree of certainty that the injured party suffered harm; (3) the closeness of the connection between the defendant's conduct and the injury suffered; (4) the moral blame attached to the defendant's conduct; (5) the policy of preventing future harm; (6) the extent

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[2] All out of state cases mentioned herein have been previously provided to the Court attached to Plaintiffs' Opposition to Defendants' Demurrer to Plaintiffs' First Amended Complaint, and to avoid inundating the Court's file with extra paperwork, these cases are not attached to this Opposition. They are however, incorporated herein specifically by this reference, *along with Plaintiffs' entire Opposition to Defendants' First Demurer.*

of the burden to the defendant; and (7) the consequences to the community of imposing a duty to exercise care, with resulting potential liability. *Juarez, supra,* 81 Cal.App.4th at 401, citing *Rowland, supra*, 69 Cal.2d at 112-113 and *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 267-268.

In *Juarez*, plaintiff was a boy scout who was sexually molested by a scoutmaster in the organization. The Court, which held, "consideration of the *Rowland* factors **supports the imposition of a duty of care** on [defendants] **to have taken reasonable protective measures to protect** [plaintiff] **from the risk of sexual abuse by adult volunteers**," (*Juarez, supra,* 81 Cal.App.4th at 409-410), discussed the *Rowland* factors as follows: (1) the foreseeability of harm that plaintiff would be sexually molested was great because children engaged in organized group activities are at risk for foreseeable sexual abuse (*Id.* at 404); (2) plaintiff suffered harm and significant emotional trauma from the sexual abuse he endured (*Id.* at 405); (3) the absence of information about the warning indicators of impending molestation along with the absence of critical advice as to how to rebuff a sexual advance created a significant causal link between the acts or omissions of the Boy Scouts organization and the harm plaintiff suffered (*Id.* at 406); (4) the policy behind preventing sexual abuse from occurring is a significant societal interest (*Id.* at 407); (5) the organization would hardly be "burdened" by an imposed duty on it to take steps to prevent sexual abuse of children by leaders in its organization from occurring (*Id.* at 409); and (6) imposing a duty on the organization to prevent child sexual abuse from occurring at the hands of its own members directly benefits society as a whole, vastly outweighing any slight burden imposed on the organization (*Id.* at 408-409.)

Other California cases also support imposition of a duty on people and entities to prevent childhood sexual abuse. In *Randi W., supra,* 14 Cal.4th 1066, the school district, by and through its agents, writing a letter of recommendation of prospective administrator-employee was held to owe a duty not to misrepresent facts in describing qualifications and character of former employee, when making the misrepresentations presents a substantial, foreseeable risk of physical, sexual injury to a child-student.

In *Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 842-843, a child-parishioner's negligent hiring claim against a church for being sexually abused by the child's pastor was allowed to proceed to trial, with the court recognizing the existence of a duty owed by the church to the child-parishioner:

> The principal may be negligent because he has *reason to know* that the servant or other agent, because of his qualities, is likely to harm other in view of the work or instrumentalities entrusted to him... An agent, although otherwise competent, may be incompetent because of his reckless or vicious disposition, and if a principal, *without exercising due care in selection*, employs a vicious person to do an act which necessarily brings him contact with others while in the performance of a duty, he is subject to liability for harm cause by the vicious propensity... If liability results it is because, under the circumstances, *the employer has not taken the care which a prudent man would take in selecting the person for the business at hand... If... the work is likely to subject third persons to serious risk of great harm, there is a special duty of investigation.* Liability results under the rule stated in this Section, not because of the relation of the parties, **but because the employer antecedently *had reason to believe that an undue risk of harm would exist because of the employment.*** (Emphasis added.)

The only *Rowland* factor which weighed in favor of not imposing a duty was the "moral blame" of the defendant-organization because, unlike the case pled by Plaintiffs herein, there was no evidence in the record that the Boy Scouts had prior notice of the troop leaders' prior sexual abuse of children or were "morally blameworthy." Instead the evidence established that they were to be "commended for being in the vanguard in fighting child sexual abuse with their educational program, which, if communicated, is geared toward teaching volunteer leaders, parents and scouts how to be aware of and avoid child sexual abuse." *Juarez, supra,* 81 Cal.App4th at 406-407.

Plaintiffs' Complaint satisfies each of the factors set out in *Rowland* and *Juarez*. As pled in Plaintiffs' Complaint, the Watchtower Defendants were on notice that Villegas was suspected of sexually abusing children, making it foreseeable that children, including Plaintiffs, would be sexual abuse victims of Villegas. As pled in Plaintiffs' Complaint, Plaintiffs suffered emotional, mental, and physical harm as a result of the sexual abuse they endured. As pled in Plaintiffs' Complaint, the Watchtower Defendants were notified

that Villegas was suspected of sexually abusing children within the local congregation yet they continued to place Villegas in positions of authority. This placement caused injuries to Plaintiffs. The Watchtower Defendants also failed to provide any information to Plaintiffs, their families, and others in the organization so they could protect themselves from Villegas' evil acts. The omission of this vital information coupled, with Watchtower Defendants' conspiracy to "cover-up" this information to avoid harm to their reputation, is causally related to the abuse Plaintiffs endured.

As a matter of law, the prevention of childhood sexual abuse is a significant societal interest. As a matter of law, the organization would hardly be burden by taking steps to ensure children entrusted to their care are protected from sexual abuse. And as a matter of law, any conceivable "burden" Watchtower Defendants might assert by the imposition of a duty to prevent childhood sexual abuse committed by its own agent, during sanctioned activities of the organization while children were being tended to in a daycare facility run by Villegas while parents engaged in Watchtower Defendants' sanctioned activities, is vastly outweighed by the benefit to society at large in requiring the organization to take steps to redress child sexual abuse in their organization.

With respect to the "moral blame" factor, this is perhaps where Watchtower Defendants' conduct is most egregious. As pled in Plaintiffs' complaint at ¶¶ 15 through 33, the Watchtower Defendants, and each of them, operate as a single business enterprise in a hierarchical organization receiving direction from the Governing Body which sits atop the hierarchy, directing downward throughout the organization how all aspect of life, especially regarding the handling of sexual abuse claims, should be conducted. Further, the organization, as a whole, placed individuals, like Villegas, who were they knew were sexually abusing children in their organization, in positions of authority, thereby allowing them direct contact with children without taking any steps to eradicate any further abuse from occurring with children of their organization. The organization suppressed information regarding sex abuse complaints and prevented Plaintiffs, their families, and others from

protecting themselves from pedophiles like Villegas, thereby exacerbating this issue and allowing it to continue.

Watchtower Defendants did nothing, as alleged in Plaintiffs' Complaint, to prevent Plaintiffs from being sexually abused after being "on notice" of Villegas' propensities to sexually abuse children. If ever there was a defendant considered "morally blameworthy" within the context of the *Rowland* factors, it is the Watchtower Defendants, who conspired to conceal complaints of sexually molestation to avoid harm to their reputation, again as pled in Plaintiffs' Complaint. Respectfully submitted, all of the *Rowland* factors support imposition of a duty on Watchtower Defendants' in this case regarding ***their own*** tortious conduct, just as in *Juarez*.

2. California Cases Supporting Existence of a Duty Based on Special Relationship.

In addition to the above basis for finding a duty, a ***"special relationship"*** existed between Plaintiffs and Watchtower Defendants. This duty required Watchtower Defendants to protect Plaintiffs from sexual abuse by Watchtower Defendants' own agent, Edward Villegas.

As succinctly stated by the *Juarez* Court:

> Generally, a greater degree of care is owed to children because of their lack of capacity to appreciate risks and avoid danger. (Citations omitted.) Consequently, California courts have **frequently recognized special relationships between children and their adult caregivers that give rise to a duty to prevent harm caused by the intentional or criminal conduct of third parties**. Recognized special relationships include an operator of a preschool or daycare center to the children in attendance (Citations omitted); a school district to a mother whose child was sexually molested by another student because the school stood in loco parentis while the child was in attendance (Citations omitted); and the wife of a sexual offender to children she invited to play in her home because '[b]eing of tender years they were particularly vulnerable to this sort of misconduct and not fully able to protect themselves against it. [Citation.]' (Citations omitted.) (Emphasis added.) *Juarez, supra,* 81 Cal.App.4th at 410.

In *Richelle L. v. Roman Catholic Archbishop of San Francisco* (2003) 106 Cal.App.4th 257, the Court explained the meaning of a "fiduciary" or "confidential" relationship giving rise to the imposition of a duty of care:

> "[F]iduciary" and "confidential" have been used synonymously to describe... "any relation existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he [or she] voluntarily accepts or assumes to accept the confidence, can take no advantage from his [or her] acts relating to the interest of the other party without the latter's knowledge or consent. (Citations omitted.) Technically, a fiduciary relationship is a recognized legal relationship sich as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client (citation omitted), whereas a "confidential relationship" may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship. *Id.* at 270-271.

The Court further stated:

> The vagueness of the common law definition of the confidential relation that gives rise to a fiduciary duty, and the range of relationships that can potentially be characterized as fiduciary, led one court to usefully distill the essential elements as follows: (1) the vulnerability of one party to the other which (2) results in the empowerment of the stronger party by the weaker which (3) empowerment has been solicited or accepted by the stronger party and (4) prevents the weaker party from effectively protecting itself. (Citations omitted.) *Id.* at 272.

The California Supreme has held a confidential relationship may exist although there is no fiduciary relation. *Vai v. Bank of America* (1961) 56 Cal.2d 329-337-338. The vulnerability that is the necessary predicate of a confidential relationship usually arises from advanced age, ***youth***, lack of education, weakness of mind, grief, sickness, or some other incapacity. *Richelle L.*, *supra*, 106 Cal.App.4th at 273. *Richelle L.* did not involved child sexual abuse, but legal seduction of an adult woman. In the context of those facts, the *Richelle L.* Court concluded the adult plaintiff-appellant could not permissibly pursue her negligence-based tort claims because, "instead of alleging any of the reasons conventionally relied upon to show that a party to an alleged confidential relation is in a

vulnerable position - namely, "advanced age, or ***youth***, or lack of education, or ill health, or mental weakness", plaintiff-appellant instead relied solely on her own "piety." *Id.* at 280.

Here, Plaintiffs have alleged they were vulnerable because they were children entrusted to Defendants' care. Plaintiffs' ***youth***, not their piety, is the basis of the "special", "confidential", and/or "fiduciary" relation between the Watchtower Defendants and Plaintiffs. This relationship gave rise to a duty to prevent and protect Plaintiffs from sexual abuse from Watchtower Defendants' own agent!

Other examples of special, confidential, or fiduciary relations creating a duty of care include: *In re Brown's Estate, Brown v. Collins* (1948) 89 Cal.App.2d 496 (an individual posing as a "minister" who moved in with an elderly woman taking charge of her household and keeping up his "pose as [decedent's] spiritual advisor, eventually persuading her to change her will and beneficiaries for "minster's" benefit, facts which were quite sufficient to support a finding that a confidential relationship existed between deceased and ["minister"]...); *In re Miller's Estate: MacFarlene v. Farwell* (1936) 16 Cal.App.2d 141, 152 (a confidential relationship is presumed to exist between a spiritual adviser and parishioner: "Confidential relations are presumed to exist ***between priest and parishioner***...").

As pled in Plaintiffs' Complaint at ¶ 24, Watchtower Defendants empowered their agent Villegas to run a daycare center where Plaintiffs, and others, were "cared for" while parents engaged in activities required by the Watchtower Defendants. The day care facility was used by the Watchtower Defendants to "attract new members" to Watchtower Defendants' organization. At the daycare facility, Villegas sexually abused Plaintiffs, and others. Watchtower Defendants knew that their agent, Villegas, had previously sexually abused children as pled in Plaintiffs' Complaint at ¶¶ 25-32, yet failed to redress these wrongs.

The elements establishing the existence of a confidential relationship giving rise to a fiduciary duty owed by Watchtower Defendants to Plaintiffs are clearly present in this case: (1) Plaintiffs' vulnerability due to their age and being entrusted to the care of Watchtower Defendants (2) resulted in the empowerment of Watchtower Defendants over

Plaintiffs which (3) was accepted by Watchtower Defendants and (4) prevented the Plaintiffs from effectively protecting themselves.

The *Richelle L.* Court recognized "there are circumstances in which tort liability for breach of fiduciary duty may be imposed on a pastor for injuries resulting from the pastor's sexual misconduct with a parishioner without offense to the religion clauses." *Id.* at 263. And, it also recognized that no First Amendment protection or defense is available when a"cleric is said to have sodomized young children under his charge." *Id.* at 275. This Court recognized this principle when it denied the Watchtower Defendants' First Demurrer on First Amendment grounds

Defendants voluntarily accepted the charge to supervise, sculpt, train, enlighten, advise, counsel, and teach Plaintiffs and other children in their organization. Yet, now they seek to argue they do not owe a duty to protect these children from their own agent, Villegas, from his proclivities to sexually gratify himself at the expense of Plaintiffs' virtue? Public policy and California dictate otherwise.

3. <u>Out of State Cases also Support Imposing a Duty on Defendants.</u>

Multiple out of state cases, relied on by Plaintiffs in their Opposition to Watchtower Defendants' demurrer to Plaintiffs' First Amended Complaint, also confirm a duty is owed by an organization (like Watchtower Defendants) to Plaintiffs for child sexual abuse: *Sanders v. Casa View Baptist Church* (N.D. Tex. 1995) 898 F.Supp. 1169, 1176-7 (finding that a minister, who had sexual relations with the wife of a couple in marital counseling, owed the couple a fiduciary duty created by minister's undertaking to counsel the couple); *Bear Valley Church of Christ v. DuBose* (Colo. 1997) 928 P.2d 1315 (jury verdict in favor of plaintiff-child's lawsuit against church and pastor breach of fiduciary duty and negligent hiring/supervision regarding pastor's inappropriate touching of plaintiff during counseling session upheld on appeal); *Byrd v. Faber* (Ohio 1991) 565 N.E.2d 584, 590 (to survive a 12(b)6 motion regarding a negligent hiring claim against a religious institution, a plaintiff must pled facts indicating the individual hired had a past history of criminal, tortious, or otherwise dangerous conduct about which the religious institution knew or could have

discovered through reasonable investigation); *Kenneth R. v. Roman Catholic Diocese of Brooklyn* (N.Y. App. Div. 1997) 229 A.D.2d 159, 164 (sexually abused plaintiff can assert causes of action for negligent retention and supervision of religious entity for its agent's tortious conduct, which does not violated constitutional of statutory guarantees of free exercise of religion and separation of church and State); *Konkle v. Henson* (Ind. 1996) 672 N.E.2d 450, 460 (child sex abuse victim in lawsuit need only show religious organization knew or should have had reason to know of religious entities' agent's misconduct and failed to take appropriate action to satisfy the duty element of a negligent hiring, retention and supervision claim); *Malicki v. Doe* (Fla. 2002) 814 So.2d 347, 361-363 (Florida Supreme Court ruled plaintiff, who was sexually abused by minister, could pursue negligent hiring/supervision/retention claim against church because danger of plaintiff being sexually molested was foreseeable and manifested itself imposing duty on church to protect child-plaintiff); *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.* (2nd Cir. 1999) 196 F.3d 409, 429-430 (plaintiff's jury verdict was affirmed because sufficient evidence was established to prove a fiduciary duty was owed and breached by the Diocese to plaintiff-victim of sexual abuse by priest because of the "unique degree of trust and confidence between the parties, one of whom had superior knowledge, skill or expertise and is under a duty to represent the interests of the other); *and Moses v. Diocese of Colorado* (Colo 1993) 863 P.2d 310, 321-325 (Colorado Supreme Court held clergy-parishioner relationship involves "the type of interaction that creates trust and reliance" recognizing along with other courts there indeed is a fiduciary nature of the clergy-parishioner relationship, and upheld a plaintiff's jury verdict stemming from sexual abuse for breach of fiduciary duty and negligent hiring and supervision).

Most notably is the Court's opinion in *C.J.C v. Corporation of the Catholic Bishop of Yakima* (Wash. 1999) 985 P.2d 262.[3] Regarding child sexual abuse suffered by plaintiffs

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[3] Assuming Watchtower Defendants point out the sexual predator in their organization who abused Plaintiffs was not an employee, and instead a "volunteer" attempting to further avoid liability, *C.J.C.* strongly pointed out: "The fact that [both perpetrators] were volunteers does not impact our analysis. A charitable entity may be held liable for the negligence of volunteers acting in an agency capacity. *Abel v. Firs Bible & Missionary Conf.*, 57 Wash.2d 853, 855, 360 P.2d 356 (1961). Furthermore, one who assumes to act, even though gratuitously, may be held liable for his or her negligence in

from persons with authority in the church, the Court noted the current state of the law regarding the duty question, attacked by Watchtower Defendants in this case:

> We begin with the now well established principle that where a "special relationship" exists, a duty to protect against the intentional or criminal acts of third parties may arise....
>
> Whether there is a special relationship between a **church and the children of its congregation that gives rise to a duty to protect the children against foreseeable harms** is an issue of first impression. In important aspects, however, activities of a church **generate the kind of relationships where we have, in other contexts, imposed a duty of reasonable care**. The children of a congregation may be delivered into the custody and care of a church and its workers, whether it be on the premises for services and Sunday school, or off the premises at church sponsored activities or youth camps. As in other agency relationships, a church chooses its officials, directs their activities, and may restrict and control their conduct. In many respects, the activities of a church, and the corresponding duties legitimately imposed upon it, are similar to those of a school. **As a matter of public policy, the protection of children is a high priority. In general, therefore, we find churches (and other religious organizations) subject to the same duties of reasonable care as would be imposed on any person or entity in selecting and supervising their workers, or protecting vulnerable persons within their custody, so as to prevent reasonably foreseeable harm.** [Emphasis added.] *Id.* at 273-274.

The Washington Supreme Court found in favor of imposing a duty on the Church defendants in *C.J.C.* to protect children from foreseeable sexual abuse by the Church's agents by stating:

> [L]iability exists not because of when (or where) the injury occurs, but because 'the actor has brought into contact or association with the [victim] a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct.... *Marquay*, 139 N.H. at 719, 662 A.2d 272 (quoting Restatement (Second) of Torts § 302B cmt. E(D))....
>
> We find the rationale adopted in *Marquay* persuasive when analogized to circumstances presented here. In particular, **we find the conjunction of four factors present in the case before us decisive to finding the existence of a duty is not foreclosed as a matter of law**: (1) the special relationship between the Church and deacon Wilson; (2) the special relationship between the Church and the plaintiffs; (3) the

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carrying out the act. *See Roth v. Kay* 35 Wash.App. 1, 4, 664 P.2d 1299 (9183). *See also Curran v. City of Marysville*, 53 Wash.App. 358, 365, 766 P.2d 1141 (1989) (one who voluntarily assumes responsibility for the care of a child has a duty to exercise reasonable care to protect that child.)

> alleged knowledge of the risk of harm possessed by the Church; and (4) the alleged causal connection between [perpetrator's] position in the Church and the resulting harm. Under these circumstances, **we simply do not agree with the Church that its duty to take protective action was arbitrarily relieved at the church door. Where a protective relationship exists, a principal is not free to ignore the risk posed by its agents, place such agents into association with vulnerable persons it would otherwise be required to protect, and then escape liability simply because the harm was accomplished off premises or after-hours. Under these facts, the focus is not on where or when the harm occurred, but on whether the Church or its individual officials negligently caused the harm by placing its agent into association with the plaintiffs when the risk was, or should have been, known.** *Id.* at 274-275.

The holding in *C.J.C.* is directly applicable to this case. Villegas was an elder of Watchtower Defendants, creating a special relationship between them. Plaintiffs have pled that they were children entrusted to Watchtower Defendants' care not only during on-premises activities, but also off-premises activities being cared for by Villegas wife, while parents went out, door-to-door to attract new members within Watchtower Defendants' organization. Plaintiffs have further pled that the Watchtower Defendants were notified, on notice, and aware of suspicions that their agent Villegas was sexually molesting children, including Plaintiffs. There is a direct causal connection between the Villegas' position in the organization, the harm suffered by Plaintiffs, and Watchtower Defendants' failure to protect Plaintiffs and prevent any further acts of sexual molestation.

Watchtower Defendants owed a duty to Plaintiffs to prevent Watchtower Defendants' agent, Villegas, from sexually abusing Plaintiffs, and to protect Plaintiffs from the sexual abuse. California case law, out-of-state case law, and public policy mandate that Watchtower Defendants cannot be permitted to ignore the risk that their agent Villegas would sexually abuse children, especially after being notified Villegas was suspected of sexually abusing children. Accordingly, this Court is well within its right to overrule Watchtower Defendants' second demurrer on the Common Law Negligence, Negligent Appointment, Retention and Supervision, Gross Negligence, and Breach of Fiduciary Duty causes of action. Additionally, because it is clear that a special, confidential and fiduciary

relation existed between Plaintiffs and Watchtower Defendants, it necessarily follows the cause of action for Fraud, Fraudulent Concealment, and Conspiracy should be declared viable, premised on existence of that relationship and Watchtower Defendants' own legal arguments (e.g., "Plaintiffs' amended cause of action for fraud, fraudulent concealment, and conspiracy should be dismissed, because **it requires the establishment of a "special" or "fiduciary" relationship** between themselves and the Church Defendants," relying on *Peterson Dev. Co., Inc. v. Torrey Pines Bank* (1991) 233 Cal.App.3d 103, 116, 284 Cal.Rptr. 367. See Defendants' instant demurrer at Page 11, lines 22-26. [Emphasis added.])

III

CONCLUSION

For all the reasons set forth hereinabove, Plaintiffs respectfully request this Court overrule Watchtower Defendants' instant Demurrer in its entirety.

Dated: February 2, 2004

NOLEN SAUL BRELSFORD

William Brelsford, Esq.
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On February 6, 2004 I caused the within **MEMORANDUM OF POINT AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANT'S DEMURRER,** the original of which was produced on recycled paper, to be served as follows:

xxxx **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 2004, at Sacramento, California.

Deanna Czarnecki

FILED

FEB 0 2 2004

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

Case No.: 26-22191

SECOND AFFIDAVIT OF RICHARD E. ABRAHAMSON

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Richard E. Abrahamson, after being duly sworn, depose and state as follows:

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

2. I am the secretary and treasurer of Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA"), who is a Defendant in this proceeding.

3. Watch Tower PA coordinates the worldwide activities of Jehovah's Witnesses by providing copyrighted literature (text and images for various publications) and financial support. Historically, Watch Tower PA has also given powers of attorney to individuals in foreign countries to act on its behalf where the national laws require the appointment of a "chief" religious person. Few, if any, foreign countries now have such requirements.

4. In most countries where Jehovah's Witnesses are legally recognized, a local corporation has been formed to be legally responsible for the various appointments of individuals and is used to communicate with congregations in that country.

5. Watch Tower PA has never acted in a supervisory capacity to any congregation in the United States, other than providing infrequent spiritual direction by mail. Additionally, Watch Tower PA has never been responsible for the appointment of individual Elders or others in the United States. Furthermore, Watch Tower PA is not responsible for any assemblies or conventions of Jehovah's Witnesses held in California or in the United States.

6. Watch Tower PA, as a recognized charity, has received donations from individuals in California. Some of these donations are in the form of real property. In many cases, the individuals have deeded a part of their property to Watch Tower PA, but have retained a life estate in the property donated.

7. Watch Tower PA administers a fund for the construction of church buildings entitled the Kingdom Hall Fund. Through this fund, Watch Tower PA has provided financial assistance to congregations in the United States and around the world to build their places of worship known as Kingdom Halls and Assembly Halls. In return for the financial assistance, the congregations have executed promissory notes, or some mortgages before 1988, agreeing to pay back the loans.

8. Watch Tower PA has lent money to congregations in California through its Kingdom Hall Fund to assist in the construction of places of worship and received promissory notes or mortgages in return for the money lent. However, these financing arrangements have been conducted exclusively through the mails and over the telephone.

9. Watch Tower PA does not hold, and has never held, promissory notes or mortgages from the Napa Congregation of Jehovah's Witnesses in Napa, California, or from the Oak Knoll Congregation of Jehovah's Witnesses in Napa, California.

10. Watch Tower PA administers a fund named the Kingdom Hall Assistance Arrangement ("KHAA"). The KHAA is a fund created from voluntary donations and used for the discretionary purposes of Watch Tower PA. These discretionary purposes include paying for uninsured property damage to Kingdom Halls as well as expenses and liability claims arising from accidents at Kingdom Halls. No premiums have ever been collected for the KHAA. Similarly, the KHAA does not guarantee payment to any person or legal entity that contributes to the fund. Finally, the KHAA has been used by Watch Tower PA in all 50 States in the United States and in many countries around the world.

11. The Watchtower Bible School of Gilead ("School") has been owned and operated by Watchtower Bible and Tract Society of New York, Inc. ("WTNY") since its inception in 1942. The School does not have income, in the classical sense, because students do not pay tuition or other fees. WTNY underwrites all expenses for the School. All invitations to the School have been sent by WTNY to students in the United States and around the world since its inception.

12. Watch Tower PA maintains its own separate corporate meetings. Watch Tower PA maintains its own separate corporate books and records. Members of the Board of Directors and Officers of Watch Tower PA do not sit on any other corporations, including WTNY or Christian Congregation of Jehovah's Witnesses ("CCJW").

13. Watch Tower PA prepares its own annual financial reports. These financial reports are prepared separately from all other corporations, including WTNY and CCJW.

14. Watch Tower PA maintains separate bank accounts from all other corporations. Watch Tower PA does not commingle funds with any other corporation.

15. Watch Tower PA has provided funds to other corporations, including WTNY and CCJW. These funds have been recorded as long-term receivables by Watch Tower PA and long-term payables by the other corporations. Watch Tower PA has also made gifts to other corporations and recorded them as such.

16. Watch Tower PA is not held out as liable for the debts of any other corporation, including WTNY or CCJW.

17. Watch Tower PA occupies WTNY office space under a written lease. To some extent, some of the same personnel serve all of the corporations in providing legal, accounting, and risk management services.

18. Watch Tower PA maintains all corporate formalities required by Pennsylvania law. Watch Tower PA holds annual meetings of members and directors and documents all its meetings (annual, regular, or special), and all significant corporate actions.

SIGNED this the 26th day of January, 2004.

Richard E. Abrahamson
Secretary-Treasurer of Watch Tower Bible and Tract Society of Pennsylvania

SUBSCRIBED AND SWORN TO BEFORE ME on the 26th day of January, 2004, to certify which witness my hand and official seal.

Notary Public, State of New York

DANNY L. BLAND
Notary Public, State of New York
No. 24-4725296
Qualified in Kings County
Commission Expires February 28, 2007

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 30, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

SECOND AFFIDAVIT OF RICHARD E. ABRAHAMSON

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 30, 2004, at Gold River, California.

By 
Michelle A. Tinker

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FILED
FEB 06 2004
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS** DATE: February 19, 2004 TIME: 8:30 a.m. DEPT: B TRIAL DATE: Not yet set

Defendant WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA (hereinafter "Watch Tower PA"), by and through their attorneys of record, specially appears to submit this Supplemental Memorandum of Points and Authorities in support of its earlier filed motion to quash service of summons and complaint based on lack of personal jurisdiction in California.

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I. STATEMENT OF RELEVANT FACTS

On December 9, 2003, Plaintiffs filed an amended complaint naming as Defendants two local congregations of Jehovah's Witnesses in Napa, California, and three national religious corporations. *Amended Complaint*, ¶¶ 3-7. One of these national religious corporations is Watch Tower PA. *Amended Complaint*, ¶ 4. Although the Church Defendants have collectively filed demurrers to each of Plaintiffs' five remaining causes of action alleged in the amended complaint, Watch Tower PA also earlier moved herein to quash service of summons on the basis that California courts lack personal jurisdiction over Watch Tower PA.

Richard E. Abrahamson, Secretary and Treasurer of Watch Tower PA, has previously submitted an affidavit setting forth facts about Watch Tower PA's lack of traditional physical contacts with California. For example, Watch Tower PA does not have and has never had an office, mailing address, or telephone number in California, nor does it have employees, officers, or directors residing in the State of California. (Abrahamson 1st Aff., ¶ 5) Additionally, Watch Tower PA has never maintained a place of business in California, paid taxes in California, maintained a bank account in California, held any corporate meeting in California, or engaged in commercial activity in California. (Abrahamson 1st Aff., ¶¶ 5, 6)

In further support of this motion, Mr. Abrahamson submits herewith a second affidavit explaining Watch Tower PA's non-traditional contacts with California as well as facts about Watch Tower PA's existence as a separate corporate entity. (Abrahamson 2nd Aff.)

As discussed below, the facts established by the Abrahamson affidavits demonstrate that this Court lacks both general and specific jurisdiction over Watch Tower PA. These facts also show that Watch Tower PA exists as a separate corporate entity and that the theories of alter ego, agency, and conspiracy on which Plaintiffs may rely are inapplicable to Watch Tower PA.

II. JURISDICTIONAL REQUIREMENTS

California permits its courts to exercise jurisdiction over nonresidents "on any basis not inconsistent with the Constitution of this state or of the United States." CCP § 410.10. Unlike other states that limit personal jurisdiction by statute, section 410.10 "manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations." *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445, 128 Cal.Rptr. 34, 36.

The federal Constitution permits a state to exercise jurisdiction over a nonresident defendant if that defendant has sufficient "minimum contacts" with the forum State so that "maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' [Citations omitted.]" *Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310, 316. "The 'substantial connection' between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*. [Citations omitted.]" *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112 (emphasis in original). "This restriction on the states is not merely a protection against inconvenient litigation; it is 'a consequence of territorial limitations on the power of the respective States.'[Citation omitted.]" *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica* (9th Cir. 1980) 614 F.2d 1247, 1251 (hereinafter "*Gonzalez*").

Personal jurisdiction may be either general or specific. *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445, 58 Cal.Rptr.2d 899, 906. A nonresident defendant is subject to the forum's general jurisdiction where the defendant's contacts are "'substantial ... continuous and systematic.'" *Id.* (quoting *Perkins v. Benguet Consol. Mining Co.* (1952) 342 U.S. 437, 445-46). If a defendant is subject to general jurisdiction, he or she may be subject to any cause of action in the state, including those that are not related to the defendant's contacts

with the state. *Id.*, 14 Cal.4th at 445, 58 Cal.Rptr.2d at 906. "Such a defendant's contacts with the forum are so wide-ranging that they take the place of *physical presence* in the forum as a basis for jurisdiction." *Id.*, 14 Cal.4th at 446, 58 Cal.Rptr.2d at 906 (emphasis added).

If a nonresident defendant does not have substantial and systematic contacts with the state, he or she may be subject to specific jurisdiction. A nonresident defendant is subject to specific jurisdiction if all three of the following apply: (1) the defendant "'purposefully availed [itself] of forum benefits;'" (2) the controversy is "related to or arises out of" the defendant's contacts with the forum; and (3) the exercise of jurisdiction would comport with "fair play and substantial justice." *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269, 127 Cal.Rptr.2d 329, 335. Thus, a nonresident defendant who is subject to specific jurisdiction may only be subject to causes of action that are related to or arise out of its contacts with the state.

III. BURDEN OF PROOF

If a nonresident defendant challenges personal jurisdiction through a motion to quash, the plaintiff must show by a "preponderance of the evidence" that the defendant has sufficient minimum contacts with the state to satisfy the constitutional considerations. *DVI, Inc. v. Superior Court* (2002) 104 Cal.App.4th 1080, 1090, 128 Cal.Rptr.2d 683, 690. The plaintiff must "present facts demonstrating that the conduct of defendants related to the pleaded causes is such as to constitute constitutionally cognizable 'minimum contacts.'" *Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710, 215 Cal.Rptr. 442, 445. An unverified complaint (like the complaint and the amended complaint filed here by Plaintiffs) has *no evidentiary value* whatsoever in meeting plaintiff's burden of proving minimum contacts. *Id.*

IV. GENERAL JURISDICTION

A. Standard for General Jurisdiction

It is important to note that "[t]he level of contact with the forum state necessary to establish general jurisdiction is quite high." *Shute v. Carnival Cruise Lines* (9th Cir. 1990) 897 F.2d 377, 380, *rev'd on other grounds*, 499 U.S. 585 (1991); *see also Bancroft & Masters, Inc. v. Augusta National Inc.* (9th Cir. 2000) 223 F.3d 1082, 1086 (standard for general jurisdiction is "fairly high"). The contacts with the forum state must be of a sort that "approximate[s] physical presence." *Bancroft*, 223 F.3d at 1086.

The test for determining general jurisdiction is whether the nonresident defendant has 'substantial, continuous, and systematic' contacts with the forum state. *Vons*, 14 Cal.4th at 445, 58 Cal.Rptr.2d at 906. "Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there." *Bancroft*, 223 F.3d at 1086. However, "engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders." *Id.* Thus, "it is not the quantity, but rather the 'nature and quality' of the defendant's activities which determine whether extension of jurisdiction offends due process." *Gonzalez*, 614 F.2d at 1252 (emphasis added).

For example, in *Perkins v. Benguet Consol. Mining Co., supra,* the United States Supreme Court found that Ohio had general jurisdiction over a Philippines company when the president of the company maintained an office, kept company files, held director meetings, distributed salaries, and conducted other company business *within the state*. *Id.,* 342 U.S. at 445-46. Also, in *Koninklijke L.M. v. Superior Court* (1951) 107 Cal.App.2d 495, a California Court

of Appeal found that a Dutch company was subject to general jurisdiction in California because it had made substantial purchases of airplanes, employed some 30 local employees, and conducted other local business operations *within the state*.

On the other hand, when nonresidents do *not* have a substantial physical presence within the state, the courts have been much more reluctant to exercise general jurisdiction over them. *E.g.*, *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 (no jurisdiction over foreign corporation that sent officers to forum for a negotiating session, accepted checks drawn from a forum bank, purchased equipment from the forum, and sent personnel to the forum to be trained); *Gates Learjet Corp. v. Jensen* (9th Cir. 1984) 743 F.2d 1325, 1330-31 (no general jurisdiction over defendants despite several visits and purchases in forum, solicitation of contracts in forum, and extensive communication with forum), *cert. denied*, 471 U.S. 1066 (1985); *Boaz v. Boyle & Company, Inc.* (1995) 40 Cal.App.4th 700, 717, 46 Cal.Rptr.2d 888, 898 (no general jurisdiction over corporation that targeted mailers to physicians in California and advertised in national medically related publication).

Thus, licensing agreements with California television networks and vendors has been found insufficient for general jurisdiction, even though it constitutes doing business with California. *Bancroft*, 223 F.3d at 1086. Additionally, the "regular sale and purchase agreements" with California residents, payments made in California, and frequent communication through the mails and by telephone "do not qualify as purposeful activity invoking the benefits and protection of the state" for the purposes of general jurisdiction. *Gonzalez*, 614 F.2d at 1254. Finally, the "[o]wnership of property in California 'alone'" does not support general jurisdiction. *Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 6 Cal.Rptr.3d 262, 270 (citation omitted).

B. Watch Tower PA is Not Subject to General Jurisdiction in California

Plaintiffs in this case have urged the Court to exercise general jurisdiction over Watch Tower PA, which would subject the corporation to liability claims for any cause of action in California. However, Watch Tower PA has established through admissible evidence that it does not have the 'substantial, continuous and systematic' contacts with California that approximate a "physical presence." *Vons*, 14 Cal.4th at 446, 58 Cal.Rptr.2d at 906.

The first Abrahamson affidavit established that Watch Tower PA does not have any of the traditional contacts used to assert general jurisdiction over a nonresident defendant. For example, Watch Tower PA was incorporated in Pennsylvania in 1884 and maintains a place of business in New York. (Abrahamson 1st Aff., ¶ 3) Watch Tower PA does not maintain an office, mailing address, telephone number in California; does not have employees, officers, or directors residing in California; has not directed commercial activity toward California; has never maintained a place of business in California; has never paid taxes in California; has never maintained a bank account in California; and has never held any sort of meeting in California. (Abrahamson 1st Aff., ¶¶ 5, 6) These undisputed facts mean that Watch Tower PA cannot be subject to jurisdiction in the California courts on the basis of the traditional indicia for general jurisdiction used in cases like *Perkins* or *Koninklijke*.

Furthermore, the second Abrahamson Affidavit submitted herewith shows that Watch Tower PA has a few non-traditional contacts with California but importantly, establishes that those are *not* the quality of contacts needed to establish general jurisdiction. For example, Watch Tower PA, as a charity, has received donations of real property from individuals in California. (Abrahamson 2nd Aff., ¶ 6) However, the mere ownership of property in a forum does not subject one to general jurisdiction. *Thomson,* 6 Cal.Rptr.3d at 270. If this were the case, then all

charitable organizations would be subject to general jurisdiction in every State from which they received donated property.

According to the affidavit, Watch Tower PA has also made loans to California congregations through its Kingdom Hall Fund. The Kingdom Hall Fund is used by Watch Tower PA to provide financial assistance to congregations around the world to build their places of worship known as Kingdom Halls and Assembly Halls. (Abrahamson 2nd Aff., ¶ 7) Through this fund, Watch Tower PA has extended loans to congregations and, in return, has obtained a promissory note or mortgage from the congregations. (Abrahamson 2nd Aff., ¶ 7)

This lending arrangement, however, does not mean that Watch Tower PA has a "physical presence" in California. *Vons*, 14 Cal.4th at 446, 58 Cal.Rptr.2d at 906. If the "regular sale and purchase agreements" in *Gonzalez*, 614 F.2d at 1253-54, the licensing agreements in *Bancroft*, 223 F.3d at 1086, and the solicitation of contracts in *Gates*, 743 F.2d at 1330-31, were insufficient acts to establish general jurisdiction in the respective forums, then Watch Tower PA's acceptance of promissory notes is similarly insufficient.

Watch Tower PA, acting as an out-of-state lender, conducts these financing arrangements through the telephone and mails. (Abrahamson 2nd Aff., ¶ 8) As was pointed out by the Ninth Circuit in *Gonzalez*, use of the telephone and mails by a corporation like Watch Tower PA to execute these promissory notes does not lead to general jurisdiction. *Gonzalez*, 743 F.2d at 1331. If this were the case, then any out-of-state lending institution could be subject to general jurisdiction in California for simply making loans within the state. This result would have serious consequences not only for lending institutions but for California businesses as well.

A third contact Watch Tower PA has with California is the Kingdom Hall Assistance Arrangement (KHAA). The KHAA is a discretionary fund used to cover uninsured damage to

Kingdom Halls and for liabilities arising from accidents at Kingdom Halls. (Abrahamson 2nd Aff., ¶ 10) However, the KHAA fund is not directed toward California, but is used in all fifty States of the United States and most countries worldwide. *Id.* Additionally, no "premiums" have ever been collected by the KHAA from California congregations for the KHAA fund; instead, congregations only made voluntary donations, and the KHAA does *not* guarantee payment to any person or legal entity that makes donations to it. *Id.* Thus, the KHAA does not constitute the type of "purposeful activity" that invokes the benefits of the California forum for purposes of general jurisdiction.

Because Watch Tower PA lacks substantial, continuous and systematic contacts with California, this Court should rule that Watch Tower PA is not subject to general jurisdiction and grant Watch Tower PA's motion to quash.

V. SPECIFIC JURISDICTION

A. Standard for Specific Jurisdiction

If a nonresident defendant does not have sufficient contacts with a forum state for general jurisdiction, the defendant may still be subject to specific jurisdiction for certain forum-related activities. When determining whether specific jurisdiction is appropriate, courts consider the "'relationship among the defendant, the forum, and the litigation.'[Citation omitted.]" *Helicopteros,* 466 U.S. at 414.

A California court may exercise specific jurisdiction over a nonresident defendant provided the following three-prong test is met: "(1) 'the defendant has purposefully availed himself or herself of forum benefits;'" (2) "the controversy is related to or 'arises out of' [the] defendant's contacts with the forum"; and (3) "'the assertion of personal jurisdiction would

comport with "fair play and substantial justice."'[Citations omitted.]" Pavlovich, 29 Cal.4th at 269, 127 Cal.Rptr.2d at 335.

The purposeful availment analysis of the first prong focuses on the nonresident defendant's intent to direct activity to the state. This requirement is meant to serve as a protection for nonresident defendants so that they are not subject to a foreign jurisdiction because of "'random,' 'fortuitous,' or 'attenuated'" contacts, or as a result of the "'unilateral activity'" of another party. *Id.* (quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475). The principal question is whether the defendant, by 'expressly aiming at or targeting the forum state,' should reasonably anticipate being subject to that forum's jurisdiction. *Bancroft,* 223 F.3d at 1087.

Once the court is satisfied that a nonresident defendant has purposefully availed itself with respect to the forum, an inquiry must be made under the second prong of the test to determine whether the plaintiff's cause of action is "related to" or "arises out of" the defendant's forum contacts. *Pavlovich*, 29 Cal.4th at 269, 127 Cal.Rptr.2d at 335. The "relatedness factor" can be determined by considering the following: "(1) what is the business relationship between the defendant and California-based interests, (2) what is the claim asserted by the plaintiff against the defendant and (3) is there substantial nexus or relationship between the two because the latter arises out of or is substantially connected to the former." *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 239-40, 121 Cal.Rptr.2d 1, 9-10. Thus, the "[c]rucial inquiry concerns ... whether the cause of action arises out of or has a *substantial connection* with [the forum] activity." *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 148, 127 Cal.Rptr. 352, 354-55 (emphasis added).

The final prong of the test for specific jurisdiction concerns the reasonableness of subjecting a nonresident defendant to a particular forum. In order for jurisdiction to be reasonable, it must comport with "fair play and substantial justice." *Bancroft*, 223 F.3d at 1088.

B. Watch Tower PA is Not Subject to Specific Jurisdiction in California

As set forth above, the specific jurisdiction analysis begins with a determination of whether a nonresident defendant has purposefully availed itself to the forum state. *Pavlovich*, 29 Cal.4th at 269, 127 Cal.Rptr.2d at 335. In this case, Watch Tower PA arguably may have availed itself to California through its ownership of real property that was donated to it and loans made through the Kingdom Hall Fund. (Abrahamson 2nd Aff., ¶¶ 6, 8) Significantly, however, there are no other contacts where Watch Tower PA has "expressly aimed at or target[ed]" California that would constitute purposeful availment. *Pavlovich*, 29 Cal.4th at 271, 127 Cal.Rptr.2d at 336; *see id.* at 271-73, 127 Cal.Rptr.2d at 336-38 (knowledge, without express aiming at particular forum, is insufficient for purposeful availment analysis).

The second prong of the test for specific jurisdiction is whether there is a "substantial connection" or "nexus" between Watch Tower PA's forum contacts and the plaintiff's causes of action. *Virtualmagic*, 99 Cal.App.4th at 239-40, 121 Cal.Rptr.2d at 9. Here, the specific jurisdiction analysis completely breaks down, because *none* of the causes of action set forth in the amended complaint in this case are even remotely "related to" or "arise out of" Watch Tower PA's forum contacts. *Pavlovich*, 29 Cal.4th at 269, 127 Cal.Rptr.2d at 335. Plaintiffs' tort claims alleged here all relate to and arise out of alleged sexual abuse by Edward Villegas. *Amended Complaint*, ¶¶ 27, 29. Plaintiffs' claims do not arise out of property held by Watch Tower PA or loans given through the Kingdom Hall Fund. (Abrahamson 2nd Aff., ¶¶ 6, 8) In fact, Watch Tower PA does not hold, and has never held, promissory notes or mortgages from

the Napa Congregation of Jehovah's Witnesses or the Oak Knoll Congregation of Jehovah's Witnesses, the two local congregations named as Defendants in this case. (Abrahamson 2nd Aff., ¶ 9)

Because Plaintiffs' causes of action do not arise out of or have a "substantial connection" to forum activity, the second prong for specific jurisdiction fails. *Cornelison*, 16 Cal.3d at 148, 127 Cal.Rptr. at 355. Thus, this Court should rule that specific jurisdiction does not exist and grant Watch Tower PA's motion to quash.

VI. ALTER EGO, PRINCIPAL/AGENT, AND CONSPIRACY THEORIES

In the alternative to their arguments for general and specific jurisdiction, Plaintiffs' counsel have stated to defense counsel that Watch Tower PA is subject to jurisdiction in California on the theories of alter ego, principal and agent, and conspiracy. As will be shown below, these alternative theories are insufficient to establish personal jurisdiction in California over Watch Tower PA.

A. Alter Ego

In the normal course of business, a corporation is considered to be a legal entity, separate and distinct from its stockholders, officers and directors. *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538, 99 Cal.Rptr.2d 824, 836. However, a corporate identity may be set aside, or the "corporate veil" pierced, when an abuse of the corporation arrangement justifies holding the equitable owner responsible for the corporation's actions. *Id.* Thus, under the "alter ego" doctrine, the courts will ignore the corporate entity when a corporate form is "used to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose." *Id.*

In California, the alter ego doctrine cannot be invoked unless two elements are present. First, the party alleging the doctrine must show that: (1) there is "'such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist,'" *and* (2) "'an inequitable result if the acts in question are treated as those of the corporation alone.'[Citation omitted.]" *Virtualmagic*, 99 Cal.App.4th at 244-45, 121 Cal.Rptr.2d at 13. Thus, "[a]lter ego is a limited doctrine, invoked only where recognition of the corporate form would work an *injustice* to a third person." *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1285, 31 Cal.Rptr.2d 433, 443; *Sonora*, 83 Cal.App.4th at 539, 99 Cal.Rptr.2d at 836 ("Alter ego is an extreme remedy, sparingly used.").

The courts have used numerous factors to determine whether a "unity of interest" exists between two corporations. Among the factors to be considered are:

> inadequate capitalization, commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, use of one as a mere conduit for the affairs of the other, disregard of corporate formalities, lack of segregation of corporate records, and identical directors and officers.

Virtualmagic, 99 Cal.App.4th at 245, 121 Cal.Rptr.2d at 13. No single characteristic is determinative, and the court must examine all of the circumstances before applying the doctrine. *Talbot v. Fresno-Pacific Corp.* (1960) 181 Cal.App.2d 425, 432, 5 Cal.Rptr. 361, 366.

Furthermore, even if a "unity of interest" is shown between two entities, "alter ego will not be applied absent evidence that an *injustice* would result from the recognition of separate corporate identities." *Virtualmagic*, 99 Cal.App.4th at 245, 121 Cal.Rptr.2d at 13 (emphasis added). Also, "[d]ifficulty in enforcing a judgment or collecting a debt does not satisfy this [injustice] standard." *Id.*

Because Plaintiffs have failed to make even a prima facie case to support any alter ego theory against Watch Tower PA, this Court should grant Watch Tower PA's motion to quash.

B. Principal/Agent Theory

Under the principal/agent theory, California courts may, under certain conditions, exercise jurisdiction over a parent corporation for its subsidiary's contacts with the forum state. *Sonora,* 83 Cal.App.4th at 536-537, 99 Cal.Rptr.2d at 834-35. According to this theory, if a "forum may assert jurisdiction over the subsidiary, the forum may extend its jurisdiction to the parent if the parent exerts a sufficiently high degree of control over its subsidiary to reasonably deem the subsidiary the agent of the parent under traditional agency principles." *Virtualmagic*, 99 Cal.App.4th at 244, 121 Cal.Rptr.2d at 13. Because some degree of control is a necessary incident to the parent's ownership, the degree of control for this theory must "reflect[] the parent's purposeful disregard of the subsidiary's independent corporate existence" and be exercised over the "'subsidiary's *day-to-day* operations.'[Citation omitted.]" *Id.,* 99 Cal.App.4th at 245, 121 Cal.Rptr.2d at 14 (emphasis in original).

In this case, Watch Tower PA is an independent, non-profit corporation that does not act in a supervisory capacity, does not provide advice, and does not control any congregation in the United States except for occasional spiritual direction communicated by mail prior to 2001. (Abrahamson 2nd Aff., ¶¶ 4, 5) Because Watch Tower PA does not direct or control the "day-to-day operations" of WTNY, CCJW or the local Napa congregations, the agent/principal analysis fails as to Watch Tower PA. This Court should grant Watch Tower PA's motion to quash.

C. Conspiracy Theory

Plaintiffs allege that Watch Tower PA is part of a conspiracy with WTNY, CCJW and the local Napa congregations and imply that the alleged forum-related activity of the alleged co-conspirators may be used to obtain jurisdiction over Watch Tower PA. *Amended Complaint*, ¶¶ 4, 54, 55. However, that conspiracy argument fails for two reasons. First, "the bland allegation of a conspiracy without a prima facie showing of its existence is insufficient to establish personal jurisdiction." *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 114, 265 Cal.Rptr. 672, 678. Plaintiffs have not presented any admissible facts to the Court to support their conspiracy allegations. Second, "California does not recognize conspiracy as a basis for acquiring personal jurisdiction over a party. The cases expressly considering the issue have rejected it." *Mansour v. Superior Court* (1995) 38 Cal.App.4th 1750, 1760, 46 Cal.Rptr.2d 191, 197. Thus, even assuming, *arguendo,* that Plaintiffs could present evidence of a conspiracy, their conspiracy theory is insufficient as a matter of law for this Court to exercise jurisdiction over Watch Tower PA.

CONCLUSION

Plaintiffs have failed to present any evidence, much less sufficient evidence, to show that Watch Tower PA is subject to general jurisdiction in California or specific jurisdiction as to this case in California. Additionally, Plaintiffs cannot show that Watch Tower PA is subject to personal jurisdiction under their theories of alter ego and principal/agent or under their conspiracy theory. Thus, this Court should grant Watch Tower PA's motion to quash service for lack of personal jurisdiction in California with prejudice and dismiss Watch Tower PA from this case.

DATED: January 30, 2004

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack
Attorneys for Church Defendants

4106080.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 30, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 30, 2004, at Gold River, California.

By 
Michelle A. Tinker

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Gold River, CA 95670-4491
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., et al.

FILED
FEB 0 2 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH

I. APPENDIX OF NON-CALIFORNIA AUTHORITIES

A. Cases **Exhibit No.**

Asahi Metal Industry Company v Superior Court
(1987) 480 U.S. 102 1

Bancroft & Masters, Inc. v. Augusta National Inc.
(9th Cir. 2000) 223 F.3d 1082 2

Burger King Corp. v. Rudzewicz
(1985) 471 U.S. 462 3

Gates Learjet Corp. v. Jensen
(9th Cir. 1984) 743 F.2d 1325 4

Helicopteros Nacionales De Colombia v. Hall
(1984) 466 U.S. 408 5

Internat. Shoe Co. v. Washington
(1945) 326 U.S. 310 6

Perkins v Benguet Consol. Mining Co.
(1952) 3402 U.S. 437 7

Shute v. Carnival Cruise Lines
(9th Cir. 1990) 897 F.2d 377 8

Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica
(9th Cir. 1980) 614 F.2d 1247 9

4101527.1

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 30, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

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[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 30, 2004, at Gold River, California.

By _____
Michelle A. Tinker

EXHIBIT 1

107 S.Ct. 1026
94 L.Ed.2d 92, 55 USLW 4197, Prod.Liab.Rep. (CCH) P 11,267
(Cite as: 480 U.S. 102, 107 S.Ct. 1026)

Briefs and Other Related Documents

Supreme Court of the United States

ASAHI METAL INDUSTRY CO., LTD., Petitioner
v.
SUPERIOR COURT OF CALIFORNIA, SOLANO COUNTY (Cheng Shin Rubber Industrial Co., Ltd., Real Party in Interest).

No. 85-693.

Argued Nov. 5, 1986.
Decided Feb. 24, 1987.

Japanese manufacturer of valve stems, cross-claimed defendant, sought by petition for writ of mandate to compel Superior Court to quash summons upon it in state products liability action. The Superior Court, Solano County, denied petition. On appeal, the Court of Appeal issued peremptory writ of mandate commanding Superior Court to quash service of summons, and review was granted. The Supreme Court of California, 39 Cal.3d 35, 216 Cal.Rptr. 385, 702 P.2d 543, reversed and discharged the writ, and certiorari was granted. The Supreme Court, Justice O'Connor, held that exercise of jurisdiction by California court over Japanese manufacturer would be unreasonable and unfair.

Reversed and remanded.

Justice Brennan concurred in part and in the judgment and filed opinion in which Justices White, Marshall and Blackmun joined.

Justice Stevens concurred in part and in the judgment and filed opinion in which Justices White and Blackmun joined.

Order on remand, 236 Cal.Rptr. 153, 734 P.2d 989.

West Headnotes

[1] Courts ⇐12(2.10)
106k12(2.10) Most Cited Cases

Substantial connection between defendant and forum state necessary for finding of minimum contacts must come about by action of defendant purposefully directed toward forum state; *placement of product in stream of commerce*, without more, is not such an act. (Per Justice O'Connor with the Chief Justice and two Justices concurring.) U.S.C.A. Const.Amend. 14.

[2] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases

Assuming that Japanese manufacturer of valve stems for tire tubes manufactured in Taiwan was aware that some valves would be incorporated into tire tubes sold in California, California's exertion of personal jurisdiction over Japanese manufacturer would exceed limits of due process, absent action by manufacturer to purposefully avail itself of California market. (Per Justice O'Connor with the Chief Justice and two Justices concurring.) West's Ann.Cal.C.C.P. § 410.10; U.S.C.A. Const.Amend. 14.

[3] Corporations ⇐665(1)
101k665(1) Most Cited Cases

Exercise of personal jurisdiction by California court over Japanese manufacturer of valve stems for tire tubes manufactured in Taiwan would be unreasonable and unfair with respect to Taiwanese manufacturer's indemnification claim against Japanese manufacturer, considering international contacts, heavy burden on alien defendant and slight interests of plaintiff and forum state. West's Ann.Cal.C.C.P. § 410.10; U.S.C.A. Const.Amend. 14.

***102 **1026** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Petitioner manufactures tire valve assemblies in Japan and sells them to several tire manufacturers, including Cheng Shin Rubber Industrial Co. (Cheng Shin). The sales to Cheng Shin, which amounted to at least 100,000 assemblies annually from 1978

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to 1982, took place in Taiwan, to which the assemblies were shipped from Japan. Cheng Shin incorporates the assemblies into its finished tires, which it sells throughout the world, including the United States, where 20 percent of its sales take place in California. Affidavits indicated that petitioner was aware that tires incorporating its assemblies would end up in California, but, on the other hand, that it never contemplated that its sales to Cheng Shin in Taiwan would subject it to lawsuits in California. Nevertheless, in 1979, a **1027 product liability suit was brought in California Superior Court arising from a motorcycle accident allegedly caused by defects in a tire manufactured by Cheng Shin, which in turn filed a cross- complaint seeking indemnification from petitioner. Although the main suit was eventually settled and dismissed, the Superior Court denied petitioner's motion to quash the summons issued against it. The State Court of Appeal then ordered that the summons be quashed, but the State Supreme Court reversed, finding that petitioner's intentional act of placing its assemblies into the stream of commerce by delivering them to Cheng Shin in Taiwan, coupled with its awareness that some of them would eventually reach California, were sufficient to support state court jurisdiction under the Due Process Clause.

Held: The judgment is reversed, and the case is remanded.

39 Cal.3d 35, 216 Cal.Rptr. 385, 702 P.2d 543, reversed and remanded.

Justice O'CONNOR, delivered the opinion of the Court as to Parts I and II-B, concluding that the state court's exercise of personal jurisdiction over petitioner would be unreasonable and unfair in violation of the Due Process Clause. Pp. 1033-1034.

(a) The burden imposed on petitioner by the exercise of state court jurisdiction would be severe, since petitioner would be required not only to traverse the distance between Japan and California, but also to submit *103 its dispute with Cheng Shin to a foreign judicial system. Such unique burdens should have significant weight in assessing the reasonableness of extending personal jurisdiction over national borders. Pp. 1033-1034.

(b) The interests of Cheng Shin and the forum State in the exercise of jurisdiction over petitioner would be slight, and would be insufficient to justify the heavy burdens placed on petitioner. The only surviving question is whether a Japanese corporation should indemnify a Taiwanese corporation on the bases of a sale made in Taiwan and a shipment of goods from Japan to Taiwan. The facts do not demonstrate that it would be more convenient for Cheng Shin to litigate its claim in California rather than in Taiwan or Japan, while California's interests are diminished by Cheng Shin's lack of a California residence and by the fact that the dispute is primarily about indemnity rather than the safety of consumers. While the possibility of being sued in California might create an additional deterrent to petitioner's manufacture of unsafe assemblies, the same effect would result from pressures placed on petitioner by Cheng Shin, whose California sales would subject it to state tort law. P. 1034.

(c) The procedural and substantive policies of other nations whose interests are affected by the forum State's assertion of jurisdiction over an alien defendant must be taken into account, and great care must be exercised when considering personal jurisdiction in the international context. Although other nations' interests will differ from case to case, those interests, as well as the Federal Government's interest in its foreign relations policies, will always be best served by a careful inquiry into the reasonableness of the particular assertion of jurisdiction, and an unwillingness to find an alien defendant's serious burdens outweighed where, as here, the interests of the plaintiff and the forum State are minimal. P. 1034.

Justice O'CONNOR, joined by THE CHIEF JUSTICE, Justice POWELL, and Justice SCALIA, concluded in Parts II-A and III that, even assuming, *arguendo,* that petitioner was aware that some of the assemblies it sold to Cheng Shin would be incorporated into tires sold in California, the facts do not establish minimum contacts sufficient to render the State's exercise of personal jurisdiction consistent with fair play and substantial justice as required by the Due Process Clause. Since petitioner does not do business, have an office, agents, employees, or property, or advertise or solicit business in California, and since it did not create, control, or employ the distribution system

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that brought its assemblies to, or design them in anticipation of sales in, California, it did not engage ****1028** in any action to purposely avail itself of the California market. The "substantial connection" between a defendant and the forum State necessary for a finding of minimum contacts must derive from an action purposely directed toward the forum State, and the mere placement of a product ***104** into the stream of commerce is not such an act, even if done with an awareness that the stream will sweep the product into the forum State absent additional conduct indicating an intent to serve the forum state market. Pp. --- - ---.

Justice BRENNAN, joined by Justice WHITE, Justice MARSHALL, and Justice BLACKMUN, agreed with the Court's conclusion in Part II-B that the exercise of jurisdiction over petitioner would not comport with "fair play and substantial justice," but disagreed with the Part II-A's interpretation of the stream-of- commerce theory, and with the conclusion that petitioner did not purposely avail itself of the California market. As long as a defendant is aware that the final product is being marketed in the forum State, jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and no showing of additional conduct is required. Here, even though petitioner did not design or control the distribution system that carried its assemblies into California, its regular and extensive sales to a manufacturer it knew was making regular sales of the final product in California were sufficient to establish minimum contacts with California. Pp. 1035-1037.

Justice STEVENS, joined by Justice WHITE and Justice BLACKMUN, agreed that the California Supreme Court's judgment should be reversed for the reasons stated in Part II-B of the Court's opinion, but did not join Part II-A, for the reasons that (1) the Court's holding that the State's exercise of jurisdiction over petitioner would be "unreasonable and unfair" alone requires reversal, and renders any examination of minimum contacts unnecessary; and (2) even assuming that the "purposeful availment" test should be formulated here, Part II-A misapplies it to the facts of this case since, in its dealings with Cheng Shin, petitioner has arguably engaged in a higher quantum of conduct than the mere placement of a product into the stream of commerce. P. 1038.

O'CONNOR, J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Part I, the opinion of the Court with respect to Part II-B, in which REHNQUIST, C.J., and BRENNAN, WHITE, MARSHALL, BLACKMUN, POWELL, and STEVENS, JJ., joined, and an opinion with respect to Parts II-A and III, in which REHNQUIST, C.J., and POWELL and SCALIA, JJ., joined. BRENNAN, J., filed an opinion concurring in part and concurring in the judgment, in which WHITE, MARSHALL, and BLACKMUN, JJ., joined, *post,* p. ---. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, in which WHITE and BLACKMUN, JJ., joined, *post,* p. ---.

***105** *Graydon S. Staring* argued the cause for petitioner. With him on the briefs was *Richard D. Hoffman.*

Ronald R. Haven argued the cause and filed a brief for respondent.*

* Briefs of *amici curiae* urging reversal were filed for Alcan Aluminio Do Brasil, S.A. by *Lawrence A. Salibra II;* for the American Chamber of Commerce in the United Kingdom et al. by *Douglas E. Rosenthal, Donald I. Baker,* and *Andreas F. Lowenfeld;* and for Cassiar Mining Corp. by *David Booth Beers* and *Wendy S. White.*

George E. Murphy filed a brief for the California Manufacturers Association as *amicus curiae* urging affirmance.

Justice O'CONNOR announced the judgment of the Court and delivered the unanimous opinion of the Court with respect to Part I, the opinion of the Court with respect to Part II-B, in which THE CHIEF JUSTICE, Justice BRENNAN, Justice WHITE, Justice MARSHALL, Justice BLACKMUN, Justice POWELL, and Justice STEVENS join, and an opinion with respect to Parts II-A and III, in which THE CHIEF JUSTICE, Justice POWELL, and Justice SCALIA join.

This case presents the question whether the mere awareness on the part of a foreign defendant that the components it manufactured, sold, and delivered outside the United States would reach the forum

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State in the stream of commerce constitutes "minimum contacts" between the defendant and the forum State such that the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice.' " ****1029***International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), quoting *Milliken v. Meyer,* 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940).

I

On September 23, 1978, on Interstate Highway 80 in Solano County, California, Gary Zurcher lost control of his Honda motorcycle and collided with a tractor. Zurcher was severely injured, and his passenger and wife, Ruth Ann Moreno, was killed. In September 1979, Zurcher filed a product liability action in the Superior Court of the State of ***106** California in and for the County of Solano. Zurcher alleged that the 1978 accident was caused by a sudden loss of air and an explosion in the rear tire of the motorcycle, and alleged that the motorcycle tire, tube, and sealant were defective. Zurcher's complaint named, *inter alia,* Cheng Shin Rubber Industrial Co., Ltd. (Cheng Shin), the Taiwanese manufacturer of the tube. Cheng Shin in turn filed a cross-complaint seeking indemnification from its codefendants and from petitioner, Asahi Metal Industry Co., Ltd. (Asahi), the manufacturer of the tube's valve assembly. Zurcher's claims against Cheng Shin and the other defendants were eventually settled and dismissed, leaving only Cheng Shin's indemnity action against Asahi.

California's long-arm statute authorizes the exercise of jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." Cal.Civ.Proc.Code Ann. § 410.10 (West 1973). Asahi moved to quash Cheng Shin's service of summons, arguing the State could not exert jurisdiction over it consistent with the Due Process Clause of the Fourteenth Amendment.

In relation to the motion, the following information was submitted by Asahi and Cheng Shin. Asahi is a Japanese corporation. It manufactures tire valve assemblies in Japan and sells the assemblies to Cheng Shin, and to several other tire manufacturers, for use as components in finished tire tubes. Asahi's sales to Cheng Shin took place in Taiwan. The shipments from Asahi to Cheng Shin were sent from Japan to Taiwan. Cheng Shin bought and incorporated into its tire tubes 150,000 Asahi valve assemblies in 1978; 500,000 in 1979; 500,000 in 1980; 100,000 in 1981; and 100,000 in 1982. Sales to Cheng Shin accounted for 1.24 percent of Asahi's income in 1981 and 0.44 percent in 1982. Cheng Shin alleged that approximately 20 percent of its sales in the United States are in California. Cheng Shin purchases valve assemblies from other suppliers as well, and sells finished tubes throughout the world.

***107** In 1983 an attorney for Cheng Shin conducted an informal examination of the valve stems of the tire tubes sold in one cycle store in Solano County. The attorney declared that of the approximately 115 tire tubes in the store, 97 were purportedly manufactured in Japan or Taiwan, and of those 97, 21 valve stems were marked with the circled letter "A", apparently Asahi's trademark. Of the 21 Asahi valve stems, 12 were incorporated into Cheng Shin tire tubes. The store contained 41 other Cheng Shin tubes that incorporated the valve assemblies of other manufacturers. Declaration of Kenneth B. Shepard in Opposition to Motion to Quash Subpoena, App. to Brief for Respondent 5-6. An affidavit of a manager of Cheng Shin whose duties included the purchasing of component parts stated: " 'In discussions with Asahi regarding the purchase of valve stem assemblies the fact that my Company sells tubes throughout the world and specifically the United States has been discussed. I am informed and believe that Asahi was fully aware that valve stem assemblies sold to my Company and to others would end up throughout the United States and in California.' " 39 Cal.3d 35, 48, n. 4, 216 Cal.Rptr. 385, 392, n. 4, 702 P.2d 543, 549-550, n. 4 (1985). An affidavit of the president of Asahi, on the other hand, declared that Asahi " 'has never contemplated that its limited sales of tire valves to Cheng Shin in Taiwan would subject it to lawsuits in California.' " *Ibid.* The record does not include any contract between Cheng Shin and Asahi. Tr. of Oral Arg. 24.

****1030** Primarily on the basis of the above information, the Superior Court denied the motion to quash summons, stating: "Asahi obviously does business on an international scale. It is not unreasonable that they defend claims of defect in their product on an international scale." Order

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Denying Motion to Quash Summons, *Zurcher v. Dunlop Tire & Rubber Co.*, No. 76180 (Super.Ct., Solano County, Cal., Apr. 20, 1983).

The Court of Appeal of the State of California issued a peremptory writ of mandate commanding the Superior Court to quash service of summons. The court concluded that "it ***108** would be unreasonable to require Asahi to respond in California solely on the basis of ultimately realized foreseeability that the product into which its component was embodied would be sold all over the world including California." App. to Pet. for Cert. B5-B6.

The Supreme Court of the State of California reversed and discharged the writ issued by the Court of Appeal. 39 Cal.3d 35, 216 Cal.Rptr. 385, 702 P.2d 543 (1985). The court observed: "Asahi has no offices, property or agents in California. It solicits no business in California and has made no direct sales [in California]." *Id.*, at 48, 216 Cal.Rptr., at 392, n. 4, 702 P.2d, at 549. Moreover, "Asahi did not design or control the system of distribution that carried its valve assemblies into California." *Id.*, at 49, 216 Cal.Rptr., at 392, 702 P.2d, at 549. Nevertheless, the court found the exercise of jurisdiction over Asahi to be consistent with the Due Process Clause. It concluded that Asahi knew that some of the valve assemblies sold to Cheng Shin would be incorporated into tire tubes sold in California, and that Asahi benefited indirectly from the sale in California of products incorporating its components. The court considered Asahi's intentional act of placing its components into the stream of commerce--that is, by delivering the components to Cheng Shin in Taiwan--coupled with Asahi's awareness that some of the components would eventually find their way into California, sufficient to form the basis for state court jurisdiction under the Due Process Clause.

We granted certiorari, 475 U.S. 1044, 106 S.Ct. *1258, 89 L.Ed.2d 569 (1986), and now reverse.*

II
A

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant. "[T]he constitutional touchstone" of the determination whether an exercise of personal jurisdiction comports with due process "remains whether the defendant purposefully established 'minimum contacts' in the ***109** forum State." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985), quoting *International Shoe Co. v. Washington,* 326 U.S., at 316, 66 S.Ct., at 158. Most recently we have reaffirmed the oft-quoted reasoning of *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958), that minimum contacts must have a basis in "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King,* 471 U.S., at 475, 105 S.Ct., at 2183. "Jurisdiction is proper ... where the contacts proximately result from actions by the defendant *himself* that create a 'substantial connection' with the forum State." *Ibid.*, quoting *McGee v. International Life Insurance Co.,* 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957) (emphasis in original).

Applying the principle that minimum contacts must be based on an act of the defendant, the Court in *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980), rejected the assertion that a *consumer's* unilateral act of bringing the defendant's product into the forum State was a sufficient constitutional basis for personal jurisdiction over the defendant. It had been argued in *World-Wide Volkswagen* that because an automobile retailer and its wholesale distributor ****1031** sold a product mobile by design and purpose, they could foresee being haled into court in the distant States into which their customers might drive. The Court rejected this concept of foreseeability as an insufficient basis for jurisdiction under the Due Process Clause. *Id.*, at 295-296, 100 S.Ct., at 566. The Court disclaimed, however, the idea that "foreseeability is wholly irrelevant" to personal jurisdiction, concluding that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *Id., at 297-298, 100 S.Ct., at 567 (citation omitted).* The Court reasoned:

***110** "When a corporation 'purposefully avails

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itself of the privilege of conducting activities within the forum State,' *Hanson v. Denckla,* 357 U.S. [235,] 253 [78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958)], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor ... is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owners or to others." *Id.,* at 297, 100 S.Ct., at 567.

In *World-Wide Volkswagen* itself, the state court sought to base jurisdiction not on any act of the defendant, but on the foreseeable unilateral actions of the consumer. Since *World-Wide Volkswagen,* lower courts have been confronted with cases in which the defendant acted by placing a product in the stream of commerce, and the stream eventually swept defendant's product into the forum State, but the defendant did nothing else to purposefully avail itself of the market in the forum State. Some courts have understood the Due Process Clause, as interpreted in *World-Wide Volkswagen,* to allow an exercise of personal jurisdiction to be based on no more than the defendant's act of placing the product in the stream of commerce. Other courts have understood the Due Process Clause and the above-quoted language in *World- Wide Volkswagen* to require the action of the defendant to be more purposefully directed at the forum State than the mere act of placing a product in the stream of commerce.

The reasoning of the Supreme Court of California in the present case illustrates the former interpretation of *World-Wide Volkswagen.* The Supreme Court of California held that, because the stream of commerce eventually brought ***111** some valves Asahi sold Cheng Shin into California, Asahi's awareness that its valves would be sold in California was sufficient to permit California to exercise jurisdiction over Asahi consistent with the requirements of the Due Process Clause. The Supreme Court of California's position was consistent with those courts that have held that mere foreseeability or awareness was a constitutionally sufficient basis for personal jurisdiction if the defendant's product made its way into the forum State while still in the stream of commerce. See *Bean Dredging Corp. v. Dredge Technology Corp.,* 744 F.2d 1081 (CA5 1984); *Hedrick v. Daiko Shoji Co.,* 715 F.2d 1355 (CA9 1983).

Other courts, however, have understood the Due Process Clause to require something more than that the defendant was aware of its product's entry into the forum State through the stream of commerce in order for the State to exert jurisdiction over the defendant. In the present case, for example, the State Court of Appeal did not read the Due Process Clause, as interpreted by *World-Wide Volkswagen,* to allow "mere foreseeability that the product ****1032** will enter the forum state [to] be enough by itself to establish jurisdiction over the distributor and retailer." App. to Pet. for Cert. B5. In *Humble v. Toyota Motor Co.,* 727 F.2d 709 (CA8 1984), an injured car passenger brought suit against Arakawa Auto Body Company, a Japanese corporation that manufactured car seats for Toyota. Arakawa did no business in the United States; it had no office, affiliate, subsidiary, or agent in the United States; it manufactured its component parts outside the United States and delivered them to Toyota Motor Company in Japan. The Court of Appeals, adopting the reasoning of the District Court in that case, noted that although it "does not doubt that Arakawa could have foreseen that its product would find its way into the United States," it would be "manifestly unjust" to require Arakawa to defend itself in the United States. *Id.,* at 710-711, quoting 578 F.Supp. 530, 533 (ND Iowa 1982). See also ***112***Hutson v. Fehr Bros., Inc.,* 584 F.2d 833 (CA8 1978); see generally *Max Daetwyler Corp. v. R. Meyer,* 762 F.2d 290, 299 (CA3 1985) (collecting "stream of commerce" cases in which the "manufacturers involved had made deliberate decisions to market their products in the forum state").

[1] We now find this latter position to be consonant with the requirements of due process. The "substantial connection," *Burger King,* 471 U.S., at 475, 105 S.Ct., at 2184; *McGee,* 355 U.S., at 223, 78 S.Ct., at 201, between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the*

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defendant purposefully directed toward the forum State. Burger King, supra, 471 U.S., at 476, 105 S.Ct., at 2184; *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79 L.Ed.2d 790 (1984). The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State. But a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State.

[2] Assuming, *arguendo,* that respondents have established Asahi's awareness that some of the valves sold to Cheng Shin would be incorporated into tire tubes sold in California, respondents have not demonstrated any action by Asahi to purposefully avail itself of the California market. Asahi does not do business in California. It has no office, agents, employees, or property in California. It does not advertise or otherwise solicit business in California. It did not create, control, or employ the distribution system that brought its valves to California. Cf. *113*Hicks v. Kawasaki Heavy Indus* tries, 452 F.Supp. 130 (MD Pa.1978). There is no evidence that Asahi designed its product in anticipation of sales in California. Cf. *Rockwell International Corp. v. Costruzioni Aeronautiche Giovanni Agusta,* 553 F.Supp. 328 (ED Pa.1982). On the basis of these facts, the exertion of personal jurisdiction over Asahi by the Superior Court of California [FN*] exceeds the limits of due process.

FN* We have no occasion here to determine whether Congress could, consistent with the Due Process Clause of the Fifth Amendment, authorize federal court personal jurisdiction over alien defendants based on the aggregate of *national* contacts, rather than on the contacts between the defendant and the State in which the federal court sits. See *Max Daetwyler Corp. v. R. Meyer,* 762 F.2d 290, 293-295 (CA3 1985); *DeJames v. Magnificence Carriers, Inc.,* 654 F.2d 280, 283 (CA3 1981); see also Born, Reflections on Judicial Jurisdiction in International Cases, to be published in 17 Ga.J. Int'l & Comp.L. 1 (1987); Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va.L.Rev. 85, 127-145 (1983).

****1033** B

The strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction over Asahi under circumstances that would offend " 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington,* 326 U.S., at 316, 66 S.Ct., at 158; quoting *Milliken v. Meyer,* 311 U.S., at 463, 61 S.Ct., at 342.

We have previously explained that the determination of the reasonableness of the exercise of jurisdiction in each case will depend on an evaluation of several factors. A court must consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. It must also weigh in its determination "the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen,* 444 U.S., at 292, 100 S.Ct., at 564 (citations omitted).

***114** [3] A consideration of these factors in the present case clearly reveals the unreasonableness of the assertion of jurisdiction over Asahi, even apart from the question of the placement of goods in the stream of commerce.

Certainly the burden on the defendant in this case is severe. Asahi has been commanded by the Supreme Court of California not only to traverse the distance between Asahi's headquarters in Japan and the Superior Court of California in and for the County of Solano, but also to submit its dispute with Cheng Shin to a foreign nation's judicial system. The unique burdens placed upon one who must defend oneself in a foreign legal system should

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have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.

When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant. In the present case, however, the interests of the plaintiff and the forum in California's assertion of jurisdiction over Asahi are slight. All that remains is a claim for indemnification asserted by Cheng Shin, a Taiwanese corporation, against Asahi. The transaction on which the indemnification claim is based took place in Taiwan; Asahi's components were shipped from Japan to Taiwan. Cheng Shin has not demonstrated that it is more convenient for it to litigate its indemnification claim against Asahi in California rather than in Taiwan or Japan.

Because the plaintiff is not a California resident, California's legitimate interests in the dispute have considerably diminished. The Supreme Court of California argued that the State had an interest in "protecting its consumers by ensuring that foreign manufacturers comply with the state's safety standards." 39 Cal.3d, at 49, 216 Cal.Rptr., at 392, 702 P.2d, at 550. The State Supreme Court's definition of California's interest, however, was overly broad. The dispute between Cheng Shin and Asahi is primarily about indemnification rather than safety ***115** standards. Moreover, it is not at all clear at this point that California law should govern the question whether a Japanese corporation should indemnify a Taiwanese corporation on the basis of a sale made in Taiwan and a shipment of goods from Japan to Taiwan. *Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 821-822, 105 S.Ct. 2965, 2979-2980, 86 L.Ed.2d 628 (1985); *Allstate Insurance Co. v. Hague,* 449 U.S. 302, 312-313, 101 S.Ct. 633, 639-640, 66 L.Ed.2d 521 (1981). The possibility of being haled into a California court as a result of an accident involving Asahi's components undoubtedly creates an additional deterrent to the manufacture of unsafe components; however, similar pressures will be placed on Asahi by the purchasers of its components as long as those who use Asahi components in their final products, and sell those products in California, are subject to the application of California tort law.

****1034** World-Wide Volkswagen* also admonished courts to take into consideration the interests of the "several States," in addition to the forum State, in the efficient judicial resolution of the dispute and the advancement of substantive policies. In the present case, this advice calls for a court to consider the procedural and substantive policies of other *nations* whose interests are affected by the assertion of jurisdiction by the California court. The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State. "Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *United States v. First National City Bank,* 379 U.S. 378, 404, 85 S.Ct. 528, 542, 13 L.Ed.2d 365 (1965) (Harlan, J., dissenting). See Born, Reflections on Judicial Jurisdiction in International Cases, to be published in 17 Ga.J. Int'l & Comp. L. 1 (1987).

***116** Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction by a California court over Asahi in this instance would be unreasonable and unfair.

III

Because the facts of this case do not establish minimum contacts such that the exercise of personal jurisdiction is consistent with fair play and substantial justice, the judgment of the Supreme Court of California is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice BRENNAN, with whom Justice WHITE, Justice MARSHALL, and Justice BLACKMUN join, concurring in part and concurring in the

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judgment.

I do not agree with the interpretation in Part II-A of the stream-of-commerce theory, nor with the conclusion that Asahi did not "purposely avail itself of the California market." *Ante,* at 1034. I do agree, however, with the Court's conclusion in Part II-B that the exercise of personal jurisdiction over Asahi in this case would not comport with "fair play and substantial justice," *International Shoe Co. v. Washington,* 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945). This is one of those rare cases in which "minimum requirements inherent in the concept of 'fair play and substantial justice' ... defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 477-478, 105 S.Ct. 2174, 2184-2185, 85 L.Ed.2d 528 (1985). I therefore join Parts I and II-B of the Court's opinion, and write separately to explain my disagreement with Part II-A.

Part II-A states that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward ***117** the forum State." *Ante,* at 1033. Under this view, a plaintiff would be required to show "[a]dditional conduct" directed toward the forum before finding the exercise of jurisdiction over the defendant to be consistent with the Due Process Clause. *Ibid.* I see no need for such a showing, however. The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for ****1035** which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in the forum State, or engages in additional conduct directed toward that State. Accordingly, most courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct. [FN1]

FN1. See, *e.g., Bean Dredging Corp. v. Dredge Technology Corp.,* 744 F.2d 1081 (CA5 1984); *Hedrick v. Daiko Shoji Co.,* 715 F.2d 1355 (CA9 1983); *Nelson v. Park Industries, Inc.,* 717 F.2d 1120, 1126 (CA7 1983), *cert. denied,* 465 U.S. 1024, 104 S.Ct. 1277, 79 L.Ed.2d 682 (1984); *Stabilisierungsfonds fur Wein v. Kaiser Stuhl Wine Distributors Pty. Ltd.,* 207 U.S.App.D.C. 375, 378, 647 F.2d 200, 203 (1981); *Poyner v. Erma Werke GmbH,* 618 F.2d 1186, 1190-1191 (CA6), cert. denied, 449 U.S. 841, 101 S.Ct. 121, 66 L.Ed.2d 49 (1980); cf. *Fidelity & Casualty Co. of New York v. Philadelphia Resins Corp.,* 766 F.2d 440 (CA10 1985) (endorsing stream-of-commerce theory but finding it inapplicable in instant case), cert. denied, 474 U.S. 1082, 106 S.Ct. 853, 88 L.Ed.2d 893 (1986); *Montalbano v. Easco Hand Tools, Inc.,* 766 F.2d 737 (CA2 1985) (noting potential applicability of stream-of-commerce theory, but remanding for further factual findings). See generally Currie, The Growth of the Long-Arm: Eight Years of Extended Jurisdiction in Illinois, 1963 U. Ill. Law Forum 533, 546-560 (approving and tracing development of the stream-of-commerce theory); C. Wright & A. Miller, Federal Practice and Procedure § 1069, pp. 259-261 (1969) (recommending in effect a stream-of-commerce approach); Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv.L.Rev. 1121, 1168-1172 (1966) (same).

***118** The endorsement in Part II-A of what appears to be the minority view among Federal Courts of Appeals [FN2] represents a marked retreat from the analysis in *World-Wide Volkswagen v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980). In that case, "respondents [sought] to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the

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fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma." *Id.*, at 295, 100 S.Ct., at 566. The Court held that the possibility of an accident in Oklahoma, while to some extent foreseeable in light of the inherent mobility of the automobile, was not enough to establish ***119** minimum contacts between the forum State and the retailer or distributor. *Id.*, at 295-296, 100 S.Ct., at 566. The Court then carefully explained:

> FN2. The Court of Appeals for the Eighth Circuit appears to be the only Court of Appeals to have expressly adopted a narrow construction of the stream-of-commerce theory analogous to the one articulated in Part II-A today, although the Court of Appeals for the Eleventh Circuit has implicitly adopted it. See *Humble v. Toyota Motor Co., Ltd.*, 727 F.2d 709 (CA8 1984); *Banton Industries, Inc. v. Dimatic Die & Tool Co.*, 801 F.2d 1283 (CA11 1986). Two other Courts of Appeals have found the theory inapplicable when only a single sale occurred in the forum State, but do not appear committed to the interpretation of the theory that the Court adopts today. *E.g., Chung v. NANA Development Corp.*, 783 F.2d 1124 (CA4), cert. denied, 479 U.S. 948, 107 S.Ct. 431, 93 L.Ed.2d 381 (1986); *Dalmau Rodriguez v. Hughes Aircraft Co.*, 781 F.2d 9 (CA1 1986). Similarly, the Court of Appeals for the Third Circuit has not interpreted the theory as Justice O'CONNOR's opinion has but has rejected stream-of-commerce arguments for jurisdiction when the relationship between the distributor and the defendant "remains in dispute" and "evidence indicating that [defendant] could anticipate either use of its product or litigation in [the forum State] is totally lacking," *Max Daetwyler Corp. v. R. Meyer*, 762 F.2d 290, 298, 300, n. 13, cert. denied, 474 U.S. 980, 106 S.Ct.383, 88 L.Ed.2d 336 (1985), and when the defendant's product was not sold in the forum State and the defendant "did not take advantage of an indirect marketing scheme," *DeJames v. Magnificence Carriers, Inc.*, 654 F.2d 280, 285, cert. denied, 454 U.S. 1085, 102 S.Ct. 642, 70 L.Ed.2d 620 (1981).

> "[T]his is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with ****1036** the forum State are such that he should reasonably anticipate being haled into Court there." *Id.*, at 297, 100 S.Ct., at 567.

The Court reasoned that when a corporation may reasonably anticipate litigation in a particular forum, it cannot claim that such litigation is unjust or unfair, because it "can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to consumers, or, if the risks are too great, severing its connection with the State." *Ibid.*

To illustrate the point, the Court contrasted the foreseeability of litigation in a State to which a consumer fortuitously transports a defendant's product (insufficient contacts) with the foreseeability of litigation in a State where the defendant's product was regularly *sold* (sufficient contacts). The Court stated:

> "Hence if the *sale* of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, *directly or indirectly*, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce *with the expectation that they will be purchased* ***120** *by consumers* in the forum State." *Id.*, at 297-298, 100 S.Ct., at 567 (emphasis added).

The Court concluded its illustration by referring to *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill.2d 432, 176 N.E.2d 761 (1961), a well-known stream-of-commerce case in which the Illinois Supreme Court applied the theory to assert jurisdiction over a component-parts manufacturer

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that sold no components directly in Illinois, but did sell them to a manufacturer who incorporated them into a final product that was sold in Illinois. 444 U.S., at 297-298, 100 S.Ct., at 567.

The Court in *World-Wide Volkswagen* thus took great care to distinguish "between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer ... took them there." *Id.*, at 306-307, 100 S.Ct., at 584 (BRENNAN, J., dissenting). [FN3] The California Supreme Court took note of this distinction, and correctly concluded that our holding in *World-Wide Volkswagen* preserved the stream-of-commerce theory. See App. to Pet. for Cert. C-9, and n. 3, C-13--C-15; cf. Comment, Federalism, Due Process, and Minimum Contacts: *World-Wide Volkswagen Corp. v. Woodson*, 80 Colum.L.Rev. 1341, 1359-1361, and nn. 140-146 (1980).

FN3. In dissent, I argued that the distinction was without constitutional significance, because in my view the foreseeability that a customer would use a product in a distant State was a sufficient basis for jurisdiction. 444 U.S., at 306-307, and nn. 11, 12, 100 S.Ct., at 584-585, and nn. 11, 12. See also *id.*, at 315, 100 S.Ct., at 569 (MARSHALL, J., dissenting) ("I cannot agree that jurisdiction is necessarily lacking if the product enters the State not through the channels of distribution but in the course of its intended use by the consumer"); *id.*, at 318-319, 100 S.Ct., at 570-571 (BLACKMUN, J., dissenting) ("[F]oreseeable use in another State seems to me little different from foreseeable resale in another State"). But I do not read the decision in *World-Wide Volkswagen* to establish a *per se* rule against the exercise of jurisdiction where the contacts arise from a consumer's use of the product in a given State, but only a rule against jurisdiction in cases involving "one, isolated occurrence [of consumer use, amounting to] ... the fortuitous circumstance...." *Id.*, at 295, 100 S.Ct., at 566. See *Hedrick v. Daiko Shoji Co.*, 715 F.2d, at 1358-1359.

***121** In this case, the facts found by the California Supreme Court support its finding of minimum contacts. The court found that "[a]lthough Asahi did not design or control the system of distribution that carried its valve assemblies into California, Asahi was aware of the distribution system's operation, and it knew that it would ****1037** benefit economically from the sale in California of products incorporating its components." App. to Pet. for Cert. C-11. [FN4] Accordingly, I cannot join the determination in Part II-A that Asahi's regular and extensive sales of component parts to a manufacturer it knew was making regular sales of the final product in California is insufficient to establish minimum contacts with California.

FN4. Moreover, the Court found that "at least 18 percent of the tubes sold in a particular California motorcycle supply shop contained Asahi valve assemblies," App. to Pet. for Cert. C-11, n. 5, and that Asahi had an ongoing business relationship with Cheng Shin involving average annual sales of hundreds of thousands of valve assemblies, *id.*, at C-2.

Justice STEVENS, with whom Justice WHITE and Justice BLACKMUN join, concurring in part and concurring in the judgment.

The judgment of the Supreme Court of California should be reversed for the reasons stated in Part II-B of the Court's opinion. While I join Parts I and II-B, I do not join Part II-A for two reasons. First, it is not necessary to the Court's decision. An examination of minimum contacts is not always necessary to determine whether a state court's assertion of personal jurisdiction is constitutional. See *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-478, 105 S.Ct. 2174, 2184-2185, 85 L.Ed.2d 528 (1985). Part II- B establishes, after considering the factors set forth in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, 100 S.Ct. 559, 564, 62 L.Ed.2d 490 (1980), that California's exercise of jurisdiction over Asahi in this case would be "unreasonable and unfair." *Ante*, at 1035. This finding alone requires reversal; this case fits within the rule that "minimum requirements inherent in the concept of 'fair play and substantial justice' may defeat ***122** the

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reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities." *Burger King,* 471 U.S., at 477- 478, 105 S.Ct., at 2184-2185 (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945)). Accordingly, I see no reason in this case for the plurality to articulate "purposeful direction" or any other test as the nexus between an act of a defendant and the forum State that is necessary to establish minimum contacts.

Second, even assuming that the test ought to be formulated here, Part II-A misapplies it to the facts of this case. The plurality seems to assume that an unwavering line can be drawn between "mere awareness" that a component will find its way into the forum State and "purposeful availment" of the forum's market. *Ante,* at 1033. Over the course of its dealings with Cheng Shin, Asahi has arguably engaged in a higher quantum of conduct than "[t]he placement of a product into the stream of commerce, without more...." *Ibid.* Whether or not this conduct rises to the level of purposeful availment requires a constitutional determination that is affected by the volume, the value, and the hazardous character of the components. In most circumstances I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute "purposeful availment" even though the item delivered to the forum State was a standard product marketed throughout the world.

107 S.Ct. 1026, 480 U.S. 102, 94 L.Ed.2d 92, 55 USLW 4197, Prod.Liab.Rep. (CCH) P 11,267

Briefs and Other Related Documents (Back to top)

- 1986 WL 727590 (Appellate Brief) Petitioner's Reply Brief (Oct. 28, 1986)

- 1986 WL 727586 (Appellate Brief) Brief of Amicus Curiae California Manufacturers Association in Support of Respondent (May. 16, 1986)

- 1986 WL 727589 (Appellate Brief) Respondent's Brief (May. 16, 1986)

- 1986 WL 727582 (Appellate Brief) Brief for Cassiar Mining Corporation as Amicus Curiae in Support of the Petitioner (Apr. 17, 1986)

- 1986 WL 727584 (Appellate Brief) Brief of the American Chamber of Commerce in the United Kingdom and the Confederation of British Industry as Amici Curiae in Support of Petitioner%n*%n (Apr. 17, 1986)

- 1986 WL 727585 (Appellate Brief) Petitioner's Brief (Apr. 17, 1986)

- 1986 WL 727580 (Appellate Brief) Brief of Amicus Curiae Alcan Aluminio do Brasil, S.A. in Support of Petitioner (Apr. 15, 1986)

END OF DOCUMENT

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EXHIBIT 2

223 F.3d 1082
55 U.S.P.Q.2d 1941, 00 Cal. Daily Op. Serv. 6941, 2000 Daily Journal D.A.R. 9197
(Cite as: 223 F.3d 1082)

Briefs and Other Related Documents

United States Court of Appeals,
Ninth Circuit.

BANCROFT & MASTERS, INC., a California corporation, Plaintiff-Appellant,
v.
AUGUSTA NATIONAL INC., a Georgia corporation, Defendant-Appellee.

No. 99-15099.

Argued and Submitted April 13, 2000.
Filed Aug. 18, 2000.

California computer services corporation, which owned Internet domain name "masters.com," brought action against Georgia golf club, which held "Masters" trademark, seeking declaratory judgment of non-dilution and non-infringement of mark, and cancellation of golf club's mark due to misuse. The United States District Court for the Northern District of California, Thelton E. Henderson, J., 45 F.Supp.2d 777, dismissed for lack of personal jurisdiction over club, and corporation appealed. The Court of Appeals, Schroeder, Circuit Judge, held that: (1) action was not rendered moot by club's settlement offer; (2) club's contacts with California were insufficient to establish general jurisdiction; but (3) club was subject to specific jurisdiction in California.

Reversed and remanded.

Sneed, Circuit Judge, filed concurring opinion in which Trott, Circuit Judge, joined.

West Headnotes

[1] Federal Courts ⇐13
170Bk13 Most Cited Cases

Computer services corporation's action against golf club, seeking declaration that corporation's use of Internet domain name "masters.com" did not dilute or infringe club's "Masters" trademark, and seeking cancellation of that trademark, was not rendered moot by club's offer to waive all trademark infringement, dilution, and unfair competition claims against corporation if corporation stayed out of the golf business, since club's offer was incomplete and qualified, and cancellation count was separate from declaratory judgment count and was not obviously meritless.

[2] Federal Courts ⇐794
170Bk794 Most Cited Cases

Where the district court does not hold an evidentiary hearing but rather decides jurisdictional issue on the basis of the pleadings and supporting declarations, Court of Appeals will presume that the facts set forth therein can be proven.

[3] Courts ⇐12(2.5)
106k12(2.5) Most Cited Cases

Because California permits the exercise of personal jurisdiction to the full extent permitted by due process, issue of whether California court has personal jurisdiction over nonresident defendant depends on whether plaintiff has alleged minimum contacts between defendant and the state of California for purposes of general or specific jurisdiction. U.S.C.A. Const.Amend. 14; West's Ann.Cal.Civ.Code § 410.10 (Repealed).

[4] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

A defendant whose contacts with a state are substantial or continuous and systematic can be haled into court in that state in any action, even if the action is unrelated to those contacts, under the doctrine of "general jurisdiction."

[5] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

The standard for establishing general jurisdiction is fairly high and requires that the defendant's contacts be of the sort that approximate physical presence; factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there.

[6] Federal Courts ⇐76.5

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170Bk76.5 Most Cited Cases

Georgia golf club's contacts with California were not sufficiently substantial or continuous and systematic to support exercise of general jurisdiction over club in California, as club's only contacts with state were its passive Internet web site, its occasional unsolicited sales of tournament tickets and merchandise to California residents, and its license agreements with two television networks and a handful of California vendors.

[7] Federal Courts ⇐76.15
170Bk76.15 Most Cited Cases

Engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders, for purposes of establishing general jurisdiction.

[8] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

"Specific jurisdiction" over a nonresident defendant exists if (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable. (Per Schroeder, Circuit Judge, with two Circuit Judges concurring separately.)

[9] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Georgia golf club that held "Masters" trademark and sent letter to registrar of Internet domain names challenging California computer services company's use of "masters.com" domain name purposefully availed itself of privileges of conducting activities in California, and was thus subject to specific jurisdiction there in company's resulting declaratory judgment action, since letter targeted California company, letter forced company to either bring suit or lose control of its website, and club demonstrated no hardship or any other specific factor suggesting that jurisdiction in California would be unreasonable. (Per Schroeder, Circuit Judge, with two Circuit Judges concurring separately.)

[10] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

To meet the effects test, in order to show purposeful availment supporting specific jurisdiction over a nonresident defendant, the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state. (Per Schroeder, Circuit Judge, with two Circuit Judges concurring separately.)

[11] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

To establish purposeful availment under effects test, for purpose of showing specific jurisdiction, requirement of "express aiming" is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state. (Per Schroeder, Circuit Judge, with two Circuit Judges concurring separately.)

[12] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Requirement for specific jurisdiction that the defendant's contacts constituting purposeful availment must be the ones that give rise to the current suit is measured in terms of "but for" causation. (Per Schroeder, Circuit Judge, with two Circuit Judges concurring separately.)

[13] Constitutional Law ⇐305(5)
92k305(5) Most Cited Cases

For jurisdiction over a nonresident defendant to be reasonable, it must comport with fair play and substantial justice; the reasonableness determination requires the consideration of several specific factors, including (1) the extent of the defendant's purposeful interjection into the forum state, (2) the burden on the defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant's state, (4) the forum state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. (Per Schroeder,

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Circuit Judge, with two Circuit Judges concurring separately.)
***1084** Douglas A. Charkin, Peninsula IP Group, Morgan Hill, California, for the plaintiff-appellant.

Carla B. Oakley, Brobeck, Phleger & Harrison LLP, San Francisco, California, for the defendant-appellee.

Appeal from the United States District Court for the Northern District of California; Thelton E. Henderson, District Judge, Presiding, D.C. No. CV-97- 04412-TEH.

Before: SNEED, SCHROEDER, and TROTT, Circuit Judges.

Opinion By Judge SCHROEDER; Concurrence by Judge SNEED.

SCHROEDER, Circuit Judge:

This is a trademark dispute. The principal issue is whether the district court in California has personal jurisdiction over the defendant, a Georgia corporation. We hold that the district court can exercise specific jurisdiction over this suit because the complaint alleges the defendant engaged in wrongful conduct that individually targeted the plaintiff in California.

BACKGROUND

Plaintiff-appellant Bancroft & Masters, Inc. ("B & M") is a small California corporation that sells computer and networking products and support services. B & M does almost all of its business in the San Francisco area. It brought this action against defendant-appellee Augusta National Inc. ("ANI"), which operates the Augusta National Golf Club in Augusta, Georgia and sponsors the annual PGA Tour event known as the Masters Tournament.

ANI holds several federally registered trademarks for the mark "Masters" and operates a website at the domain name "masters.org." B & M registered the domain name "masters.com" with Network Solutions, Inc. ("NSI") in 1995. Until recently, NSI was the sole registrar of domain ***1085** names in the United States, under an exclusive contract with the U.S. government. B & M alleges that sometime in late 1997, ANI sent a letter to NSI's Virginia headquarters challenging B & M's use of the domain name masters.com. ANI also sent a letter to B & M in California demanding that B & M cease and desist its use of masters.com and transfer it immediately to ANI.

ANI's letter to NSI triggered NSI's then-applicable dispute resolution policy. Under this policy, B & M had three options: (1) voluntarily transfer the masters.com domain name to ANI; (2) allow the domain name to be placed "on hold," meaning that it could not be used by either party; or (3) obtain a declaratory judgment establishing its right to use the masters.com domain name. *See Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 982 (9th Cir.1999) (explaining NSI's procedures). Rather than give up its website, B & M chose the third option. B & M filed suit in the Northern District of California seeking a judgment declaring non-dilution and non- infringement. B & M's complaint also requested in a separate count that the court order the cancellation of ANI's federally registered trademarks.

The district court granted ANI's motion to dismiss for lack of personal jurisdiction, reasoning that the continuous and systematic contacts in California necessary for general jurisdiction were lacking and that B & M had not satisfied the criteria for specific jurisdiction. *See Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 45 F.Supp.2d 777 (1998). B & M appeals this dismissal. We now hold that the district court had specific jurisdiction and reverse and remand. ANI's contention that its settlement offer moots this appeal is without merit.

DISCUSSION

[1] ANI's threshold argument is that this appeal has been rendered moot because ANI has offered to waive all trademark infringement, dilution, and unfair competition claims against B & M, so long as B & M stays out of the golf business. B & M's request for a declaratory judgment that it is entitled to use the domain name is not moot, however, because ANI has not made the requisite showing *that it is absolutely clear that it will never seek* to prevent B & M from using its domain name in the

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future. *See FTC v. Affordable Media, LLC,* 179 F.3d 1228, 1238 (9th Cir.1999) (A declaratory judgment action is not moot unless it is absolutely clear that the defendant will never renew its allegedly wrongful behavior.). ANI's promise was an incomplete and qualified one.

Furthermore, even if ANI's promise had been unqualified, it would not have mooted B & M's separate request for cancellation of ANI's "Masters" trademarks. The trademark cancellation count is separate from the declaratory judgment count in the complaint and does not appear to be obviously meritless. *Cf. Arizonans For Official English v. Arizona,* 520 U.S. 43, 71, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997) (obviously meritless and belatedly asserted damages claim cannot save appeal from mootness). The Lanham Act authorizes district courts to order trademark cancellation in any action involving a registered mark. *See* 15 U.S.C. § 1119.

ANI further suggested at oral argument that the case may be moot because NSI's dispute resolution procedures have recently changed. This argument was neither developed on appeal nor adequately supported in the record. As a result, we are unable to evaluate that suggestion on the record before us.

[2] ANI also contends that there is insufficient evidence in the record to establish jurisdiction. Where, as here, however, the district court does not hold an evidentiary hearing but rather decides the jurisdictional issue on the basis of the pleadings and supporting declarations, we will presume that the facts set forth therein can be proven. *See Omeluk v. Langsten Slip & Batbyggeri A/S,* 52 F.3d 267, 268 (9th Cir.1995). ANI's challenge to the evidentiary ***1086** basis for the district court's ruling is therefore irrelevant.

General Jurisdiction

[3] California permits the exercise of personal jurisdiction to the full extent permitted by due process. *See* Cal. Civ.Code § 410.10. Whether a California court has personal jurisdiction over ANI thus depends on whether B & M has alleged "minimum contacts" between ANI and the state of California for purposes of general or specific jurisdiction. *See International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

[4][5] A defendant whose contacts with a state are "substantial" or "continuous and systematic" can be haled into court in that state in any action, even if the action is unrelated to those contacts. *See Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 415, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984). This is known as general jurisdiction. The standard for establishing general jurisdiction is "fairly high," *Brand v. Menlove Dodge,* 796 F.2d 1070, 1073 (9th Cir.1986), and requires that the defendant's contacts be of the sort that approximate physical presence. *See Gates Learjet Corp. v. Jensen,* 743 F.2d 1325, 1331 (9th Cir.1984). Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there. *See Hirsch v. Blue Cross, Blue Shield of Kansas City,* 800 F.2d 1474, 1478 (9th Cir.1986).

[6] The district court correctly found general jurisdiction lacking in this case, because ANI's contacts do not qualify as either substantial or continuous and systematic. ANI is not registered or licensed to do business in California. It pays no taxes in California, maintains no bank accounts in California, and targets no print, television, or radio advertising toward California. ANI's masters.org website is "passive," i.e., consumers cannot use it to make purchases. Furthermore, ANI's occasional, unsolicited sales of tournament tickets and merchandise to California residents are insufficient to create general jurisdiction. *See Brand,* 796 F.2d at 1073 (occasional sales to California residents insufficient to create general jurisdiction).

[7] ANI continues to have license agreements with two television networks and a handful of California vendors. These agreements constitute doing business with California, but do not constitute doing business in California. *See Helicopteros,* 466 U.S. at 418, 104 S.Ct. 1868 (no general jurisdiction in Texas over helicopter transportation company that purchased 80 percent of its helicopters, spare parts, and accessories from Texas sources over a four year period). This is because engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders. *See id.*

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Compare Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 447, 72 S.Ct. 413, 96 L.Ed. 485 (1952) (upholding Ohio's exercise of general jurisdiction over corporation where corporation's president worked out of an office in Ohio from which he drew and distributed payroll checks, performed corporation's filing and correspondence, and held regular directors' meetings, and where the corporation held two Ohio bank accounts). ANI's limited contacts with California are insufficient to establish general jurisdiction.

Specific Jurisdiction

[8] Even though there is no general jurisdiction over ANI in California, California courts may still exercise personal jurisdiction if the case arises out of certain forum-related acts. This "specific" jurisdiction exists if (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir.1997).

***1087** [9] The claims in this case center on ANI's letter to NSI in Virginia, which forced B & M to bring suit or lose control of its website. B & M argues that this letter, addressed to Virginia but intended to affect B & M in California, constitutes "purposeful availment" under the "effects test" first announced by the Supreme Court in *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984). ANI describes the letter as purely defensive, aimed only at protecting its intellectual property rights from incursion by B & M. B & M's complaint, however, contends that ANI deliberately triggered NSI's dispute resolution procedures not only to defend its own trademarks but also to interfere wrongfully with B & M's use of its domain name and to misappropriate that name, "masters.com," for ANI's own use. Because the prima facie jurisdictional analysis requires us to accept the plaintiff's allegations as true, we must adopt B & M's version of events for purposes of this appeal.

[10] In *Calder*, the Supreme Court held that a foreign act that is both aimed at and has effect in the forum state satisfies the purposeful availment prong of the specific jurisdiction analysis. To meet the effects test, the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state. *See Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir.1998). Subsequent cases have struggled somewhat with *Calder* 's import, recognizing that the case cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction. We have said that there must be "something more," but have not spelled out what that something more must be. *See Panavision*, 141 F.3d at 1322.

[11] We now conclude that "something more" is what the Supreme Court described as "express aiming" at the forum state. *See Calder*, 465 U.S. at 789, 104 S.Ct. 1482. Express aiming is a concept that in the jurisdictional context hardly defines itself. From the available cases, we deduce that the requirement is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state. For example, in *Calder* itself, the defendants were a reporter and an editor of a nationally-circulated tabloid newspaper whom plaintiff, a well-known California resident, accused of libel. The defendants argued that the alleged wrong had no intended nexus with California and that they should be treated like "a welder employed in Florida who works on a boiler which subsequently explodes in California." *Id.* The Supreme Court rejected this proposed analogy, pointing out that "petitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California." *Id.*

Subsequent cases from this circuit bear out the conclusion that "express aiming" encompasses wrongful conduct individually targeting a known forum resident. In *Metropolitan Life Insurance Co. v. Neaves*, 912 F.2d 1062 (9th Cir.1990), we held that an Alabama resident could be haled into a California court on the basis of a letter she sent to an insurance company representing that she was entitled to an insurance payment that actually belonged to a California resident. We stated that

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under *Calder,* it was irrelevant where the letter was sent. The critical factor was that in sending the letter, the defendant "was purposefully defrauding [plaintiff] in California." 912 F.2d at 1065. Similarly, in *Brainerd v. Governors of the University of Alberta,* 873 F.2d 1257 (9th Cir.1989) , we held that an Arizona court could exercise specific jurisdiction over Canadian residents who, in response to telephone calls directed to them in Canada, made statements that allegedly defamed a person they knew resided in Arizona. *Id.* at 1259-60. Even though the Canadian defendants had not initiated the telephone ***1088** calls, the statements they made about the plaintiff during the conversations were not "untargeted negligence" but rather were "performed for the very purpose of having their consequences felt in the forum state." *Id. See also Gordy v. Daily News, L.P.,* 95 F.3d 829, 833 (9th Cir.1996) (holding that specific jurisdiction existed in light of evidence of "targeting" of the plaintiff, who was a forum resident); *Lake v. Lake,* 817 F.2d 1416, 1422-23 (9th Cir.1987) (holding that specific jurisdiction existed where defendant performed foreign acts for the purpose of having their consequences felt in the forum state); *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.,* 784 F.2d 1392, 1398 (9th Cir.1986) (finding purposeful availment where forum effect of a foreign act "was not only foreseeable, it was contemplated and bargained for").

The presence of individualized targeting is what separates these cases from others in which we have found the effects test unsatisfied. In *Cybersell,* for example, there was no showing that the defendants even knew of the existence of the plaintiffs, let alone targeted them individually. *See* 130 F.3d at 420. *See also Gordy,* 95 F.3d at 833 (distinguishing certain cases holding that no personal jurisdiction existed under *Calder* on the ground that in those cases targeting was lacking).

Applying these concepts to the instant case, we conclude that B & M has demonstrated purposeful availment by ANI under the *Calder* effects test. ANI acted intentionally when it sent its letter to NSI. The letter was expressly aimed at California because it individually targeted B & M, a California corporation doing business almost exclusively in California. Finally, the effects of the letter were primarily felt, as ANI knew they would be, in California.

This case resembles *Panavision,* in which an Illinois resident registered as his domain name a California corporation's trademark. Though this activity was conducted outside of California, it was clear that the defendant's deliberate choice of the plaintiff's trademark, and his subsequent attempts to extort compensation for his conveyance of the domain name, targeted that individual plaintiff. *See Panavision,* 141 F.3d at 1321. Here, too, ANI was well aware that B & M currently held the masters.com website and that it was B & M that would be affected if the NSI dispute resolution procedures were triggered. This is sufficient to satisfy *Calder* and thereby demonstrate the purposeful availment necessary for an exercise of specific jurisdiction.

[12] The second requirement for specific jurisdiction is that the contacts constituting purposeful availment must be the ones that give rise to the current suit. We measure this requirement in terms of "but for" causation. *See Ziegler v. Indian River County,* 64 F.3d 470, 474 (9th Cir.1995). This requirement is met here. But for the letter to NSI, which under the NSI dispute resolution procedures forced B & M to choose between bringing this suit and losing the use of its website, it is clear that B & M would have no need for a judicial declaration of its right to use masters.com.

[13] The final requirement for specific jurisdiction, and the one that the district court apparently found to be lacking, is reasonableness. For jurisdiction to be reasonable, it must comport with fair play and substantial justice. *See Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985). *Burger King* explicitly places upon the defendant the burden of demonstrating unreasonableness and requires the defendant to put on a "compelling case." *Id.* at 476-77, 105 S.Ct. 2174. The reasonableness determination requires the consideration of several specific factors: (1) the extent of the defendant's purposeful interjection into the forum state, (2) the burden on the defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant's state, (4) the forum state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief,

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and (7) the existence of an alternative forum. *Id.*

***1089** In the district court, ANI attempted no factual showing with regard to the *Burger King* factors. Instead, ANI stated without elaboration that jurisdiction would be unreasonable. ANI supported this assertion with citations to various district court cases and two pre-*Burger King* cases from this circuit holding that a cease-and-desist letter sent by a trademark holder to a putative infringer is not, by itself, a sufficient basis for personal jurisdiction in the putative infringer's home state. *See Kransco Mf'g, Inc. v. Markwitz,* 656 F.2d 1376 (9th Cir.1981); *Cascade Corp. v. Hiab-Foco AB,* 619 F.2d 36 (9th Cir.1980); *Douglas Furniture Co. v. Wood Dimensions, Inc.,* 963 F.Supp. 899 (C.D.Cal.1997). This is inadequate to discharge *Burger King* 's requirement that the defendant demonstrate a "compelling case," focused on the seven specific factors listed above, in order to establish unreasonableness. ANI did not focus on the *Burger King* factors and apply them to the particular circumstances of this case.

Moreover, the cases on which ANI relies are inapposite because they concern only cease-and-desist letters. This case does not arise solely out of ANI's cease-and-desist letter to B & M, which placed B & M on notice of ANI's competing claim. This case arises principally out of ANI's letter to NSI, and that letter did more than warn or threaten B & M. Under NSI procedures, the letter would have operated automatically to prevent B & M from using its website had B & M not filed suit. ANI has not demonstrated any hardship or any other specific factors suggesting that jurisdiction in California would be unreasonable. We therefore conclude that the reasonableness requirement is met.

CONCLUSION

The district court's order dismissing the case for lack of personal jurisdiction is reversed, and the case is remanded for further proceedings. We decline B & M's request for 28 U.S.C. § 1927 sanctions against ANI for its attempt to have this appeal dismissed as moot. ANI's mootness argument was neither unreasonable nor vexatious, and does not appear to have been raised in bad faith.

REVERSED AND REMANDED.

SNEED, Circuit Judge, with whom TROTT, Circuit Judge, joins, Concurring:

The "effects test" has normally been restricted to tortious conduct in which the "aimer" in state Y was seeking to injure wrongfully the target in state X. I concur in the opinion only on the assumption that Augusta National, through its letter to NSI, engaged in tortious conduct, i.e., that they intended to effect a conversion of the masters.com domain name.

I am skeptical of Bancroft & Masters's selection of masters.com as its domain name. I suspect that Augusta National's initial reaction was similar. Therefore, I do not find it implausible that Augusta National, through its letter to NSI, merely intended to protect its trademark from dilution and infringement. At this point, however, there is insufficient information with which to make such a judgment. Jurisdiction in California would be ripe for challenge if following the development of trial it should appear that Augusta National acted reasonably and in good faith to protect its trademark against an infringer.

223 F.3d 1082, 55 U.S.P.Q.2d 1941, 00 Cal. Daily Op. Serv. 6941, 2000 Daily Journal D.A.R. 9197

Briefs and Other Related Documents (Back to top)

- 1999 WL 33607690 (Appellate Brief) Reply Brief for Appellant (Jul. 13, 1999)

- 1999 WL 33612523 (Appellate Brief) Appellee's Brief (Jun. 14, 1999)

END OF DOCUMENT

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EXHIBIT 3

105 S.Ct. 2174
85 L.Ed.2d 528, 53 USLW 4541
(Cite as: 471 U.S. 462, 105 S.Ct. 2174)

Briefs and Other Related Documents

Supreme Court of the United States

BURGER KING CORPORATION, Appellant
v.
John RUDZEWICZ.

No. 83-2097.

Argued Jan. 8, 1985.
Decided May 20, 1985.

Franchisor brought action against franchisee alleging breach of franchise obligations and trademark infringement. The United States District Court for the Southern District of Florida entered judgment in favor of franchisor and franchisee appealed. The Court of Appeals for the Eleventh Circuit, 724 F.2d 1505, reversed and denied rehearing, 729 F.2d 1468. The Supreme Court, Justice Brennan, held that: (1) where it was not clear that Court of Appeals had found Florida long-arm statute unconstitutional as applied, Supreme Court did not have jurisdiction over appeal; (2) jurisdictional statement would be treated as petition for writ of certiorari; and (3) exercise of long- arm jurisdiction over Michigan franchisee in Florida did not offend due process.

Reversed and remanded.

Justice Stevens dissented and filed an opinion in which Justice White joined.

West Headnotes

[1] Federal Courts ⇐453
170Bk453 Most Cited Cases

Where it was unclear whether Court of Appeals *actually held statute unconstitutional as applied* to the circumstances of the case, jurisdiction did not properly lie in the Supreme Court by appeal and appeal would be dismissed, with the jurisdictional statement treated as a petition for writ of certiorari, which would be granted. 28 U.S.C.A. § 1254(2).

[2] Federal Courts ⇐455.1
170Bk455.1 Most Cited Cases
(Formerly 170Bk455)

Parties cannot stipulate to a particular construction of state law, and thereby obtain jurisdiction over appeal to Supreme Court, where state law might, in fact, be in harmony with the Federal Constitution; Supreme Court's jurisdiction is properly invoked only where a Court of Appeals has squarely held that the statute is unconstitutional on its face or as applied and jurisdiction does not lie if the decision might rest on other grounds. 28 U.S.C.A. § 1254(2).

[3] Constitutional Law ⇐305(5)
92k305(5) Most Cited Cases

Due process clause protects an individual's liberty in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations; although the protection operates to restrict state power, *it is ultimately a* function of the individual liberty interest preserved by the due process clause rather than a function of federalism concern. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law ⇐305(4.1)
92k305(4.1) Most Cited Cases
(Formerly 92k305(4))

[4] Contracts ⇐127(4)
95k127(4) Most Cited Cases

Where forum selection provisions have been obtained through freely negotiated agreements and are not unreasonable and unjust, their enforcement does not offend due process. U.S.C.A. Const.Amend. 14.

[5] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Where forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, fair-warning requirement is satisfied if the defendant has purposefully directed his activities at residence of the forum and the litigation results from injuries that arise out of or relate to those activities.

[6] Federal Courts ⇐84
170Bk84 Most Cited Cases

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Publisher who distributes magazines in a distant state may fairly be held accountable in that forum for damages resulting therefrom an allegedly defamatory story.

[7] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other state for the consequences of their activities.

[8] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

State generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors and, where those individuals purposefully derive benefit from their interstate activities, it may be unfair to allow them to escape having to account in other states for the consequences that arise proximately from such activities and, for those reasons, forum may legitimately exercise personal jurisdiction over a nonresident who purposefully directs activities toward forum residents.

[9] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Constitutional touchstone in long-arm jurisdiction cases is whether the defendant purposefully established minimum contacts in the forum state.

[10] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Foreseeability of causing injury in another state is not a sufficient benchmark for exercising personal jurisdiction; foreseeability which is critical to due process analysis is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there.

[11] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Purposeful availment requirement for long-arm jurisdiction insures that defendant will not be haled into a jurisdiction solely as the result of random, fortuitous, or attenuated contacts or the unilateral activity of another party or a third person.

[12] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Jurisdiction is proper where the contacts of the defendant proximately result from actions by the defendant himself which create a substantial connection with the forum.

[13] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

So long as it creates a substantial connection with the forum, even a single act can support jurisdiction.

[14] Federal Courts ⇐76.15
170Bk76.15 Most Cited Cases

When defendant has availed himself of the privilege of conducting business in a forum, jurisdiction cannot be avoided merely because the defendant did not physically enter the forum state.

[15] Federal Courts ⇐76.15
170Bk76.15 Most Cited Cases

So long as a commercial actor's efforts are purposefully directed toward residents of another state, absence of physical contacts cannot defeat personal jurisdiction there.

[16] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Once it has been decided that a defendant has purposefully established minimum contacts with the forum state, the contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice.

[17] Federal Courts ⇐96
170Bk96 Most Cited Cases

Where defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.

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[18] Courts ⇐85(3)
106k85(3) Most Cited Cases

Jurisdictional rules may not be employed in such a way as to make litigation so gravely difficult and inconvenient that a party is unfairly at a severe disadvantage in comparison to his opponent.

[19] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Individual's contact with an out-of-state party cannot alone automatically establish sufficient minimum contacts in the other party's home forum to permit exercise of jurisdiction in that forum.

[20] Federal Courts ⇐76.30
170Bk76.30 Most Cited Cases

Parties' negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated in determining whether the defendant has purposefully established minimum contacts with the forum.

[21] Federal Courts ⇐76.30
170Bk76.30 Most Cited Cases

Michigan franchisee who deliberately reached out beyond his state of residence and negotiated with a Florida franchisor for purchase of a long-term franchise and the manifold benefits that would derive from affiliation with the nationwide organization, who entered into a carefully structured 20-year relationship which envisioned continuing and wide-reaching contacts with Florida, who accepted regulation of his business from the Miami headquarters of the franchisor, and who was required to make monthly payments to the franchisor in Miami was constitutionally subject to long-arm jurisdiction in Florida in dispute arising out of the franchise arrangement. West's F.S.A. § 48.193(1)(g); U.S.C.A. Const.Amend. 14.

[22] Federal Courts ⇐76.30
170Bk76.30 Most Cited Cases

Although choice-of-law provision on a contract, standing alone, would be insufficient to confer jurisdiction in forum whose law is to apply, choice-of- law provision should not be ignored in considering whether defendant has purposefully invoked the benefits and protections of a state's law.

[23] Federal Courts ⇐76.15
170Bk76.15 Most Cited Cases

State of residence of nationwide franchisor had more than a negligible interest in providing a convenient forum, notwithstanding the franchisor's size and ability to conduct litigation anywhere in the country; absent compelling consideration, defendant who has purposefully derived commercial benefit from his affiliations in a forum may not defeat jurisdiction there simply because of his adversary's greater net wealth.

[24] Federal Courts ⇐101
170Bk101 Most Cited Cases

To the extent that it is inconvenient for a party who has minimum contacts with a forum to litigate there, the considerations can be accommodated through change of venue, rather than denial of jurisdiction.

[25] Federal Courts ⇐76
170Bk76 Most Cited Cases

Inconvenience which Michigan franchisee would suffer from litigating franchise dispute in Florida was not so substantial as to render it unconstitutional to subject him to jurisdiction in Florida.

[26] Federal Courts ⇐96
170Bk96 Most Cited Cases

Evidence sustained trial court's finding that franchisee was not the victim of misrepresentation, fraud, or duress in connection with franchise agreement rendering it unconstitutional to subject him to jurisdiction in franchisor's state of residence.

[27] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases

Quality and nature of an interstate transaction may sometimes be so random, fortuitous, or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction.

***2176 *Syllabus* [FN*]

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FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Appellant is a Florida corporation whose principal offices are in Miami. It conducts most of its restaurant business through a franchise operation, under which franchisees are licensed to use appellant's trademarks and service marks in leased standardized restaurant facilities for a period of 20 years. The governing contracts provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required monthly fees and forwarding of all relevant notices to the Miami headquarters. The Miami headquarters sets policy and works directly with the franchisees in attempting to resolve major problems. Day-to-day monitoring of franchisees, however, is conducted through district offices that in turn report to the Miami headquarters. Appellee is a Michigan resident who, along with another Michigan resident, entered into a 20-year franchise contract with appellant to operate a restaurant in Michigan. Subsequently, when the restaurant's patronage declined, the franchisees fell behind in their monthly payments. After extended negotiations among the franchisees, the Michigan district office, and the Miami headquarters proved unsuccessful in solving **2177 the problem, headquarters terminated the franchise and ordered the franchisees to vacate the premises. They refused and continued to operate the restaurant. Appellant then brought a diversity action in Federal District Court in Florida, alleging that the franchisees had breached their franchise obligations and requesting damages and injunctive relief. The franchisees claimed that, because they were Michigan residents and because appellant's claim did not "arise" within Florida, the District Court lacked personal jurisdiction over them. But the court held that the franchisees were subject to personal jurisdiction pursuant to Florida's long-arm statute, which extends jurisdiction to any person, whether or not a citizen or resident of the State, who breaches a contract in the State by failing to perform acts that the contract requires to be performed there. Thereafter, the court entered judgment against the franchisees on the merits. The Court of Appeals reversed, holding that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process."

Held: The District Court's exercise of jurisdiction pursuant to Florida's long-arm statute did not violate the Due Process Clause of the Fourteenth Amendment. Pp. 2181-2190.

***463** (a) A forum may assert specific jurisdiction over a nonresident defendant where an alleged injury arises out of or relates to actions by the defendant *himself* that are purposefully directed toward forum residents, and where jurisdiction would not otherwise offend "fair play and substantial justice." Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum. Pp. 2181-2185.

(b) An individual's contract with an out-of-state party cannot *alone* automatically establish sufficient minimum contacts in the other party's home forum. Instead, the prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated to determine whether a defendant purposefully established minimum contacts within the forum. Pp. 2185-2186.

(c) Here, appellee established a substantial and continuing relationship with appellant's Miami headquarters, and received fair notice from the contract documents and the course of dealings that he might be subject to suit in Florida. The District Court found that appellee is an "experienced and sophisticated" businessman who did not act under economic duress or disadvantage imposed by appellant, and appellee has pointed to no other factors that would establish the *unconstitutionality* of Florida's assertion of jurisdiction. Pp. 2186-2190.

724 F.2d 1505 (CA11 1984), reversed and remanded.

Joel S. Perwin argued the cause and filed briefs for appellant.

Thomas H. Oehmke argued the cause and filed a brief for appellee.

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Justice BRENNAN delivered the opinion of the Court.

The State of Florida's long-arm statute extends jurisdiction to "[a]ny person, whether or not a citizen or resident of this state," who, *inter alia,* "[b]reach [es] a contract in this state by failing to perform acts required by the contract to be performed in this state," so long as the cause of action ***464** arises from the alleged contractual breach. Fla.Stat. § 48.193(1)(g) (Supp.1984). The United States District Court for the Southern District of Florida, sitting in diversity, relied on this provision in exercising personal jurisdiction over a Michigan resident who allegedly had breached a franchise agreement with a Florida corporation by failing to make required payments in Florida. The question presented is whether this exercise of long-arm jurisdiction offended "traditional conception[s] of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment. ****2178***International Shoe Co. v. Washington,* 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945).

I
A

Burger King Corporation is a Florida corporation whose principal offices are in Miami. It is one of the world's largest restaurant organizations, with over 3,000 outlets in the 50 States, the Commonwealth of Puerto Rico, and 8 foreign nations. Burger King conducts approximately 80% of its business through a franchise operation that the company styles the "Burger King System"--"a comprehensive restaurant format and operating system for the sale of uniform and quality food products." App. 46. [FN1] Burger King licenses its franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. In addition, franchisees acquire a variety of proprietary information concerning the "standards, specifications, procedures and methods for operating ***465** a Burger King Restaurant." *Id.,* at 52. They also receive market research and advertising assistance; ongoing training in restaurant management; [FN2] and accounting, cost-control, and inventory- control guidance. By permitting franchisees to tap into Burger King's established national reputation and to benefit from proven procedures for dispensing standardized fare, this system enables them to go into the restaurant business with significantly lowered barriers to entry. [FN3]

FN1. Burger King's standard Franchise Agreement further defines this system as "a restaurant format and operating system, including a recognized design, decor, color scheme and style of building, uniform standards, specifications and procedures of operation, quality and uniformity of products and services offered, and procedures for inventory and management control...." App. 43.

FN2. Mandatory training seminars are conducted at Burger King University in Miami and at Whopper College Regional Training Centers around the country. See *id.,* at 39; 6 Record 540-541.

FN3. See App. 43-44. See generally H. Brown, Franchising Realities and Remedies 6-7, 16-17 (2d ed. 1978).

In exchange for these benefits, franchisees pay Burger King an initial $40,000 franchise fee and commit themselves to payment of monthly royalties, advertising and sales promotion fees, and rent computed in part from monthly gross sales. Franchisees also agree to submit to the national organization's exacting regulation of virtually every conceivable aspect of their operations. [FN4] Burger King imposes these standards and undertakes its rigid regulation out of conviction that "[u]niformity of service, appearance, and quality of product is essential to the preservation of the Burger King image and the benefits accruing therefrom to both Franchisee and Franchisor." *Id.,* at 31.

FN4. See, *e.g.,* App. 24-25, 26 (range, "quality, appearance, size, taste, and processing" of menu items), 31 ("standards of service and cleanliness"), 32 (hours of operation), 47 ("official mandatory restaurant operating standards,

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specifications and procedures"), 48-50 (building layout, displays, equipment, vending machines, service, hours of operation, uniforms, advertising, and promotion), 53 (employee training), 55-56 (accounting and auditing requirements), 59 (insurance requirements). Burger King also imposes extensive standards governing franchisee liability, assignments, defaults, and termination. See *id.*, at 61-74.

Burger King oversees its franchise system through a two-tiered administrative structure. The governing contracts ***466** provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required fees and forwarding of all relevant notices to the Miami headquarters. [FN5] The Miami headquarters sets policy and works directly with its franchisees in attempting to resolve major problems. See nn. 7, 9, *infra.* Day-to-day monitoring of franchisees, however, is conducted through a network of 10 district offices which in turn report to the Miami headquarters.

FN5. See *id.*, at 10-11, 37, 43, 72-73, 113. See *infra*, at 2187.

The instant litigation grows out of Burger King's termination of one of its franchisees, ****2179** and is aptly described by the franchisee as "a divorce proceeding among commercial partners." 5 Record 4. The appellee John Rudzewicz, a Michigan citizen and resident, is the senior partner in a Detroit accounting firm. In 1978, he was approached by Brian MacShara, the son of a business acquaintance, who suggested that they jointly apply to Burger King for a franchise in the Detroit area. MacShara proposed to serve as the manager of the restaurant if Rudzewicz would put up the investment capital; in exchange, the two would evenly share the profits. Believing that MacShara's idea offered attractive investment and tax-deferral opportunities, Rudzewicz agreed to the venture. 6 *id.*, at 438-439, 444, 460.

Rudzewicz and MacShara jointly applied for a franchise to Burger King's Birmingham, Michigan, district office in the autumn of 1978. Their application was forwarded to Burger King's Miami headquarters, which entered into a preliminary agreement with them in February 1979. During the ensuing four months it was agreed that Rudzewicz and MacShara would assume operation of an existing facility in Drayton Plains, Michigan. MacShara attended the prescribed management courses in Miami during this period, see n. 2, *supra,* and the franchisees purchased $165,000 worth of restaurant equipment from Burger King's Davmor Industries division in ***467** Miami. Even before the final agreements were signed, however, the parties began to disagree over site- development fees, building design, computation of monthly rent, and whether the franchisees would be able to assign their liabilities to a corporation they had formed. [FN6] During these disputes Rudzewicz and MacShara negotiated both with the Birmingham district office and with the Miami headquarters. [FN7] With some misgivings, Rudzewicz and MacShara finally obtained limited concessions from the Miami headquarters, [FN8] signed the final agreements, and commenced operations in June 1979. By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding $1 million over the 20-year franchise relationship.

FN6. The latter two matters were the major areas of disagreement. Notwithstanding that Burger King's franchise offering advised that minimum rent would be based on a percentage of "approximated capitalized site acquisition and construction costs," *id.*, at 23, Rudzewicz assumed that rent would be a function solely of renovation costs, and he thereby underestimated the minimum monthly rent by more than $2,000. The District Court found Rudzewicz' interpretation "incredible." 7 Record 649.
With respect to assignment, Rudzewicz and MacShara had formed RMBK Corp. with the intent of assigning to it all of their interest and liabilities in the franchise. Consistent with the contract documents, however, Burger King insisted that the two remain personally liable for their franchise obligations. See App. 62, 109. Although the franchisees contended that Burger King officials had given them oral assurances concerning assignment, the District Court

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found that pursuant to the parol evidence rule any such assurances "even if they had been made and were misleading were joined and merged" into the final agreement. 7 Record 648.

FN7. Although Rudzewicz and MacShara dealt with the Birmingham district office on a regular basis, they communicated directly with the Miami headquarters in forming the contracts; moreover, they learned that the district office had "very little" decisionmaking authority and accordingly turned directly to headquarters in seeking to resolve their disputes. 5 *id.*, at 292. See generally App. 5-6; 5 Record 167-168, 174-179, 182-184, 198-199, 217-218, 264-265, 292-294; 6 *id.*, at 314-316, 363, 373, 416, 463, 496.

FN8. They were able to secure a $10,439 reduction in rent for the third year. App. 82; 5 Record 222-223; 6 *id.*, at 500.

***468** The Drayton Plains facility apparently enjoyed steady business during the summer of 1979, but patronage declined after a recession began later that year. Rudzewicz and MacShara soon fell far behind in their monthly payments to Miami. Headquarters sent notices of default, and an extended period of negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters. After several Burger King officials in Miami had engaged in prolonged but ultimately unsuccessful negotiations with the franchisees ****2180** by mail and by telephone, [FN9] headquarters terminated the franchise and ordered Rudzewicz and MacShara to vacate the premises. They refused and continued to occupy and operate the facility as a Burger King restaurant.

FN9. Miami's policy was to "deal directly" with franchisees when they began to encounter financial difficulties, and to involve district office personnel only when necessary. 5 *id.*, at 95. In the instant case, for example, the Miami office handled all credit problems, ordered cost-cutting measures, negotiated for a partial refinancing of the franchisees' debts, communicated directly with the franchisees in attempting to resolve the dispute, and was responsible for all termination matters. See 2 *id.*, at 59-69; 5 *id.*, at 84-89, 94-95, 97-98, 100-103, 116-128, 151- 152, 158, 163; 6 *id.*, at 395-397, 436-438, 510-511, 524-525.

B

Burger King commenced the instant action in the United States District Court for the Southern District of Florida in May 1981, invoking that court's diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) and its original jurisdiction over federal trademark disputes pursuant to § 1338(a). [FN10] Burger King alleged that Rudzewicz and MacShara had breached their franchise obligations "within [the jurisdiction of] this district court" by failing to make the required payments "at plaintiff's place of business in Miami, Dade County, Florida," ¶ 6, App. 121, and also charged that they were tortiously infringing ***469** its trademarks and service marks through their continued, unauthorized operation as a Burger King restaurant, ¶¶ 35-53, App. 130-135. Burger King sought damages, injunctive relief, and costs and attorney's fees. Rudzewicz and MacShara entered special appearances and argued, *inter alia*, that because they were Michigan residents and because Burger King's claim did not "arise" within the Southern District of Florida, the District Court lacked personal jurisdiction over them. The District Court denied their motions after a hearing, holding that, pursuant to Florida's long-arm statute, "a non- resident Burger King franchisee is subject to the personal jurisdiction of this Court in actions arising out of its franchise agreements." *Id.*, at 138. Rudzewicz and MacShara then filed an answer and a counterclaim seeking damages for alleged violations by Burger King of Michigan's Franchise Investment Law, Mich.Comp.Laws § 445.1501 *et seq.* (1979).

FN10. Rudzewicz and MacShara were served in Michigan with summonses and copies of the complaint pursuant to Federal Rule of Civil Procedure 4. 2 *id.*, at 102-103.

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After a 3-day bench trial, the court again concluded that it had "jurisdiction over the subject matter and the parties to this cause." App. 159. Finding that Rudzewicz and MacShara had breached their franchise agreements with Burger King and had infringed Burger King's trademarks and service marks, the court entered judgment against them, jointly and severally, for $228,875 in contract damages. The court also ordered them "to immediately close Burger King Restaurant Number 775 from continued operation or to immediately give the keys and possession of said restaurant to Burger King Corporation," *id.*, at 163, found that they had failed to prove any of the required elements of their counterclaim, and awarded costs and attorney's fees to Burger King.

Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit. [FN11] A divided panel of that Circuit reversed the ***470** judgment, ****2181** concluding that the District Court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Fla.Stat. § 48.193(1)(g) (Supp.1984) because "the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida." *Burger King Corp. v. MacShara,* 724 F.2d 1505, 1513 (1984). Accordingly, the panel majority concluded that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Ibid.*

> FN11. MacShara did not appeal his judgment. See *Burger King Corp. v. MacShara,* 724 F.2d 1505, 1506, n. 1 (CA11 1984). In addition, Rudzewicz entered into a compromise with Burger King and waived his right to appeal the District Court's finding of trademark infringement and its entry of injunctive relief. See 4 Record 804-816. Accordingly, we need not address the extent to which the tortious act provisions of Florida's long-arm statute, see Fla.Stat. § 48.193(1)(b) (Supp.1984), may constitutionally extend to out-of-state trademark infringement. Cf. *Calder v. Jones,* 465 U.S. 783, 788-789, 104 S.Ct. 1482, 1486-1487, 79 L.Ed.2d 804 (1984) (tortious out-of-state conduct); *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 776, 104 S.Ct. 1473, 1479, 79 L.Ed.2d 790 (1984) (same).

[1][2] Burger King appealed the Eleventh Circuit's judgment to this Court pursuant to 28 U.S.C. § 1254(2), and we postponed probable jurisdiction. 469 U.S. 814, 105 S.Ct. 77, 83 L.Ed.2d 25 (1984). Because it is unclear whether the Eleventh Circuit actually held that Fla.Stat. § 48.193(1)(g) (Supp.1984) *itself* is unconstitutional as applied to the circumstances of this case, we conclude that jurisdiction by appeal does not properly lie and therefore dismiss the appeal. [FN12] Treating the jurisdictional ***471** statement as a petition for a writ of certiorari, see 28 U.S.C. § 2103, we grant the petition and now reverse.

> FN12. The District Court had found both that Rudzewicz fell within the reach of Florida's long-arm statute and that the exercise of jurisdiction was constitutional. The Court of Appeals did not consider the statutory question, however, because, as Burger King acknowledged at argument, that court "accepted the parties' stipulation" that § 48.193 reached Rudzewicz "in lieu of [making] a determination of what Florida law provides." Tr. of Oral Arg. 12. Burger King contends that an appeal is proper "on the basis of the Circuit Court's holding that *given that stipulation* the statute was unconstitutional as applied," *Id.*, at 13 (emphasis added).
>
> We disagree. Our "overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound judicial administration," *Gonzalez v. Automatic Employees Credit Union,* 419 U.S. 90, 98, 95 S.Ct. 289, 294, 42 L.Ed.2d 249 (1974) (construing 28 U.S.C. § 1253), would be threatened if litigants could obtain an appeal through the expedient of stipulating to a particular construction of state law where state law might in fact be in harmony with the Federal Constitution. Jurisdiction under 28 U.S.C. § 1254(2) is

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properly invoked only where a court of appeals *squarely* has "held" that a state statute is unconstitutional on its face or as applied; jurisdiction does not lie if the decision might rest on other grounds. *Public Service Comm'n v. Batesville Telephone Co.,* 284 U.S. 6, 7, 52 S.Ct. 1, 76 L.Ed. 135 (1931) (*per curiam*). Consistent with "our practice of strict construction" of § 1254(2), *Fornaris v. Ridge Tool Co.,* 400 U.S. 41, 42, n. 1, 91 S.Ct. 156, 157, n. 1, 27 L.Ed.2d 174 (1970) (*per curiam*), we believe that an appeal cannot lie where a court of appeals' judgment rests solely on the stipulated applicability of state law. Rather, it must be reasonably clear that the court independently concluded that the challenged statute governs the case and held the statute itself unconstitutional as so applied. The Court of Appeals did neither in this case, concluding simply that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." 724 F.2d, at 1513.

Of course, if it were clear under Florida law that § 48.193(1)(g) governed every transaction falling within its literal terms, there could be no objection to a stipulation that merely recognized this established construction. But the Florida Supreme Court has not ruled on the breadth of § 48.193(1)(g), and several state appellate courts have held that the provision extends only to the limits of the Due Process Clause. See, *e.g., Scordilis v. Drobnicki,* 443 So.2d 411, 412-414 (Fla.App.1984); *Lakewood Pipe of Texas, Inc. v. Rubaii,* 379 So.2d 475, 477 (Fla.App.1979), appeal dism'd, 383 So.2d 1201 (Fla.1980); *Osborn v. University Society, Inc.,* 378 So.2d 873, 874 (Fla.App.1979). If § 48.193(1)(g) is construed and applied in accordance with due process limitations as a matter of state law, then an appeal is improper because the statute cannot be "invalid as repugnant to the Constitution ... of the United States," 28 U.S.C. § 1254(2), since its boundaries are defined by, rather than being in excess of, the Due Process Clause. See, *e.g., Calder v. Jones, supra,* 465 U.S., at 787-788, n. 7, 104 S.Ct., at 1486, n. 7; *Kulko v. California Superior Court,* 436 U.S. 84, 90, and n. 4, 98 S.Ct. 1690, 1695-1696, and n. 4, 56 L.Ed.2d 132 (1978).

II

A

[3][4] The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a ***472** forum with which he has established no meaningful "contacts, ties, or relations." ****2182***International Shoe Co. v. Washington,* 326 U.S., at 319, 66 S.Ct., at 160. [FN13] By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," *Shaffer v. Heitner,* 433 U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

FN13. Although this protection operates to restrict state power, it "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause" rather than as a function "of federalism concerns." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 702-703, n. 10, 102 S.Ct. 2099, 2104- 2105, n. 10, 72 L.Ed.2d 492 (1982).

[5][6][7] Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [FN14] this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, *Keeton v. Hustler Magazine, Inc.,* 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79 L.Ed.2d 790 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those

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activities, ***473***Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 1984). [FN15] Thus "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" and those products subsequently injure forum consumers. *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 297-298, 100 S.Ct., at 567-568. Similarly, a publisher who distributes magazines in a distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. *Keeton v. Hustler Magazine, Inc., supra;* see also *Calder v. Jones,* 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984) (suit against author and editor). And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. *Travelers Health Assn. v. Virginia,* 339 U.S. 643, 647, 70 S.Ct. 927, 929, 94 L.Ed. 1154 (1950). See also *McGee v. International Life Insurance Co.,* 355 U.S. 220, 222-223, 78 S.Ct. 199, 200-201, 2 L.Ed.2d 223 (1957).

FN14. We have noted that, because the personal jurisdiction requirement is a waivable right, there are a "variety of legal arrangements" by which a litigant may give "express or implied consent to the personal jurisdiction of the court." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, supra,* at 703, 102 S.Ct., at 2105. For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. See *National Equipment Rental, Ltd. v. Szukhent,* 375 U.S. 311, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964). Where such forum-selection provisions have been obtained through "freely negotiated" agreements and are not "unreasonable and unjust," *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 15, 92 S.Ct. 1907, 1916, 32 L.Ed.2d 513 (1972), their enforcement does not offend due process.

FN15. "Specific" jurisdiction contrasts with "general" jurisdiction, pursuant to which "a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S., at 414, n. 9, 104 S.Ct., at 1872, n. 9; see also *Perkins v. Benguet Consolidated Mining Co.,* 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952).

[8] We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. ***2183** *Id.,* at 223, 78 S.Ct., at 201; see also *Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 776, 104 S.Ct., at 1479. Moreover, where individuals "purposefully derive benefit" from their interstate activities, ***474***Kulko v. California Superior Court,* 436 U.S. 84, 96, 98 S.Ct. 1690, 1699, 56 L.Ed.2d 132 (1978), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223, 78 S.Ct., at 201.

[9][10] Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co. v. Washington, supra,* 326 U.S., at 316, 66

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S.Ct., at 158. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require, [FN16] the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S., at 295, 100 S.Ct., at 566. Instead, "the foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.,* at 297, 100 S.Ct., at 567. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958):

> FN16. See, *e.g., World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 299, 100 S.Ct. 559, 568, 62 L.Ed.2d 490 (1980) (BRENNAN, J., dissenting); *Shaffer v. Heitner,* 433 U.S. 186, 219, 97 S.Ct. 2569, 2588, 53 L.Ed.2d 683 (1977) (BRENNAN, J., concurring in part and dissenting in part).

> "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application ***475** of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

[11][12][13] This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton v. Hustler Magazine, Inc.,* 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 299, 100 S.Ct., at 568, or of the "unilateral activity of another party or a third person," *Helicopteros Nacionales de Colombia, S.A. v. Hall, supra,* 466 U.S., at 417, 104 S.Ct., at 1873. [FN17] Jurisdiction is proper, however, ****2184** where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223, 78 S.Ct., at 201; see also *Kulko v. California Superior Court, supra,* 436 U.S., at 94, n. 7, 98 S.Ct., at 1698, n. 7. [FN18] Thus where the defendant "deliberately" has ***476** engaged in significant activities within a State, *Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 781, 104 S.Ct., at 1481, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn. v. Virginia,* 339 U.S., at 648, 70 S.Ct., at 929, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

> FN17. Applying this principle, the Court has held that the Due Process Clause forbids the exercise of personal jurisdiction over an out- of-state automobile distributor whose only tie to the forum resulted from a customer's decision to drive there, *World-Wide Volkswagen Corp. v. Woodson, supra;* over a divorced husband sued for child-support payments whose only affiliation with the forum was created by his former spouse's decision to settle there, *Kulko v. California Superior Court,* 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978); and over a trustee whose only connection with the forum resulted from the settlor's decision to exercise her power of appointment there, *Hanson v. Denckla,* 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). In such instances, the defendant has had no "clear notice that it is subject to suit" in the forum and thus no opportunity to "alleviate the risk of burdensome litigation" there. *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 297, 100 S.Ct., at 567.

> FN18. So long as it creates a "substantial connection" with the forum, even a single

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> act can support jurisdiction. *McGee v. International Life Insurance Co.,* 355 U.S., at 223, 78 S.Ct., at 201. The Court has noted, however, that "some single or occasional acts" related to the forum may not be sufficient to establish jurisdiction if "their nature and quality and the circumstances of their commission" create only an "attenuated" affiliation with the forum. *International Shoe Co. v. Washington,* 326 U.S. 310, 318, 66 S.Ct. 154, 159, 90 L.Ed. 95 (1945); *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S., at 299, 100 S.Ct., at 568. This distinction derives from the belief that, with respect to this category of "isolated" acts, *id.,* at 297, 100 S.Ct., at 567, the reasonable foreseeability of litigation in the forum is substantially diminished.

[14][15] Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 774-775, 104 S.Ct., at 1478; see also *Calder v. Jones,* 465 U.S., at 778- 790, 104 S.Ct., at 1486-1487; *McGee v. International Life Insurance Co.,* 355 U.S., at 222-223, 78 S.Ct., at 200-201. Cf. *Hoopeston Canning Co. v. Cullen,* 318 U.S. 313, 317, 63 S.Ct. 602, 605, 87 L.Ed. 777 (1943).

[16][17][18] Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." *International Shoe Co. v. Washington,* 326 U.S., at 320, 66 S.Ct., at 160. Thus ***477** courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 292, 100 S.Ct., at 564. These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. See, *e.g., Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 780, 104 S.Ct., at 1481; *Calder v. Jones, supra,* 465 U.S., at 788-789, 104 S.Ct., at 1486-1487; *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223-224, 78 S.Ct., at 201-202. On the other hand, where a defendant who purposefully has directed his activities at ****2185** forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, the potential clash of the forum's law with the "fundamental substantive social policies" of another State may be accommodated through application of the forum's choice-of-law rules. [FN19] Similarly, a defendant claiming substantial inconvenience may seek a change of venue. [FN20] Nevertheless, minimum requirements inherent in the concept of "fair play and substantial ***478** justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 292, 100 S.Ct., at 564; see also Restatement (Second) of Conflict of Laws §§ 36-37 (1971). As we previously have noted, jurisdictional rules may not be employed in such a way as to make litigation "so gravely difficult and inconvenient" that a party unfairly is at a "severe disadvantage" in comparison to his opponent. *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 18, 92 S.Ct. 1907, 1917, 32 L.Ed.2d 513 (1972) (*re* forum-selection provisions); *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223-224, 78 S.Ct., at 201-202.

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FN19. See *Allstate Insurance Co. v. Hague,* 449 U.S. 302, 307-313, 101 S.Ct. 633, 637-640, 66 L.Ed.2d 521 (1981) (opinion of BRENNAN, J.). See generally Restatement (Second) of Conflict of Laws §§ 6, 9 (1971).

FN20. See, *e.g.,* 28 U.S.C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought"). This provision embodies in an expanded version the common-law doctrine of *forum non conveniens,* under which a court in appropriate circumstances may decline to exercise its jurisdiction in the interest of the "easy, expeditious and inexpensive" resolution of a controversy in another forum. See *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508-509, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947).

B
(1)

[19][20] Applying these principles to the case at hand, we believe there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz in Florida for the alleged breach of his franchise agreement did not offend due process. At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. [FN21] If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington, supra,* 326 U.S., at 319, 66 S.Ct., at 159, or on "conceptualistic ... theories of the place of contracting or of performance," ***479***Hoopeston Canning Co. v. Cullen,* 318 U.S., at 316, 63 S.Ct., at 604. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.,* at 316- 317, 63 S.Ct., at 604-605. It is these factors--prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing--that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

FN21. See, *e.g., Lakeside Bridge & Steel Co. v. Mountain State Construction Co.,* 445 U.S. 907, 909-910, 100 S.Ct. 1087, 1088-1089, 63 L.Ed.2d 325 (1980) (WHITE, J., dissenting from denial of certiorari) (collecting cases); Brewer, Jurisdiction in Single Contract Cases, 6 U.Ark. Little Rock L.J. 1, 7-11, 13 (1983); Note, Long-Arm Jurisdiction in Commercial Litigation: When is a Contract a Contact?, 61 B.U.L.Rev. 375, 384-388 (1981).

****2186** [21] In this case, no physical ties to Florida can be attributed to Rudzewicz other than MacShara's brief training course in Miami. [FN22] Rudzewicz did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of "a contract which had a *substantial* connection with that State." *McGee v. International Life Insurance Co.,* 355 U.S., at 223, 78 S.Ct., at 201 (emphasis added). Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately "reach[ed] out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long- term franchise and ***480*** the manifold benefits that would derive from affiliation with a nationwide organization. *Travelers Health Assn. v. Virginia,* 339 U.S., at 647, 70 S.Ct., at 929. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the "quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated." *Hanson v. Denckla,* 357 U.S., at 253,

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78 S.Ct., at 1239; *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 299, 100 S.Ct., at 568. Rudzewicz' refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively reasonable for Rudzewicz to be called to account there for such injuries.

> FN22. The Eleventh Circuit held that MacShara's presence in Florida was irrelevant to the question of Rudzewicz's minimum contacts with that forum, reasoning that "Rudzewicz and MacShara never formed a partnership" and "signed the agreements in their individual capacities." 724 F.2d, at 1513, n. 14. The two did jointly form a corporation through which they were seeking to conduct the franchise, however. See n. 6, *supra*. They were required to decide which one of them would travel to Florida to satisfy the training requirements so that they could commence business, and Rudzewicz participated in the decision that MacShara would go there. We have previously noted that when commercial activities are "carried on in behalf of" an out-of-state party those activities may sometimes be ascribed to the party, *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945), at least where he is a "primary participan[t]" in the enterprise and has acted purposefully in directing those activities, *Calder v. Jones*, 465 U.S., at 790, 104 S.Ct., at 1487. Because MacShara's matriculation at Burger King University is not pivotal to the disposition of this case, we need not resolve the permissible bounds of such attribution.

The Court of Appeals concluded, however, that in light of the supervision emanating from Burger King's district office in Birmingham, Rudzewicz reasonably believed that "the Michigan office was for all intents and purposes the embodiment of Burger King" and that he therefore had no "reason to anticipate a Burger King suit outside of Michigan." 724 F.2d, at 1511. See also *post*, at 2190 (STEVENS, J., dissenting). This reasoning overlooks substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida. The contract documents themselves emphasize that Burger King's operations are conducted and supervised from the Miami headquarters, that all relevant notices and payments must be sent there, and that the agreements were made in and enforced from Miami. See n. 5, *supra*. Moreover, the parties' actual course of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters ***481** and that the district office served largely as an intermediate link between the headquarters and the franchisees. When problems arose over building design, site-development fees, rent computation, and the defaulted payments, Rudzewicz and MacShara learned that the Michigan office was powerless to resolve their disputes and ****2187** could only channel their communications to Miami. Throughout these disputes, the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone, and it was the Miami headquarters that made the key negotiating decisions out of which the instant litigation arose. See nn. 7, 9, *supra*.

[22][23] Moreover, we believe the Court of Appeals gave insufficient weight to provisions in the various franchise documents providing that all disputes would be governed by Florida law. The franchise agreement, for example, stated:

> "This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida." App. 72.

See also n. 5, *supra*. The Court of Appeals reasoned that choice-of-law provisions are irrelevant to the question of personal jurisdiction, relying on *Hanson v. Denckla* for the proposition that "the center of gravity for choice-of-law

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purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F.2d, at 1511-1512, n. 10, citing 357 U.S., at 254, 78 S.Ct., at 1240. This reasoning misperceives the import of the quoted proposition. The Court in *Hanson* and subsequent cases has emphasized that choice-of-law *analysis* --which focuses on all elements of a transaction, and not simply on the defendant's conduct--is distinct from minimum-contacts jurisdictional analysis--which focuses at the threshold ***482** solely on the defendant's purposeful connection to the forum. [FN23] Nothing in our cases, however, suggests that a choice-of-law *provision* should be ignored in considering whether a defendant has "purposefully invoked the benefits and protections of a State's laws" for jurisdictional purposes. Although such a provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there. As Judge Johnson argued in his dissent below, Rudzewicz "purposefully availed himself of the benefits and protections of Florida's laws" by entering into contracts expressly providing that those laws would govern franchise disputes. 724 F.2d, at 1513. [FN24]

FN23. *Hanson v. Denckla,* 357 U.S., at 253-254, 78 S.Ct., at 1239- 1240. See also *Keeton v. Hustler Magazine, Inc.,* 465 U.S., at 778, 104 S.Ct., at 1480; *Kulko v. California Superior Court,* 436 U.S., at 98, 98 S.Ct., at 1700; *Shaffer v. Heitner,* 433 U.S., at 215, 97 S.Ct., at 2585.

FN24. In addition, the franchise agreement's disclaimer that the "choice of law designation does not *require* that all suits concerning this Agreement be filed in Florida," App. 72 (emphasis added), reasonably should have suggested to Rudzewicz that by negative implication such suits *could* be filed there.
The lease also provided for binding arbitration in Miami of certain condemnation disputes, *id.,* at 113, and Rudzewicz conceded the validity of this provision at oral argument, Tr. of Oral Arg. 37. Although it does not govern the instant dispute, this provision also should have made it apparent to the franchisees that they were dealing directly with the Miami headquarters and that the Birmingham district office was *not* "for all intents and purposes the embodiment of Burger King." 724 F.2d, at 1511.

(2)

[24][25] Nor has Rudzewicz pointed to other factors that can be said persuasively to outweigh the considerations discussed above and to establish the *unconstitutionality* of Florida's assertion of jurisdiction. We cannot conclude that Florida had no "legitimate interest in holding [Rudzewicz] answerable ***483** on a claim related to" the contacts he had established in that State. *Keeton v. Hustler Magazine, Inc.,* 465 U.S., at 776, 104 S.Ct., at 1479; see also ****2188***McGee v. International Life Insurance Co.,* 355 U.S., at 223, 78 S.Ct., at 201 (noting that State frequently will have a "manifest interest in providing effective means of redress for its residents"). [FN25] Moreover, although Rudzewicz has argued at some length that Michigan's Franchise Investment Law, Mich.Comp.Laws § 445.1501 *et seq.* (1979), governs many aspects of this franchise relationship, he has not demonstrated how Michigan's acknowledged interest might possibly render jurisdiction in Florida *unconstitutional.* [FN26] Finally, the Court of Appeals' assertion that the Florida litigation "severely impaired [Rudzewicz'] ability to call Michigan witnesses who might be essential to his defense and counterclaim," 724 F.2d, at 1512-1513, is wholly without support in the record. [FN27] And even to the extent that it is inconvenient ***484** for a party who has minimum contacts with a forum to litigate there, such considerations most frequently can be accommodated through a change of venue. See n. 20, *supra.* Although the Court has suggested that inconvenience may at some point become so substantial as to achieve *constitutional* magnitude, *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223, 78 S.Ct., at 201, this is not such a case.

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FN25. Complaining that "when Burger King is the plaintiff, you won't 'have it your way' because it sues all franchisees in Miami," Brief for Appellee 19, Rudzewicz contends that Florida's interest in providing a convenient forum is negligible given the company's size and ability to conduct litigation anywhere in the country.

We disagree. Absent compelling considerations, cf. *McGee v. International Life Insurance Co.*, 355 U.S., at 223, 78 S.Ct., at 201, a defendant who has purposefully derived commercial benefit from his affiliations in a forum may not defeat jurisdiction there simply because of his adversary's greater net wealth.

FN26. Rudzewicz has failed to show how the District Court's exercise of jurisdiction in this case might have been at all inconsistent with Michigan's interests. To the contrary, the court found that Burger King had fully complied with Michigan law, App. 159, and there is nothing in Michigan's franchise Act suggesting that Michigan would attempt to assert exclusive jurisdiction to resolve franchise disputes affecting its residents. In any event, minimum-contacts analysis presupposes that two or more States may be interested in the outcome of a dispute, and the process of resolving potentially conflicting "fundamental substantive social policies," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 292, 100 S.Ct., at 564, can usually be accommodated through choice-of-law rules rather than through outright preclusion of jurisdiction in one forum. See n. 19, *supra*.

FN27. The only arguable instance of trial inconvenience occurred when Rudzewicz had difficulty in authenticating some corporate records; the court offered him as much time as would be necessary to secure the requisite authentication from the Birmingham district office, and Burger King ultimately stipulated to their authenticity rather than delay the trial. See 7 Record 574-575, 578-579, 582, 598-599.

[26] The Court of Appeals also concluded, however, that the parties' dealings involved "a characteristic disparity of bargaining power" and "elements of surprise," and that Rudzewicz "lacked fair notice" of the potential for litigation in Florida because the contractual provisions suggesting to the contrary were merely "boilerplate declarations in a lengthy printed contract." 724 F.2d, at 1511-1512, and n. 10. See also *post*, at 2190 (STEVENS, J., dissenting). Rudzewicz presented many of these arguments to the District Court, contending that Burger King was guilty of misrepresentation, fraud, and duress; that it gave insufficient notice in its dealings with him; and that the contract was one of adhesion. See 4 Record 687-691. After a 3-day bench trial, the District Court found that Burger King had made no misrepresentations, that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen," and that "at no time" did they "act [t] under economic duress or disadvantage imposed by" Burger King. App. 157- 158. See also 7 Record 648-649. Federal Rule of Civil Procedure 52(a) requires that "[f]indings of fact shall not be set aside unless clearly erroneous," and neither Rudzewicz nor the Court of Appeals has pointed to record evidence that would support a "definite and firm conviction" that the District Court's findings are mistaken. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948). See also ***485 ****2189* *Anderson v. Bessemer City*, 470 U.S. 564, 573-576, 105 S.Ct. 1504, ---- - ----, 84 L.Ed.2d 518 (1985). To the contrary, Rudzewicz was represented by counsel throughout these complex transactions and, as Judge Johnson observed in dissent below, was himself an experienced accountant "who for five months conducted negotiations with Burger King over the terms of the franchise and lease agreements, and who obligated himself personally to contracts requiring over time payments that exceeded $1 million." 724 F.2d, at 1514. Rudzewicz was able to secure a modest reduction in rent and other concessions from Miami headquarters, see nn. 8, 9, *supra;* moreover, to the extent that Burger King's terms were inflexible, Rudzewicz presumably decided that the advantages of affiliating with a national organization provided sufficient commercial benefits to offset the

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detriments. [FN28]

FN28. We do not mean to suggest that the jurisdictional outcome will always be the same in franchise cases. Some franchises may be primarily intrastate in character or involve different decisionmaking structures, such that a franchisee should not reasonably anticipate out-of-state litigation. Moreover, commentators have argued that franchise relationships may sometimes involve unfair business practices in their inception and operation. See H. Brown, Franchising Realities and Remedies 4-5 (2d ed. 1978). For these reasons, we reject Burger King's suggestion for "a general rule, or at least a presumption, that participation in an interstate franchise relationship" represents consent to the jurisdiction of the franchisor's principal place of business. Brief for Appellant 46.

III

[27] Notwithstanding these considerations, the Court of Appeals apparently believed that it was necessary to reject jurisdiction in this case as a prophylactic measure, reasoning that an affirmance of the District Court's judgment would result in the exercise of jurisdiction over "out-of-state consumers to collect payments due on modest personal purchases" and would "sow the seeds of default judgments against franchisees owing smaller debts." 724 F.2d, at 1511. We share the Court of Appeals' broader concerns and therefore reject any talismanic jurisdictional formulas; "the ***486** facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." *Kulko v. California Superior Court,* 436 U.S., at 92, 98 S.Ct., at 1696-1697. [FN29] The "quality and nature" of an interstate transaction may sometimes be so "random," "fortuitous," or "attenuated" [FN30] that it cannot fairly be said that the potential defendant "should reasonably anticipate being haled into court" in another jurisdiction. *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S., at 297, 100 S.Ct., at 567; see also n. 18, *supra.* We also have emphasized that jurisdiction may not be grounded on a contract whose terms have been obtained through "fraud, undue influence, or overweening bargaining power" and whose application would render litigation "so gravely difficult and inconvenient that [a party] will for all practical purposes be deprived of his day in court." *The Bremen v. Zapata Off-Shore Co.,* 407 U.S., at 12, 18, 92 S.Ct., at 1914, 1917. Cf. *Fuentes v. Shevin,* 407 U.S. 67, 94-96, 92 S.Ct. 1983, 2001-2002, 32 L.Ed.2d 556 (1972); *National Equipment Rental, Ltd. v. Szukhent,* 375 U.S. 311, 329, 84 S.Ct. 411, 421, 11 L.Ed.2d 354 (1964) (BLACK, J., dissenting) (jurisdictional rules may not be employed against small consumers so as to "crippl[e] their defense"). Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively ****2190** "judgment proof" for the consequences of obligations they voluntarily assume in other States, *McGee v. International Life Insurance Co.,* 355 U.S., at 223, 78 S.Ct., at 201, so too does it prevent rules that would unfairly enable them to obtain default judgments against unwitting customers. Cf. *United States v. Rumely,* 345 U.S. 41, 44, 73 S.Ct. 543, 545, 97 L.Ed. 770 (1953) (courts must not be " 'blind' " to what " '[a]ll others can see and understand' ").

FN29. This approach does, of course, preclude clear-cut jurisdictional rules. But any inquiry into "fair play and substantial justice" necessarily requires determinations "in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.' " *Kulko v. California Superior Court,* 436 U.S., at 92, 98 S.Ct., at 1697.

FN30. *Hanson v. Denckla,* 357 U.S., at 253, 78 S.Ct., at 1239; *Keeton v. Hustler Magazine, Inc.,* 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S., at 299, 100 S.Ct., at 568.

***487** For the reasons set forth above, however, these dangers are not present in the instant case. Because Rudzewicz established a substantial and

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continuing relationship with Burger King's Miami headquarters, received fair notice from the contract documents and the course of dealing that he might be subject to suit in Florida, and has failed to demonstrate how jurisdiction in that forum would otherwise be fundamentally unfair, we conclude that the District Court's exercise of jurisdiction pursuant to Fla.Stat. § 48.193(1)(g) (Supp.1984) did not offend due process. The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice POWELL took no part in the consideration or decision of this case.

Justice STEVENS, with whom Justice WHITE joins, dissenting.

In my opinion there is a significant element of unfairness in requiring a franchisee to defend a case of this kind in the forum chosen by the franchisor. It is undisputed that appellee maintained no place of business in Florida, that he had no employees in that State, and that he was not licensed to do business there. Appellee did not prepare his French fries, shakes, and hamburgers in Michigan, and then deliver them into the stream of commerce "with the expectation that they [would] be purchased by *consumers in*" Florida. *Ante,* at 2182. To the contrary, appellee did business only in Michigan, his business, property, and payroll taxes were payable in that State, and he sold all of his products there.

Throughout the business relationship, appellee's principal contacts with appellant were with its Michigan office. Notwithstanding its disclaimer, *ante,* at 2185, the Court seems ultimately to rely on nothing more than standard boilerplate language contained in various documents, *ante,* at 2187, ***488** to establish that appellee " 'purposefully availed himself of the benefits and protections of Florida's laws.' " *Id.,* at 2187. Such superficial analysis creates a potential for unfairness not only in negotiations between franchisors and their franchisees but, more significantly, in the resolution *of the disputes that inevitably arise from time to* time in such relationships.

Judge Vance's opinion for the Court of Appeals for the Eleventh Circuit adequately explains why I *would affirm the judgment of that court.* I particularly find the following more persuasive than what this Court has written today:

> "Nothing in the course of negotiations gave Rudzewicz reason to anticipate a Burger King suit outside of Michigan. The only face-to-face or even oral contact Rudzewicz had with Burger King throughout months of protracted negotiations was with representatives of the Michigan office. Burger King had the Michigan office interview Rudzewicz and MacShara, appraise their application, discuss price terms, recommend the site which the defendants finally agreed to, and attend the final closing ceremony. There is no evidence that Rudzewicz ever negotiated with anyone in Miami or even sent mail there during negotiations. He maintained no staff in the state of Florida, and as far as the record reveals, he has never even visited the state.
> "The contracts contemplated the startup of a local Michigan restaurant whose profits would derive solely from food sales made to customers in Drayton Plains. The sale, which involved the use of an intangible trademark in Michigan and occupancy of a Burger King facility ****2191** there, required no performance in the state of Florida. Under the contract, the local Michigan district office was responsible for providing all of the services due Rudzewicz, including advertising and management consultation. Supervision, moreover, emanated from that office alone. To Rudzewicz, the Michigan office was for all intents and purposes the embodiment ***489** of Burger King. He had reason to believe that his *working relationship* with Burger King began and ended in Michigan, not at the distant and anonymous Florida headquarters.... "Given that the office in Rudzewicz' home state conducted all of the negotiations and wholly supervised the contract, we believe that he had reason to assume that the state of the supervisory office would be the same state in which Burger King would file suit. Rudzewicz lacked fair notice that the distant corporate headquarters which insulated itself from direct dealings with him would later seek to assert jurisdiction over him in the courts of its own home state....

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"Just as Rudzewicz lacked notice of the possibility of suit in Florida, he was financially unprepared to meet its added costs. The franchise relationship in particular is fraught with potential for financial surprise. The device of the franchise gives local retailers the access to national trademark recognition which enables them to compete with better-financed, more efficient chain stores. This national affiliation, however, does not alter the fact that the typical franchise store is a local concern serving at best a neighborhood or community. Neither the revenues of a local business nor the geographical range of its market prepares the average franchise owner for the cost of distant litigation....

"The particular distribution of bargaining power in the franchise relationship further impairs the franchisee's financial preparedness. In a franchise contract, 'the franchisor normally occupies [the] dominant role'.... "We discern a characteristic disparity of bargaining power in the facts of this case. There is no indication that Rudzewicz had any latitude to negotiate a reduced rent or franchise fee in exchange for the added risk of suit in Florida. He signed a standard form contract whose terms were non-negotiable and which appeared ***490** in some respects to vary from the more favorable terms agreed to in earlier discussions. In fact, the final contract required a minimum monthly rent computed on a base far in excess of that discussed in oral negotiations. Burger King resisted price concessions, only to sue Rudzewicz far from home. In doing so, it severely impaired his ability to call Michigan witnesses who might be essential to his defense and counterclaim.

"In sum, we hold that the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida. Jurisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." 724 F.2d 1505, 1511-1513 (1984) (footnotes omitted).

Accordingly, I respectfully dissent.

105 S.Ct. 2174, 471 U.S. 462, 85 L.Ed.2d 528, 53 USLW 4541

Briefs and Other Related Documents (Back to top)

- 1984 WL 565540 (Appellate Brief) Reply Brief of Appellant (Dec. 31, 1984)
- 1984 WL 565538 (Appellate Brief) Appellee's Brief (Dec. 15, 1984)
- 1984 WL 565536 (Appellate Brief) Brief of Appellant (Nov. 15, 1984)

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EXHIBIT 4

H

United States Court of Appeals,
Ninth Circuit.

GATES LEARJET CORPORATION and Gates Learjet Export Corporation,
Plaintiffs/Appellants,
v.
James B. JENSEN, Jr.; Ricardo S. Tomacruz; Learjet Philippines, Inc., a corporation; James B. Jensen & Co., Inc., a corporation, and Hamix International, Ltd., a corporation,
Defendants/Appellees.

No. 83-2643.

Argued and Submitted May 14, 1984.
Decided Sept. 27, 1984.

Arizona aircraft manufacturer filed suit against nonresident defendants alleging unauthorized use of trade names and trademarks, abuse of process, interference with contractual relations and conspiracy to make unauthorized use of trade names and trademarks. The United States District Court for the District of Arizona, Alfredo C. Marquez, J., *dismissed the abuse of process and interference* with contractual relations counts for lack of personal jurisdiction and dismissed the trademark claims on grounds of forum non conveniens. Appeal was taken. The Court of Appeals, Choy, Circuit Judge, held that: (1) although the nonresident defendants did not have sufficient contacts with Arizona to support general jurisdiction, the abuse of process and interference with contractual relations claims were sufficiently related to the trademark claims, over which there was personal jurisdiction, to support a finding of limited jurisdiction, and (2) the district court's dismissal of the trademark counts for forum non conveniens was an abuse of discretion.

Reversed and remanded.

West Headnotes

[1] Federal Courts ⇐95
170Bk95 Most Cited Cases

Filing of permissive counterclaim does not constitute waiver of personal jurisdiction defense asserted in same pleading. Fed.Rules Civ.Proc.Rule 12(b), 28 U.S.C.A.

[2] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Sufficient relationship between nonresident defendants and Arizona exists to support general jurisdiction if plaintiff can demonstrate that defendants' activities within Arizona are "substantial" or "continuous and systematic." U.S.C.A. Const.Amends. 5, 14.

[3] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

For purposes of determining whether nonresident defendants' contacts with Arizona support general jurisdiction, it must be determined whether those contacts constitute sufficient activity in Arizona to conclude that defendants could in fact be said already to be present there. U.S.C.A. Const.Amends. 5, 14.

[4] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

For purposes of determining whether nonresident defendants' contacts with Arizona support general jurisdiction, court must focus on "economic reality" of defendants' activities in Arizona, rather than on mechanical checklist. U.S.C.A. Const.Amends. 5, 14

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[5] Federal Courts ⇐76.15
170Bk76.15 Most Cited Cases

For purposes of asserting general jurisdiction over nonresident defendants in Arizona, one nonresident's solicitation of distributorship agreement in Arizona and defendants' visits to Arizona did not constitute "conducting business" in Arizona. U.S.C.A. Const.Amends. 5, 14.

[6] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

Nonresident defendants' activities of making telephone calls and sending telexes and letters to Arizona were not activities which supported a finding of general jurisdiction. U.S.C.A. Const.Amends. 5, 14.

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[7] Contracts ⚿206
95k206 Most Cited Cases

Choice of forum provision in airplane purchase agreement applied only to disputes arising out of that agreement and did not provide general jurisdiction in Arizona over all disputes between parties. U.S.C.A. Const.Amends. 5, 14.

[8] Federal Courts ⚿76.10
170Bk76.10 Most Cited Cases

Nonresident defendants' activities in Arizona were more occasional than continuous and more infrequent than systematic and, therefore, they did not provide basis for general jurisdiction over defendants in Arizona. U.S.C.A. Const.Amends. 5, 14.

[9] Federal Courts ⚿76.10
170Bk76.10 Most Cited Cases

If nonresident defendant's activities are not so pervasive to subject them to general jurisdiction in a forum, it must be determined whether there is limited jurisdiction by evaluating whether nonresident defendant does some act or consummates some transaction with forum or performs some act by which he purposely avails himself of privilege of conducting activities in forum, thereby invoking benefits and protection of its laws, whether claim is one which arises out of or results from defendant's forum-related activities and whether exercise of jurisdiction is reasonable. U.S.C.A. Const.Amends. 5, 14.

[10] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Nonresident defendants' activities in soliciting distributorship agreement in Arizona which specifically provided that Arizona law governed it supported finding of limited jurisdiction over claims arising out of that agreement in that distributorship agreement directly invoked benefits and protections of Arizona law. U.S.C.A. Const.Amends. 5, 14.

[11] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Count alleging that nonresident defendants filed two civil actions and one criminal complaint in the Philippines which caused seizure of one of Arizona aircraft manufacturer's planes and arrest of one of its employees arose out of distributorship agreement because termination of agreement induced defendants' alleged harassment and intimidation and, therefore, count was not too attenuated from distributorship agreement to support a finding of limited jurisdiction. U.S.C.A. Const.Amends. 5, 14.

[12] Federal Courts ⚿76.25
170Bk76.25 Most Cited Cases

Count alleging that nonresident defendants interfered with Arizona aircraft manufacturer's contractual relations with its customers in the Philippines arose out of distributorship agreement between manufacturer and nonresident defendants because its factual basis concerned whether one defendant improperly used manufacturer's trade names contrary to terms of distributorship agreement and, therefore, count was not too attenuated from distributorship agreement to support finding of limited jurisdiction in Arizona. U.S.C.A. Const.Amends. 5, 14.

[13] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Although nonresident defendants' contacts were not extensive enough to support general jurisdiction in Arizona, contacts with Arizona were sufficient to demonstrate purposeful interjection into Arizona to support limited jurisdiction over claims arising out of distributorship agreements between nonresident defendants and Arizona aircraft manufacturer. U.S.C.A. Const.Amends. 5, 14.

[14] Federal Courts ⚿86
170Bk86 Most Cited Cases

Although litigating abroad imposes significant inconveniences on party appearing in foreign country, extra burden on Philippine defendants of defending claims in Arizona arising out of distributorship agreements with Arizona aircraft manufacturer did not preclude limited jurisdiction in Arizona over two counts in action by manufacturer where district court already had personal jurisdiction with respect to remaining two counts of complaint. U.S.C.A. Const.Amends. 5, 14.

[15] Federal Courts ⚿86
170Bk86 Most Cited Cases

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For purposes of determining reasonableness of asserting limited jurisdiction over foreign defendant based on seriousness of potential affront to sovereignty of defendant's country, foreign nation presents a higher sovereignty barrier than that between two states within United States. U.S.C.A. Const.Amends. 5, 14.

[16] Federal Courts ⇦86
170Bk86 Most Cited Cases

Although Government of Philippines had interest in resolving disputes involving its citizens, that factor was not dispositive of whether it was reasonable to assert limited jurisdiction over Philippine defendants in that, if that factor was given controlling weight, it would always prevent suit against foreign national in United States court. U.S.C.A. Const.Amends. 5, 14.

[17] Federal Courts ⇦76
170Bk76 Most Cited Cases

For purposes of determining whether it was reasonable to assert limited jurisdiction in Arizona over nonresident defendants, Arizona had strong interest in ensuring that its citizens were fully compensated for their injuries, in part to protect state's economic resources from unnecessary expenditures.

[18] Federal Courts ⇦97
170Bk97 Most Cited Cases

For purposes of determining whether it was reasonable to assert limited jurisdiction in Arizona over nonresident defendants with respect to two counts of four-count complaint, Arizona was most efficient forum to resolve dispute where discovery was completed, matter could be tried in a matter of weeks and, although parts of those two counts could require application of Philippine law, proof of both counts could also involve application of Arizona law. U.S.C.A. Const.Amends. 5, 14.

[19] Federal Courts ⇦97
170Bk97 Most Cited Cases

For purposes of determining whether it was reasonable to assert limited jurisdiction in Arizona over nonresident defendants, fact that Arizona provided plaintiff with most convenient forum for seeking relief was entitled to some, but not significant, weight where both parties involved corporate entities apparently with sufficient resources to defend in either Arizona or in the Philippines. U.S.C.A. Const.Amends. 5, 14.

[20] Federal Courts ⇦97
170Bk97 Most Cited Cases

Possibility that Arizona aircraft manufacturer might not receive fair trial in Philippines because of political unrest there was not sufficient to establish that Philippine forum was unavailable for purposes of determining whether it was reasonable to assert limited jurisdiction over nonresident defendants in Arizona. U.S.C.A. Const.Amends. 5, 14.

[21] Federal Courts ⇦76.25
170Bk76.25 Most Cited Cases

Exercise of limited personal jurisdiction over nonresident defendants by federal district court in Arizona was reasonable with respect to claims of abuse of process and interference with contractual relations which arose out of distributorship agreements between Arizona aircraft manufacturer and nonresident defendants. U.S.C.A. Const.Amends. 5, 14.

[22] Federal Courts ⇦818
170Bk818 Most Cited Cases

If district court properly analyzes and considers all relevant factors and its balancing of those factors is reasonable, its forum non conveniens dismissal may be reversed only when there has been clear abuse of discretion.

[23] Federal Courts ⇦45
170Bk45 Most Cited Cases

In dismissing, on ground of forum non conveniens, counts involving trademark dispute, district court failed to recognize or consider in its balancing that plaintiff was United States citizen and resident of Arizona.

[24] Federal Courts ⇦45
170Bk45 Most Cited Cases

In dismissing, on ground of forum non conveniens, counts involving trademark dispute, district court failed to examine fact that trial preparation had progressed nearly to point of trial for purposes of

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deciding whether trial in Arizona would have been more "easy, expeditious and inexpensive" than trial in Philippines.

[25] Federal Courts ⇐763.1
170Bk763.1 Most Cited Cases
(Formerly 170Bk763)

In reviewing dismissal, on ground of forum non conveniens, of counts involving trademark dispute, district court's consideration of convenience of witnesses was not entitled to much deference where district court improperly focused on number of witnesses in Arizona and in the Philippines without examining materiality and importance of anticipated witnesses' testimony and their accessibility and convenience to forum in Arizona.

[26] Federal Courts ⇐45
170Bk45 Most Cited Cases

District court's consideration of public interest factors in dismissing, on ground of forum non conveniens, counts involving trademark dispute was erroneous where those counts involved interpretation of international distributorship agreement entered into between Arizona aircraft manufacturer and Philippine corporation which specifically provided that it would be governed by Arizona law.

[27] Federal Courts ⇐45
170Bk45 Most Cited Cases

In dismissing, on ground of forum non conveniens, counts involving trademark dispute between Arizona aircraft manufacturer and Philippine corporation, district court failed to weigh Arizona's interests in having controversy resolved at home, especially since Philippine law was not applicable to alleged trademark and trade name infringement.

[28] Federal Courts ⇐45
170Bk45 Most Cited Cases

District court's docket congestion was not entitled to great weight for purposes of determining whether to dismiss, on ground of forum non conveniens, counts involving trademark dispute between Arizona aircraft manufacturer and Philippine corporation where it was not determined whether trial would be speedier in the Philippines than it would be in Arizona.

***1328** William H. Tinney, Michael J. Rusing, Bilby, Shoenhair, Warnock & Dolph, Tucson, Ariz., for plaintiffs-appellants.

D. Michael Mandig, John F. Molloy, Molloy, Jones, Donahue, Trachta, Childers & Mallamo, P.C., Tucson, Ariz., for defendants-appellees.

Appeal from the United States District Court for the District of Arizona.

Before CHOY, PREGERSON and REINHARDT, Circuit Judges.

CHOY, Circuit Judge:

The issues on this appeal are (1) whether the district court properly dismissed counts two and three of appellant's complaint for lack of personal jurisdiction, and (2) whether the district court's dismissal of counts one and four for *forum non conveniens* was an abuse of discretion. On both issues, we reverse and remand to the district court.

I. BACKGROUND

Gates Learjet Corporation and Gates Learjet Export Corporation ("Gates") entered into an international distributorship agreement with Learjet Philippines, Inc. ("LPI") in 1978. Gates, principally located in Tucson, Arizona, manufactures executive aircraft known as Learjets. LPI is a Philippine corporation. The original agreement was for a period of one year but was renewed for an additional two years and four months.

***1329** James B. Jensen, Jr., a United States citizen with residence in California and the Philippines, is the president of LPI and James B. Jensen & Co. ("Jensen, Inc."), a California corporation located in San Francisco. The negotiations for the international distributorship agreement occurred both in Tucson, when Jensen visited Gates, and by telephone, correspondence, and telex from Tucson to Manila and San Francisco. The agreement provides that it "is an Arizona agreement and that it shall be governed by the laws of the State of Arizona of the United States of America in all matters, included but not limited to, validity,

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obligation, interpretation, construction, performance and termination."

During the time the agreement was in effect, Jensen and Ricardo S. Tomacruz, the vice-president and general manager of LPI and a citizen and resident of the Philippines, made several trips to Tucson on behalf of LPI. The purposes of Jensen's visits, which numbered at least seven between February 1978 and September 1981, included arrangement of an aircraft sale, meetings with Gates' employees, and attendance at Gates' international distributor conference and the delivery of several airplanes. LPI also entered into several airplane purchase agreements with Gates in Tucson. Each agreement contained a choice of law provision specifying Arizona and a choice of forum provision that the "courts of Arizona shall have exclusive jurisdiction to hear and determine all claims, disputes, actions, or suits which may arise hereunder." In addition, LPI and Jensen, Inc. purchased over $200,000 in spare parts from Gates.

In 1981, Gates did not renew the international distributorship agreement with LPI. On February 3, 1982, Gates filed a four-count complaint in an Arizona state court against Jensen, Tomacruz, LPI, Jensen, Inc., and Hamix International Ltd., a Hong Kong corporation ("defendants"). Count one of the complaint alleges unauthorized use of Gates' tradenames and trademarks. Count two alleges abuse of process arising out of the seizure by Philippine authorities of a Gates' aircraft and the jailing of its pilot. Count three alleges interference with contractual relations between Gates and customers in the Philippines. Count four alleges a conspiracy to make unauthorized use of Gates' tradename and trademark. The action was removed to a federal district court for diversity of citizenship.

On September 23, 1982, the United States District Court for the District of Arizona dismissed counts two and three for lack of personal jurisdiction as to one of the defendants, Jensen, Inc. *Gates Learjet Corp. v. Jensen,* No. CIV 82-139 (D.Ariz. Sept. 23, 1982) (*Gates Learjet I*). After this partial dismissal, the defendants answered the complaint and filed a six-count counterclaim. The counterclaim alleges improper termination of the distributorship agreement, unjust enrichment, interference with contractual relations, and defamation. It added three parties to the litigation: B.S. Stillwell, Jane Doe Stillwell, and Stillwell Aviation Australia Party, Ltd. On May 31, 1983, the district court clarified its earlier dismissal order and dismissed counts two and three as to all of the defendants.

On October 5, 1983, after 18 months of trial preparation, the defendants challenged the convenience of the forum. The defendants allege that two civil actions pending in Philippine courts make the same allegations as the action brought by Gates in Arizona. On November 1, 1983, the district court conditionally dismissed counts one and four of the complaint under the doctrine of *forum non conveniens.* The court dismissed Gates' complaint on the following conditions: 1) The Philippine courts accept jurisdiction; 2) the defendants submit to that jurisdiction; 3) the defendants make their employees available for process and as witnesses; 4) the defendants waive any newly arisen statute of limitations defenses; 5) the defendants recognize any Philippine court judgment; and 6) all discovery and products may be used in any action in the Philippines, subject to objections which could be made in this court. *Gates Learjet Corp. v. Jensen,* No. CIV 82-139, slip op. at 11 (D.Ariz. Nov. 1, 1983) (*Gates Learjet II*).

***1330 II.** DISCUSSION

A. Personal Jurisdiction

[1] The district court dismissed counts two and three of Gates' complaint for lack of personal jurisdiction. As the party seeking to invoke the jurisdiction of the court, Gates has the burden of establishing personal jurisdiction. *Data Disc, Inc. v. Systems Technology Associates, Inc.,* 557 F.2d 1280, 1285 (9th Cir.1977). [FN1] Arizona's long-arm statute establishes personal jurisdiction over nonresidents to the maximum extent permitted by due process. *Houghton v. Piper Aircraft Corp.,* 112 Ariz. 365, 542 P.2d 24, 26 (1975). Due process requires the defendants to have certain minimum contacts with the forum so that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945); *Colonial Leasing Co. v. Pugh Brothers Garage,* 735 F.2d 380, 383 (9th Cir.1984). To satisfy this due process requirement, Gates may prove "general jurisdiction" or "limited jurisdiction."

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FN1. Gates contends that the defendants waived any objection to personal jurisdiction when they invoked the jurisdiction of this court by asking for affirmative relief in a permissive counterclaim. The courts are divided on the issue of whether the assertion of a permissive counterclaim should constitute a waiver of a jurisdictional defense. *Compare North Branch Products, Inc. v. Fisher,* 284 F.2d 611, 615 (D.C.Cir.1960) (waiver) *and Merz v. Hemmerle,* 90 F.R.D. 566, 569 (E.D.N.Y.1981) (waiver) *with Neifeld v. Steinberg,* 438 F.2d 423, 427 (3d Cir.1971) (no waiver) *and Lomanco, Inc. v. Missouri Pacific Railroad Co.,* 566 F.Supp. 846, 851 (E.D.Ark.1983) (no waiver). *See generally* Annot., 17 A.L.R.Fed. 390 (1973). Although this court has held that the defendant's assertion of a compulsory counterclaim "does not constitute a waiver of any jurisdictional defense he previously or concurrently asserts," *Dragor Shipping Corp. v. Union Tank Car Co.,* 378 F.2d 241, 244 (9th Cir.1967), we have not decided whether the assertion of a permissive counterclaim constitutes a waiver.

As to defendant Jensen, Inc., this case is easily resolved because Jensen, Inc. brought a motion to dismiss for lack of personal jurisdiction prior to the filing of the answer and counterclaim. *See Neifeld v. Steinberg,* 438 F.2d at 428 n. 10 (clearly no waiver when jurisdictional defenses raised by motion prior to filing of answer).

The other defendants, however, did not raise the jurisdictional defense until they filed their answer and counterclaim. Nevertheless, we hold that the filing of a permissive counterclaim does not constitute a waiver of a personal jurisdiction defense asserted in the same pleading. Rule 12(b) of the Federal Rules of Civil Procedure implicitly authorizes a defendant to join a jurisdictional defense with a counterclaim without waiving this defense. The rule permits a defendant to raise jurisdictional defenses by motion or by answer. If we were to find a waiver when a defendant files a permissive counterclaim in the same pleading in which he asserts jurisdictional defenses, the purposes behind Rule 12(b)--to avoid the delay caused by successive motions and pleadings and to reverse the prior practice of asserting jurisdictional defenses by "special appearances"--would be thwarted. *See Neifeld v. Steinberg,* 438 F.2d at 429. Moreover, courts have noted that when the rule makers wanted to attach "waiver" consequences in certain situations, they did so explicitly. *See id.* at 428 & n. 11; *Lomanco, Inc. v. Missouri Pacific Railroad Co.,* 566 F.Supp. at 850.

1. General Jurisdiction

[2] A sufficient relationship between the defendants and Arizona exists to support general jurisdiction if Gates can demonstrate that the defendants' activities within Arizona are "substantial" or "continuous and systematic." *See Data Disc, Inc. v. Systems Technology Associates, Inc.,* 557 F.2d at 1287. We review the district court's holding that Jensen "does not transact business within Arizona on a continuous or systematic basis, and does not provide the kind of contacts that would sustain exercise of general jurisdiction." *Gates Learjet I,* slip op. at 7.

Gates cites five activities to prove that defendants' contacts with Arizona were "continuous and systematic" and "substantial": 1) Jensen solicited the distributorship agreement in Arizona; 2) the defendants visited Tucson a number of times; 3) the airplane purchase agreements between Gates and Jensen contained an Arizona choice of law and forum provision; 4) the defendants purchased spare parts from Gates in Tucson; and 5) the defendants sent many letters and telexes and made numerous telephone calls to Tucson.

***1331** [3][4] We must decide whether these contacts constitute sufficient activity in Arizona to conclude that the defendants "may in fact be said already to be 'present' there." *Wells Fargo & Co. v. Wells Fargo Express Co.,* 556 F.2d 406, 413 (9th Cir.1977). Moreover, we must focus upon the "economic reality" of the defendants' activities rather than a mechanical checklist. *See Thos. P. Gonzalez Corp. v. Consejo Nacional,* 614 F.2d 1247, 1254 (9th Cir.1980) (quoting*Foster v. Mooney Aircraft Corp.,* 68 Cal.App.3d 887, 137

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Cal.Rptr. 694, 697 (1977)).

[5][6][7][8] We conclude that the "economic reality" here is that defendants' activities in Arizona were not "continuous and systematic" or "substantial". Jensen's solicitation of the distributorship agreement in Arizona and the defendants' visits to Tucson do not constitute "conducting business" in Arizona. *See Rocke v. Canadian Automobile Sport Club,* 660 F.2d 395, 399 (9th Cir.1981). Making telephone calls and sending telexes and letters to Tucson are not activities which support a finding of general jurisdiction. *See Thos. P. Gonzalez Corp. v. Consejo Nacional,* 614 F.2d at 1254. Furthermore, the choice of forum provision in the airplane purchase agreement applies only to disputes arising out of those agreements. Significantly, the defendants did not establish a regular place of business in Arizona. *See Rocke v. Canadian Automobile Sport Club,* 660 F.2d at 399. These contacts in their totality do not demonstrate sufficient activity in Arizona to support general jurisdiction. Defendants' activities in Arizona were more occasional than continuous, and more infrequent than systematic.

2. Limited Jurisdiction

[9] If a defendant's activities are not so pervasive to subject them to general jurisdiction, this court makes the following evaluation in determining whether there is limited jurisdiction:

> (1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposely avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws.
>
> (2) The claim must be one which arises out of or results from the defendant's forum-related activities.
>
> (3) Exercise of jurisdiction must be reasonable.

Data Disc, Inc. v. Systems Technology Associates, Inc., 557 F.2d 1280, 1287 (9th Cir.1977).

[10] Gates clearly satisfies the first prong of this test. Not only did Jensen solicit the distributorship agreement in Arizona, but also the agreement specifically provides that Arizona law governs it. The distributorship agreement, therefore, directly invokes the benefits and protections of Arizona laws. *See O'Hare International Bank v. Hampton,* 437 F.2d 1173, 1177 (7th Cir.1971); *Alchemie International, Inc. v. Metal World, Inc.,* 523 F.Supp. 1039, 1054 (D.N.J.1981). Given these circumstances, Jensen should have reasonably anticipated "being haled into court" in Arizona. *See World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

Prong two of the *Data Disc* inquiry requires that each claim "arises out of or results from" the defendants' forum related activity. 557 F.2d at 1287. The district court had the most trouble with this part of the test, stating:

> The claims of counts two and three, sounding in tort law, cannot be said to arise out of the distributorship agreement. These claims result from the conduct of defendant outside the state, and are too attenuated a contact to justify exercise of personal jurisdiction.

Gates Learjet I, slip op. at 10. After examining the record, we conclude that the district court erred in finding that the claims in counts two and three are "too attenuated a contact" to justify the exercise of personal jurisdiction.

[11] Count two of Gates' complaint alleges that the defendants filed two civil ***1332** actions and one criminal complaint in the Philippines which caused the seizure of one of Gates' Learjets and the arrest of one of its employees. Count two alleges further that these actions were meant to harass, intimidate and threaten Gates and constitute an abuse of process. At first blush, this count may appear to be unrelated to the distributorship agreement. An examination of the complaint that the defendants filed in the Philippines on December 1, 1981, however, dispels any doubt that this count "arises out of" the distributorship agreement.

The first cause of action in the Philippines complaint alleges that Gates' nonrenewal of the distributorship agreement with the defendants was "clearly contrary to law, morals, good customs, public policy and public order." The second cause of action alleges "moral" and reputation damages for Gates' bad faith in refusing to renew the distributorship agreement. The third cause of action alleges wanton and fraudulent behavior in refusing to negotiate the renewal of the distributorship agreement. Thus, count two of Gates' complaint arose out of the distributorship agreement because its termination induced

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defendants' alleged harassment and intimidation of Gates. Count two was not too attenuated from the distributorship agreement to support a finding of limited jurisdiction.

[12] We similarly conclude that count three of Gates' complaint satisfies the second prong of the *Data Disc* test. Count three alleges that the defendants interfered with Gates' contractual relations with its customers in the Philippines. This count also arises out of the distributorship agreement because its factual basis concerns whether Jensen improperly used Gates' tradenames contrary to the terms of the distributorship agreement. [FN2]

> FN2. Gates cites cases that interpret an Arizona attorney's fee statute and hold that tort claims arise out of a contract if they could not exist "but for" the contract. *See, e.g., Sparks v. Republic National Life Insurance Co.,* 132 Ariz. 529, 544, 647 P.2d 1127, 1141 (1982), *cert. denied,* 459 U.S. 1070, 103 S.Ct. 490, 74 L.Ed.2d 632. Although these cases interpret the "arises out of" language in a manner that supports Gates' construction, Gates never demonstrates why this court, in applying a constitutional due process test, should adopt an Arizona court's interpretation of an irrelevant state statute.

The third and final prong of the *Data Disc* inquiry requires a court's exercise of jurisdiction to be reasonable. 557 F.2d at 1287. This court has identified seven factors as pertinent to the reasonableness inquiry:

> (A) the extent of the defendant's purposeful interjection into the forum state; (B) the burden of defending in the forum state; (C) the extent of the conflict with the sovereignty of the defendant's state; (D) the forum state's interest in adjudicating the dispute; (E) the most efficient judicial resolution of the controversy; (F) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (G) the existence of an alternative forum.

Rocke v. Canadian Automobile Sport Club, 660 F.2d 395, 399 (9th Cir.1981); *see Insurance Co. of North America v. Marina Salina Cruz,* 649 F.2d 1266, 1270 (9th Cir.1981). "These factors are not mandatory tests, each of which plaintiff must pass in order for a court properly to assume jurisdiction. Instead, the factors illuminate the considerations of fairness and due process set forth in *International Shoe,* 326 U.S. at 310 [66 S.Ct. at 154]." *Hedrick v. Daiko Shoji Co., Ltd., Osaka,* 715 F.2d 1355, 1359 (9th Cir.1983).

The application of these factors to this case convinces us that it would be reasonable to subject the defendants to the jurisdiction of the Arizona court. We consider each of the factors in turn.

[13] Although not extensive enough to support general jurisdiction, the contacts of LPI, Jensen, and Tomacruz with Arizona are sufficient to demonstrate a purposeful interjection into the forum state. Jensen solicited an international distributorship agreement in Tucson, which contained a choice of law provision specifying Arizona. ***1333** Both Jensen and Tomacruz made several visits to the Gates' facilities and even accepted delivery of airplanes in Tucson. Moreover, these airplane purchase agreements contained choice of law and forum provisions, both of which specified Arizona. Thus, the terms of important contracts between Gates and the defendants demonstrate that the defendants had notice that they might be brought into a court in Arizona.

[14] The burden on the defendants of defending in Arizona, as opposed to the Philippines, is potentially significant. Litigating abroad imposes significant inconveniences upon the party appearing in a foreign country. *Olsen By Sheldon v. Mexico,* 729 F.2d 641, 650 (9th Cir.1984). We nevertheless conclude that the burden on the defendants would not be substantial here, primarily because the defendants must litigate in Arizona anyway. The district court found personal jurisdiction as to counts one and four. The extra burden of defending counts two and three in Arizona, particularly in light of their connection to counts one and four, would be minimal.

[15][16] The reasonableness of jurisdiction depends also in part upon the seriousness of the potential affront to the sovereignty of the defendants' state. A foreign nation presents a higher sovereignty barrier than that between two states within our union. *Insurance Co. of North America v. Marina Salina Cruz,* 649 F.2d at 1272.

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Two of the three defendants named in counts two and three are residents of the Philippines. The government of the Philippines clearly has an interest in resolving disputes that involve its citizens. Nevertheless, we note that this factor is not dispositive because, if given controlling weight, it would always prevent suit against a foreign national in a United States court.

[17] We examine next Arizona's interest in adjudicating this dispute. Arizona has a strong interest in ensuring that its citizens are fully compensated for their injuries, in part to protect the state's economic resources from unnecessary expenditures. *See Olsen By Sheldon v. Mexico,* 729 F.2d at 651.

[18] At the current stage of the litigation, Arizona would appear to be the more efficient forum to resolve this dispute. Gates alleges, and defendants do not dispute, that discovery is completed and "this matter could be tried in a matter of weeks." In addition, although parts of counts two and three may require the application of Philippine law, the proof of both counts may also involve the application of Arizona law. For example, Gates may attempt to prove the unreasonableness of defendants' alleged actions in count two, in part, by demonstrating that Gates properly terminated the distributorship agreement, which proof would require the application of Arizona law. The district court in Arizona is the more efficient forum to resolve such interpretations of Arizona law. *See Hedrick v. Daiko Shoji Co., Ltd., Osaka,* 715 F.2d at 1359; *Raffaele v. Compagnie Generale Maritime,* 707 F.2d 395, 399 (9th Cir.1983); *Insurance Co. of North America v. Marina Salina Cruz,* 649 F.2d at 1273. [FN3]

> FN3. The Philippines, of course, may be the more efficient forum to apply possible Philippine law questions. Nevertheless, we conclude that Arizona is the more efficient forum because the action is almost ready for trial in Arizona.

[19] An Arizona court certainly provides Gates with the most convenient forum for seeking relief. Unlike the individual plaintiff in *Raffaele v. Compagnie Generale Maritime,* 707 F.2d at 399, both parties here involve corporate entities apparently with sufficient resources to defend in either country. We therefore give some, but not significant, weight to this factor.

[20] The final factor we consider is the availability of an alternative forum. Gates alleges that it may not receive a fair trial in the Philippines because of the "well publicized violent upheavals" there. We note that the "appellants must carry the burden ***1334** of proving the unavailability of an alternative forum." *Olsen By Sheldon v. Mexico,* 729 F.2d at 651. We cannot say that Gates has satisfied this burden. In light of the other factors, however, this factor is not dispositive.

[21] After considering all the relevant factors, we conclude that, on balance, the exercise of limited personal jurisdiction over the defendants by a federal district court in Arizona is reasonable. The defendants' numerous visits to Tucson and Jensen's solicitation of the distributorship agreement there demonstrate a purposeful interjection into the state of Arizona. Moreover, defending counts two and three would not burden defendants significantly because they must litigate counts one and four in Arizona anyway. We place some, but not substantial, weight on the convenience to Gates of litigating this dispute in Arizona. Finally, Arizona has an interest in adjudicating this dispute and, at this stage of the litigation, it is the more efficient forum.

In weighing these factors, we are not convinced that adjudication of this dispute in Arizona will affront the sovereignty of the Philippines. Although the availability of an alternative forum supports the defendants' position, the other factors weigh more strongly in Gates' favor. The district court in its order did not weigh these factors, nor did it examine whether the exercise of personal jurisdiction would be reasonable. Under the *Data Disc* three-prong inquiry, therefore, the district court erred in dismissing counts two and three for lack of personal jurisdiction.

B. Forum Non Conveniens

On November 1, 1983, the district court conditionally dismissed Gates' complaint under the doctrine of *forum non conveniens.* Because the district court had dismissed counts two and three for lack of personal jurisdiction one year earlier, this dismissal pertained only to counts one and four,

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which allege unauthorized use of Gates' tradenames and trademarks. The dismissal would require Gates to pursue relief in the Philippine courts.

Whether an action may be dismissed for *forum non conveniens* when jurisdiction is otherwise properly invoked is governed by the factors outlined in *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508-09, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947). The Court divided these factors into "private interest" and "public interest" factors, each of which must be weighed by the district court. As this court has noted:

> The private interest factors include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." ... The public interest factors include the administrative difficulties flowing from court congestion; the local interest in having localized controversies resolved at home; the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action; the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Cheng v. Boeing Co., 708 F.2d 1406, 1409-10 (9th Cir.1983) (citations omitted), *cert. denied,* 464 U.S. 1017, 104 S.Ct. 549, 78 L.Ed.2d 723 (1983).

[22] If a district court properly analyzes and considers all relevant factors and its balancing of these factors is reasonable, its *forum non conveniens* dismissal "may be reversed only when there has been a clear abuse of discretion." *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 257, 102 S.Ct. 252, 266, 70 L.Ed.2d 419 (1981). A district court, therefore, abuses its discretion when it fails to balance the relevant factors. *La Seguridad v. Transytur Line,* 707 F.2d 1304, 1308 (11th Cir.1983). "Emphasis on the district court's discretion ... must not overshadow the central principle of the *Gilbert* doctrine that 'unless the balance is strongly in favor of the defendant, the ***1335** plaintiff's choice of forum should rarely be disturbed.' " *Manu International, S.A. v. Avon Products, Inc.,* 641 F.2d 62, 65 (2d Cir.1981) (quoting *Gulf Oil Co. v. Gilbert,* 330 U.S. at 508, 67 S.Ct. at 843).

We conclude that the district court did not balance the important relevant factors. The balance of the public and private interest factors is not strongly in favor of the defendants. We therefore hold that the district court's dismissal of counts one and four for *forum non conveniens* was an abuse of discretion.

1. Private Interest Factors

[23] The district court failed to examine at least two important and relevant private interest factors. [FN4] First, the district court did not recognize or consider in its balancing that Gates is a United States citizen and a resident of Arizona. A United States citizen has no absolute right to sue in a United States court. *Mizokami Brothers of Arizona, Inc. v. Baychem Corp.,* 556 F.2d 975, 977 (9th Cir.1977) (per curiam), *cert. denied,* 434 U.S. 1035, 98 S.Ct. 770, 54 L.Ed.2d 783 (1978). The Supreme Court, however, has observed "that a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum." *Piper Aircraft Co. v. Reyno,* 454 U.S. at 255, 102 S.Ct. at 265; *see Koster v. Lumbermens Mutual Co.,* 330 U.S. 518, 524, 67 S.Ct. 828, 832, 91 L.Ed. 1067 (1947); *Paper Operations Consultants International, Ltd. v. SS Hong Kong Amber,* 513 F.2d 667, 672 (9th Cir.1975). Greater deference is due because "a real showing of convenience by a plaintiff who has sued in his home forum will normally outweigh the inconvenience the defendant may have shown." *Piper Aircraft Co. v. Reyno,* 454 U.S. at 255 n. 23, 102 S.Ct. at 266 n. 23 (quoting *Koster v. Lumbermens Mutual Co.,* 330 U.S. at 524, 67 S.Ct. at 832).

> FN4. The district court correctly began its analysis with a determination of whether there exists an alternative forum. *See Piper Aircraft Co. v. Reyno,* 454 U.S. at 254 n. 22, 102 S.Ct. at 265 n. 22; *Cheng v. Boeing Co.,* 708 F.2d at 1410; *Pain v. United Technologies Corp.,* 637 F.2d 775, 784 (D.C.Cir.1980), *cert. denied,* 454 U.S. 1128, 102 S.Ct. 980, 71 L.Ed.2d 116 (1981). The court noted that a defendant's amenability to process in the other jurisdiction ordinarily satisfies this requirement. *See Gulf Oil Co. v. Gilbert,* 330 U.S. at 506-07, 67 S.Ct. at 842. We

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> do not overturn the district court's finding of an alternative forum. That an alternative forum exists, however, is not dispositive in the balancing required in a *forum non conveniens* analysis.

[24] The second relevant private interest factor the district court failed to examine is that the parties were ready for trial when it dismissed the complaint for *forum non conveniens*. The discovery deadline had passed; all documents needed for trial had been exchanged and/or identified; and all necessary trial documents were located in Tucson, Arizona. The central purpose of any *forum non conveniens* inquiry is to ensure that the trial is convenient. *Piper Aircraft Co. v. Reyno,* 454 U.S. at 256, 102 S.Ct. at 266; *La Seguridad v. Transytur Line,* 707 F.2d at 1307. That trial preparation had progressed nearly to the point of trial certainly was a relevant factor when the district court considered whether trial of the case in Arizona would have been more "easy, expeditious and inexpensive" than trial in the Philippines. *See Gulf Oil Corp. v. Gilbert,* 330 U.S. at 508, 67 S.Ct. at 843. Although no single factor is dispositive, we conclude that the district court's failure to weigh these private interest factors was an abuse of discretion.

[25] We also observe that the private interest factors mentioned by the district court do not strongly support the defendants' position on *forum non conveniens*. The district court noted that "the vast majority of the witnesses reside in the Philippines ...." *Gates Learjet II,* slip op. at 9. The defendants, however, admit that the district court was not absolutely correct. In fact, 23 of the 44 witnesses, whom the parties designated in response to interrogatories, reside in the Philippines, which is hardly a "vast majority."

Furthermore, the district court improperly focused on the number of witnesses in each location. Instead, the court should have examined the materiality and importance of the anticipated witnesses' testimony and then determined their accessibility ***1336** and convenience to the forum. *See La Seguridad v. Transytur Line,* 707 F.2d at 1308-09; *Thomson & McKinnon v. Minyard,* 291 F.Supp. 573, 576 (S.D.N.Y.1968). We also note that a district court should keep in mind that "the increased speed and ease of travel and communication ... makes, especially when a key issue is the location of witnesses, no forum 'as inconvenient [today] as it was in 1947,' " when the Supreme Court decided *Gilbert. Manu International, S.A. v. Avon Products, Inc.,* 641 F.2d 62, 65 (2d Cir.1981). We are not convinced that the court here properly considered and weighed this private interest factor. We therefore cannot give much deference to the district court's consideration of it. [FN5]

> FN5. In its discussion of private interest factors, the district court also noted that "almost all of the acts alleged in the complaints and counterclaims occurred in the Philippines." This observation, however, seems to pertain to the Philippines' interest in the action, which is a public interest factor. If the district court was instead referring to the convenience of obtaining certain evidence, it failed to explain what evidence was unavailable. As discussed above, most trial materials were located in Arizona at the time the district court dismissed counts one and four for *forum non conveniens*.

2. Public Interest Factors

In its consideration of public interest factors, the district court concluded that the Philippines "has a substantial interest in the outcome of the litigation." It reasoned that "most of the operating facts occurred in the Philippines," and that "[t]he controversies will require the application of Arizona law and Philippine law." *Gates Learjet II,* slip op. at 10. Public interest factors properly considered include "the local interest in having localized controversies resolved at home," and "the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action." *Cheng v. Boeing Co.,* 708 F.2d at 1410.

[26] We nevertheless conclude that the district court's consideration of these public interest factors rested on a mistaken assumption about the applicable law and improperly ignored the advantages of an Arizona forum for the trial. In noting that both Philippine and Arizona law applied to this matter, the district court apparently considered all four counts of the Gates complaint. The defendants' motion to dismiss for *forum non*

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conveniens, however, could pertain only to counts one and four because the court had already dismissed counts two and three for lack of personal jurisdiction.

Counts one and four allege unauthorized use and a conspiracy to make unauthorized use of Gates' tradename and trademark. These counts involve an interpretation of the international distributorship agreement entered into between Gates and LPI. Under the heading, "Post-Termination Actions," the distributorship agreement provides:

> The Distributor shall immediately discontinue the use of any trade names or trademarks referred to in Article III above and shall make no further use of the same nor any other name, title, expression or mark so nearly resembling such trade names or trademarks as to be deceptive in nature.

The distributorship agreement also specifically provides that it shall be governed by Arizona law. Thus, counts one and four apparently are contract actions that require the application of Arizona law, not Philippine law. [FN6]

> FN6. Defendants implicitly admit this point, conceding that Arizona law would apply to a contract action.

[27] In addition to making a mistaken assumption about the applicable law, the district court failed to weigh Arizona's interests in having the controversy "resolved at home." Arizona has a significant interest in interpreting its own laws. *See Cheng v. Boeing Co.*, 708 F.2d at 1411. Arizona also has an interest in protecting its companies from trademark infringement abroad to preserve the state's economic vitality. Although the situs of the alleged trademark and tradename infringement was the Philippines, it appears that Philippine law is not applicable. We therefore conclude that these public interest factors ***1337** should not weigh heavily in defendants' favor. A proper understanding of the applicable law and the relative interests, in fact, suggests that Arizona has the more substantial interest in this litigation.

[28] The district court particularly emphasized one public interest factor: the docket congestion of its court. It stated:

> Counsel have indicated that there are hundreds, if not thousands, of exhibits involved. There will be many witnesses testifying for both sides. The case will take weeks to try. The Tucson division of the District of Arizona is presently operating with two district judges. Normally there are three judges in the division. The two judges are handling all of the criminal calendar. Outside judges have been assigned to handle part of the civil calendar and it is contemplated that more help will be necessary in the future.

Gates Learjet II, slip op. at 10.

This factor also should not weigh heavily in defendants' favor. The real issue is not whether a dismissal will reduce a court's congestion but whether a trial may be speedier in another court because of its less crowded docket. *See Starnes v. McGuire*, 512 F.2d 918, 932 (D.C.Cir.1974) (en banc); 15 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 3854 at 289-91 (1976); *see also Foster v. Litton Industries, Inc.*, 431 F.Supp. 86, 88 (S.D.N.Y.1977) (relative docket conditions accorded some, but not decisive, weight in transfer motions). The district court here observed only that its docket was congested; it did not determine whether a trial would be speedier in the Philippines. Even if it were, however, it is unfair for a court to subject a United States corporation to the courts of another country merely because plaintiff's home country courts are congested. The *forum non conveniens* doctrine should not be used as a solution to court congestion; other remedies, such as placing reasonable limitations on the amount of time each side may have to present evidence, are more appropriate.

We hold that the district court failed to consider relevant private and public interest factors and misconstrued others. The district court therefore abused its discretion. On balance, we conclude that the relevant private and public interest factors support the district court's retention of jurisdiction and the dismissal of defendants' *forum non conveniens* motion.

III. CONCLUSION

Gates cannot demonstrate that the defendants had sufficient activity in Arizona to establish general jurisdiction. Under the *Data Disc* three-prong inquiry into limited jurisdiction, however, we hold that the district court erred in dismissing counts two and three for lack of personal jurisdiction. As to the district court's dismissal of counts one and four for

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forum non conveniens, we find an abuse of discretion. The district court's orders are therefore

REVERSED AND THE CASE IS REMANDED.

743 F.2d 1325

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EXHIBIT 5

104 S.Ct. 1868
80 L.Ed.2d 404
(Cite as: 466 U.S. 408, 104 S.Ct. 1868)

Supreme Court of the United States

HELICOPTEROS NACIONALES DE COLOMBIA, S.A., Petitioner,
v.
Elizabeth HALL et al.

No. 82-1127.

Argued Nov. 8, 1983.
Decided April 24, 1984.

Wrongful death action was instituted in a Texas state court against a Colombian corporation and others. Denying Colombian corporation's motion to dismiss actions for lack of in personam jurisdiction over it, the District Court, Harris County, Wyatt H. Heard, J., entered judgment against corporation on a jury verdict in favor of plaintiffs. Corporation appealed. The Texas Court of Civil Appeals, 616 S.W.2d 247, reversed and dismissed case for lack of jurisdiction, and plaintiffs appealed. The Texas Supreme Court, 638 S.W.2d 870, reversed. Certiorari was granted. The Supreme Court, Justice Blackmun, held that Colombian corporation's contacts with Texas, which consisted of one trip to Texas by corporation's chief executive officer for purpose of negotiating transportation services contract, acceptance of checks drawn on Texas bank, and purchases of helicopters and equipment from Texas manufacturer and related training trips, were insufficient to satisfy requirements of due process clause of the Fourteenth Amendment and hence to allow Texas court to assert in personam jurisdiction over corporation in wrongful death action.

Texas Supreme Court judgment reversed.

Justice Brennan dissented and filed an opinion.

West Headnotes

[1] Federal Courts ⇐71
170Bk71 Most Cited Cases
(Formerly 170Bk76)

Lack of residential or other contacts with forum state of itself does not defeat otherwise proper jurisdiction.

[2] Constitutional Law ⇐305(5)
92k305(5) Most Cited Cases

Due process clause of the Fourteenth Amendment operates to limit the power of a state to assert in personam jurisdiction over a nonresident defendant. U.S.C.A. Const.Amend. 14.

[3] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases

Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases

Colombian corporation's contacts with Texas, which consisted of one trip to Texas by corporation's chief executive officer for purpose of negotiating transportation services contract, acceptance of checks drawn on Texas bank, and purchases of helicopters and equipment from Texas manufacturer and related training trips, were insufficient to satisfy requirements of due process clause of the Fourteenth Amendment and hence to allow Texas court to assert in personam jurisdiction over corporation in wrongful death action. U.S.C.A. Const.Amend. 14.

[5] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases
(Formerly 170Bk76)

Unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum state to justify an assertion of jurisdiction. U.S.C.A. Const.Amend. 14.

[6] Federal Courts ⇐84
170Bk84 Most Cited Cases

Mere purchases in forum state, even if occurring at regular intervals, are not enough to warrant state's

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assertion of in personam jurisdiction over nonresident corporation in cause of action not related to those purchase transactions. U.S.C.A. Const.Amend. 14.

Syllabus [FNa1]

> FNa1. *The syllabus constitutes no part of* the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Petitioner, a Colombian corporation, entered into a contract to provide helicopter transportation for a Peruvian consortium, the alter ego of a joint venture that had its headquarters in Houston, Tex., during the consortium's construction of a pipeline in Peru for a Peruvian state-owned oil company. Petitioner has no place of business in Texas and never has been licensed to do business there. Its only contacts with the State consisted of sending its chief executive officer to Houston to negotiate the contract with the consortium, accepting into its New York bank account checks drawn by the consortium on a Texas bank, purchasing helicopters, equipment, and training services from a Texas manufacturer, and sending personnel to that manufacturer's facilities for training. After a helicopter owned by petitioner crashed in Peru, resulting in the death of respondents' decedents--United States citizens who were employed by the consortium--respondents instituted wrongful-death actions in a Texas state court against the consortium, the Texas manufacturer, and petitioner. Denying petitioner's motion to dismiss the actions for lack of in personam jurisdiction over it, the trial court entered judgment against petitioner on a jury verdict in favor of respondents. The Texas Court of Civil Appeals reversed, holding that in personam jurisdiction over petitioner was lacking, but in turn was reversed by the Texas Supreme Court.

Held: Petitioner's contacts with Texas were insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment and hence to allow the Texas court to assert in personam jurisdiction over petitioner. The one trip to Houston by petitioner's chief executive officer for the purpose of negotiating the transportation services contract cannot be regarded as a contact of a "continuous and systematic" nature, and thus cannot support an assertion of general jurisdiction. Similarly, petitioner's acceptance of checks drawn on a Texas bank is of negligible significance for purposes of determining whether petitioner had sufficient contacts in Texas. Nor were petitioner's purchases of helicopters and equipment from the Texas manufacturer and the related training trips a sufficient basis for the Texas court's assertion of jurisdiction. Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372. Mere purchases, even if occurring at regular intervals, are not enough to warrant ***409** a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to the purchases. And the fact that petitioner sent personnel to Texas for training in connection with the purchases did not enhance the nature of petitioner's contacts with Texas. Pp. 1872-1874.

638 S.W.2d 870 (Tex.1982), reversed.

Thomas J. Whalen argued the cause for petitioner. With him on the briefs were *Austin P. Magner, Cynthia J. Larsen, James E. Ingram,* and *Barry A. Chasnoff.*

George E. Pletcher argued the cause and filed a brief for respondents.*

* *Robert L. Stern, Stephen M. Shapiro, William H. Crabtree,* and *Edward P. Good* filed a brief for the Motor Vehicle Manufacturers Association as *amicus curiae* urging reversal.

Solicitor General Lee, Assistant Attorney General McGrath, Deputy Solicitor General Geller, Kathryn A. Oberly, Michael F. Hertz, and *Howard S. Scher* filed a brief for the United States as *amicus curiae.*

Justice BLACKMUN delivered the opinion of the Court.

We granted certiorari in this case, 460 U.S. 1021, 103 S.Ct. 1270, 75 L.Ed.2d 493 (1983), to decide whether the Supreme Court of Texas correctly ruled that the contacts of a foreign corporation with the State of Texas were sufficient to allow a Texas state court to assert jurisdiction over the corporation in a cause of action not ****1870** arising out of or related

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to the corporation's activities within the State.

I

Petitioner Helicopteros Nacionales de Colombia, S.A. (Helicol), is a Colombian corporation with its principal place of business in the city of Bogota in that country. It is engaged in the business of providing helicopter transportation for oil and construction companies in South America. On *410 January 26, 1976, a helicopter owned by Helicol crashed in Peru. Four United States citizens were among those who lost their lives in the accident. Respondents are the survivors and representatives of the four decedents.

At the time of the crash, respondents' decedents were employed by Consorcio, a Peruvian consortium, and were working on a pipeline in Peru. Consorcio is the alter ego of a joint venture named Williams-Sedco-Horn (WSH). [FN1] The venture had its headquarters in Houston, Tex. Consorcio had been formed to enable the venturers to enter into a contract with Petro Peru, the Peruvian state-owned oil company. Consorcio was to construct a pipeline for Petro Peru running from the interior of Peru westward to the Pacific Ocean. Peruvian law forbade construction of the pipeline by any non-Peruvian entity.

FN1. The participants in the joint venture were Williams International Sudamericana, Ltd., a Delaware corporation; Sedco Construction Corporation, a Texas corporation; and Horn International, Inc., a Texas corporation.

Consorcio/WSH [FN2] needed helicopters to move personnel, materials, and equipment into and out of the construction area. In 1974, upon request of Consorcio/WSH, the chief executive officer of Helicol, Francisco Restrepo, flew to the United States and conferred in Houston with representatives of the three joint venturers. At that meeting, there was a discussion of prices, availability, working conditions, fuel, supplies, and housing. Restrepo represented that Helicol could have the first helicopter on the job in 15 days. The Consorcio/WSH representatives decided to accept the contract proposed by Restrepo. Helicol began performing before the agreement was formally signed in Peru on November 11, 1974. [FN3] The contract was written in Spanish on *411 official government stationery and provided that the residence of all the parties would be Lima, Peru. It further stated that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts. In addition, it provided that Consorcio/WSH would make payments to Helicol's account with the Bank of America in New York City. App. 12a.

FN2. Throughout the record in this case the entity is referred to both as Consorcio and as WSH. We refer to it hereinafter as Consorcio/WSH.

FN3. Respondents acknowledge that the contract was executed in Peru and not in the United States. Tr. of Oral Arg. 22-23. See App. 79a; Brief for Respondents 3.

Aside from the negotiation session in Houston between Restrepo and the representatives of Consorcio/WSH, Helicol had other contacts with Texas. During the years 1970-1977, it purchased helicopters (approximately 80% of its fleet), spare parts, and accessories for more than $4 million from Bell Helicopter Company in Fort Worth. In that period, Helicol sent prospective pilots to Fort Worth for training and to ferry the aircraft to South America. It also sent management and maintenance personnel to visit Bell Helicopter in Fort Worth during the same period in order to receive "plant familiarization" and for technical consultation. Helicol received into its New York City and Panama City, Fla., bank accounts over $5 million in payments from Consorcio/WSH drawn upon First City National Bank of Houston.

[1] Beyond the foregoing, there have been no other business contacts between Helicol and the State of Texas. Helicol never has been authorized to do business in Texas and never has had an agent for the **1871 service of process within the State. It never has performed helicopter operations in Texas or sold any product that reached Texas, never solicited business in Texas, never signed any contract in Texas, never had any employee based

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there, and never recruited an employee in Texas. In addition, Helicol never has owned real or personal property in Texas and never has maintained an office or establishment there. Helicol has maintained no records in Texas and has no shareholders in that State. [FN4] None of the ***412** respondents or their decedents were domiciled in Texas, Tr. of Oral Arg. 17, 18, [FN5] but all of the decedents were hired in Houston by Consorcio/WSH to work on the Petro Peru pipeline project.

FN4. The Colombian national airline, Aerovias Nacionales de Colombia, owns approximately 94% of Helicol's capital stock. The remainder is held by Aerovias Corporacion de Viajes and four South American individuals. See Brief for Petitioner 2, n. 2.

FN5. Respondents' lack of residential or other contacts with Texas of itself does not defeat otherwise proper jurisdiction. Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780, 104 S.Ct. 1473, 1481, 79 L.Ed.2d 790 (1984); Calder v. Jones, 465 U.S. 783, 788, 104 S.Ct. 1482, 1486, 79 L.Ed.2d 804 (1984). We mention respondents' lack of contacts merely to show that nothing in the nature of the relationship between respondents and Helicol could possibly enhance Helicol's contacts with Texas. The harm suffered by respondents did not occur in Texas. Nor is it alleged that any negligence on the part of Helicol took place in Texas.

Respondents instituted wrongful-death actions in the District Court of Harris County, Tex., against Consorcio/WSH, Bell Helicopter Company, and Helicol. Helicol filed special appearances and moved to dismiss the actions for lack of in personam jurisdiction over it. The motion was denied. After a consolidated jury trial, judgment was entered against Helicol on a jury verdict of $1,141,200 in favor of respondents. [FN6] App. 174a.

FN6. Defendants Consorcio/WSH and Bell Helicopter Company were granted directed verdicts with respect to respondents' claims against them. Bell Helicopter was granted a directed verdict on Helicol's cross-claim against it. App. 167a. Consorcio/WSH, as cross-plaintiff in a claim against Helicol, obtained a judgment in the amount of $70,000. Id., at 174a.

The Texas Court of Civil Appeals, Houston, First District, reversed the judgment of the District Court, holding that in personam jurisdiction over Helicol was lacking. 616 S.W.2d 247 (Tex.1981). The Supreme Court of Texas, with three justices dissenting, initially affirmed the judgment of the Court of Civil Appeals. App. to Pet. for Cert. 46a-62a. Seven months later, however, on motion for rehearing, the court withdrew its prior opinions and, again with three justices dissenting, reversed the judgment of the intermediate court. 638 S.W.2d 870 (Tex.1982). In ruling that the Texas courts had ***413** in personam jurisdiction, the Texas Supreme Court first held that the State's long-arm statute reaches as far as the Due Process Clause of the Fourteenth Amendment permits. Id., at 872. [FN7] Thus, the only question remaining ****1872** for the court to decide was whether it was consistent with the Due Process Clause for Texas courts to assert in personam jurisdiction over Helicol. Ibid.

FN7. The State's long-arm statute is Tex.Rev.Civ.Stat.Ann., Art. 2031b (Vernon 1964 and Supp.1982-1983). It reads in relevant part:
"Sec. 3. Any foreign corporation ... that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation ... of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings

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> arising out of such business done in this State, wherein such corporation ... is a party or is to be made a party.
> "Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation ... shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State." The last sentence of § 4 was added by 1979 Tex.Gen.Laws, ch. 245, § 1, and became effective August 27, 1979.
> The Supreme Court of Texas in its principal opinion relied upon rulings in U-Anchor Advertising, Inc. v. Burt, 553 S.W.2d 760 (Tex.1977); Hoppenfeld v. Crook, 498 S.W.2d 52 (Tex.Civ.App.1973) ; and O'Brien v. Lanpar Co., 399 S.W.2d 340 (Tex.1966). It is not within our province, of course, to determine whether the Texas Supreme Court correctly interpreted the State's long-arm statute. We therefore accept that court's holding that the limits of the Texas statute are coextensive with those of the Due Process Clause.

II

[2][3] The Due Process Clause of the Fourteenth Amendment operates to limit the power of a State to assert in personam ***414** jurisdiction over a nonresident defendant. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1878). Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940). When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of in personam jurisdiction. Shaffer v. Heitner, 433 U.S. 186, 204, 97 S.Ct. 2569, 2579, 53 L.Ed.2d 683 (1977). [FN8]

> FN8. It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising "specific jurisdiction" over the defendant. See Von Mehren & Trautman, *Jurisdiction to* Adjudicate: A Suggested Analysis, 79 Harv.L.Rev. 1121, 1144-1164 (1966).

Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, [FN9] due process is not offended by a State's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the State and the foreign corporation. Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952); see Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 779-780, 104 S.Ct. 1473, 1480-1481, 79 L.Ed.2d 790 (1984). In Perkins, the Court addressed a situation in which state courts had asserted general jurisdiction over a defendant foreign corporation. During the Japanese ***415** occupation of the Philippine Islands, the president and general manager of a Philippine mining corporation maintained an office in Ohio from which he conducted activities on behalf of the company. He kept company files and held directors' meetings in the office, carried on correspondence relating to the business, distributed salary checks drawn on two active Ohio bank accounts, engaged an Ohio bank to act as transfer agent, and supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines. In short, the foreign corporation, through its president, "ha[d] been carrying on in Ohio a continuous and systematic, but limited, part of its general business," and the exercise of general jurisdiction over the Philippine corporation by an Ohio court was "reasonable and just." 342 U.S., at 438, 445, 72 S.Ct., at 414, 418.

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FN9. When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising "general jurisdiction" over the defendant. See Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 S.Ct.Rev. 77, 80-81; Von Mehren & Trautman, 79 Harv.L.Rev., at 1136-1144; Calder v. Jones, 465 U.S., at 786, 104 S.Ct., at 1485.

[4] All parties to the present case concede that respondents' claims against Helicol did not "arise out of," and are not related to, Helicol's activities within Texas. [FN10] We thus must *416 explore the nature **1873 of Helicol's contacts with the State of Texas to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in Perkins. We hold that they do not.

FN10. See Brief for Respondents 14; Tr. of Oral Arg. 26-27, 30-31. Because the parties have not argued any relationship between the cause of action and Helicol's contacts with the State of Texas, we, contrary to the dissent's implication, post, at 1875, assert no "view" with respect to that issue.
The dissent suggests that we have erred in drawing no distinction between controversies that "relate to" a defendant's contacts with a forum and those that "arise out of" such contacts. Post, at 1875. This criticism is somewhat puzzling, for the dissent goes on to urge that, for purposes of determining the constitutional validity of an assertion of specific jurisdiction, there really should be no distinction between the two. Post, at 1879.
We do not address the validity or consequences of such a distinction because the issue has not been presented in this case. Respondents have made no argument that their cause of action either arose out of or is related to Helicol's contacts with the State of Texas. Absent any briefing on the issue, we decline to reach the questions (1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists. Nor do we reach the question whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.

It is undisputed that Helicol does not have a place of business in Texas and never has been licensed to do business in the State. Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

[5] The one trip to Houston by Helicol's chief executive officer for the purpose of negotiating the transportation-services contract with Consorcio/WSH cannot be described or regarded as a contact of a "continuous and systematic" nature, as Perkins described it, see also International Shoe Co. v. Washington, 326 U.S., at 320, 66 S.Ct., at 160, and thus cannot support an assertion of in personam jurisdiction over Helicol by a Texas court. Similarly, Helicol's acceptance from Consorcio/WSH of checks drawn on a Texas bank is of negligible significance for purposes of determining whether Helicol had sufficient contacts in Texas. There is no indication that Helicol ever requested that the checks be drawn on a Texas bank or that there was any negotiation between Helicol and Consorcio/WSH with respect to the location or identity of the bank on which checks would be drawn. Common sense and everyday experience suggest that, absent unusual circumstances, [FN11] the bank on which a check is drawn is generally of little *417 consequence to the payee and is a matter left to the discretion of the drawer. Such unilateral activity of another party or a third person is not an

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appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction. See Kulko v. California Superior Court, 436 U.S. 84, 93, 98 S.Ct. 1690, 1697, 56 L.Ed.2d 132 (1978) (arbitrary to subject one parent to suit in any State where other parent chooses to spend time while having custody of child pursuant to separation agreement); Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958) ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State"); see also Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va.L.Rev. 85, 99 (1983).

FN11. For example, if the financial health and continued ability of the bank to honor the draft are questionable, the payee might request that the check be drawn on an account at some other institution.

The Texas Supreme Court focused on the purchases and the related training trips in **1874 finding contacts sufficient to support an assertion of jurisdiction. We do not agree with that assessment, for the Court's opinion in Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372 (1923) (Brandeis, J., for a unanimous tribunal), makes clear that purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction.

The defendant in Rosenberg was a small retailer in Tulsa, Okla., who dealt in men's clothing and furnishings. It never had applied for a license to do business in New York, nor had it at any time authorized suit to be brought against it there. It never had an established place of business in New York and never regularly carried on business in that State. Its only connection with New York was that it purchased from New York wholesalers a large portion of the merchandise sold in its Tulsa store. The purchases sometimes were made by correspondence and sometimes through visits to New York by an officer of the defendant. The Court concluded: "Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction of [New York]." Id., at 518, 43 S.Ct., at 171.

[6] *418 This Court in International Shoe acknowledged and did not repudiate its holding in Rosenberg. See 326 U.S., at 318, 66 S.Ct., at 159. In accordance with Rosenberg, we hold that mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. [FN12] Nor can we conclude that the fact that Helicol sent personnel into Texas for training in connection with the purchase of helicopters and equipment in that State in any way enhanced the nature of Helicol's contacts with Texas. The training was a part of the package of goods and services purchased by Helicol from Bell Helicopter. The brief presence of Helicol employees in Texas for the purpose of attending the training sessions is no more a significant contact than were the trips to New York made by the buyer for the retail store in Rosenberg. See also Kulko v. California Superior Court, 436 U.S., at 93, 98 S.Ct., at 1697 (basing California jurisdiction on 3-day and 1-day stopovers in that State "would make a mockery of" due process limitations on assertion of personal jurisdiction).

FN12. This Court in International Shoe cited Rosenberg for the proposition that "the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it." 326 U.S., at 318, 66 S.Ct., at 159. Arguably, therefore, Rosenberg also stands for the proposition that mere purchases are not a sufficient basis for either general or specific jurisdiction. Because the case before us is one in which there has been an assertion of general jurisdiction over a foreign defendant, we need not decide the continuing validity of Rosenberg with respect to an assertion of specific jurisdiction, i.e., where the cause of action arises out of or relates to the purchases by the defendant in the forum State.

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III

We hold that Helicol's contacts with the State of Texas were insufficient to satisfy the requirements of the Due Process ***419** Clause of the Fourteenth Amendment. [FN13] Accordingly, we reverse the judgment of the Supreme Court of Texas.

> FN13. As an alternative to traditional minimum-contacts analysis, respondents suggest that the Court hold that the State of Texas had personal jurisdiction over Helicol under a doctrine of "jurisdiction by necessity." See Shaffer v. Heitner, 433 U.S. 186, 211, n. 37, 97 S.Ct. 2569, 2583, n. 37, 53 L.Ed.2d 683 (1977). We conclude, however, that respondents failed to carry their burden of showing that all three defendants could not be sued together in a single forum. It is not clear from the record, for example, whether suit could have been brought against all three defendants in either Colombia or Peru. We decline to consider adoption of a doctrine of jurisdiction by necessity--a potentially far- reaching modification of existing law--in the absence of a more complete record.

It is so ordered.

****1875** Justice BRENNAN, dissenting.

Decisions applying the Due Process Clause of the Fourteenth Amendment to determine whether a State may constitutionally assert in personam jurisdiction over a particular defendant for a particular cause of action most often turn on a weighing of facts. See, e.g., Kulko v. California Superior Court, 436 U.S. 84, 92, 98 S.Ct. 1690, 1697, 56 L.Ed.2d 132 (1978); id., at 101-102, 98 S.Ct., at 1701-1702 (BRENNAN, J., dissenting). To a large extent, today's decision follows the usual pattern. Based on essentially undisputed facts, the Court concludes that petitioner Helicol's contacts with the State of Texas were insufficient to allow the Texas state courts constitutionally to assert "general jurisdiction" over all claims filed against this foreign corporation. Although my independent weighing of the facts leads me to a different conclusion, see infra, at 1877, the Court's holding on this issue is neither implausible nor unexpected.

What is troubling about the Court's opinion, however, are the implications that might be drawn from the way in which the Court approaches the constitutional issue it addresses. First, the Court limits its discussion to an assertion of general jurisdiction of the Texas courts because, in its view, the ***420** underlying cause of action does "not aris[e] out of or relat[e] to the corporation's activities within the State." Ante, at 1870. Then, the Court relies on a 1923 decision in Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372, without considering whether that case retains any validity after our more recent pronouncements concerning the permissible reach of a State's jurisdiction. By posing and deciding the question presented in this manner, I fear that the Court is saying more than it realizes about constitutional limitations on the potential reach of in personam jurisdiction. In particular, by relying on a precedent whose premises have long been discarded, and by refusing to consider any distinction between controversies that "relate to" a defendant's contacts with the forum and causes of action that "arise out of" such contacts, the Court may be placing severe limitations on the type and amount of contacts that will satisfy the constitutional minimum.

In contrast, I believe that the undisputed contacts in this case between petitioner Helicol and the State of Texas are sufficiently important, and sufficiently related to the underlying cause of action, to make it fair and reasonable for the State to assert personal jurisdiction over Helicol for the wrongful-death actions filed by the respondents. Given that Helicol has purposefully availed itself of the benefits and obligations of the forum, and given the direct relationship between the underlying cause of action and Helicol's contacts with the forum, maintenance of this suit in the Texas courts "does not offend [the] 'traditional notions of fair play and substantial justice,' " International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940)), that are the touchstone of jurisdictional analysis under the Due Process Clause. I therefore dissent.

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I

The Court expressly limits its decision in this case to "an assertion of general jurisdiction over a foreign defendant." ***421** Ante, at 1874, n. 12. See ante, at 1873, and n. 10. Having framed the question in this way, the Court is obliged to address our prior holdings in Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952), and Rosenberg Bros. & Co. v. Curtis Brown Co., supra. In Perkins, the Court considered a State's assertion of general jurisdiction over a foreign corporation that "ha[d] been carrying on ... a continuous and systematic, but limited, part of its general business" in the forum. 342 U.S., at 438, 72 S.Ct., at 414. Under the circumstances of that case, we held that such contacts were constitutionally sufficient "to make it reasonable and just to subject the corporation ****1876** to the jurisdiction" of that State. Id., at 445, 72 S.Ct., at 418 (citing International Shoe, supra, 326 U.S., at 317-320, 66 S.Ct., at 158-160). Nothing in Perkins suggests, however, that such "continuous and systematic" contacts are a necessary minimum before a State may constitutionally assert general jurisdiction over a foreign corporation.

The Court therefore looks for guidance to our 1923 decision in Rosenberg, supra, which until today was of dubious validity given the subsequent expansion of personal jurisdiction that began with International Shoe, supra, in 1945. In Rosenberg, the Court held that a company's purchases within a State, even when combined with related trips to the State by company officials, would not allow the courts of that State to assert general jurisdiction over all claims against the nonresident corporate defendant making those purchases. [FN1] ***422** Reasoning by analogy, the Court in this case concludes that Helicol's contacts with the State of Texas are no more significant than the purchases made by the defendant in Rosenberg. The Court makes no attempt, however, to ascertain whether the narrow view of in personam jurisdiction adopted by the Court in Rosenberg comports with "the fundamental transformation of our national economy" that has occurred since 1923. McGee v. International Life Ins. Co., 355 U.S. 220, 222-223, 78 S.Ct. 199, 200-201, 2 L.Ed.2d 223 (1957). See also World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292-293, 100 S.Ct. 559, 564-565, 62 L.Ed.2d 490 (1980); id., at 308-309, 100 S.Ct., at 585-586 (BRENNAN, J., dissenting); Hanson v. Denckla, 357 U.S. 235, 250-251, 78 S.Ct. 1228, 1237-1238, 2 L.Ed.2d 1283 (1958); id., at 260, 78 S.Ct., at 1243 (Black, J., dissenting). This failure, in my view, is fatal to the Court's analysis.

> FN1. The Court leaves open the question whether the decision in Rosenberg was intended to address any constitutional limits on an assertion of "specific jurisdiction." Ante, at 1874, n. 12 (citing International Shoe, 326 U.S., at 318, 66 S.Ct., at 159). If anything is clear from Justice Brandeis' opinion for the Court in Rosenberg, however, it is that the Court was concerned only with general jurisdiction over the corporate defendant. See 260 U.S., at 517, 43 S.Ct., at 171 ("The sole question for decision is whether ... defendant was doing business within the State of New York in such manner and to such extent as to warrant the inference that it was present there"); id., at 518, 43 S.Ct., at 171 (the corporation's contacts with the forum "would not warrant the inference that the corporation was present within the jurisdiction of the State"); ante, at 1874. The Court's resuscitation of Rosenberg, therefore, should have no bearing upon any forum's assertion of jurisdiction over claims that arise out of or relate to a defendant's contacts with the State.

The vast expansion of our national economy during the past several decades has provided the primary rationale for expanding the permissible reach of a State's jurisdiction under the Due Process Clause. By broadening the type and amount of business opportunities available to participants in interstate and foreign commerce, our economy has increased the frequency with which foreign corporations actively pursue commercial transactions throughout the various States. In turn, it has become both necessary and, in my view, desirable to allow the States more leeway in bringing the activities of these nonresident corporations within the scope of their respective jurisdictions.

This is neither a unique nor a novel idea. As the

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Court first noted in 1957:

> "[M]any commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the *423 same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." McGee, supra, at 222-223, 78 S.Ct., at 200-201.

See also World-Wide Volkswagen, supra, 444 U.S., at 293, 100 S.Ct., at 565 (reaffirming that "[t]he historical developments noted in McGee ... have only accelerated in the generation since that case was decided"); **1877 Hanson v. Denckla, supra, 357 U.S., at 250-251, 78 S.Ct., at 1237-1238.

Moreover, this "trend ... toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents," McGee, supra, 355 U.S., at 222, 78 S.Ct., at 200, is entirely consistent with the "traditional notions of fair play and substantial justice," International Shoe, 326 U.S., at 316, 66 S.Ct., at 158, that control our inquiry under the Due Process Clause. As active participants in interstate and foreign commerce take advantage of the economic benefits and opportunities offered by the various States, it is only fair and reasonable to subject them to the obligations that may be imposed by those jurisdictions. And chief among the obligations that a nonresident corporation should expect to fulfill is amenability to suit in any forum that is significantly affected by the corporation's commercial activities.

As a foreign corporation that has actively and purposefully engaged in numerous and frequent commercial transactions in the State of Texas, Helicol clearly falls within the category of nonresident defendants that may be subject to that forum's general jurisdiction. Helicol not only purchased helicopters and other equipment in the State for many years, but also sent pilots and management personnel into Texas to be trained in the use of this equipment and to consult with the seller on technical matters. [FN2] Moreover, negotiations for the *424 contract under which Helicol provided transportation services to the joint venture that employed the respondents' decedents also took place in the State of Texas. Taken together, these contacts demonstrate that Helicol obtained numerous benefits from its transaction of business in Texas. In turn, it is eminently fair and reasonable to expect Helicol to face the obligations that attach to its participation in such commercial transactions. Accordingly, on the basis of continuous commercial contacts with the forum, I would conclude that the Due Process Clause allows the State of Texas to assert general jurisdiction over petitioner Helicol.

FN2. Although the Court takes note of these contacts, it concludes that they did not "enhanc[e] the nature of Helicol's contacts with Texas [[because the] training was a part of the package of goods and services purchased by Helicol." Ante, at 1874. Presumably, the Court's statement simply recognizes that participation in today's interdependent markets often necessitates the use of complicated purchase contracts that provide for numerous contacts between representatives of the buyer and seller, as well as training for related personnel. Ironically, however, while relying on these modern-day realities to denigrate the significance of Helicol's contacts with the forum, the Court refuses to acknowledge that these same realities require a concomitant expansion in a forum's jurisdictional reach. See supra, at 1876 - 1877. As a result, when deciding that the balance in this case must be struck against jurisdiction, the Court loses sight of the ultimate inquiry: whether it is fair and reasonable to subject a nonresident corporate defendant to the jurisdiction of a State when that defendant has purposefully availed itself of the benefits and obligations of that particular forum. Cf. Hanson v. Denckla, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239, 2 L.Ed.2d 1283 (1958).

II

The Court also fails to distinguish the legal principles that controlled our prior decisions in Perkins and Rosenberg. In particular, the contacts between petitioner Helicol and the State of Texas,

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unlike the contacts between the defendant and the forum in each of those cases, are significantly related to the cause of action alleged in the original suit filed by the respondents. Accordingly, in my view, it is both fair and reasonable for the Texas courts to assert specific jurisdiction over Helicol in this case.

By asserting that the present case does not implicate the specific jurisdiction of the Texas courts, see ante, at 1872-1873, and nn. 10 and 12, the Court necessarily removes its decision ***425** from the reality of the actual facts presented for our consideration. [FN3] Moreover, the Court refuses to consider ****1878** any distinction between contacts that are "related to" the underlying cause of action and contacts that "give rise" to the underlying cause of action. In my view, however, there is a substantial difference between these two standards for asserting specific jurisdiction. Thus, although I agree that the respondents' cause of action did not formally "arise out of" specific activities initiated by Helicol in the State of Texas, I believe that the wrongful-death claim filed by the respondents is significantly related to the undisputed contacts between Helicol and the forum. On that basis, I would conclude that the Due Process Clause allows the Texas courts to assert specific jurisdiction over this particular action.

> FN3. Nor do I agree with the Court that the respondents have conceded that their claims are not related to Helicol's activities within the State of Texas. Although parts of their written and oral arguments before the Court proceed on the assumption that no such relationship exists, other portions suggest just the opposite:
> "If it is the concern of the Solicitor General [appearing for the United States as amicus curiae] that a holding for Respondents here will cause foreign companies to refrain from purchasing in the United States for fear of exposure to general jurisdiction on unrelated causes of action, such concern is not well founded.
> "Respondents' cause is not dependent on a ruling that mere purchases in a state, together with incidental training for operating and maintaining the merchandise purchased can constitute the ties, contacts and relations necessary to justify jurisdiction over an unrelated cause of action. However, regular purchases and training coupled with other contacts, ties and relations may form the basis for jurisdiction." Brief for Respondents 13-14. Thus, while the respondents' position before this Court is admittedly less than clear, I believe it is preferable to address the specific jurisdiction of the Texas courts because Helicol's contacts with Texas are in fact related to the underlying cause of action.

The wrongful-death actions filed by the respondents were premised on a fatal helicopter crash that occurred in Peru. Helicol was joined as a defendant in the lawsuits because it provided transportation services, including the particular helicopter and pilot involved in the crash, to the joint venture ***426** that employed the decedents. Specifically, the respondent Hall claimed in her original complaint that "Helicol is ... legally responsible for its own negligence through its pilot employee." App. 6a. Viewed in light of these allegations, the contacts between Helicol and the State of Texas are directly and significantly related to the underlying claim filed by the respondents. The negotiations that took place in Texas led to the contract in which Helicol agreed to provide the precise transportation services that were being used at the time of the crash. Moreover, the helicopter involved in the crash was purchased by Helicol in Texas, and the pilot whose negligence was alleged to have caused the crash was actually trained in Texas. See Tr. of Oral Arg. 5, 22. This is simply not a case, therefore, in which a state court has asserted jurisdiction over a nonresident defendant on the basis of wholly unrelated contacts with the forum. Rather, the contacts between Helicol and the forum are directly related to the negligence that was alleged in the respondent Hall's original complaint. [FN4] Because Helicol should have expected to be amenable to suit in the Texas courts for claims directly related to these contacts, it is fair and reasonable to allow the assertion of jurisdiction in this case.

> FN4. The jury specifically found that "the pilot failed to keep the helicopter under

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> proper control," that "the helicopter was flown into a treetop fog condition, whereby the vision of the pilot was impaired," that "such flying was negligence," and that "such negligence ... was a proximate cause of the crash." See App. 167a-168a. On the basis of these findings, Helicol was ordered to pay over $1 million in damages to the respondents.

Despite this substantial relationship between the contacts and the cause of action, the Court declines to consider whether the courts of Texas may assert specific jurisdiction over this suit. Apparently, this simply reflects a narrow interpretation of the question presented for review. See ante, at 1873, n. 10. It is nonetheless possible that the Court's opinion may be read to imply that the specific jurisdiction of the Texas courts is inapplicable because the cause of action ***427** did not formally "arise out of" the contacts between Helicol and the forum. In my view, however, such a rule would place unjustifiable limits on the ****1879** bases under which Texas may assert its jurisdictional power. [FN5]

> FN5. Compare Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv.L.Rev. 1121, 1144-1163 (1966), with Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 S.Ct.Rev. 77, 80-88. See also Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va.L.Rev. 85, 100-101, and n. 66 (1983).

Limiting the specific jurisdiction of a forum to cases in which the cause of action formally arose out of the defendant's contacts with the State would subject constitutional standards under the Due Process Clause to the vagaries of the substantive law or pleading requirements of each State. For example, the complaint filed against Helicol in this case alleged negligence based on pilot error. Even though the pilot was trained in Texas, the Court assumes that the Texas courts may not assert jurisdiction over the suit because the cause of action "did not 'arise out of,' and [is] not related to," that training. See ante, at 1872. If, however, the applicable substantive law required that negligent training of the pilot was a necessary element of a cause of action for pilot error, or if the respondents had simply added an allegation of negligence in the training provided for the Helicol pilot, then presumably the Court would concede that the specific jurisdiction of the Texas courts was applicable.

Our interpretation of the Due Process Clause has never been so dependent upon the applicable substantive law or the State's formal pleading requirements. At least since International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), the principal focus when determining whether a forum may constitutionally assert jurisdiction over a nonresident defendant has been on fairness and reasonableness to the defendant. To this extent, a court's specific jurisdiction should be applicable whenever the cause of action arises out of or relates to the contacts between the defendant and the forum. It is eminently ***428** fair and reasonable, in my view, to subject a defendant to suit in a forum with which it has significant contacts directly related to the underlying cause of action. Because Helicol's contacts with the State of Texas meet this standard, I would affirm the judgment of the Supreme Court of Texas.

104 S.Ct. 1868, 466 U.S. 408, 80 L.Ed.2d 404

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EXHIBIT 6

66 S.Ct. 154
90 L.Ed. 95, 161 A.L.R. 1057
(Cite as: 326 U.S. 310, 66 S.Ct. 154)

Briefs and Other Related Documents

Supreme Court of the United States

INTERNATIONAL SHOE CO.
v.
STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT et al.

No. 107.

Decided Dec. 3, 1945.

Proceeding by the State of Washington, Office of Unemployment Compensation and Placement, and E. B. Riley, Commissioner, against the International Shoe Company to recover contributions under the Unemployment Compensation Act. From a judgment of the Supreme Court of Washington, 154 P.2d 801, affirming a judgment in favor of the plaintiff, the defendant appeals under s 237(a) of the Judicial Code, 28 U.S.C.A. s 344(a).

Affirmed.

West Headnotes

[1] Commerce ⇐62.71
83k62.71 Most Cited Cases
(Formerly 83k62.70, 83k72)

The Washington Unemployment Compensation Act, as applied to foreign corporation having employees within state, does not impose an unconstitutional burden on interstate commerce. 26 U.S.C.A. Int.Rev.Code, § 1606(a); Rem.Supp.Wash.1941, §§ 9998--103a to 9998--123a.

[2] Commerce ⇐9
83k9 Most Cited Cases

Congress, in exercise of commerce power, may authorize states, in specified ways, to regulate interstate commerce or impose burdens upon it.

[3] Constitutional Law ⇐315
92k315 Most Cited Cases

"Due process of law" requires only that in order to subject a defendant to a judgment in personam, if he be not present within territory of forum, he has certain minimum contacts with it such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. U.S.C.A. Const.Amend. 14.

[4] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k283, 92k305)

The "presence" of a corporation without or within state of its origin for purposes of taxation or maintenance of suits against it in courts of state can be manifested only by activities carried on in corporation's behalf by those who are authorized to act for it. U.S.C.A. Const. Amend. 14.

[5] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The demand that corporation be "present" in state to satisfy due process of law requirement for purpose of maintenance of suit against it in courts of state may be met by such contacts of corporation with the state of forum as make it reasonable, in context of federal system of government, to require corporation to defend the particular suit which is brought there, and an "estimate of inconveniences" which would result to corporation from a trial away from its "home" or principal place of business would be relevant in such connection. U.S.C.A. Const. Amend. 14.

[6] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

"Presence" of foreign corporation in state for purpose of maintenance of suit against it exists when activities of corporation in state of forum have not only been continuous and systematic, but also give rise to liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. U.S.C.A. Const. Amend. 14.

[7] Constitutional Law ⇐305(6)

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66 S.Ct. 154
90 L.Ed. 95, 161 A.L.R. 1057
(Cite as: 326 U.S. 310, 66 S.Ct. 154)

92k305(6) Most Cited Cases
(Formerly 92k305)

The casual presence of corporate agent or even his conduct of single or isolated items of activities in a state in corporation's behalf are not enough to subject corporation to suit on causes of action unconnected with activities there. U.S.C.A. Const. Amend. 14.

[8] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

Although commission of some single act or occasional acts of corporate agent in a state sufficient to impose an obligation on corporation does not confer upon the state authority to enforce obligation, other such acts, because of their nature and quality and circumstances of their commission, may be deemed sufficient to render corporation liable to suit. U.S.C.A. Const. Amend. 14.

[9] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305, 192k305)

Whether due process of law is satisfied in suit in state court against foreign corporation must depend upon quality and nature of corporation's activity in relation to fair and orderly administration of laws which it was purpose of due process clause to insure. U.S.C.A. Const. Amend. 14.

[10] Constitutional Law ⇐315
92k315 Most Cited Cases

The due process of law clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which state has no contacts, ties or relations. U.S.C.A. Const.Amend. 14.

[11] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The exercise by foreign corporation of privilege of conducting activities within a state may give rise to obligations, and, so far as those obligations arise out of or are connected with activities within the state, a procedure requiring corporation to respond to a suit brought to enforce such obligations does not offend due process of law clause. U.S.C.A. Const. Amend. 14.

[12] Constitutional Law ⇐309(1)
92k309(1) Most Cited Cases

A Delaware shoe corporation having its principal place of business in Missouri and employing from 11 to 13 salesmen residing in state of Washington and regularly engaged therein in soliciting orders and displaying samples, sometimes in permanent display rooms paid for by company, which paid commissions to salesmen totalling more than $31,000 for each year during 4-year period, was "present" and "doing business" in Washington, so as to be amenable to process in proceedings in Washington courts to recover unpaid contributions to state unemployment compensation fund. Rem.Supp.Wash.1941, §§ 9998-103a to 9998-123a; U.S.C.A. Const. Amend. 14.

[13] Constitutional Law ⇐309(3)
92k309(3) Most Cited Cases

The service of process within state upon foreign corporation's agent whose activities established corporation's presence in state was sufficient notice of the suit. U.S.C.A. Const. Amend. 14.

[14] Constitutional Law ⇐309(3)
92k309(3) Most Cited Cases

A proceeding in Washington state courts against foreign corporation to recover unpaid contributions to state unemployment compensation fund based on commissions paid to its salesmen in state was not so unrelated to activities of a salesman soliciting orders in state as to make such salesman an inappropriate vehicle for communicating notice of suit to corporation. Rem.Supp.Wash.1941, ss 9998--103a to 9998--123a; U.S.C.A.Const. Amend. 14.

[15] Constitutional Law ⇐309(2)
92k309(2) Most Cited Cases

The mailing of notice of suit to a foreign corporation by registered mail at its home office was sufficient notice of the suit. U.S.C.A. Const. Amend. 14.

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[16] Constitutional Law ⚖283
92k283 Most Cited Cases

[16] Taxation ⚖37.3
371k37.3 Most Cited Cases
(Formerly 371k37)

The Washington Unemployment Compensation Act, when construed as imposing a tax against foreign corporation on privilege of employing salesmen within state measured by percentage of commissions payable to salesmen, is not invalid as violative of "due process of law". Rem.Supp.Wash.1941, §§ 9998-103a to 9998-123a; U.S.C.A.Const. Amend. 14.
****156 *311** Appeal from the Supreme Court of the State of Washington.

Mr. Henry C. Lowenhaupt, of St. Louis Mo., for appellant.

Mr. George W. Wilkins, of Olympia, Wash., for appellees.

Mr. Chief Justice STONE delivered the opinion of the Court.

The questions for decision are (1) whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of Washington rendered itself amenable to proceedings in the courts of that state to recover unpaid contributions to the state unemployment compensation fund exacted by state statutes, Washington Unemployment Compensation Act, Washington Revised Statutes, s 9 998--103a through s 9998--123a, 1941 Supp., and (2) whether the state can exact those contributions consistently with the due process clause of the Fourteenth Amendment.

The statutes in question set up a comprehensive scheme of unemployment compensation, the costs of which are defrayed by contributions required to be made by employers to a state unemployment compensation fund. ***312** The contributions are a specified percentage of the wages payable annually by each employer for his employees' services in the state. The assessment and collection of the contributions and the fund are administered by respondents. Section 14(c) of the Act, Wash.Rev.Stat. 1941 Supp., s 9998--114c, authorizes respondent Commissioner to issue an order and notice of assessment of delinquent contributions upon prescribed personal service of the notice upon the employer if found within the state, or, if not so found, by mailing the notice to the employer by registered mail at his last known address. That section also authorizes the Commissioner to collect the assessment by distraint if it is not paid within ten days after service of the notice. By ss 14(e) and 6(b) the order of assessment may be administratively reviewed by an appeal tribunal within the office of unemployment upon petition of the employer, and this determination is by s 6(i) made subject to judicial review on questions of law by the state Superior Court, with further right of appeal in the state Supreme Court as in other civil cases.

In this case notice of assessment for the years in question was personally served upon a sales solicitor employed by appellant in the State of Washington, and a copy of the notice was mailed by registered mail to appellant at its address in St. Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant's salesman was not proper service upon appellant; that appellant was not a corporation of the State of Washington and was not doing business within the state; that it had no agent within the state upon whom service could be made; and that appellant is not an employer and does not furnish employment within the meaning of the statute.

The motion was heard on evidence and a stipulation of facts by the appeal tribunal which denied the motion ***313** and ruled that respondent Commissioner was entitled to recover the unpaid contributions. That action ****157** was affirmed by the Commissioner; both the Superior Court and the Supreme Court affirmed. 154 P.2d 801. Appellant in each of these courts assailed the statute as applied, as a violation of the due process clause of the Fourteenth Amendment, and as imposing a constitutionally prohibited burden on interstate commerce. The cause comes here on appeal under s 237(a) of the Judicial Code, 28 U.S.C. s 344(a), 28 U.S.C.A. s 344(a), appellant assigning as error that the challenged statutes as applied infringe the

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due process clause of the Fourteenth Amendment and the commerce clause.

The facts as found by the appeal tribunal and accepted by the state Superior Court and Supreme Court, are not in dispute. Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than Washington, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of Washington.

Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in Washington; their principal activities were confined to that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than $31,000. Appellant supplies its salesmen with a line of samples, each consisting of one shoe of a pair, which ***314** they display to prospective purchasers. On occasion they rent permanent sample rooms, for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

The Supreme Court of Washington was of opinion that the regular and systematic solicitation of orders in the state by appellant's salesmen, resulting in a continuous flow of appellant's product into the state, was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts. But it was also of opinion that there were sufficient additional activities shown to bring the case within the rule frequently stated, that solicitation within a state by the agents of a foreign corporation plus some additional activities there are sufficient to render the corporation amenable to suit brought in the courts of the state to enforce an obligation arising out of its activities there. International Harvester Co. v. Kentucky, 234 U.S. 579, 587, 34 S.Ct. 944, 946, 58 L.Ed. 1479; People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87, 38 S.Ct. 233, 235, 62 L.Ed. 587, Ann.Cas.1918C, 537; Frene v. Louisville Cement Co., 77 U.S.App.D.C. 129, 134 F.2d 511, 516, 146 A.L.R. 926. The court found such additional activities in the salesmen's display of samples sometimes in permanent display rooms, and the salesmen's residence within the state, continued over a period of years, all resulting in a ***315** substantial volume of merchandise regularly shipped by appellant to purchasers within the state. The court also held that the statute as applied did not invade the constitutional power of Congress to regulate interstate commerce and did not impose a prohibited burden on such commerce.

[1][2] Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us. For 53 Stat. 1391, 26 U.S.C. s 1606(a), 26 U.S.C.A. Int.Rev.Code, s 1606(a), provides that 'No person required under a State law to make payments to an unemployment fund shall be ****158** relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.' It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U.S. 334, 57 S.Ct. 277, 81 L.Ed. 270; Perkins v. Pennsylvania, 314 U.S. 586, 62 S.Ct. 484, 86 L.Ed. 473; Standard Dredging Corp. v. Murphy, 319 U.S. 306, 308, 63 S.Ct. 1067, 1068, 87 L.Ed. 1416; Hooven & Allison v. Evatt, 324

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U.S. 652, 679, 65 S.Ct. 870, 883; Southern Pacific Co. v. Arizona, 325 U.S. 761, 769, 65 S.Ct. 1515, 1520.

Appellant also insists that its activities within the state were not sufficient to manifest its 'presence' there and that in its absence the state courts were without jurisdiction, that consequently it was a denial of due process for the state to subject appellant to suit. It refers to those cases in which it was said that the mere solicitation of orders for the purchase of goods within a state, to be accepted without the state and filled by shipment of the purchased goods interstate, does not render the corporation seller amenable to suit within the state. See Green v. Chicago, Burlington & Quincy R. Co., 205 U.S. 530, 533, 27 S.Ct. 595, 596, 51 L.Ed. 916; International Harvester Co. v. Kentucky, supra, 234 U.S. 586, 587, 34 S.Ct. 946, 58 L.Ed. 1479; Philadelphia & Reading R. Co. v. McKibbin, 243 U.S. 264, 268, 37 S.Ct. 280, 61 L.Ed. 710; People's Tobacco Co. v. American Tobacco Co., supra, 246 U.S. 87, 38 S.Ct. 235, 62 L.Ed. 587, Ann.Cas.1918C, 537. ***316** And appellant further argues that since it was not present within the state, it is a denial of due process to subject it to taxation or other money exaction. It thus denies the power of the state to lay the tax or to subject appellant to a suit for its collection.

[3] Historically the jurisdiction of courts to render judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U.S. 714, 733, 24 L.Ed. 565. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 132 A.L.R. 1357. See Holmes, J., in McDonald v. Mabee, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458. Compare Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316, 319, 63 S.Ct. 602, 604, 606, 87 L.Ed. 777, 145 A.L.R. 1113. See Blackmer v. United States, 284 U.S. 421, 52 S.Ct. 252, 76 L.Ed. 375; Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091; Young v. Masci, 289 U.S. 253, 53 S.Ct. 599, 77 L.Ed. 1158, 88 A.L.R. 170.

[4][5] Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, Klein v. Board of Tax Supervisors, 282 U.S. 19, 24, 51 S.Ct. 15, 16, 75 L.Ed. 140, 73 A.L.R. 679, it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far 'present' there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms 'present' or 'presence' are ***317** used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in Hutchinson v. Chase & Gilbert, 2 Cir., 45 F.2d 139, 141. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection. Hutchinson v. Chase & Gilbert, supra, 45 F.2d 141.

****159** [6][7] 'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. St. Clair v. Cox, 106 U.S. 350, 355, 1 S.Ct. 354, 359, 27 L.Ed. 222; Connecticut Mutual Life Ins. Co. v. Spratley, 172 U.S. 602, 610, 611, 19 S.Ct. 308, 311, 312, 43 L.Ed. 569; Pennsylvania Lumbermen's Mut. Fire Ins. Co. v. Meyer, 197 U.S. 407, 414, 415, 25 S.Ct. 483, 484, 485, 49 L.Ed. 810; Commercial Mutual Accident Co. v. Davis, 213 U.S. 245, 255, 256, 29 S.Ct. 445, 448, 53 L.Ed. 782; International Harvester Co. v. Kentucky, supra; cf. St. Louis S.W.R. Co. v. Alexander, 227 U.S. 218, 33 S.Ct. 245, 57 L.Ed. 486, Ann.Cas.1915B, 77.

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Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. St. Clair v. Cox, supra, 106 U.S. 359, 360, 1 S.Ct. 362, 363, 27 L.Ed. 222; Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 21, 27 S.Ct. 236, 240, 51 L.Ed. 345; Frene v. Louisville Cement Co., supra, 77 U.S.App.D.C. 133, 134 F.2d 515, 146 A.L.R. 926, and cases cited. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

***318** While it has been held in cases on which appellant relies that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, Old Wayne Mut. Life Ass'n v. McDonough, supra; Green v. Chicago, Burlington & Quincy R. Co., supra; Simon v. Southern R. Co., 236 U.S. 115, 35 S.Ct. 255, 59 L.Ed. 492; People's Tobacco Co. v. American Tobacco Co., supra; cf. Davis v. Farmers' Co-operative Equity Co., 262 U.S. 312, 317, 43 S.Ct. 556, 558, 67 L.Ed. 996, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See Missouri, K. & T.R. Co. v. Reynolds, 255 U.S. 565, 41 S.Ct. 446, 65 L.Ed. 788; Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915; cf. St. Louis S.W.R. Co. v. Alexander, supra.

[8] Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit. Cf. Kane v. New Jersey, 242 U.S. 160, 37 S.Ct. 30, 61 L.Ed. 222; Hess v. Pawloski, supra; Young v. Masci, supra. True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. Lafayette Insurance Co. v. French, 18 How. 404, 407, 15 L.Ed. 451; St. Clair v. Cox, supra, 106 U.S. 356, 1 S.Ct. 359, 27 L.Ed. 222; Commercial Mutual Accident Co. v. Davis, supra, 213 U.S. 254, 29 S.Ct. 447, 53 L.Ed. 782; State of Washington v. Superior Court, 289 U.S. 361, 364, 365, 53 S.Ct. 624, 626, 627, 77 L.Ed. 1256, 89 A.L.R. 653. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. Smolik v. Philadelphia & R.C. & I. Co., D.C., 222 F. 148, 151. ***319** Henderson, The Position of Foreign Corporations in American Constitutional Law, 94, 95.

[9][10] It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. St. Louis S.W.R. Co. v. Alexander, supra, 227 U.S. 228, ****16033** S.Ct. 248, 57 L.Ed. 486, Ann.Cas.1915B, 77; International Harvestor Co. v. Kentucky, supra, 234 U.S. 587, 34 S.Ct. 946, 58 L.Ed. 1479. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. Pennoyer v. Neff, supra; Minnesota Commercial Men's Ass'n v. Benn, 261 U.S. 140, 43 S.Ct. 293, 67 L.Ed. 573.

[11] But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce

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them can, in most instances, hardly be said to be undue. Compare International Harvester Co. v. Kentucky, supra, with Green v. Chicago, Burlington & Quincy R. Co., supra, and People's Tobacco Co. v. American Tobacco Co., supra. Compare Connecticut Mutual Life Ins. Co. v. Spratley, supra, 172 U.S. 619, 620, 19 S.Ct. 314, 315, 43 L.Ed. 569, and Commercial Mutual Accident Co. v. Davis, supra, with Old Wayne Mut. Life Ass'n v. McDonough, supra. See 29 Columbia Law Review, 187-195.

[12] ***320** Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

[13][14][15] We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. Connecticut Mutual Life Ins. Co. v. Spratley, supra, 172 U.S. 618, 619, 19 S.Ct. 314, 315, 43 L.Ed. 569; Board of Trade v. Hammond Elevator Co., 198 U.S. 424, 437, 438, 25 S.Ct. 740, 743, 744, 49 L.Ed. 1111; Commercial Mutual Accident Co. v. Davis, supra, 213 U.S. 254, 255, 29 S.Ct. 447, 448, 53 L.Ed. 782. Cf. Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 194, 195, 35 S.Ct. 579, 580, 581, 59 L.Ed. 910; see Knowles v. Gaslight & Coke Co., 19 Wall. 58, 61, 22 L.Ed. 70; McDonald v. Mabee, supra; Milliken v. Meyer, supra. Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. Compare Hess v. Pawloski, supra, with McDonald v. Mabee, supra, 243 U.S. 92, 37 S.Ct. 344, 61 L.Ed. 608, L.R.A.1917F, 458, ***321** and Wuchter v. Pizzutti, 276 U.S. 13, 19, 24, 48 S.Ct. 259, 260, 262, 72 L.Ed. 446, 57 A.L.R. 1230; cf. Bequet v. MacCarthy, 2 B. & Ad. 951; Maubourquet v. Wyse, 1 Ir.Rep.C.L. 471. See State of Washington v. Superior Court, supra, 289 U.S. 365, 53 S.Ct. 626, 77 L.Ed. 1256, 89 A.L.R. 653.

[16] Only a word need be said of appellant's liability for the demanded contributions of the state unemployment fund. The Supreme Court of Washington, construing and applying the statute, has held that it imposes a tax on the privilege of employing appellant's salesmen within the state measured by a percentage of the wages, here the commissions payable to the salesmen. This construction we accept for purposes of determining the constitutional validity of the statute. The right to employ labor has been ****161** deemed an appropriate subject of taxation in this country and England, both before and since the adoption of the Constitution. Steward Machine Co. v. Davis, 301 U.S. 548, 579 et seq., 57 S.Ct. 883, 887 et seq., 81 L.Ed. 1279, 109 A.L.R. 1293. And such a tax imposed upon the employer for unemployment benefits is within the constitutional power of the states. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 508 et seq., 57 S.Ct. 868, 871 et seq., 81 L.Ed. 1245, 109 A.L.R. 1327.

Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit in personam to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For Washington has made one of those activities, which taken together establish appellant's 'presence' there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its 'presence' subject it alike to taxation by the state and to suit to recover the tax. Equitable Life Assur.

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Society v. Pennsylvania, 238 U.S. 143, 146, 35 S.Ct. 829, 830, 59 L.Ed. 1239; cf. International Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435, 442 et seq., 64 S.Ct. 1060, 1064 et seq., 88 L.Ed. 1373; Hoopeston Canning Co. v. Cullen, supra, 318 U.S. 316--319, 63 S.Ct. 604-- 606, 87 L.Ed. 1722, 145 A.L.R. 113; ***322** see General Trading Co. v. State Tax Com., 322 U.S. 335, 349, 64 S.Ct. 1028, 1030, 88 L.Ed. 1309, 1319.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK delivered the following opinion.

Congress, pursuant to its constitutional power to regulate commerce, has expressly provided that a State shall not be prohibited from levying the kind of unemployment compensation tax here challenged. 26 U.S.C. s 1606, 26 U.S.C.A. Int.Rev.Code, s 1606. We have twice decided that this Congressional consent is an adequate answer to a claim that imposition of the tax violates the Commerce Clause. Perkins v. Pennsylvania, 314 U.S. 586, 62 S.Ct. 484, 86 L.Ed. 473, affirming 342 Pa. 529, 21 A.2d 45; Standard Dredging Corp. v. Murphy, 319 U.S. 306, 308, 63 S.Ct. 1067, 1068, 87 L.Ed. 1416. Two determinations by this Court of an issue so palpably without merit are sufficient. Consequently that part of this appeal which again seeks to raise the question seems so patently frivolous as to make the case a fit candidate for dismissal. Fay v. Crozer, 217 U.S. 455, 30 S.Ct. 568, 54 L.Ed. 837. Nor is the further ground advanced on this appeal, that the State of Washington has denied appellant due process of law, any less devoid of substance. It is my view, therefore, that we should dismiss the appeal as unsubstantial, [FN1] Seaboard Air Line R. Co. v. Watson, 287 U.S. 86, 90, 92, 53 S.Ct. 32, 34, 35, 77 L.Ed. 180, 86 A.L.R. 174; and decline the invitation to formulate broad rules as to the meaning of due process, which here would amount to deciding a constitutional question 'in advance of the necessity for its decision.' Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389, 89 L.Ed. 1725, 1734.

FN1 This Court has on several occasions pointed out the undesirable consequences of a failure to dismiss frivolous appeals. Salinger v. United States, 272 U.S. 542, 544, 47 S.Ct. 173, 174, 71 L.Ed. 398; United Surety Co. v. American Fruit Product Co., 238 U.S. 140, 35 S.Ct. 828, 59 L.Ed. 1238; De Bearn v. Safe Deposit & Trust Co., 233 U.S. 24, 33, 34, 34 S.Ct. 584, 586, 587, 58 L.Ed. 833.

***323** Certainly appellant cannot in the light of our past decisions meritoriously claim that notice by registered mail and by personal service on its sales solicitors in Washington did not meet the requirements of procedural due process. And the due process clause is not brought in issue any more by appellant's further conceptualistic contention that Washington could not levy a tax or bring suit against the corporation because it did not honor that State with its mystical 'presence.' For it is unthinkable that the vague due process clause was ever intended to prohibit a State from regulating or taxing a business carried on within its boundaries simply because this is done by agents of a corporation organized and having its headquarters elsewhere. ****162** To read this into the due process clause would in fact result in depriving a State's citizens of due process by taking from the State the power to protect them in their business dealings within its boundaries with representatives of a foreign corporation. Nothing could be more irrational or more designed to defeat the function of our federative system of government. Certainly a State, at the very least, has power to tax and sue those dealing with its citizens within its boundaries, as we have held before. Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S.Ct. 602, 87 L.Ed. 1722, 145 A.L.R. 1113. Were the Court to follow this principle, it would provide a workable standard for cases where, as here, no other questions are involved. The Court has not chosen to do so, but instead has engaged in an unnecessary discussion in the course of which it has announced vague Constitutional criteria applied for the first time to the issue before us. It has thus introduced uncertain elements confusing the simple pattern and tending to curtail the exercise of State powers to an extent not justified by the Constitution.

The criteria adopted insofar as they can be

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identified read as follows: Due process does permit State courts to 'enforce the obligations which appellant has incurred' if ***324** it be found 'reasonable and just according to our traditional conception of fair play and substantial justice.' And this in turn means that we will 'permit' the State to act if upon 'an 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business', we conclude that it is 'reasonable' to subject it to suit in a State where it is doing business.

It is true that this Court did use the terms 'fair play' and 'substantial justice' in explaining the philosophy underlying the holding that it could not be 'due process of law' to render a personal judgment against a defendant without notice to and an opportunity to be heard by him. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357. In McDonald v. Mabee, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458, cited in the Milliken case, Mr. Justice Holmes speaking for the Court warned against judicial curtailment of this opportunity to be heard and referred to such a curtailment as a denial of 'fair play', which even the common law would have deemed 'contrary to natural justice.' And previous cases had indicated that the ancient rule against judgments without notice had stemmed from 'natural justice' concepts. These cases, while giving additional reasons why notice under particular circumstances is inadequate, did not mean thereby that all legislative enactments which this Court might deem to be contrary to natural justice ought to be held invalid under the due process clause. None of the cases purport to support or could support a holding that a State can tax and sue corporations only if its action comports with this Court's notions of 'natural justice.' I should have thought the Tenth Amendment settled that.

I believe that the Federal Constitution leaves to each State, without any 'ifs' or 'buts', a power to tax and to open the doors of its courts for its citizens to sue corporations whose agents do business in those States. Believing that the Constitution gave the States that power, I think it a judicial deprivation to condition its exercise upon this ***325** Court's notion of 'fairplay', however appealing that term may be. Nor can I stretch the meaning of due process so far as to authorize this Court to deprive a State of the right to afford judicial protection to its citizens on the ground that it would be more 'convenient' for the corporation to be sued somewhere else.

There is a strong emotional appeal in the words 'fair play', 'justice', and 'reasonableness.' But they were not chosen by those who wrote the original Constitution or the Fourteenth Amendment as a measuring rod for this Court to use in invalidating State or Federal laws passed by elected legislative representatives. No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power to invalidate legislation under any such elastic standards. Express prohibitions against certain types of legislation are found in the Constitution, and under the long settled practice, courts invalidate laws found to conflict with them. This requires interpretation, and interpretation, it is true, may result in extension of the Constitution's purpose. But that is no reason for reading the due process clause so as to restrict a State's power to tax and sue ****163** those whose activities affect persons and businesses within the State, provided proper service can be had. Superimposing the natural justice concept on the Constitution's specific prohibitions could operate as a drastic abridgment of democratic safeguards they embody, such as freedom of speech, press and religion, [FN2] and the right to counsel. This ***326** has already happened. Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595. Compare Feldman v. United States, 322 U.S. 487, 494--503, 64 S.Ct. 1082, 1085--1089, 88 L.Ed. 1408, 154 A.L.R. 982. For application of this natural law concept, whether under the terms 'reasonableness', 'justice', or 'fair play', makes judges the supreme arbiters of the country's laws and practices. Polk Co. v. Glover, 305 U.S. 5, 17--18, 59 S.Ct. 15, 20, 21, 83 L.Ed. 6; Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 600, 62 S.Ct. 736, 750, 86 L.Ed. 1037, note 4. This result, I believe, alters the form of government our Constitution provides. I cannot agree.

FN2 These First Amendment liberties--freedom of speech, press and religion--provide a graphic illustration of the potential restrictive capacity of a rule under which they are protected at a particular time only because the Court, as then constituted believes them to be a

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> requirement of fundamental justice. Consequently, under the same rule, another Court, with a different belief as to fundamental justice, could at least as against State action, completely or partially withdraw Constitutional protection from these basic freedoms, just as though the First Amendment had never been written.

True, the State's power is here upheld. But the rule announced means that tomorrow's judgment may strike down a State or Federal enactment on the ground that it does not conform to this Court's idea of natural justice. I therefore find myself moved by the same fears that caused Mr. Justice Holmes to say in 1930:

'I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable.' Baldwin v. Missouri, 281 U.S. 586, 595, 50 S.Ct. 436, 439, 74 L.Ed. 1056, 72 A.L.R. 1303.

66 S.Ct. 154, 326 U.S. 310, 90 L.Ed. 95, 161 A.L.R. 1057

Briefs and Other Related Documents (Back to top)

- 1945 WL 27433 (Appellate Brief) Appellant's Reply Brief (Nov. 13, 1945)
- 1945 WL 27432 (Appellate Brief) Brief of Appellees (Oct. 27, 1945)
- 1945 WL 27431 (Appellate Brief) Appellant's Brief (Oct. 08, 1945)
- 1944 WL 28353 (Appellate Brief) Brief of Appellant Upon Appellees' Motion to Dismiss or Affirm (1944)

END OF DOCUMENT

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EXHIBIT 7

72 S.Ct. 413
96 L.Ed. 485, 63 Ohio Law Abs. 146
(Cite as: 342 U.S. 437, 72 S.Ct. 413)

Supreme Court of the United States

PERKINS
v.
BENGUET CONSOLIDATED MINING CO. et al.

No. 85.

Argued Nov. 27, 28, 1951.
Decided March 3, 1952.
Rehearing Denied March 31, 1952.
See 343 U.S. 917, 72 S.Ct. 645.

Actions by Idonah Slade Perkins against Benguet Consolidated Mining Company, an alien business association known as A Sociedad Anonima and others. The Court of Appeals of Ohio, Clermont County, Per Curiam, 88 Ohio App. 118, 95 N.E.2d 5, affirmed a judgment of the Court of Common Pleas, Clermont County, sustaining a motion to quash service of summons on the named defendant, 99 N.E.2d 515, and plaintiff appealed. The Supreme Court, 155 Ohio St. 116, 98 N.E.2d 33, affirmed the judgment, and plaintiff brought certiorari. The United States Supreme Court, in an opinion by Mr. Justice Burton, held that under the circumstances it would not violate due process of law under the Fourteenth Amendment for Ohio courts either to take or refuse to take jurisdiction of a foreign corporation in action not arising out of the corporation's activities within the state.

Judgment of the Supreme Court of Ohio vacated, and cause remanded for further proceedings.

Mr. Justice Minton, with whom Chief Justice Vinson joined, dissented.

West Headnotes

[1] Mines and Minerals ⇨108
260k108 Most Cited Cases

Where foreign mining corporation had not secured license to transact business in Ohio or designated agent upon whom process could be served, but actual notice of proceeding was given to corporation through regular service of summons upon its president while he was in Ohio acting in that capacity, there could be no jurisdictional objection based upon lack of notice to responsible representative of corporation. Gen.Code Ohio, §§ 8625-2, 8625-4, 8625-5, 8625- 25, 11288, 11290.

[2] Corporations ⇨665(1)
101k665(1) Most Cited Cases

Whether state courts of Ohio are open to proceeding in personam against amply notified foreign corporation to enforce cause of action not arising in Ohio and not related to business or activities of corporation in that state depends entirely upon law of Ohio unless due process clause of the Fourteenth Amendment compels decision either way. U.S.C.A.Const.Amend. 14.

[3] Constitutional Law ⇨305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The due process clause of the Fourteenth Amendment does not compel a state to open its courts to proceeding in personam against amply notified foreign corporation to enforce cause of action not arising in that state and not related to business or activities of corporation in that state. U.S.C.A.Const. Amend. 14.

[4] Constitutional Law ⇨309(3)
92k309(3) Most Cited Cases
(Formerly 92k309(1))

Provision for making foreign corporation subject to service in a state is a matter of legislative discretion, and failure to provide for such service is not a denial of due process of law. U.S.C.A.Const. Amend. 14.

[5] Constitutional Law ⇨305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

In providing due process of law, state need not make jurisdiction over foreign corporation wide enough to include adjudication of transitory actions not arising in the state. U.S.C.A.Const. Amend. 14.

[6] Constitutional Law ⇨305(6)
92k305(6) Most Cited Cases
(Formerly 92k305, 92k5)

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Merely because the State of Ohio permits a complainant to maintain proceeding in personam in its courts against properly served nonresident natural person to enforce cause of action which does not arise out of anything done in Ohio, state is not compelled by the due process clause of the Fourteenth Amendment to provide like relief against foreign corporation. U.S.C.A.Const. Amend. 14.

[7] Courts ⇐109
106k109 Most Cited Cases

Under Ohio practice as understood by the United States Supreme Court, syllabus of the state Supreme Court constitutes official opinion of that court, but it must be read in light of facts and issues of the case. Gen.Code Ohio, § 1483.

[8] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k309(3))

If authorized representative of foreign corporation be physically present in state of forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, there is no unfairness in subjecting corporation to jurisdiction of courts of that state through such service of process upon the representative. U.S.C.A.Const. Amend. 14.

[9] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

In determining whether due process clause of the Fourteenth Amendment precluded the State of Ohio from subjecting a foreign corporation to jurisdiction of its courts in an action in personam which did not arise in the state and did not relate to corporation's activities there, issue was one of general fairness to the corporation. U.S.C.A.Const. Amend. 14.

[10] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The amount and kind of activities which must be carried on by foreign corporation in state of the forum so as to make it reasonable and just to subject corporation to jurisdiction of that state are to be determined in each case, and corporate activities which, under state statute, make it necessary for foreign corporation to secure a license and to designate statutory agent upon whom process may be served provide a helpful, but not conclusive test. U.S.C.A.Const. Amend. 14.

[11] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

No requirement of due process of law under the Fourteenth Amendment prohibits the State of Ohio from opening its courts to a proceeding in personam to enforce a cause of action not arising out of corporation's activities in the state, or compels state to do so. U.S.C.A.Const. Amend. 14.

[12] Federal Courts ⇐504.1
170Bk504.1 Most Cited Cases
(Formerly 170Bk504, 106k394(1))

Consideration of circumstances which, under law of Ohio, ultimately will determine whether courts of that state will choose to take jurisdiction over foreign corporation in proceeding in personam to enforce cause of action not arising out of corporation's activities in that state is reserved for courts of Ohio.

[13] Constitutional Law ⇐305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

Where Philippine mining operations of foreign corporation were halted by Japanese occupation, and president, who was general manager and principal stockholder, returned to Ohio home and there maintained office from which he carried on personal and corporate business, did banking for corporation, supervised policies dealing with rehabilitation of properties and dispatched funds, and summons was regularly served upon him while in Ohio in action not arising out of corporation's activities within the state, Ohio courts would not violate due process of law under the Fourteenth Amendment in either taking or declining to take jurisdiction. U.S.C.A.Const. Amend. 14.

[14] Federal Courts ⇐513
170Bk513 Most Cited Cases
(Formerly 106k400)

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Where syllabus denied relief against foreign corporation but did not indicate whether Ohio Supreme Court rested decision on state law or on due process clause of Fourteenth Amendment, and opinion placed concurrence of author unequivocally on ground that due process clause prohibited courts from exercising jurisdiction, but report did not disclose to what extent other members of court may have shared that view, United States Supreme Court would vacate judgment and remand cause for further proceedings in light of its opinion determining that due process would not be violated if Ohio court either took or declined jurisdiction. U.S.C.A.Const. Amend. 14.

****414** Mr. ***438** Robert N. Gorman, Cincinnati, Ohio, for petitioner.

Mr. Lucien H. Mercier, Washington, D.C., for respondent.

Mr. Justice BURTON delivered the opinion of the Court.

This case calls for an answer to the question whether the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States precludes Ohio from subjecting a foreign corporation to the jurisdiction of its courts in this action in personam. The corporation has been carrying on in Ohio a continuous and systematic, but limited, part of its general business. Its president, while engaged in doing such business in Ohio, has been ****415** served with summons in this proceeding. The cause of action sued upon did not arise in Ohio and does not relate to the corporation's activities there. For the reasons hereafter stated, we hold that the Fourteenth Amendment leaves Ohio free to take or decline jurisdiction over the corporation.

After extended litigation elsewhere [FN1] petitioner, Idonah Slade Perkins, a nonresident of Ohio, filed two actions in personam in the Court of Common Pleas of Clermont ***439** County, Ohio, against the several respondents. Among those sued is the Benguet Consolidated Mining Company, here called the mining company. It is styled a 'sociedad anonima' under the laws of the Philippine Islands, where it owns and has operated profitable gold and silver mines. In one action petitioner seeks approximately $68,400 in dividends claimed to be due her as a stockholder. In the other she claims $2,500,000 damages largely because of the company's failure to issue to her certificates for 120,000 shares of its stock.

FN1. See Perkins v. Perkins, 57 Phil.R. 205; Harden v. Benguet Consolidated Mining Co., 58 Phil.R. 141; Perkins v. Guaranty Trust Co., 274 N.Y. 250, 8 N.E.2d 849; Perkins v. Beneguet Consolidated Mining Co., 55 Cal.App.2d 720, 132 P.2d 70, rehearing denied, 55 Cal.App.2d 774, 132 P.2d 102, certiorari denied, 319 U.S. 774, 63 S.Ct. 1435, 37 L.Ed. 1721; 60 Cal.App.2d 845, 141 P.2d 19, certiorari denied, 320 U.S. 803, 815, 64 S.Ct. 429, 88 L.Ed. 485; Perkins v. First National Bank of Cincinnati, Com.Pl., Hamilton County, Ohio, 79 N.E.2d 159.

In each case the trial court sustained a motion to quash the service of summons on the mining company. Ohio Com.Pl., 99 N.E.2d 515. The Court of Appeals of Ohio affirmed that decision, 88 Ohio App. 118, 95 N.E.2d 5, as did the Supreme Court of Ohio, 155 Ohio St. 116, 98 N.E.2d 33. The cases were consolidated and we granted certiorari in order to pass upon the conclusion voiced within the court below that federal due process required the result there reached. 342 U.S. 808, 72 S.Ct. 33, 96 L.Ed. 611.

[1] We start with the holding of the Supreme Court of Ohio, not contested here, that, under Ohio law, the mining company is to be treated as a foreign corporation. [FN2] Actual notice of the proceeding was given to the corporation ***440** in the instant case through regular service of summons upon its president while he was in Ohio acting in that capacity. Accordingly, there can be no jurisdictional objection based upon a lack of notice to a responsible representative of the corporation.

FN2. Ohio requires a foreign corporation to secure a license to transact 'business' in that State, Throckmorton's Ohio Code, 1940, s 8625-- 4, and to appoint a

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'designated agent' upon whom process may be served, ss 8625--2, 8625--5. The mining company has neither secured such a license nor designated such an agent. While this may make it subject to penalties and handicaps, this does not prevent it from transacting business or being sued. s 8625--25. If it has a 'managing agent' in Ohio, service may be made upon him. s 11290. Such service is a permissive alternative to service on the corporation through its president or other chief officer. s 11288. Lively v. Picton, 6 Cir., 218 F. 401, 406--407. The evidence as to the business activities of the corporation in Ohio is summarized by the Ohio Court of Appeals. 88 Ohio App. 118, 119--125, 95 N.E.2d 5, 6--9. That court held that such activities did not constitute the transaction of business referred to in the Code. In its syllabus, however, the Supreme Court of Ohio, without passing upon the sufficiency of such acts for the above statutory purpose, and without defining its use of the term, affirmed the judgment dismissing the complaint and assumed that what the corporation had done in Ohio constituted 'doing business' to an extent sufficient to be recognized in reaching its decision.

[2] The answer to the question of whether the state courts of Ohio are open to a proceeding in personam, against an amply notified foreign corporation, to enforce a cause of action not arising in Ohio and not related to the business or activities of the corporation in that State rests entirely ****416** upon the law of Ohio, unless the Due Process Clause of the Fourteenth Amendment compels a decision either way.

[3][4][5][6] The suggestion that federal due process compels the State to open its courts to such a case has no substance.

'Provisions for making foreign corporations subject to service in the state is a matter of legislative discretion, and a failure to provide for such service is not a denial of due process. Still less is it incumbent upon a state in furnishing such process to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory actions not arising in the state.' Missouri P.R. Co. v. Clarendon Co., 257 U.S. 533, 535, 42 S.Ct. 210, 211, 66 L.Ed. 354.

***441** Also without merit is the argument that merely because Ohio permits a complainant to maintain a proceeding in personam in its courts against a properly served nonresident natural person to enforce a cause of action which does not arise out of anything done in Ohio, therefore, the Constitution of the United States compels Ohio to provide like relief against a foreign corporation.

A more serious question is presented by the claim that the Due Process Clause of the Fourteenth Amendment prohibits Ohio from granting such relief against a foreign corporation. The syllabus in the report of the case below, while denying the relief sought, does not indicate whether the Supreme Court of Ohio rested its decision on Ohio law or on the Fourteenth Amendment. The first paragraph of that syllabus is as follows:

'1. The doing of business in this state by a foreign corporation, which has not appointed a statutory agent upon whom service of process against the corporation can be made in this state or otherwise consented to service of summons upon it in actions brought in this state, will not make the corporation subject to service of summons in an action in personam brought in the courts of this state to enforce a cause of action not arising in this state and in no way related to the business or activities of the corporation in this state.' 155 Ohio St. 116, 117, 98 N.E.2d 33, 34.

[7] If the above statement stood alone, it might mean that the decision rested solely upon the law of Ohio. In support of that possibility we are told that, under the rules and practice of the Supreme Court of Ohio, only the syllabus necessarily carries the approval of that court. [FN3] As ***442** we understand the Ohio practice, the syllabus of its ****417** Supreme Court constitutes the official opinion of that court but it must be read in the light of the facts and issues of the case.

FN3. In 1858 the Supreme Court of Ohio promulgated the following rule: 'A syllabus of the points decided by the Court in each case, shall be stated, in writing, by the

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Judge assigned to deliver the opinion of the Court, which shall be confined to the points of law, arising from the facts of the case, that have been determined by the Court. And the syllabus shall be submitted to the Judges concurring therein, for revisal, before publication thereof; and it shall be inserted in the book of reports without alteration, unless by the consent of the Judges concurring therein.' 5 Ohio St. vii.

This policy has been recognized by statute. Bates Ohio R.S. s 427, as amended, 103 Ohio Laws 1913, s 1483, and 108 Ohio Laws 1919, s 1483. It appears now in Throckmorton's Ohio Code, 1940, s 1483, as follows: 'Whenever it has been thus decided to report a case for publication the syllabus thereof shall be prepared by the judge delivering the opinion, and approved by a majority of the members of the court; and the report may be per curiam, or if an opinion be reported, the same shall be written in as brief and concise form as may be consistent with a clear presentation of the law of the case. * * * Only such cases as are hereafter reported in accordance with the provisions of this section shall be recognized by and receive the official sanction of any court within the state.'

There are many references to this practice, both in the syllabi and opinions written for the Supreme Court of Ohio. Typical of these is the following:

'It has long been the rule of this court that the syllabus contains the law of the case. It is the only part of the opinion requiring the approval of all the members concurring in the judgment. Where the judge writing an opinion discusses matters or gives expression to his views on questions not contained in the syllabus, it is merely the personal opinion of that judge.' State ex rel. Donahey v. Edmondson, 89 Ohio St. 93, 107--108, 105 N.E. 269, 273, 52 L.R.A.,N.S., 305.

See also, Williamson Heater Co. v. Radich, 128 Ohio St. 124, 190 N.E. 403; Baltimore & O.R. Co. v. Baillie, 112 Ohio St. 567, 148 N.E. 233. A syllabus must be read in the light of the facts in the case, even where brought out in the accompanying opinion rather than in the syllabus itself. See Williamson Heater Co. v. Radich, supra; Perkins v. Bright, 109 Ohio St. 14, 19--20, 141 N.E. 689, 690--691; In re Poage, 87 Ohio St. 72, 82--83, 100 N.E. 125, 127--128.

***443** The only opinion accompanying the syllabus of the court below places the concurrence of its author unequivocally upon the ground that the Due Process Clause of the Fourteenth Amendment prohibits the Ohio courts from exercising jurisdiction over the respondent corporation in this proceeding. [FN4] That opinion is an official part of the report of the case. The report, however, does not disclose to what extent, if any, the other members of the court may have shared the view expressed in that opinion. Accordingly, for us to allow the judgment to stand as it is would risk an affirmance of a decision which might have been decided differently if the court below had felt free, under our decisions, to do so.

FN4. 'However, the doing of business in a state by a foreign corporation, which has not appointed a statutory agent upon whom service of process against the corporation can be made in that state or otherwise consented to service of summons upon it in actions brought in that state, will not make the corporation subject to service of summons in an action in personam brought in the courts of that state to enforce a cause of action in no way related to the business or activities of the corporation in that state.

Old Wayne Mutual Life Ass'n of Indianapolis v. McDonough, 204 U.S. 8, 22, 23, 27 S.Ct. 236, 51 L.Ed. 345; Simon v. Southern Ry. Co., 236 U.S. 115, 129, 130 and 132, 35 S.Ct. 255, 59 L.Ed. 492. See, also, Pennsylvania Fire Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co., 243 U.S. 93, 95 and 96, 37 S.Ct. 344, 61 L.Ed. 610; Robert Mitchell Furniture Co. v. Selden Breck Construction Co., 257 U.S. 213, 215 and 216, 42 S.Ct. 84, 66 L.Ed. 201; International Shoe Co. v. Washington, 326 U.S. 310, 319 and 320, 66 S.Ct. 154, 90 L.Ed. 95.

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> 'An examination of the opinions of the Supreme Court of the United States in the foregoing cases will clearly disclose that service of summons in such an instance would be void as wanting in due process of law.' 155 Ohio St. 116, 119--120, 98 N.E.2d 33, 35.

The cases primarily relied on by the author of the opinion accompanying the syllabus below are Old Wayne Life Ass'n v. McDonough, 204 U.S. 8, 27 S.Ct. 236, 51 L.Ed. 345, and Simon v. Southern R. Co., 236 U.S. 115, 35 S.Ct. 255, 59 L.Ed. 492. Unlike the case at bar, no actual notice of the proceedings was received in those cases by a ***444** responsible representative of the foreign corporation. In each case, the public official who was served with process in an attempt to bind the foreign corporation was held to lack the necessary authority to accept service so as to bind it in a proceeding to enforce a cause of action arising outside of the state of the forum. See 204 U.S. at pages 22--23, 27 S.Ct. at pages 240--241, and 236 U.S. at page 130, 35 S.Ct. at page 260. The necessary result was a finding of inadequate service in each case and a conclusion that the foreign corporation was not bound by it. The same would be true today in a like proceeding where the only service had and the only notice given was that directed to a public official who had no authority, by statute or otherwise, to accept it in that kind of a proceeding. At the time of rendering the above decisions this Court was aided, in reaching its conclusion as to the limited scope of the statutory authority of the public officials, by this Court's conception that the Due Process Clause of the Fourteenth Amendment precluded a state from giving its public officials authority to accept service in terms broad enough to bind a foreign corporation in proceedings against it to enforce an obligation arising outside of the state of the forum. That conception now has been modified by the ****418** rationale adopted in later decisions and particularly in International Shoe Co. v. Washington, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95.

[8] Today if an authorized representative of a foreign corporation be physically present in the state of the forum and be there engaged in activities appropriate to accepting service or receiving notice on its behalf, we recognize that there is no unfairness in subjecting that corporation to the jurisdiction of the courts of that state through such service of process upon that representative. This has been squarely held to be so in a proceeding in personam against such a corporation, at least in relation to a cause of action ***445** arising out of the corporation's activities within the state of the forum. [FN5]

> FN5. '* * * The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.' International Shoe Co. v. Washington, supra, 326 U.S. at page 320, 66 S.Ct. at page 160.

[9][10] The essence of the issue here, at the constitutional level, is a like one of general fairness to the corporation. Appropriate tests for that are discussed in International Shoe Co. v. Washington, supra, 326 U.S. at pages 317--320, 66 S.Ct. at pages 158, 160. The amount and kind of activities which must be carried on by the foreign corporation in the state of the forum so as to make it reasonable and just to subject the corporation to the jurisdiction of that state are to be determined in each case. The corporate activities of a foreign corporation which, under state statute, make it necessary for it to secure a license and to designate a statutory agent upon whom process may be served provide a helpful but not a conclusive test. For example, the state of the forum may by statute require a foreign mining corporation to secure a license in order lawfully to carry on there such functional intrastate operations as those of mining or refining ore. On the other hand, if the same corporation carries on, in that state, other continuous and systematic corporate activities as it did here--consisting of directors' meetings, business correspondence, banking, stock transfers, payment of salaries, purchasing of

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machinery, etc.--those activities are enough to make it fair and reasonable to subject that corporation to proceedings in personam in that state, at least insofar as the proceedings in personam seek to enforce*446 causes of action relating to those very activities or to other activities of the corporation within the state.

[11] The instant case takes us one step further to a proceeding in personam to enforce a cause of action not arising out of the corporation's activities in the state of the forum. Using the tests mentioned above we find no requirement of federal due process that either prohibits Ohio from opening its courts to the cause of action here presented or compels Ohio to do so. This conforms to the realistic reasoning in International Shoe Co. v. Washington, supra, 326 U.S. at pages 318--319, 66 S.Ct. at pages 159--160:

'* * * there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See Missouri, K. & T.R. Co. v. Reynolds, 255 U.S. 565, 41 S.Ct. 446, 65 L.Ed. 788; [FN6] **419 Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915; cf. St. Louis S.W.R. Co. v. Alexander, supra (227 U.S. 218, 33 S.Ct. 245, 57 L.Ed. 486).

> FN6. This citation does not disclose the significance of this decision but light is thrown upon it by the opinions of the state court below. Reynolds v. Missouri, K. & T.R. Co., 224 Mass. 379, 113 N.E. 413; 228 Mass. 584, 117 N.E. 913. In addition to the cases cited in the text see Barrow S.S. Co. v. Kane, 170 U.S. 100, 18 S.Ct. 526, 42 L.Ed. 964; Pennsylvania Fire Insurance Co. v. Gold Issue Mining Co., 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610 (statutory agent appointed); Philadelphia & Reading R. Co. v. McKibbin, 243 U.S. 264, 268--269, 37 S.Ct. 280, 281, 282, 61 L.Ed. 710 (question left open).

'* * * some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. Lafayette Insurance Co. v. French, 18 How. 404, 407; St. Clair v. Cox, supra, 106 U.S. (350) 356, 1 S.Ct. (354) 359, 27 L.Ed. 222; *447Commercial Mutual Accident Co. v. Davis, supra, 213 U.S. (245) 254, 29 S.Ct. (445) 447, 53 L.Ed. 782; State of Washington v. Superior Court, 289 U.S. 361, 364, 365, 53 S.Ct. 624, 626, 627, 77 L.Ed. 1256. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. Smolik v. Philadelphia & Reading Co., D.C., 222 F. 148, 151. Henderson, The Position of Foreign Corporations in American Constitutional Law, 94, 95.

'* * * Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. Pennoyer v. Neff, supra (95 U.S. 714, 24 L.Ed. 565); Minnesota Commercial Assn. v. Benn, 261 U.S. 140, 43 S.Ct. 293, 67 L.Ed. 573.'

It remains only to consider, in more detail, the issue of whether, as a matter of federal due process, the business done in Ohio by the respondent mining company was sufficiently substantial and of such a nature as to permit Ohio to entertain a cause of action against a foreign corporation, where the cause of action arose from activities entirely distinct from its activities in Ohio. See International Shoe Co. v. Washington, supra, 326 U.S. at page 318, 66 S.Ct. at page 159.

[12][13] The Ohio Court of Appeals summarized the evidence on the subject. 88 Ohio App. at pages 119--125, 95 N.E.2d at pages 6--9. From that summary the following facts are substantially beyond controversy: The company's mining properties were in the Philippine Islands. Its operations there were completely halted during the occupation of the Islands by the Japanese. During that interim the president, who was also the general manager and principal stockholder of the company, returned to his home in Clermont County, Ohio. There he maintained an office in *448 which he conducted his personal affairs and did many things

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on behalf of the company. He kept there office files of the company. He carried on there correspondence relating to the business of the company and to its employees. He drew and distributed there salary checks on behalf of the company, both in his own favor as president and in favor of two company secretaries who worked there with him. He used and maintained in Clermont County, Ohio, two active bank accounts carrying substantial balances of company funds. A bank in Hamilton County, Ohio, acted as transfer agent for the stock of the company. Several directors' meetings were held at his office or home in Clermont County. From that office he supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines and he dispatched funds to cover purchases of machinery for such rehabilitation. Thus he carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company. He there discharged his duties as president and general manager, both during the occupation of the company's properties by the Japanese and immediately thereafter. While ****420** no mining properties in Ohio were owned or operated by the company, many of its wartime activities were directed from Ohio and were being given the personal attention of its president in that State at the time he was served with summons. Consideration of the circumstances which, under the law of Ohio, ultimately will determine whether the courts of that State will choose to take jurisdiction over the corporation is reserved for the courts of that State. Without reaching that issue of state policy, we conclude that, under the circumstances above recited, it would not violate federal due process for Ohio either to take or decline jurisdiction of the corporation in this proceeding. This relieves the Ohio courts of the restriction relied upon in the opinion ***449** accompanying the syllabus below and which may have influenced the judgment of the court below.

[14] Accordingly, the judgment of the Supreme Court of Ohio is vacated and the cause is remanded to that court for further proceedings in the light of this opinion. [FN7]

FN7. For like procedure followed under somewhat comparable circumstances see State Tax Comm'n v. Van Cott, 306 U.S. 511, 59 S.Ct. 605, 83 L.Ed. 950.

It is so ordered.

Judgment vacated and cause remanded for further proceedings.

Mr. Justice BLACK concurs in the result.

Mr. Justice MINTON, with whom the CHIEF JUSTICE joins, dissenting.

As I understand the practice in Ohio, the law as agreed to by the court is stated in the syllabus. If an opinion is filed, it expresses the views of the writer of the opinion and of those who may join him as to why the law was so declared in the syllabus. Judge Taft alone filed an opinion in the instant case.

The law as declared in the syllabus, which is the whole court speaking, is clearly based upon adequate state grounds. Judge Taft in his opinion expresses the view that the opinions of this Court on due process grounds require the court to declare the law as stated in the syllabus. As the majority opinion of this Court points out, this is an erroneous view of this Court's decisions. 'This brings the situation clearly within the settled rule whereby this Court will not review a State court decision resting on an adequate and independent nonfederal ground even though the State court may have also summoned to its support an erroneous view of federal law.' Radio Station WOW v. Johnson, 326 U.S. 120, 129, 65 S.Ct. 1475, 1480, 89 L.Ed. 2092.

The case of State Tax Comm'n v. Van Cott, 306 U.S. 511, 59 S.Ct. 605, 83 L.Ed. 950, is not this case. There the case was not clearly decided ***450** on an adequate state ground, but the state ground and the federal ground were so interwoven that this Court was 'unable to conclude that the judgment rests upon an independent interpretation of the state law.' 306 U.S. at page 514, 59 S.Ct. at page 606. In the instant case, a clear statement of the state law is made by the court in the syllabus. Only Judge Taft has summoned the erroneous view of this Court's decisions to his support of the adequate state ground approved by the whole court.

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What we are saying to Ohio is: 'You have decided this case on an adequate state ground, denying service, which you had a right to do, but you don't have to do it if you don't want to, as far as the decisions of this Court are concerned.' I think what we are doing is giving gratuitously an advisory opinion to the Ohio Supreme Court. I would dismiss the writ as improvidently granted.

72 S.Ct. 413, 342 U.S. 437, 96 L.Ed. 485, 63 Ohio Law Abs. 146

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EXHIBIT 8

897 F.2d 377
1990 A.M.C. 1757
(Cite as: 897 F.2d 377)

United States Court of Appeals,
Ninth Circuit.

Eulala SHUTE and Russel Shute,
Plaintiffs-Appellants,
v.
CARNIVAL CRUISE LINES, Defendant-Appellee.

No. 87-4063.

Argued and Submitted Oct. 5, 1988.
Decided Dec. 12, 1988.
Withdrawn April 27, 1989.
Amended and Refiled Feb. 22, 1990.

Cruise ship passenger brought suit against cruise line seeking damages for injuries sustained in slip and fall. The United States District Court for the Western District of Washington, Carolyn R. Dimmick, J., granted cruise line's motion for summary judgment on ground of lack of personal jurisdiction, and passenger appealed. The Court of Appeals, 863 F.2d 1437, reversed and remanded. Subsequently, the Court of Appeals, 872 F.2d 930, withdrew opinion and certified question to the Washington Supreme Court. The Washington Supreme Court, 113 Wash.2d 763, 783 P.2d 78, answered question. Thereafter, the Court of Appeals, Fletcher, Circuit Judge, held that: (1) exercise of jurisdiction in Washington was consistent with principles of due process, and (2) forum selection clause requiring suit to be brought in Florida was unenforceable.

Reversed and remanded.

Opinion, 863 F.2d 1437, superseded.

West Headnotes

[1] Federal Civil Procedure ⇐1742(1)
170Ak1742(1) Most Cited Cases
(Formerly 170Ak1742)

Where trial court's ruling, on motion to dismiss for lack of personal jurisdiction, is based solely upon review of affidavits and discovery materials, dismissal was appropriate only if plaintiff fails to make prima facie showing of personal jurisdiction.

[2] Courts ⇐12(2.1)
106k12(2.1) Most Cited Cases
(Formerly 106k12(2))

Washington's long-arm statute imposes no limitation beyond those imposed by due process. U.S.C.A. Const.Amend. 14; West's RCWA 4.28.185.

[3] Courts ⇐12(2.5)
106k12(2.5) Most Cited Cases

Court has general jurisdiction and may hear cases unrelated to nonresident defendant's forum-related activities where defendant has substantial or continuous and systematic contacts with forum state.

[4] Federal Courts ⇐76.25
170Bk76.25 Most Cited Cases

Nonresident cruise line's contacts with state of Washington were insufficient to support exercise of general jurisdiction in action arising out of slip-and-fall injuries sustained by passenger while ship was in international waters; cruise line had no offices and no exclusive agents in Washington, it was not registered to do business there and it paid no taxes there. U.S.C.A. Const.Amend. 14; West's RCWA 4.28.185.

[5] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases

To exercise specific jurisdiction over nonresident defendant, defendant must have done some act by which he purposefully availed himself of privilege of conducting activities in forum, other than by invoking benefits and protections of its laws; claim must arise out of defendant's forum-related activities; and exercise of jurisdiction must be reasonable. U.S.C.A. Const.Amend. 14.

[6] Federal Courts ⇐76.25
170Bk76.25 Most Cited Cases

Cruise line was subject to personal jurisdiction in action arising out of slip- and-fall injuries sustained by passenger while ship was in international waters; cruise line, by soliciting business in state of Washington, purposefully availed itself of privilege of doing business in that state, and cause of action arose out of cruise line's Washington contacts.

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U.S.C.A. Const.Amend. 14; West's RCWA 4.28.185.

[7] Federal Courts ⇐76.25
170Bk76.25 Most Cited Cases

Cause of action is one "arising out of" defendant's continuing efforts to solicit business in forum state, as required to support jurisdiction under Washington long-arm statute, if injury would not have occurred but for the forum-related activities. U.S.C.A. Const.Amend. 14; West's RCWA 4.28.185.

[8] Federal Courts ⇐97
170Bk97 Most Cited Cases

In determining reasonableness of exercise of jurisdiction over nonresident defendant, court must examine extent of purposeful interjection; burden on defendant to defend suit in chosen forum; extent of conflict with sovereignty of defendant's state; forum state's interest in the dispute; most efficient forum for judicial resolution of dispute; importance of chosen forum to plaintiff's interests in convenient and effective relief; and existence of alternative forum. U.S.C.A. Const.Amend. 14.

[9] Federal Courts ⇐96
170Bk96 Most Cited Cases

Once it has been established that nonresident has purposefully availed itself of privilege of conducting business in forum state, forum's exercise of personal jurisdiction is presumptively reasonable. U.S.C.A. Const.Amend. 14.

[10] Contracts ⇐127(4)
95k127(4) Most Cited Cases

Forum selection clause in cruise line's passage contract ticket, requiring litigation of all disputes in Florida, was unreasonable under federal law, in view of inequality of parties' bargaining position.

[11] Federal Courts ⇐412.1
170Bk412.1 Most Cited Cases
(Formerly 170Bk412)

Federal law governs validity of forum selection clause.

***378** Gregory J. Wall, Brousseau, Wall & Jankovich, Seattle, Wash., for plaintiffs-appellants.

Jonathan Rodriguez-Atkatz, Bogle & Gates, Seattle, Wash., for defendant- appellee.

Appeal from the United States District Court for the Western District of Washington.

Before FLETCHER, BOOCHEVER and TROTT, Circuit Judges.

***379** FLETCHER, Circuit Judge:

Plaintiffs Eulala and Russell Shute appeal the district court's decision to grant the defendant's motion for summary judgment, dismissing their suit for damages. The district court granted the motion on the grounds that the defendant's forum-related activities were insufficient to support the exercise of personal jurisdiction in a manner consistent with due process. We reverse.

BACKGROUND

The defendant-appellee, Carnival Cruise Lines, is a Panamanian corporation with its principal place of business in Miami, Florida. It is undisputed that Carnival is not registered to do business in the State of Washington. It owns no property in Washington, maintains no office or bank account in Washington and pays no business taxes in Washington. It has never operated ships which have called at Washington ports. It has no exclusive agent in Washington. Carnival does, however, advertise its cruises in local Washington newspapers. It also provides brochures to travel agents in Washington, which in turn are distributed to potential customers. Carnival also periodically holds seminars for travel agents in the State of Washington to inform them about, and encourage them to sell, Carnival cruises. Carnival pays travel agencies a 10% commission on proceeds from tickets sold for Carnival cruises.

The plaintiff-appellants, who are Washington residents, purchased tickets through Smokey Point Travel in Arlington, Washington for a seven day cruise on a Carnival Cruise Lines ship, the TROPICALE. The appellants were to embark in

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Los Angeles, California, sailing from there to Puerto Vallarta, Mexico. The tickets were purchased through the travel agent, who forwarded payment to Carnival in Miami. The tickets were issued in Florida, then forwarded to the appellants in Washington.

The passage contract ticket contained a forum selection clause that provided as follows:

> It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U.S.A., to the exclusion of the courts of any other state or country.

The appellants' cause of action arises from injuries suffered by Mrs. Shute when she slipped on a deck mat while on a guided tour of the ship's galley. This incident occurred in international waters off the coast of Mexico. The Shutes allege that the fall was due to the negligence of Carnival and its employees, and request damages arising out of personal injuries to Mrs. Shute.

Carnival moved for summary judgment on two grounds: first, that the district court lacked personal jurisdiction over Carnival; and second, that the passenger ticket contract required the Shutes to bring all claims against Carnival in the Florida courts. In the alternative, Carnival requested a transfer of the case to the U.S. District Court for the Southern District of Florida. The court addressed only the first issue, ruling that it lacked personal jurisdiction over Carnival. The Shutes timely appeal.

DISCUSSION

I. *Burden of Proof/Standard of Review*

[1] The plaintiff has the burden of establishing that the court has personal jurisdiction. *Cubbage v. Merchent,* 744 F.2d 665, 667 (9th Cir.1984), *cert. denied,* 470 U.S. 1005, 105 S.Ct. 1359, 84 L.Ed.2d 380 (1985). Where the trial court's ruling is based solely upon a review of affidavits and discovery materials, dismissal is appropriate only if the plaintiff fails to make a *prima facie* showing of personal jurisdiction. *Fields v. Sedgwick Associated Risks, Ltd.,* 796 F.2d 299, 301 (9th Cir.1986); *Data Disc, Inc. v. Systems Tech. Assocs., Inc.,* 557 F.2d 1280, 1285-86 (9th Cir.1977); *cf. Haisten v. Grass Valley Med. Reimbursement Fund,* 784 F.2d 1392, 1396, n. 1 (9th Cir.1986) (where defendant challenges judgment entered against it on the merits, the plaintiff bears the full burden of proof ***380** of personal jurisdiction by the preponderance of the evidence).

A district court's determination that personal jurisdiction can properly be exercised is a question of law reviewable *de novo* when the underlying facts are undisputed. *Haisten,* 784 F.2d at 1396. For the purposes of this appeal, we treat the plaintiffs' allegations as correct. *Fields,* 796 F.2d at 301.

II. *Personal Jurisdiction*

This action was brought in admiralty in the U.S. District Court for the Western District of Washington. In order to establish personal jurisdiction, the Shutes must demonstrate that the forum state's jurisdictional statute confers personal jurisdiction, and that the exercise of jurisdiction accords with federal constitutional principles of due process. *Pacific Atlantic Trading Co. v. M/V Main Express,* 758 F.2d 1325, 1327 (9th Cir.1985).

[2] Washington's jurisdictional statute provides, in relevant part, as follows:

> (1) Any person whether or not a citizen or resident of this state, who, in person or through an agent does any of the acts in this section enumerated, thereby submits said person, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of said acts: (a) the transaction of any business within the state....

Wash.Rev.Code 4.28.185 (West 1988). This statute has been construed by the Supreme Court of Washington to permit the assertion of jurisdiction to the extent permitted by due process, except where limited by the terms of the statute. *Deutsch v. West Coast Mach. Co.,* 80 Wash.2d 707, 497 P.2d 1311 (1972). [FN1] For our purposes, "the statutory and constitutional standards merge into a single due process test." *Pedersen Fisheries, Inc. v. Patti Indus.,* 563 F.Supp. 72, 74 (W.D.Wash.1983). [FN2]

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FN1. This opinion was withdrawn by order of the panel certifying to the Supreme Court of Washington the question of whether the Washington long-arm statute would confer personal jurisdiction over Carnival Cruise Lines for the claim asserted by the Shutes. The Supreme Court has now held "that the business activities of the cruise line in [the State of Washington] permits the assertion of jurisdiction." *Shute v. Carnival Cruise Lines,* 113 Wash.2d 763, 783 P.2d 78 (1989). The opinion is refiled as modified herein.

FN2. Where jurisdiction is asserted under § 4.28.185(1)(a), the "transaction of any business" provision, the Washington courts apply a three factor test that is virtually identical to the specific jurisdiction due process test employed by this circuit. *Compare Deutsch,* 497 P.2d at 1314 *with Haisten,* 784 F.2d at 1397. We therefore conclude that the Washington long-arm statute imposes no limitations beyond those imposed by due process.

Considerations of due process require that non-resident defendants have certain minimum contacts with the forum state, so that the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *International Shoe v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945). However, the nature and quality of the necessary contacts required vary, depending upon the type of jurisdiction asserted.

[3] Courts may exercise either general or specific jurisdiction over non-resident defendants. General jurisdiction exists where the non-resident defendant has " 'substantial' or 'continuous and systematic' contacts with the forum state." *Fields,* 796 F.2d at 301 (quoting *Haisten,* 784 F.2d at 1396). A court exercising general jurisdiction over a defendant may hear cases unrelated to the defendant's forum-related activities. *Id.*

The level of contact with the forum state necessary to establish general jurisdiction is quite high. *See, e.g., Helicopteros Nacionales de Colombia v. Hall,* 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984) (no jurisdiction over foreign corporation that sent officers to forum for a negotiating session, accepted checks drawn from a forum bank, purchased equipment from the forum, and sent personnel to the forum to be trained); *Cubbage,* 744 F.2d at 667-68 (no general jurisdiction over non-resident doctors despite significant number of patients in forum, use of forum's state ***381** medical insurance system and telephone directory listing that reached forum); *Gates Learjet Corp. v. Jensen,* 743 F.2d 1325, 1330-31 (9th Cir.1984) (no general jurisdiction over defendants despite several visits and purchases in forum, solicitation of contract in forum which included choice of law provision favoring forum, and extensive communication with forum), *cert. denied,* 471 U.S. 1066, 105 S.Ct. 2143, 85 L.Ed.2d 500 (1985); *Congoleum Corp. v. DLW Aktiengesellschaft,* 729 F.2d 1240, 1242-43 (9th Cir.1984) (foreign corporation's sales and marketing efforts in forum state, including solicitation of orders, promotion of products to potential customers through the mail and through showroom displays, and attendance at trade shows and sales meetings, were insufficient contact to assert general jurisdiction).

[4] Carnival's contacts with the State of Washington are insufficient to support an exercise of general jurisdiction. Carnival has no offices and no exclusive agents in Washington, it is not registered to do business there, and it pays no taxes there. These factors militate against the exercise of general jurisdiction. *See Fields,* 796 F.2d at 302. Its contacts are limited to advertising in the local media, the mailing of brochures and the payment of commissions to travel agents, the conducting of promotional seminars, and the sale of its vacation cruises to residents of Washington. Only 1.29% and 1.06% of Carnival's cruise business was derived from residents of Washington in 1985 and 1986, respectively. This court has held under somewhat similar facts that the exercise of general jurisdiction would violate due process. *See Congoleum,* 729 F.2d at 1243.

[5] If the non-resident defendant's activities within the forum are not sufficiently pervasive to justify the exercise of general jurisdiction, a court may nevertheless assert jurisdiction for a cause of action arising out of the defendant's activities within the

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forum. The Ninth Circuit has devised a three-part test to determine whether the exercise of this "specific" jurisdiction comports with due process: (1) The defendant must have done some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must arise out of the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable. *Haisten,* 784 F.2d at 1397; *Data Disc,* 557 F.2d at 1287.

1. Purposeful Availment

Purposeful availment requires that the defendant engage in some form of affirmative conduct allowing or promoting the transaction of business within the forum state. *Decker Coal Co. v. Commonwealth Edison Co.,* 805 F.2d 834, 840 (9th Cir.1986). This focus upon the affirmative conduct of the defendant is designed to ensure that the defendant is not haled into court as the result of random, fortuitous or attenuated contacts, or on account of the unilateral activities of third parties. *See, e.g., World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (purchaser's unilateral act of bringing defendant's product into the forum state provides an insufficient basis for the exercise of personal jurisdiction over the defendant).

This circuit has held that a non-resident defendant's act of soliciting business in the forum state will generally be considered purposeful availment if that solicitation results in contract negotiations or the transaction of business. *Sinatra v. National Enquirer, Inc.,* 854 F.2d 1191, 1195 (9th Cir.1988); *Decker Coal,* 805 F.2d at 840 ("if the defendant directly solicits business in the forum state, the resulting transactions will probably constitute the deliberate transaction of business invoking the benefits of the forum state's laws").

In *Sinatra,* the plaintiff filed suit in California against Clinic La Prairie, a Swiss health clinic, for misappropriation of his name and likeness. The *National Enquirer* had done a full feature on the Clinic in exchange for Clinic officials' agreement to make false statements regarding Frank Sinatra's alleged stay at the Clinic. Sinatra had never visited the Clinic. The court ruled that the Clinic's advertisements in the ***382** forum state, coupled with its misappropriation of Sinatra's name through the *Enquirer* article, were sufficiently directed toward the forum to satisfy the purposeful availment prong of the *Data Disc* test. 854 F.2d at 1195-98.

The *Sinatra* court's premise that solicitation of business in the forum state will support a finding of purposeful availment has substantial support in *Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987). Justice O'Connor, writing for a four-Justice plurality, noted that conduct such as "designing the product for the market in the forum State, establishing channels for providing regular advice to customers in the forum State, advertising in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State" may evidence purposeful availment. 480 U.S. at 112, 107 S.Ct. at 1033. The plurality relied upon the absence of these factors to conclude that Asahi did not purposefully avail itself of the California market. *Id.* [FN3]

> FN3. Justice Brennan, writing for four members of the Court, maintained that the absence of "additional conduct" such as advertisement in the forum state was irrelevant. In his view, placing the goods in the stream of commerce with the knowledge that they will reach the forum state, when considered in light of the economic benefit received from sales in the forum, is sufficient to establish purposeful availment. 480 U.S. at 117, 107 S.Ct. at 1035 (Brennan, J., concurring). Under this standard, it is possible that Carnival's knowledge that ticket sales were being made to Washington residents is, in itself, sufficient to establish that Carnival purposefully availed itself of the benefits and protections of Washington law. We need not reach that question, however, because Carnival engaged in three of the four types of conduct mentioned by Justice O'Connor. We view these actions to be sufficient to meet the purposeful availment test.

[6] In light of these cases, it is difficult to conclude that Carnival did not purposefully avail itself of the

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laws of Washington. It advertised in the local media, promoted its cruises through brochures sent to travel agents in that state, and paid a commission on sales of cruises in that state. In addition, Carnival conducted promotional seminars in Washington designed to increase its sales to residents of that state. Carnival's efforts to solicit business in Washington were more extensive than those of the defendant Clinic in *Sinatra,* which consisted of advertisements in a few periodicals circulated in California. *Sinatra,* 854 F.2d at 1196. [FN4]

> FN4. It should be noted, however, that in analyzing whether the defendant Clinic had directed its activities toward California, the court also considered the effects in the forum of the defendant's acts. Thus, the fact that California was the situs of the tortious injury was a factor which led the court to find purposeful availment. 854 F.2d at 1196-98. That factor is not present in this case.

Carnival maintains that the fact it has never "consummated" a transaction in Washington precludes a finding of purposeful availment. In Carnival's view, the fact that the ticket is issued in Florida after receipt of payment and the fact that the cruise takes place completely outside of Washington State are decisive. This misses the point. As the Supreme Court has explained, the reality of modern commercial life is that many transactions take place solely by mail or wire across state lines, obviating the need for physical presence in the state toward which the defendant's activities are directed. Thus, the Court has held that the physical absence of the defendant and the transaction from the forum cannot defeat the exercise of personal jurisdiction. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 476, 105 S.Ct. 2174, 2184, 85 L.Ed.2d 528 (1985); *see also Lanier v. American Bd. of Endodontics,* 843 F.2d 901, 907 (6th Cir.), *cert. denied* 488 U.S. 926, 109 S.Ct. 310, 102 L.Ed.2d 329 (1988) ("Neither the presence of the defendant in the state, nor actual contract formation need take place in the forum state for defendant to do business in that state.").

The actions taken by Carnival to solicit business within the State of Washington were clearly purposefully directed toward residents of Washington. To that extent, it is irrelevant where the tickets are issued or where the cruise takes place. In addition, Carnival's argument ignores the fact that the promotional seminars actually took ***383** place within the state. In short, Carnival's actions were more than sufficient to meet the purposeful availment test.

2. Arising Out Of

The second prong of the three-part *Data Disc* test requires that the claim must "arise out of" the defendant's forum-related activities. Carnival maintains that the Shutes' claim, which is based on allegations of negligence with respect to conditions on the TROPICALE, does not "arise out of" Carnival's business solicitation contacts with Washington.

Carnival points to several cases outside this circuit supporting its contention that, for purposes of personal jurisdiction, "slip and fall" claims do not arise out of the defendant's business solicitation activities in the forum. *See Marino v. Hyatt Corp.,* 793 F.2d 427 (1st Cir.1986); *Pearrow v. National Life & Accident Ins. Co.,* 703 F.2d 1067 (8th Cir.1983); *see also Gelfland v. Tanner Motor Tours, Ltd.,* 339 F.2d 317, 321-22 (2d Cir.1964) (plaintiff's injuries sustained while on defendant's bus tour did not arise from defendant's forum activities, where those activities consisted of ticket sale through independent travel agent in the forum).

In *Marino* the plaintiff, a resident of Massachusetts, sued Hyatt, a Delaware corporation with its principal place of business in Illinois, for injuries incurred at one of the defendant's hotels. The plaintiff had made reservations through a Massachusetts travel agent to stay at the defendant's Hyatt Regency Hotel in Maui, Hawaii. The plaintiff slipped in the bathtub of her Hawaii hotel room, sustaining injuries. The court of appeals affirmed the district court's dismissal of her ensuing personal injury claim for lack of personal jurisdiction.

Basing its decision on an interpretation of the Massachusetts long-arm statute, the court acknowledged that Hyatt transacted business in Massachusetts. However, the court concluded that

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the claim, stemming from Mrs. Marino's fall in the bathtub in Hawaii, did not "arise from" the reservation contract entered into in Massachusetts. 793 F.2d at 430. [FN5]

> FN5. The court distinguished *Hahn v. Vermont Law School,* 698 F.2d 48 (1st Cir.1983) (a cause of action for breach of contract arose from law school's act of sending recruiters to Massachusetts). In the court's view, a cause of action for breach of contract was distinguishable from a cause of action alleging a negligent tort.

In *Pearrow* the plaintiff, an Arkansas resident, slipped and fell on the floor of the Hospitality Suite at Opryland USA in Nashville, Tennessee. He brought an action in Arkansas against the owner of Opryland, National Life. The district court dismissed the case for lack of jurisdiction, noting that the cause of action did not arise out of the defendant's activities in Arkansas, and that the Arkansas long-arm statute therefore provided no basis for the exercise of jurisdiction. The court of appeals affirmed.

Noting that National was registered to conduct insurance business in Arkansas, the court concluded that the plaintiff's Tennessee injury had nothing to do with that insurance business. More important, the court concluded that National's act of sending brochures into Arkansas soliciting visits to Opryland was "too tenuous" a connection to support jurisdiction. 703 F.2d at 1069.

Were this court to apply the "arising from" analysis of *Marino* and *Pearrow* to this case, we would conclude that Mrs. Shute's fall did not arise out of Carnival's solicitation of business in Washington. Rather, we would find that her injuries arose out of the negligent failure to maintain a safe passageway through the galley of the TROPICALE. However, *Cubbage v. Merchent,* 744 F.2d 665, suggests that this circuit has not adopted such a stringent standard of causation in evaluating whether a court has specific jurisdiction.

In *Cubbage,* this court was faced with a medical malpractice suit brought in a federal district court in California by a California resident against two doctors and a hospital located in and licensed in Arizona. Although the doctors were not licensed to practice in California, they applied for and were issued California Medi-Cal numbers. ***384** Both doctors and the hospital were listed in a telephone directory which was distributed in the area of California lying adjacent to Arizona, and a significant number of the defendants' patients (including Cubbage) were California residents.

Applying the *Data Disc* test, the court held that the exercise of specific jurisdiction did not offend due process. Of particular relevance is the court's holding that the appellant's malpractice claim arose out of the defendant's solicitation of patients from California. 744 F.2d at 670. Had the *Cubbage* court applied reasoning similar to that utilized in the cases cited by Carnival, Cubbage's claim would have arisen out of the doctor's negligent treatment of Cubbage in Arizona, not out of the business solicitation activities in California. In our view, *Cubbage* must be read as a rejection by this circuit of the rigid causation standard advanced by Carnival.

Decisions by at least two other courts of appeal support the view that a tort can arise from prior business solicitation in the forum state. *Lanier,* 843 F.2d at 901; *Prejean v. Sonatrach, Inc.,* 652 F.2d 1260 (5th Cir.1981). These courts apply a "but for" test of causality in this type of situation.

Lanier involved allegations of sex discrimination in the certification procedure employed by the defendant Board. The plaintiff, a licensed Michigan dentist, sought certification by the defendant through its Chicago, Illinois headquarters. Dr. Lanier twice failed the oral examination required for certification, once in Phoenix, once in Chicago. She then filed suit in Michigan. The district court ruled that it lacked personal jurisdiction over the defendant, but the appellate court reversed.

The Sixth Circuit court first determined that the Board's contacts with the State of Michigan, which consisted of the collection of application fees from Dr. Lanier, together with a series of telephone calls and written correspondence to Dr. Lanier in Michigan, were sufficient to constitute "the transaction of any business" within the meaning of

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the long-arm statute. The court then considered whether the "arising out of" requirement of the long-arm statute was fulfilled. The Board argued that the plaintiff's cause of action arose from the allegedly unfairly evaluated oral examinations given in Arizona and Illinois rather than from its contacts with Dr. Lanier in Michigan. The court rejected this argument, commenting that it was "unpersuaded that the plaintiff's relationship and contacts with the defendant Board can be logically or legally fragmented in that fashion." 843 F.2d at 908.

In the court's view, the entire course of events underlying Dr. Lanier's claim was an uninterrupted whole which began with, and was uniquely made possible by, the Board's contacts in Michigan. But for those contacts, the cause of action would never have come about.

> Whether the decision to discriminate occurred before, during, or after the oral examination administered to plaintiff is not controlling ...; it arose from, was occasioned by, and would not have occurred but for the totality of Dr. Lanier's efforts to obtain Board certification--efforts which derived, as we have held, from the defendant's limited business contacts with Dr. Lanier in Michigan.

Id. at 908-09.

The Fifth Circuit expressed similar sentiments in *Prejean.* In that case, survivors of employees allegedly under contract with Sonatrach, the Algerian national oil company, brought a wrongful death action in Texas against Sonatrach, Air Algeria and Beech Aircraft Corporation. The plaintiffs alleged that their spouses, while in Algeria performing duties pursuant to a contract with Sonatrach, died when a plane chartered by Sonatrach crashed.

Applying the Texas jurisdictional statute, the district court dismissed the action as to all three defendants for want of personal jurisdiction. The court of appeals affirmed as to Air Algeria and Beech, but reversed and remanded for further discovery as to jurisdiction over Sonatrach. [FN6]

> FN6. The defendant disputed the existence of the only contact to the forum, the alleged contract between Sonatrach and the decedents' Dallas engineering firm. Thus, the court required more information about the possible existence of that contract.

***385** The key analysis for our purposes appears in footnote 21, where the court addressed Sonatrach's argument that the existence of the contract with the decedents' firm would be insufficient to satisfy the "arising from" requirement of the jurisdictional statute. Sonatrach argued that a tort suit cannot arise from a contractual contact with the forum. The court responded with the following observation:

> Logically, there is no reason why a tort cannot grow out of a contractual contact. In a case like this, a contractual contact is a "but for" causative factor for the tort since it brought the parties within tortious "striking distance" of one another. While the relationship between a tort suit and a contractual contact is certainly more tenuous than when a tort suit arises from a tort contact, that only goes to whether the contact is by itself sufficient for due process, not whether the suit arises from the contact.

652 F.2d at 1270, n. 21.

[7] Our circuit, in *Cubbage v. Merchent,* implicitly adopted the "but for" test in analyzing whether a cause of action arises from a defendant's continuing efforts to solicit business in the forum state. Today, we make its adoption explicit. [FN7] We agree with the Fifth and Sixth Circuits that the proximate cause approach of *Marino* and *Pearrow* unnecessarily limits the ordinary meaning of the "arising out of" language. Moreover, application of a "but for" standard is more consistent with cases finding jurisdiction over manufacturers of defective goods sent into a forum state. *See, e.g., Hedrick v. Daiko Shoji Co.,* 715 F.2d 1355, 1358 (9th Cir.1983) (Oregon longshoreman's negligence claim against Japanese manufacturer of defective wire-rope splice held to arise from delivery of the splices into commerce). In contrast, application of the *Marino* standard would compel the conclusion that such claims arise from negligence in manufacture and design, rather than from forum-related activity.

> FN7. We note that where a defendant has only one contact with the forum state, a close nexus between its forum-related

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> activities and the cause of the plaintiffs' harm may be required. *See Lake v. Lake,* 817 F.2d 1416, 1421 (9th Cir.1987). The case before us in which defendant had engaged in significant and continuing efforts to solicit business in the forum state is more like *Cubbage. See Cubbage,* 744 F.2d at 665.

The "but for" test is consistent with the basic function of the "arising out of" requirement--it preserves the essential distinction between general and specific jurisdiction. Under this test, a defendant cannot be haled into court for activities unrelated to the cause of action in the absence of a showing of substantial and continuous contacts sufficient to establish general jurisdiction. *See e.g., Scott v. Breeland,* 792 F.2d 925, 928 (9th Cir.1986) (an assault on a flight attendant occurring in a plane on the ground in Reno does not arise out of a defendant's musical performances or sales of records or tapes in California); *Thos. P. Gonzalez Corp. v. Consejo Nacional de Produccion,* 614 F.2d 1247, 1254 (9th Cir.1980) (visits to California by a defendant's representatives to execute formal documents in prior transactions do not support the exercise of jurisdiction over a cause of action relating to subsequent, unrelated transactions). The "but for" test preserves the requirement that there be some nexus between the cause of action and the defendant's activities in the forum.

A restrictive reading of the "arising out of" requirement is not necessary in order to protect potential defendants from unreasonable assertions of jurisdiction. The third prong of the *Data Disc* test provides that protection. If the connection between the defendant's forum related activities is "too attenuated," the exercise of jurisdiction would be unreasonable, and therefore in violation of due process.

Finally, we note that adoption of the more restrictive view of the "arising out of" requirement would preclude the exercise of jurisdiction in some cases where the plaintiff has established purposeful availment through continuing efforts to solicit business, some nexus between the cause of action and the defendant's forum-related ***386** activities, and the reasonableness of requiring the defendant to defend in the forum. Such an approach would represent an unwarranted departure from the core concepts of "fair play and substantial justice" which are central to due process analysis in the context of the exercise of personal jurisdiction.

Applying the *Cubbage* standard, we conclude that the Shutes' cause of action arose out of Carnival's contacts with Washington. The evidence is clear that Carnival's solicitation of business in Washington attracted the Shutes (through their travel agent) to the Carnival cruise. In the absence of Carnival's activity, the Shutes would not have taken the cruise, and Mrs. Shute's injury would not have occurred. It was Carnival's forum-related activities that put the parties within "tortious striking distance" of one another.

3. Reasonableness

[8] After the first two prongs of the *Data Disc* test have been met, the court still must determine whether the exercise of jurisdiction over Carnival would be reasonable. In determining reasonableness, this circuit examines seven factors: the extent of purposeful interjection, the burden on the defendant to defend the suit in the chosen forum, the extent of conflict with the sovereignty of the defendant's state, the forum state's interest in the dispute; the most efficient forum for judicial resolution of the dispute; the importance of the chosen forum to the plaintiff's interest in convenient and effective relief; and the existence of an alternative forum. *Federal Deposit Ins. Corp. v. British-American Ins. Co., Ltd.,* 828 F.2d 1439, 1442 (9th Cir.1987) The court must balance the seven factors to determine whether the exercise of jurisdiction would be reasonable. *Id.*

[9] Once purposeful availment has been established, the forum's exercise of jurisdiction is presumptively reasonable. To rebut that presumption, a defendant "must present a compelling case" that the exercise of jurisdiction would, in fact, be unreasonable. *Burger King,* 471 U.S. at 476; *Corporate Inv. Business Brokers v. Melcher,* 824 F.2d 786, 790 (9th Cir.1987).

Carnival does not attempt to rebut the reasonableness of the exercise of jurisdiction through an analysis of the seven factors. Rather, Carnival's main argument is that litigation in Washington was not reasonably forseeable because

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the passenger contract required suit to be brought in Florida, and because the contract for the cruise and the cruise itself were "consummated" outside of Washington. The latter argument is the same one raised and rejected in analyzing the purposeful availment requirement. The former ignores the fact that Carnival, by its business solicitation activities, has injected itself into the forum. Carnival has provided no authority for the view that a forum selection clause can be used to defeat jurisdiction of another state where exercise of that jurisdiction would otherwise be reasonable. An analysis of the seven factors used by this circuit suggests that jurisdiction over Carnival is reasonable in this case.

Extent of Purposeful Interjection

This factor is closely tied to the issue of purposeful availment analyzed above. Recent cases indicate that this factor is no longer given any weight once it is shown that the defendant purposefully directed its activities toward the forum state. *Melcher,* 824 F.2d at 790.

Burden on the Defendant

Although the defendant would prefer to litigate in Florida, in light of modern advances in transportation and communications, the burden of defending this suit in Washington would not be overwhelming. *McGee v. International Life Ins. Co.,* 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957); *Hirsch v. Blue Cross, Blue Shield,* 800 F.2d 1474, 1481 (9th Cir.1986). Moreover, this court must "examine the burden on the defendant in light of the corresponding burden on the plaintiff." *Sinatra,* 854 F.2d at 1199; *Brand v. Menlove Dodge,* 796 F.2d 1070 at 1075 (9th Cir.1986). It would be at least as burdensome for the Shutes to pursue this action in Florida as it would for Carnival to defend it in Washington.

***387** This circuit recognizes that once minimum contacts have been established, inconvenience to the defendant is more appropriately handled not as a challenge to jurisdiction, but as a factor supporting a change in venue. *Sinatra,* 854 F.2d at 1199; *Hirsch,* 800 F.2d at 1481. Any inconvenience suffered by Carnival surely would not be so great as to constitute a deprivation of due process. *See, e.g., Sinatra,* 854 F.2d at 1199 (inconvenience to Swiss Clinic with one representative in the U.S. of defending lawsuit in California not so great as to constitute due process violation). Thus, this factor does not strongly favor dismissal.

Conflict With Sovereignty of Defendant's State

This factor is not dispositive here. The Supreme Court has noted that litigation against an alien defendant creates a higher jurisdictional barrier due to additional sovereignty concerns. *Asahi,* 480 U.S. at 115. However, despite the fact that Carnival is a Panamanian corporation, its principal place of business is in Florida. It asserts that Florida is the proper forum for this dispute. Therefore it is the possible conflict with Florida's sovereignty which is of concern here. In this type of situation, this circuit has stated that choice-of-law rules, rather than jurisdictional rules, are more appropriate to accommodate conflicting sovereignty interests. *Hirsch,* 800 F.2d at 1482.

Forum State's Interest in Adjudicating the Dispute

A state is deemed to have a strong interest in protecting its citizens against the tortious acts of others. *Cubbage,* 744 F.2d at 671. This interest continues even where the injury occurs outside the forum state's territorial limits. *Id.* (California has a manifest interest in protecting its citizens from tortious injury from health care providers who solicit patients from the state).

Efficient Judicial Resolution

This factor appears to favor the exercise of jurisdiction. Although the injury occurred in international waters off the coast of Mexico, the Shutes, their health care provider, and at least one of the witnesses to the accident all reside in Washington. At least one other witness resides in California, and it is unclear where other possible witnesses reside. As between Washington and Florida, the two states which are capable of exercising jurisdiction, Washington is the more efficient forum.

Convenience and Effectiveness of Relief for Plaintiff

The record indicates that the physical and financial burdens placed upon the Shutes by being forced to pursue this suit in Florida would be substantial.

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Dismissal of this suit from Washington effectively may prevent the Shutes from obtaining relief. This factor weighs heavily in favor of the exercise of jurisdiction. *Hirsch,* 800 F.2d at 1481.

Existence of an Alternative Forum

Carnival suggests that Florida is an available alternative forum, and the Shutes do not dispute this. However, in light of the practical difficulties noted in the discussions of efficient forum and convenience to plaintiffs, this factor cannot be said to weigh heavily in favor of dismissal.

We conclude that, on balance, these factors favor the exercise of jurisdiction. Certainly, Carnival has not presented a compelling case that the exercise of jurisdiction would be unreasonable. We therefore find that the Shutes have established personal jurisdiction over Carnival in Washington.

III. *The Effect of the Forum Selection Clause*

[10] Carnival contends that even if it is subject to personal jurisdiction in Washington, the district court was required under 28 U.S.C. § 1406(a) to dismiss this action, or to transfer this action to a court located in Florida pursuant to the forum selection provision of the passenger ticket contract. [FN8] ***388** The Shutes argue that the forum selection provision is unreasonable, and should not be enforced in this case. Because of the parties' disparity in bargaining power and the impact of enforcing the forum selection provision on the Shutes' ability to pursue their case on the merits, we find that application of the forum selection provision would be unreasonable in this case.

> FN8. Although the district court did not reach this issue, both parties request that, in the interest of judicial economy, this court determine the applicability of the forum selection provision on appeal, rather than remanding to the district court. Because some of the factual issues are similar to those raised in the jurisdiction context, and because the record is sufficiently well-developed, we can decide the forum selection issue efficiently.

[11] Federal law governs the validity of the forum selection clause. *Manetti-Farrow, Inc. v. Gucci Am., Inc.,* 858 F.2d 509, 513 (9th Cir.1988). Thus, the starting point for analysis is the Supreme Court's decision in *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 92 S.Ct. 1907, 32 L.Ed.2d 513 (1972). [FN9] *The Bremen* dealt with a contract between an American corporation, Zapata, and a German corporation, Unterweser, for Unterweser to tow a Zapata oil rig from Louisiana to a point in the Adriatic Sea off Ravenna, Italy. The contract provided that any dispute arising from the contract be brought before the London Court of Justice. The rig was damaged while in the Gulf of Mexico, and Zapata brought suit in a federal district court in Florida. The Fifth Circuit affirmed the district court's denial of Unterweser's motion to dismiss, but the Supreme Court reversed.

> FN9. In *Stewart Org., Inc. v. Ricoh Corp.,* 487 U.S. 22, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988) the Court held that the enforceability of a forum selection clause is only one of the factors to consider in making a 28 U.S.C. § 1404 transfer decision. '[T]he immediate issue before the district court was whether to grant respondent's motion to transfer the action under § 1404(a).' 108 S.Ct. at 2243. Carnival made no such motion in this case.
>
> Rather, Carnival argued solely on the basis of its forum selection clause that venue was improper, and that the case should therefore be dismissed or transferred pursuant to 28 U.S.C. § 1406(a) . As this circuit noted in *Manetti-Farrow, Stewart* is inapplicable to such motions, and the analysis of *The Bremen* is controlling. 858 F.2d at 512-12 n. 2.

The Court held that forum selection clauses are *prima facie* valid. 407 U.S. at 10, 92 S.Ct. at 1913, *see also Manetti-Farrow,* 858 F.2d at 514. Such a clause should not be set aside unless the party challenging it can "clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching." *The Bremen,* 407 U.S. at 15, 92 S.Ct. at 1916; *see also Pelleport Investors, Inc. v. Budco Quality Theatres, Inc.,* 741 F.2d 273, 280

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(9th Cir.1984) (absent some evidence submitted by the party opposing enforcement of the clause indicating fraud, undue influence, overweening bargaining power, or such serious inconvenience in litigating in the selected forum so as to deprive that party of a meaningful day in court, the provision should be respected as the expressed intent of the parties). However, *The Bremen* involved a large, complex commercial contract between two sophisticated parties. There was no evidence in *The Bremen* that the parties were in an unequal bargaining position. 407 U.S. at 12-13, & n. 14, 92 S.Ct. at 1914, & n. 14 ("this was not simply a form contract with boilerplate language that Zapata had no power to alter").

Although some courts have upheld analogous provisions contained in passenger ticket contracts, [FN10] in our view the evidence in this case suggests the sort of disparity in bargaining power that justifies setting aside the forum selection provision. First, there is no evidence that the provision was freely bargained for. To the contrary, the provision is printed on the ticket, and presented to the purchaser on a take-it-or-leave-it basis. *See Colonial Leasing Co. v. Pugh Bros. Garage,* 735 F.2d 380, 382 (9th Cir.1984) (applying Oregon law, the court found that a take-it-or-leave-it clause in a form contract is the type of unfair or unreasonable clause that should be invalidated); *Yoder v. Heinold Commodities, Inc.,* 630 F.Supp. 756, 759 (E.D.Va.1986) (inequality ***389** of bargaining power and use of form contracts are important factors in determining whether to enforce a forum selection clause); *Galli v. Travelhost, Inc.,* 603 F.Supp. 1260, 1263 (D.Nev.1985) (court refused to enforce forum selection clause where evidence indicated that the clause was not freely bargained for). Even if we assume that the Shutes had notice of the provision, [FN11] there is nothing in the record to suggest that the Shutes could have bargained over this language. Because this provision was not freely bargained for, we hold that it does not represent the expressed intent of the parties, and should not receive the deference generally accorded to such provisions. [FN12]

FN10. For example, in *Carpenter v. Klosters Rederi A/S,* 604 F.2d 11 (5th Cir.1979), the Fifth Circuit upheld a contractual time limitation for initiating suit that was included in a passenger contract ticket. The court focused entirely upon whether the passenger received adequate notice. The court did not address whether application of the time limitation was reasonable.

FN11. This itself is doubtful, as the Shutes apparently did not have an opportunity to review the terms and conditions printed on the ticket until after the ticket was printed in Florida and mailed to them in Washington. Thus, the transaction was completed before the Shutes ever saw the ticket's terms and conditions.

FN12. Plaintiff also suggested that enforcement of the forum selection clause was barred by 46 U.S.C.App. § 183c, which provides that it is unlawful for vessel owners "to insert in any ... contract, or agreement any provision or limitation ... purporting ... to lessen, weaken, or avoid the right of any claimant to a trial by a court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such agreements ... shall be null and void and of no effect." Because we find that the agreement is not enforceable as a matter of public policy, we express no opinion as to the effect of this statute on forum selection agreements. We do note, however, that this statute exemplifies congressional recognition of the unequal bargaining position of passengers and vessel owners, and the need for independent examination of the fairness of this type of contract.

The fact that enforcement of the clause in this case would "be so gravely difficult and inconvenient" that the plaintiffs would "for all practical purposes be deprived of [their] day in court," *The Bremen,* 407 U.S. at 18, 92 S.Ct. at 1917, provides an independent justification for refusal to enforce the forum selection clause. *See Yoder,* 630 F.Supp. at 759; *Carefree Vacations, Inc. v. Brunner,* 615

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F.Supp. 211, 214 (W.D.Tenn.1985) (inconvenience and lack of relationship between chosen forum and transaction in dispute sufficient to establish that forum selection clause is unreasonable). As we noted in analyzing the reasonableness of subjecting Carnival to suit in Washington, enforcement of the forum selection clause would be greatly inconvenient to the plaintiffs and witnesses. There is evidence in the record to indicate that the Shutes are physically and financially incapable of pursuing this litigation in Florida. We therefore decline to hold that the forum selection clause requires that this action be dismissed or transferred pursuant to 28 U.S.C. § 1406(a).

IV. *Conclusion*

We find the exercise of jurisdiction in Washington to be consistent with principles of due process. We also find the forum selection clause requiring suit to be brought in Florida to be unenforceable in these circumstances. This case is therefore REVERSED and REMANDED.

897 F.2d 377, 1990 A.M.C. 1757

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EXHIBIT 9

United States Court of Appeals,
Ninth Circuit.

THOS. P. GONZALEZ CORPORATION,
Plaintiff-Appellant,
v.
CONSEJO NACIONAL DE PRODUCCION DE COSTA RICA, and Sergio Quiros Maroto,
Defendants-Appellees.

No. 77-3312.

March 10, 1980.

Suit for breach of a grain purchase contract was brought by the seller, an international grain trader, against the buyer, an autonomous institution of the Republic of Costa Rica. Plaintiff appealed from a judgment of the United States District Court for the Central District of California, Malcolm M. Lucas, J., dismissing the action and setting aside a default judgment entered against the Costa Rican entity and its executive president. The Court of Appeals, East, Senior District Judge, held, inter alia, that the fact that defendant regularly entered into sale and purchase agreements with plaintiff, a California resident, for purchases of grain, made payment in California by confirmed letters of credit, and frequently contacted plaintiff did not subject defendant to long-arm jurisdiction in California with respect to a dispute arising out of one of the agreements; the economic reality was that defendant had not performed any act relating to the contract at issue by which it purposefully availed itself of the privilege of conducting business in California.

Affirmed.

West Headnotes

[1] Federal Courts ⇐417
170Bk417 Most Cited Cases

A party's amenability to suit in a federal court based on diversity is determined by reference to the law of the state in which the federal court sits. 28 U.S.C.A. § 1332(a)(2).

[2] Federal Courts ⇐76.10
170Bk76.10 Most Cited Cases
(Formerly 170Bk76)

Only the defendant's purposeful activities in the forum state, not the plaintiff's actions, can justify the exercise of jurisdiction.

[3] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases
(Formerly 106k12(2))

Whether a party's contacts are sufficient to permit the state to compel the party to defend itself in the state's courts depends upon the facts of each case.

[4] Constitutional Law ⇐305(5)
92k305(5) Most Cited Cases

[4] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases
(Formerly 106k12(2))

It is not the quantity, but rather the nature and quality of defendant's activities, which determines whether extension of jurisdiction offends due process. West's Ann.Cal.Code Civ.Proc. § 410.10; U.S.C.A.Const. Amends. 5, 14.

[5] Federal Courts ⇐76
170Bk76 Most Cited Cases
(Formerly 106k12(2))

As regards jurisdiction under California's long-arm statute, it is not sufficient that plaintiff is a California resident, or that an act outside California imposes an economic burden on a California resident. West's Ann.Cal. Code Civ.Proc. § 410.10.

[6] Federal Courts ⇐76.5
170Bk76.5 Most Cited Cases
(Formerly 106k12(2))

Use of the mails, telephone, or other international communications do not qualify as purposeful activity invoking the benefits and protection of the state, as regards long-arm jurisdiction. West's Ann.Cal.Code Civ.Proc. § 410.10.

[7] Federal Courts ⇐76
170Bk76 Most Cited Cases

Visit of the nonresident defendant's legal advisor to California after filing of the complaint could not establish jurisdiction under California's long-arm

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statute. West's Ann.Cal.Code Civ.Proc. § 410.10.

[8] Federal Courts ⚿84
170Bk84 Most Cited Cases

Fact that defendant, an autonomous institution of the Republic of Costa Rica, regularly entered into sale and purchase agreements with plaintiff, a California resident, for purchases of grain, made payment in California by confirmed letters of credit, and frequently contacted plaintiff did not subject defendant to long-arm jurisdiction in California with respect to a dispute arising out of one of the agreements; the economic reality was that defendant had not performed any act relating to the contract at issue by which it purposefully availed itself of the privilege of conducting business in California. West's Ann.Cal.Code Civ.Proc. § 410.10

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[9] International Law ⚿10.42
221k10.42 Most Cited Cases

Personal jurisdiction under the Foreign Sovereign Immunities Act of 1976 requires satisfaction of the traditional minimum contacts standard. 28 U.S.C.A. §§ 1330, 1602-1611.

[10] Federal Civil Procedure ⚿2392
170Ak2392 Most Cited Cases

A judgment entered without personal jurisdiction over the parties is void.

[11] Federal Courts ⚿761
170Bk761 Most Cited Cases

If the decision below is correct, it must be affirmed although the lower court relied upon the wrong ground or gave a wrong reason.

[12] Federal Civil Procedure ⚿2444.1
170Ak2444.1 Most Cited Cases
(Formerly 170Ak2444)

Because the district court did not have personal jurisdiction over defendant, a Costa Rican entity, and the default judgment entered against defendant was therefore void, the district court had a nondiscretionary duty to grant relief from the judgment.

***1248** J. A. Uribe, Kadison, Pfaelzer, Woodard, Quinn & Rossi, Los Angeles, Cal., for plaintiff-appellant.

***1249** Robert A. Fletcher, Fletcher, Raugh & Mahoney, Los Angeles, Cal., for defendants-appellees.

Appeal from the United States District Court For the Central District of California.

Before TRASK and SNEED, Circuit Judges, and EAST,[FN*] District Judge.

FN* Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

EAST, District Judge:

Thos. P. Gonzalez Corp. (Gonzalez), a California corporation, appeals the District Court's judgment entered September 26, 1977, dismissing the action and setting aside the default judgment entered against the Consejo Nacional de Produccion de Costa Rica (the Consejo) and Sergio Quiros Maroto (Quiros), executive president of the Consejo, on February 26, 1976. We note jurisdiction and affirm.

ISSUES ON APPEAL

Gonzalez presents the following issues on appeal:

1. Did the Consejo and Quiros have sufficient contacts with California to justify a District Court in California exercising personal jurisdiction over them?

2. Did service of the summons and complaint to the Costa Rican Consul General in Los Angeles with the request that he forward them to the Ministry of Foreign Affairs in Costa Rica constitute effective service of process?

3. Did the Court abuse its discretion in granting relief from default for mistake, inadvertence, surprise, and excusable neglect?

FACTS

Gonzalez is an international grain trader with its

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principal place of business in California.

The Consejo is an autonomous institution of the Republic of Costa Rica charged with, inter alia, regulating the Costa Rican food supply by purchasing grain when needed from foreign sources and by selling surplus grain. Article 1 of the Consejo's organic law provides that the Consejo shall have its own legal capacity and shall be vested with functional and administrative autonomy as provided for in Article 188 of Costa Rica's Political Constitution. Its funds are appropriated by the Costa Rican government and any net profit from its operations belongs to the government.

During the period from May 1971 to December 1974, the Consejo transacted 15 purchases of grain from Gonzalez and two sales to Gonzalez. Each transaction originated in a bid by a representative of Gonzalez in Costa Rica in response to an invitation to bid circulated by the Consejo in Costa Rica. Each was entered into by an agent of Gonzalez residing in Costa Rica, although, on one occasion not involving the contract at issue in this case, three representatives of the Consejo visited Los Angeles to sign the formal contracts for two transactions. There was frequent communication by mail and telex between the Consejo and Gonzalez's Los Angeles office concerning the contracts. All the contracts specified delivery in Costa Rica. In none of the transactions, including the one in dispute, was California either the source or destination of the grain. The Consejo made payment by having its bank in Costa Rica issue letters of credit which Crocker National Bank in California confirmed, although the contracts specified only that payment be by letter of credit in United States or Costa Rican currency.

During this period, the Consejo had neither an office, a place of business, property nor an agent in California. It did not advertise in California nor actively solicit business there. It has never attempted to qualify for the transaction of business within California.

The contract involved in this case was entered into in Costa Rica by an exchange of letters between the Consejo and Gonzalez's representative in Costa Rica. Gonzalez agreed to sell the Consejo 10,000 metric tons of yellow corn, C.I.F. Costa Rica, with ***1250** delivery in June and July, 1975. The Consejo cancelled the contract before delivery was made, first citing delays in shipments by Gonzalez as the reason and later referring to Gonzalez's noncompliance with its obligation to post a completion guarantee. Gonzalez filed its complaint for breach of contract on September 25, 1975. Jurisdiction in the District Court was based on diversity of citizenship under 28 U.S.C. s 1332(a)(2) .

On October 16, 1975, a U.S. Marshall, on instructions of counsel for Gonzalez and without court order, served process on the Consul General of Costa Rica in Los Angeles requesting that he "notify the Ministry of Foreign Affairs in San Jose, Costa Rica through normal diplomatic channels." The Consejo did receive notice of the suit on November 6, 1975. A copy of the summons and complaint was also delivered personally to Lic. Nelson Alvarado Forseca (Alvarado), legal advisor to the Consejo, who was in California to discuss performance under a different contract. Alvarado arranged for local counsel to represent the Consejo in the matter.

On November 20, 1975, counsel for Gonzalez wrote to the Costa Rican Consul General indicating that a default would be taken unless an answer was filed within two days. The same message was sent to Alvarado in Costa Rica. No response was made, and on January 15, 1976, a default entry was made. On February 26, judgment by default was entered.

On March 27, 1976, the Consejo received a letter from its California attorney stating that he had not been able to cash the fee check sent to him, that he would not continue with the case until he received a bearer's check or money order, and that unless immediate action was taken, judgment would be entered against the Consejo. The Consejo then consulted another attorney in the United States who discovered that a default judgment had already been entered. The Consejo then retained its present counsel who filed a motion to set aside the judgment and dismiss the action for lack of personal jurisdiction on January 11, 1977, and a motion for relief from default judgment for mistake, inadvertence, surprise, and excusable neglect on January 12, 1977. The jurisdictional motion was set for argument a month earlier than the other motion, because the latter would be moot if the former were granted. If the Court denied the jurisdictional motion, however, counsel wanted an opportunity to have the default set aside and to argue the case on

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the merits. By order of the Court, the hearings on the two motions were moved to the same day, and on March 10, the Court's order simultaneously granting both motions was entered.

DISCUSSION

1. Personal Jurisdiction.[FN1]

FN1. Gonzalez has not even attempted to show how Quiros has subjected himself, in his individual capacity, to the jurisdiction of the District Court in California. The record is devoid of any facts establishing contact between Quiros and the State. Our discussion will refer only to the Consejo, but our holdings are intended to apply to Quiros as well.

[1] A party's amenability to suit in a federal court based on diversity is determined by reference to the law of the state in which the federal court sits. Republic International Corp. v. Amco Engineers, Inc., 516 F.2d 161 (9th Cir. 1975). California's long-arm statute provides: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." California Code of Civil Procedure s 410.10 . In Threlkeld v. Tucker, 496 F.2d 1101, 1103 (9th Cir.), cert. denied, 419 U.S. 1023, 95 S.Ct. 499, 42 L.Ed.2d 297 (1974), this Court described the reach of this statute:

"The jurisdiction of the California courts is therefore coextensive with the outer limits of due process under the state and federal constitutions, as those limits have been defined by the United States Supreme Court." (Footnote omitted.)

[2] The seminal case for the current law on personal jurisdiction is International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945), in which the Supreme Court held that:

***1251** "(D)ue process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' "

This restriction on the states is not merely a protection against inconvenient litigation; it is "a consequence of territorial limitations on the power of the respective States." Hanson v. Denckla, 357 U.S. 235, 251, 78 S.Ct. 1228, 1238, 2 L.Ed.2d 1283 (1958).

"However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him." Id.

Hanson also made clear that only the defendant's purposeful activities in the forum state, and not the plaintiff's actions, can justify the exercise of jurisdiction.

"The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Id. at 253, 78 S.Ct. at 1239-1240.

The International Shoe standard was recently reaffirmed in World-Wide Volkswagen Corp. v. Woodson, --- U.S. ----, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

[3] Whether a party's contacts are sufficient to permit the state to compel it to defend itself in the state's courts depends upon the facts of each case. This Court discussed the mode of analysis in Data Disc, Inc. v. Systems Tech. Assoc., Inc., 557 F.2d 1280, 1287 (9th Cir. 1977):

"If the nonresident defendant's activities within a state are 'substantial' or 'continuous and systematic,' there is a sufficient relationship between the defendant and the state to support jurisdiction even if the cause of action is unrelated to the defendant's forum activities. (Citations omitted.)

"If, however, the defendant's activities are not so pervasive as to subject him to general jurisdiction, the issue whether jurisdiction will lie turns on an evaluation of the nature and quality of the defendant's contacts in relation to the cause of action. In our circuit, we use the following approach in making this evaluation: (1) The nonresident defendant must do some act or consummate some transaction with the forum or perform some act by which he purposefully avails

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himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. (2) The claim must be one which arises out of or results from the defendant's forum-related activities. (3) Exercise of jurisdiction must be reasonable. (Citations omitted.)"

In Data Disc, a California seller charged an out-of-state buyer with breach of contract. The place of negotiation and execution of the contract was in dispute. Nevertheless, the Court of Appeals reversed the District Court's dismissal for lack of personal jurisdiction. Although it found no "substantial" or "continuous and systematic" contacts with California, it did find actions by which the defendant "purposefully availed itself of the privilege of carrying out activities in that state" and which "were beneficial" to defendant. Id. at 1287-88. Specifically, defendant conducted at least some contract negotiations in California, sent one of its own engineers to work on the project at Data Disc's California office, and sent personnel to visit Data Disc on five occasions to discuss late and defective equipment supplied under the contract.

Similarly, in Republic International Corp., the Court of Appeals affirmed the District Court's finding of personal jurisdiction by California over defendant Ministry of Public Works, Republic of Uruguay. The significant contact in this case was the Ministry's ***1252** dispatch of its own engineers to Amco's Los Angeles office for five to six months.

Gonzalez relies most heavily on American Continental Import Agency v. Superior Court, 216 Cal.App.2d 317, 30 Cal.Rptr. 654 (1963). In that case, a German import business negotiated with some United States suppliers in Germany, issued purchase orders in Germany, paid through German banks, and obtained delivery directly to its customers in Germany. It had no agents or office in the United States. The Court upheld jurisdiction, nonetheless, referring to the German corporation's activities as a systematic and continuous course of business in substantial amounts.

[4] Subsequent opinions of the California Supreme Court, however, distinguish American Continental and emphasize that the significant fact which led to its result was the four visits by a representative of the German corporation to California to expedite compliance with the sales contracts which gave rise to the litigation. Tiffany Records, Inc. v. M. B. Krupp Distributors, Inc., 276 Cal.App.2d 610, 81 Cal.Rptr. 320 (1969); Interdyne Co. v. SYS Computer Corp., 31 Cal.App.3d 508, 197 Cal.Rptr. 499 (1973). Moreover, it is clear from the later cases that it is not the quantity, but rather the "nature and quality" of the defendant's activities which determine whether extension of jurisdiction offends due process. Belmont Industries, Inc. v. Superior Court of Stanislaus County, 31 Cal.App.3d 281, 107 Cal.Rptr. 237, 241-42 n.4 (1973); Tiffany Records, 81 Cal.Rptr. at 324.

Likewise, the recent cases distinguish the oft-cited case of Henry P. Jahn & Son, Inc. v. Superior Court, 49 Cal.2d 855, 323 P.2d 437 (1958), because in that case the defendant made regular purchases of goods manufactured in California from plaintiff, its exclusive export agent, with title passing in California.

In Belmont Industries, a Pennsylvania purchaser of drafting services from a California corporation was held not subject to jurisdiction in California. The contract was negotiated by interstate communications; the purchase order was executed in Pennsylvania; performance by the seller was not required to be in California, though it was "undoubtedly contemplated"; and on four or five occasions, the purchaser sent an employee to the seller's office in California to discuss jobs in progress, but not the one which gave rise to the litigation. The court stated:

"Irrespective of the number of contracts, the substance of petitioner's activities within this state has been the same the purchase of services from residents by contracts executed outside of the state. The occasional act of sending an employee into the state to expedite the services adds nothing to the relationship between petitioner and the state. (Cf. American Continental Import Agency v. Superior Court, supra, 216 Cal.App.2d at p. 322, 30 Cal.Rptr. 654.) We note that petitioner sent no representatives into California in connection with the contract giving rise to the present litigation." 107 Cal.Rptr. at 242 n.4.

In Tiffany Records and Interdyne, California sellers solicited orders from foreign purchasers. The only contacts with California were letters and telephone calls. The court stated in Interdyne :

"When a California business seeks out purchasers in other states purchasers who are not 'present' in

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> California for general purposes deals with them only by out-of-state agents or by interstate mail and telephone, it is not entitled to force the customer to come to California to defend an action on the contract." 107 Cal.Rptr. at 501.

Floyd J. Harkness Co. v. Amezcua, 60 Cal.App.3d 687, 131 Cal.Rptr. 667 (1976), involved an agreement between a California corporation and a citizen and resident of Mexico. The agreement was negotiated and was to be performed in Arizona and Mexico, although there was frequent phone contact with the plaintiff in California. The agreement included advances of money by plaintiff and the execution of promissory notes payable in California by defendant. ***1253** The court found the contacts too "tenuous" to support jurisdiction:

> "The acts of making notes executed elsewhere by a nonresident defendant payable to a California resident in California or the acts of making interstate telephone calls relative to the performance of a contract executed outside the state and performed outside the state does not invoke the benefits and protections of our laws." 131 Cal.Rptr. at 670.

This Court affirmed the Northern District of California District Court's dismissal for lack of personal jurisdiction in H. Ray Baker, Inc. v. Associated Banking Corp., 592 F.2d 550 (9th Cir. 1979), cert. denied, --- U.S. ----, 100 S.Ct. 63, 62 L.Ed.2d 42 (1979). This was an action on a letter of credit issued by Associated Banking Corp., a Philippine corporation, to be advised and paid through a New York bank.[FN2] Despite the fact that the corporation maintained deposits with six California banks for the purpose of providing the same type of services at issue in the case, those banks had not confirmed the credit in that particular transaction. The court found neither substantial, systematic contacts with California which would justify general jurisdiction nor sufficient contacts relevant to the specific transaction.

> FN2. The court discussed the function and operation of a letter of credit in Baker, 592 F.2d at 552-53:
> "A letter of credit is an undertaking by the issuing bank, usually in the buyer's country, that it will pay a draft drawn on it by the seller upon presentation of specified documents, such as a bill of lading. This permits the seller to substitute the credit of a bank with an established international reputation for that of a foreign buyer whose credit worthiness may not be known in the seller's country. The bank's obligation under the letter of credit is independent of the underlying sales contract. If the presented documents comply with the terms of the letter of credit, the bank is obligated to pay regardless of whether the goods themselves conform to the contractual terms. The issuing bank instructs its correspondent in the seller's country to 'advise' the credit; that is, to notify the beneficiary of the existence and terms of the credit. The advising bank assumes no duty of payment unless it 'confirms' the credit at the issuing bank's request, thereby becoming independently liable to the beneficiary." (Footnote omitted.)

And in Sibley v. Superior Court of Los Angeles County, 16 Cal.3d 442, 546 P.2d 322, 128 Cal.Rptr. 34 (1976), the court held that it could not constitutionally assert jurisdiction over a non-resident individual solely because he executed a guarantee agreement regarding payment of money owing to a California corporation.

The facts in the present case which Gonzalez urges are sufficient grounds for jurisdiction are the Consejo's regular sale and purchase agreements with a California resident, payment in California by confirmed letters of credit from Crocker National Bank, frequent communications between the Consejo and Gonzalez concerning the transactions, execution of two contracts in California by representatives of the Consejo, and the visit by Alvarado to discuss performance under a prior contract.

[5] The Consejo correctly notes that only its activities in California, and not Gonzalez's, can supply the basis for jurisdiction. It is not sufficient that the plaintiff is a California resident, Hill v. Noble Drilling Corp., 61 Cal.App.3d 258, 132 Cal.Rptr. 154, 156 (1976), or that an act outside California imposes an economic burden on a California resident, Dallas-Fort Worth Regional Airport Board v. Superior Court, 63 Cal.App.3d 482, 133 Cal.Rptr. 720, 721 (1976). It denies that

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its transactions with Gonzalez constituted a systematic and continuous course of business within the forum and emphasizes that the transactions were the result of public bidding in Costa Rica. Furthermore, the number of transactions, which incidently is smaller than the number in Belmont Industries, and the amount of money involved do not reflect the quality or nature of the contacts and, therefore, should not be considered.

The Consejo points out that any contact resulting from the letters of credit was between its Costa Rican Bank and Crocker, not between the Consejo and Crocker. Moreover, no payment had yet been made ***1254** under the contract in dispute, and the contract did not expressly require payment through a California bank.

[6] The Consejo validly argues that use of the mails, telephone, or other international communications simply do not qualify as purposeful activity invoking the benefits and protection of the state. E. g., Harkness, 131 Cal.Rptr. at 670.

The Consejo minimizes the significance of the visit to California by Consejo representatives to execute the formal documents on two prior transactions. The important event, in its view, was the prior award of the contract to Gonzalez's Costa Rican representative. We find the crucial fact to be that this visit pertained only to transactions not at issue in this case. This circumstance was the feature that distinguished Belmont Industries from American Continental, Data Disc, and Republic International.

[7] Likewise, Alvarado's visit also concerned a different contract. And, as the Consejo notes, this visit occurred after the filing of the complaint in this action so it cannot establish jurisdiction.

In Foster v. Mooney Aircraft Corp., 68 Cal.App.3d 887, 137 Cal.Rptr. 694, 697 (1977), the court stated:

> "In analyzing the defendant's activities we must focus upon 'economic reality' rather than a mechanical checklist. (Buckeye Boiler Co. v. Superior Court, supra at (71 Cal.2d 893,) 903, 80 Cal.Rptr. 113, 458 P.2d 57.) An enterprise obtains the benefits and protection of our laws if as a matter of commercial actuality it has engaged in economic activity within this state. (Id., at p. 901, 80 Cal.Rptr. 113, 458 P.2d 57.)"

[8] We agree that Gonzalez has not established a systematic and continuous course of business by the Consejo in California which would justify general jurisdiction. Moreover, the economic reality is that the Consejo has not performed any act relating to the contract at issue by which it purposefully availed itself of the privilege of conducting business in California. Its actions within the state were unrelated to Gonzalez's present claim. Requiring the Consejo to submit to the jurisdiction of the court in this case would thus be unreasonable and violative of due process. See Data Disc, 557 F.2d at 1287.

Gonzalez argues alternatively that the minimum contacts standard as applied to foreign states has been redefined by the federal long-arm statute contained in the Foreign Sovereign Immunities Act of 1976, Pub.L. No. 94-583, 90 Stat. 2891 (1976) (codified at 28 U.S.C. ss 1330, 1602-1611). Gonzalez claims that under this new definition, the Consejo's contacts with the forum are sufficient to justify the District Court's exercise of jurisdiction. Although the Act did not become effective until after Gonzalez filed its complaint, the Act has been held to be retroactive by the District Court for the Southern District of New York. Yessenin-Volpin v. Novosti Press Agency, 443 F.Supp. 849, 851 n.1 (S.D.N.Y.1978).

28 U.S.C. s 1330(b) grants the district courts personal jurisdiction over foreign states in situations in which those states are not entitled to sovereign immunity, as determined in ss 1605-1607, and when service has been made pursuant to s 1608.[FN3] The Consejo probably fits within the broad definition of "foreign state." [FN4] The relevant ***1255** language in s 1605(a)(2), cited by Gonzalez as the basis for jurisdiction over the Consejo, denies sovereign immunity when the action is based "upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States."

FN3. 28 U.S.C. s 1330 reads:
"(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity

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either under sections 1605-1607 of this title or under any applicable international agreement.
"(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title."

FN4. 28 U.S.C. s 1603 provides:
". . .
"(a) A 'foreign state', except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).
"(b) An 'agency or instrumentality of a foreign state' means any entity
"(1) which is a separate legal person, corporate or otherwise, and
"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and
"(3) which is neither a citizen of a State of the United States as defined in section 1332(c) and (d) of this title, nor created under the laws of any third country."

The words "direct effect" in the clause cited by Gonzalez have been interpreted as embodying the minimum contacts standard of International Shoe Co., 326 U.S. at 316, 66 S.Ct. at 158, and the requirement of Hanson, 357 U.S. at 253, 78 S.Ct. at 1239, that the defendant purposely avail itself of the privilege of conducting business within the forum. Carey v. National Oil Corp., 592 F.2d 673, 676 (2d Cir. 1979). See East Europe Domestic International Sales Corp. v. Terra, 467 F.Supp. 383, 388-90 (S.D.N.Y.1979). The legislative history of the Act confirms that the reach of s 1330(b) does not extend beyond the limits set by the International Shoe line of cases.[FN5]

FN5. H.Rep. No. 54-1487, 94th Cong., 2d Sess. 13-14 (1976), reprinted in 1976 U.S.Code Cong. & Admin.News at pp. 6604, 6612, describes s 1330(b) as follows:
"(b) Personal Jurisdiction. Section 1330(b) provides, in effect, a Federal long-arm statute over foreign states (including political subdivisions, agencies, and instrumentalities of foreign states). It is patterned after the long-arm statute Congress enacted for the District of Columbia. Public Law 91-358, sec. 132(a), title I, 84 Stat. 549. The requirements of minimum jurisdictional contacts and adequate notice are embodied in the provision. Cf. International Shoe Co. v. Washington, 326 U.S. 310 (, 66 S.Ct. 154, 90 L.Ed. 95) (1945), and McGee v. International Life Insurance Co., 355 U.S. 220, 223 (, 78 S.Ct. 199, 201, 2 L.Ed.2d 223) (1957). For personal jurisdiction to exist under section 1330(b), the claim must first of all be one over which the district courts have original jurisdiction under section 1330(a), meaning a claim for which the foreign state is not entitled to immunity. Significantly, each of the immunity provisions in the bill, sections 1605-1607, requires some connection between the lawsuit and the United States, or an express or implied waiver by the foreign state of its immunity from jurisdiction. These immunity provisions, therefore, prescribe the necessary contacts which must exist before our courts can exercise personal jurisdiction. Besides incorporating these jurisdictional contacts by reference, section 1330(b) also satisfies the due process requirement of adequate notice by prescribing that proper service be made under section 1608 of the bill. Thus, sections 1330(b), 1608, and 1605-1607 are all carefully interconnected." (Footnotes omitted.)

[9] Personal jurisdiction under the Act requires satisfaction of the traditional minimum contacts standard. Because we have already determined that Consejo did not have the requisite minimum contacts, we need not decide and, therefore, decline to consider whether this action is governed by the Foreign Sovereign Immunities Act.[FN6]

FN6. Gonzalez relies on National

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American Corp. v. Federal Republic of Nigeria, 448 F.Supp. 622, 639 (S.D.N.Y.1978), aff'd, 597 F.2d 314 (2d Cir. 1979), which stated in dictum that the breach of a letter of credit having a beneficiary within the forum and advised by and payable through banks in the forum "would appear to satisfy" the above-cited language in s 1605(a)(2). Not only are we unconvinced that such a breach alone would fulfill the minimum contacts requirement, but we find the case distinguishable since there was no breach of a letter of credit by the Consejo. Indeed, there was not even a letter of credit in existence since the Consejo is alleged to have breached the contract by not issuing its letter of credit.

2. Service of Process.

Although we do not approve the method of service attempted here, our holding that the District Court did not have personal jurisdiction over the Consejo because the required minimum contacts were lacking makes it unnecessary for us to actually decide whether service was valid.

3. Relief from Default.

[10] It is well-established that a judgment entered without personal jurisdiction over the parties is void. ***1256**Veeck v. Commodity Enterprises, Inc., 487 F.2d 423, 426 (9th Cir. 1973); Marshall v. Board of Education, Bergerfield, N. J., 575 F.2d 417, 422 (3d Cir. 1978); Taft v. Donellan Jerome, Inc., 407 F.2d 807, 808 (7th Cir. 1969). The Consejo made a proper request, pursuant to Fed.R.Civ.P. 60(b)(4),[FN7] to be relieved of the default judgment on the ground that it was void for lack of personal jurisdiction.

FN7. Rule 60(b) reads:
"On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . . ."

"Necessarily a motion under this part of the rule differs markedly from motions under the other clauses of Rule 60(b). There is no question of discretion on the part of the court when a motion is under Rule 60(b)(4). Nor is there any requirement, as there usually is when default judgments are attacked under Rule 60(b), that the moving party show that he has a meritorious defense. Either a judgment is void or it is valid. Determining which it is may well present a difficult question, but when that question is resolved, the court must act accordingly." (Footnotes omitted.) Wright & Miller, Federal Practice & Procedure: Civil s 2862, at 197.

We have been asked to review the District Court's exercise of discretion in granting relief from default for mistake, inadvertence, surprise, or excusable neglect, under Rule 60(b)(1). The District Court did not need to and should not have reached that question. The motion filed by the Consejo on January 11, 1977 was adequate to warrant both dismissal of the action and complaint and relief from the default judgment. If the Court had ruled properly on that motion, the Rule 60(b)(1) argument would have been moot.

Nevertheless, as this Court said in Davis v. United States, 589 F.2d 446, 448 n.3 (9th Cir. 1979):

"Even if we disagree with the district judge's reasoning, we may nevertheless affirm his disposition 'on any ground squarely presented on the record.' Grosz v. Andrus, 556 F.2d 972, 974 n.3 (9th Cir. 1977); M.O.S. Corp. v. John I. Haas Co., 375 F.2d 614, 617 (9th Cir. 1967); see Jaffke v. Dunham, 352 U.S. 280, 281, 77 S.Ct. 307, 1 L.Ed.2d 314 (1957) (per curiam)."

[11] Not only "may" we affirm, we "must" in fact affirm. "In the review of judicial proceedings the rule is settled that, if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." Helvering v. Gowran, 302 U.S. 238, 245, 58 S.Ct. 154, 158, 82 L.Ed. 224 (1937). This axiom is echoed in numerous cases of this Circuit. See, e. g., United States v. Crain, 589 F.2d 996, 1001-02 n.9 (9th Cir. 1979); United States v. Best, 573 F.2d 1095, 1100-01 (9th Cir. 1978); Moore v. Jas. H. Matthews & Co., 550 F.2d 1207, 1219 (9th Cir. 1977); James v. Reese, 546 F.2d 325, 327 (9th Cir. 1976).

[12] Because it is clear from the record that the

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District Court did not have personal jurisdiction over the Consejo and the judgment was, therefore, void, the District Court had a nondiscretionary duty to grant relief from the default judgment. We affirm that decision of the District Court and offer no opinion on whether the result would have been justified pursuant to Rule 60(b)(1)'s provision for relief for mistake, inadvertence, surprise, or excusable neglect. The judgment and order setting aside the default judgment and dismissing the action and complaint are, therefore, affirmed.

AFFIRMED.

614 F.2d 1247

END OF DOCUMENT

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Motion: General.Case Management Conference **PID # :**	**Case #** 26-22191 **Event Date:** January 21, 2004 **Clerk:** D. Rey **Reporter:** Jeanine Miro **Cite/Report #:**

Appearances:

William Brelsford, Attorney for Plaintiff
Bob Schnack, Attorney for Defendants, Watchtower Bible and Tract Society of New York, Inc., et al

The Court hears comments of counsel.

CONTINUANCES

The Court, pursuant to the request of counsel, orders that this matter shall be continued as follows:

DATE	TIME	DEPT	PURPOSE	TIME EST
02-19-04	08:30 AM	B	Motion to quash	0.05
02-19-04	08:30 AM	B	Conference: Case Management	0.05

-o0o-

1-21 JAM

Robert J. Schnack, SBN 191987
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
JAN 14 2004
Clerk of the Napa Superior Court
By: J. Kelly
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

DEFENDANTS' NOTICE OF DEMURRERS TO PLAINTIFFS' AMENDED COMPLAINT

DATE: February 19, 2004
TIME: 8:30 a.m.
DEPT: B

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on February 13, 2004 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Dept. B of the above-entitled Court, Defendants, Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania,[1] Christian Congregation of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses, and Oak Knoll Congregation of Jehovah's Witnesses (collectively hereinafter "Church Defendants"), will move the Court for an Order granting or sustaining their demurrers to each of

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower Pennsylvania") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower Pennsylvania specially appears with respect to the instant demurrers.

the five causes of action alleged in Plaintiffs' amended complaint under California Code of Civil Procedure ("CCP") §§ 430.10(e) and 430.30(a), on the grounds that plaintiffs' pleading does not allege facts sufficient to constitute the causes of action alleged. Plaintiffs' causes of action as pled each fail to allege the requisite element of a special, confidential, or fiduciary relationship between each Plaintiff and each of the Church Defendants. (By filing these demurrers to Plaintiffs' amended complaint, the Church Defendants expressly do not waive any of the arguments and contentions raised in their original demurrers.)

These demurrers are based on this notice, the supporting memorandum of points and authorities, all papers and records on file in this action, and such other oral and documentary information and evidence as may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel for the Church Defendants hereby certifies that he has conferred by letter with plaintiffs' attorney William Brelsford concerning these demurrers before filing these demurrers with the court.

DATED: January 13, 2004

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4105703.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 13 2004, the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANTS' NOTICE OF DEMURRERS TO PLAINTIFFS' AMENDED COMPLAINT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 13, 2004, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

FILED
JAN 14 2004
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS AGAINST AMENDED COMPLAINT

DATE: February 19, 2004
TIME: 8:30 a.m.
DEPT: B
TRIAL DATE: Not yet set

Defendants, Watchtower Bible and Tract Society of New York, Inc., Watch Tower Bible and Tract Society of Pennsylvania,[1] Christian Congregation of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses, and Oak Knoll Congregation of Jehovah's Witnesses (collectively hereinafter "Church Defendants"), by and through their attorneys of record, submit this Memorandum of Points and Authorities in support of the Church Defendants' Demurrers to Charissa W. and Nicole D.'s (collectively hereinafter "Plaintiffs") *Amended Complaint.*

[1] Defendant Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower Pennsylvania") earlier filed a motion to quash service of summons and complaint based on lack of personal jurisdiction in California. That motion is still pending in this Court. Therefore, Defendant Watch Tower Pennsylvania specially appears with respect to the instant demurrers.

INTRODUCTION

After the Court ruled on the Church Defendants' original demurrers, which were largely based on First Amendment and related California constitutional law issues, Plaintiffs filed an amended complaint in which they reduced their stated causes of action from twelve to five. The amended complaint also limited the number of defendants in this matter to now include two local congregations of Jehovah's Witnesses in Napa, California, and three other Jehovah's Witnesses religious corporations based in New York. *Amended Complaint*, ¶¶ 3-7; *see also* fn. 1, *supra*. Each of the now five causes of action alleged against the Church Defendants is based on the alleged underlying sexual abuse by Edward Villegas (hereinafter "Villegas") of Plaintiffs when they were minors. That alleged sexual abuse occurred from approximately 1972 to 1985. *Amended Complaint,* ¶¶ 27-29. Plaintiffs have not pled any causes of action against Villegas himself, but instead claim that each of the Church Defendants is civilly liable for the sexual abuse allegedly perpetrated by Villegas.

Significantly, Plaintiffs do *not* allege that any sexual abuse committed by Villegas occurred on church property, at church-sponsored activities or functions, or at a church-operated daycare. Instead, the sexual abuse by Villegas allegedly occurred at a "daycare center run out of the Villegas home[.]" *Amended Complaint*, ¶24.

Additionally, as discussed *infra*, an essential element of each of the causes of action alleged in the amended complaint requires that Plaintiffs have been in a confidential, special, or fiduciary relationship with each of the Church Defendants. However, the amended complaint alleges such relationships only in conclusory terms. *See, e.g., Amended Complaint, ¶2* ("child entrusted to the Watchtower Defendants' care"); ¶13 ("minor children entrusted to their care); ¶17 ("the Watchtower Defendants assume responsibility for the . . . protection . . . of its membership, especially the children of members"); ¶29 ("child under the care of the Watchtower Defendants' organization"); ¶35 ("the Watchtower Defendants assumed a duty to protect Plaintiffs from sexual predators"); ¶44 ("children in the custody and care of Watchtower Defendants"); ¶48 ("the Watchtower Defendants created a fiduciary relationship with

Plaintiffs"); ¶54 ("as fiduciaries to Plaintiffs").

However, Plaintiffs do not allege any *facts* in the amended complaint to support such conclusory statements. Plaintiffs also do not make any specific factual allegations about how *each* separate corporate defendant allegedly was in such a special, confidential, or fiduciary relationship with each of the Plaintiffs. Thus, as set forth more fully below, the Church Defendants' demurrers against the five remaining causes of action should be sustained because Plaintiffs have not alleged (and the Church Defendants believe that Plaintiffs, in good faith, cannot allege) any facts that would establish the requisite special, confidential or fiduciary relationships between Plaintiffs and each of the Church Defendants necessary to support such claims.

STANDARD OF REVIEW

For the purposes of a demurrer, "the rule is that we accept as true all the material allegations of the complaint." *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7. The Court thus treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. Demurrers do not test the truth of a plaintiff's allegations or the accuracy with which they describe a defendant's alleged conduct. *E.g.*, *Baltins v. James* (1995) 36 Cal.App.4th 1193, 1196-97.

SUMMARY OF ARGUMENT

Plaintiffs' amended complaint states causes of action for common law negligence and gross negligence. As with all negligence claims, an essential element of both causes of action is the establishment of a *legal duty* owed to Plaintiffs. Here, Plaintiffs allege that each of the Church Defendants had some general common law "duty to protect" their health, safety and welfare. However, the common law does not impose a "duty to protect" in the absence of a special relationship between two parties. Indeed, the California courts have adhered to the "no duty to aid rule" absent such a special relationship. In this case, Plaintiffs have not alleged any particular facts that would establish a "special relationship" between themselves and any of the Church Defendants. Thus, without such a special relationship, Plaintiffs' two causes of action for negligence should be dismissed.

Plaintiffs have also alleged a cause of action for breach of fiduciary duty based on an alleged "fiduciary relationship" with the Church Defendants. However, California case law holds that fiduciary relationships are recognized legal relationships that are statutorily defined with considerable precision. The church/parishioner relationship is not one of those canonically defined fiduciary relationships. Additionally, Plaintiffs have not alleged any particular facts that, under California law, would establish a "confidential relationship" between themselves and any of the Church Defendants. Because the Plaintiffs have not and indeed, cannot as a matter of law, allege any facts that would establish a "fiduciary relationship" with the corporate entities that make up the Church Defendants, this cause of action also should be dismissed.

Plaintiffs' cause of action for fraud, fraudulent deceit, and conspiracy similarly depends on the essential element of a "special relationship" or "fiduciary relationship" to impose a "duty to warn" on the Church Defendants. The facts constituting every element of a fraud claim must be alleged with particularity. Here, however, because Plaintiffs have not, and again cannot, allege any particular facts that they had either a special or fiduciary relationship with the Church Defendants, this cause of action also should be dismissed. The same arguments apply to the cause of action entitled negligent appointment, retention, and supervision, i.e., absent allegations of specific facts that establish a legal duty owed to Plaintiffs (as children of Church members) by each of the Church Defendants, the cause of action should be dismissed.

ARGUMENT

1. Plaintiffs Have Not Alleged Facts That Establish A "Special Relationship" Between Themselves And Any of The Church Defendants Necessary To Support Their Negligence Claims.

A tort involves the violation of a *legal* duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. *Romero v. Superior Court* (2001) 89 Cal.App.4th 1068, 1078, 107 Cal.Rptr.2d 801. If a legal duty does not exist, any injury is "damnum absque injuria," an injury without a wrong. 5 Witkin, *Summary of Cal. Law* (10th ed. 1988) Torts, § 6, p. 61; *Romero, supra.* Because the existence of a duty is an essential element of a tort claim and thus a necessary precondition for liability, the first determination a court must make when examining a negligence claim is whether a legal duty exists. *Hooks v. Southern Ca. Permanente*

Medical Group (1980) 107 Cal.App.3d 435, 443, 165 Cal.Rptr. 741.

It is axiomatic that a person does *not* have a legal duty to come to the aid of another. RESTATEMENT (SECOND) OF TORTS (1965) § 314. This is true irrespective of the gravity of the danger to which the other is subjected and the insignificance of the trouble, effort or expense of giving aid or protection. *Id.*, § 314 comment c. However, this general "no duty" rule is subject to an exception in certain situations where a "special relationship" exists between the parties. *Id.*, § 314A.

California courts have long adhered to these "no duty to aid" principles. As the Court of Appeal recently noted, "'[a] person is ordinarily not liable for the actions of another and is under no duty to protect another from harm, in the absence of a *special relationship* of custody or control.' [Citations omitted.]" *Romero*, 89 Cal.App.4th at 1078-79 (emphasis in original); *see also Garcia v. Superior Court* (1990) 50 Cal.3d 728, 734, 268 Cal.Rptr. 779 ("A special relationship is a prerequisite for liability based on a defendant's *failure to act.*").

In California, this basic concept is known as the "no duty to aid rule" and is a "fundamental and longstanding rule of tort law." *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, 727, 90 Cal.Rptr.2d 549; *see id.*, 76 Cal.App.4th at 729-30; *Romero*, 89 Cal.App.4th at 1079. Furthermore, "[a]bsent a 'special relationship,' one cannot be held liable for mere nonfeasance, such as not protecting another from a criminal attack by a third party." *Eric J., supra; see also Totten v. More Oakland Residential Housing, Inc.* (1976) 63 Cal.App.3d 538, 541, 134 Cal.Rptr. 29 ("As a basic general principle, in the absence of a special relationship or circumstance, a private person has no duty to protect another from a criminal attack by a third person").

What are some examples of such special relationships? According to the Court of Appeal, "'the common law concept of special relationships covers: landowner or possessor and person coming on the land; manufacturer or supplier of goods and buyer or user; vendor, lessor, or contractor and purchaser, lessee or owner of real property.' [Citations omitted.]" *Seo v. All-Makes Overhead Doors* (2002) 97 Cal.App.4th 1193, 1203, 119 Cal.Rptr.2d 160. Additionally, affirmative duties may arise in relationships such as those of a "common carrier and passenger,"

"innkeeper and guest," possessor of land and invitee, and a "person who is required by law to take, or who voluntarily takes, custody of another under circumstances that deprive the other of his normal opportunities for protection." *Id.*; *see also* RESTATEMENT (SECOND) OF TORTS (1965) § 314A(1)-(4).

Then, the question becomes whether a church has a "special relationship" with its parishioners by virtue of the priest/parishioner relationship. The Court of Appeal directly addressed this question last year in *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 130 Cal.Rptr.2d 601. In *Richelle L.*, the plaintiff sued a Catholic priest and the Archdiocese of San Francisco, seeking damages for injuries she allegedly sustained as a result of a sexual relationship initiated by the priest. *Id.*, 106 Cal.App.4th at 264. The complaint in *Richelle L.* contained seven causes of action, including one for "general negligence" made against both the priest and the Archdiocese. *Id.* at 265.

In order to establish the duty element of her negligence claim, the plaintiff in *Richelle L.* argued that the priest and/or Archdiocese's nonfeasance, or failure to act to protect her, was actionable because of her "special relationship" with the priest. *Id.* at 268. As proof of this special relationship, the plaintiff pointed to the long established special relationships between physicians and their patients and between attorneys and their clients. *Id.*

However, the Court of Appeal firmly and expressly rejected the plaintiff's argument and held that a minister "cannot be liable to appellant for breach of a duty arising out of a special relationship" with a parishioner because this would be equivalent to a prohibited clerical malpractice claim. *Id.* at 270. In other words, the Court of Appeal held, as a matter of law, that no "special relationship" exists between ministers and their parishioners for the purposes of a negligence claim. This conclusion, of course, foreclosed the plaintiff's general negligence claim against the Archdiocese as well.

In this case, Plaintiffs have asserted a cause of action against the Church Defendants for common law negligence based on the conclusory allegation that they had a "duty to protect" the Plaintiffs. *Amended Complaint*, ¶ 35. Plaintiffs have also asserted a cause of action for gross negligence against the Church Defendants premised upon the Church Defendants' alleged

"fail[ure] to act to protect the health, safety and welfare" of Plaintiffs. *Amended Complaint*, ¶ 44. As alleged, both of these causes of action are for the Church Defendants' (local churches and national organizations) alleged nonfeasance, or failure to act to protect the Plaintiffs.

As demonstrated above, there is a strong common law presumption under California law against these two causes of action for negligence. This presumption, known as the "no duty to aid rule," can only be overcome allegations of *specific facts* by showing that a "special relationship" existed between the two parties. *See Eric J.*, 76 Cal.App.4th at 727. However, the *Richelle L.* court held that a "special relationship" does not exist in a priest/parishioner setting and thus did not allow a general negligence claim to proceed against a priest or his Archdiocese. *Id.*, 106 Cal.App.4th at 270. If this Court were to find that a special relationship exists between churches and parishioners, purely on the basis of a priest/parishioner or church/parishioner relationship, it would be a cause of action not previously recognized in California.[2]

Because Plaintiffs have not pled, and cannot plead, as a matter of law, any specific "facts" that would create a "special relationship" with the Church Defendants, this Court should sustain the demurrers to Plaintiffs' first and third causes of action for negligence and gross negligence, as well as Plaintiffs' cause of action for negligent appointment, retention, and supervision.

2. Plaintiffs' Breach of Fiduciary Duty Claim Should Be Dismissed; Plaintiffs Have Not Alleged Particular Facts That Establish The Existence Of A Fiduciary Relationship With the Church Defendants.

The essential elements of a cause of action for breach of fiduciary duty are the existence

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[2] In response to all of these demurrers, Plaintiffs likely will contend that the Jehovah's Witnesses "hierarchical structure" created the special, confidential or fiduciary relationship necessary to support the causes of action alleged in the amended complaint. *See Amended Complaint*, ¶¶ 15, 17, 18. Plaintiffs thus will contend that they were vulnerable to being abused because of the way that the Jehovah's Witnesses organize their church and because of the power the Jehovah's Witnesses church held over them. *Id.* However, *Richelle L., supra,* expressly rejected such claims as constitutionally improper. *Id.*, 106 Cal.App.4th at 280-82 (rejecting on constitutional grounds the plaintiff's claims that she was vulnerable to sex abuse because of her religious faith and trust in the clergy and because of the power the clergy held over her). Any inquiry by the courts into a church's organizational structure and how the church members practice their faith necessarily requires an inquiry that violates the First Amendment and its analog in the California constitution. Thus, Plaintiffs cannot rely on the Jehovah's Witnesses' alleged "hierarchical structure" and the alleged power the church held over them or their families to support the requisite element of a special, confidential, or fiduciary relationship on any of the causes of action alleged in the amended complaint.

of a fiduciary relationship, its breach, and damage proximately caused by that breach. If the allegations of a pleading do not support the existence of a fiduciary relationship, any cause of action for breach of fiduciary duty must be dismissed. Plaintiffs here have not alleged any specific facts to support the existence of a fiduciary relationship.

According to the Court of Appeal, "[t]here are *two kinds* of fiduciary duties -- those imposed by law and those undertaken by agreement." *GAB Business Serv., Inc. v. Lindsey & Newsom Claim Serv., Inc.* (2000) 83 Cal.App.4th 409, 416, 99 Cal.Rptr.2d 665 (emphasis in original). Fiduciary relationships imposed by law include "certain technical, legal relationships such as those between partners or joint venturers, [citations omitted,] guardians and wards, trustees and beneficiaries, principals and agents, and attorneys and clients. [Citations omitted]." *Id.* Fiduciary relationships imposed by law have been termed "'legally recognized fiduciary relationship[s].' [Citations omitted.]" *Id.*

The second type of fiduciary duty, one "undertaken by agreement," occurs when "one person enters into a confidential relationship with another." *Id.* at 417. This type of confidential relationship arises "'where a confidence is reposed by one person in the integrity of another, and ... the party in whom the confidence is reposed, ... voluntarily accepts or assumes to accept the confidence [.]' [Citations omitted.]" *Id.*; *Committee on Children's Television, Inc. v. General Foods Corp. et al.* (1983) 35 Cal.3d 197, 221, 197 Cal.Rptr. 783 ("before a person can be charged with a fiduciary obligation, he must [] knowingly undertake to act on behalf and for the benefit of another ...."). Thus, the existence of a confidential relationship with fiduciary obligations requires the knowing and voluntary conduct of two persons, one to "repose" and the other to "accept" the confidence.

In *Richelle L.*, the Court of Appeal went to great lengths to explain the nature of a cause of action for breach of fiduciary duty brought against a priest and the Archdiocese. *Id.*, 106 Cal.App.4th at 265. The Court of Appeal explained: "[T]echnically, a fiduciary relationship is a recognized legal relationship such as guardian and ward, trustee and beneficiary, principal and agent, or attorney and client ...." *Id.* at 271. The *Richelle L.* court also noted that "fiduciary relations arise out of certain canonical relationships that are legally defined and regulated." *Id.*

The law of trusts, "a great deal of which is statutory, defines the nature of the fiduciary duties arising out of that particular fiduciary relationship with considerable precision." *Id.* at 272.

The Court of Appeal then explained that, on the other hand, a confidential relationship "may be founded on a moral, social, domestic, or merely personal relationship as well as on a legal relationship." *Id.* at 271. A confidential relationship "refers to an unequal relationship between parties in which one surrenders to the other some degree of control because of the trust and confidence which he reposes in the other." *Id.* at 272 n.6. However, the Court of Appeal cautioned that "[a] confidential relationship cannot be imposed on an individual, but must be *voluntarily accepted*." *Id.* (emphasis added).

The *Richelle L.* court then noted that the California Supreme Court, without discussing constitutional considerations, had stated that a "'priest and a penitent' may have a confidential relationship giving rise to tort liability for the breach of a fiduciary duty." *Id.* at 275; *see also Vai v. Bank of America* (1961) 56 Cal.2d 329, 338, 15 Cal.Rptr. 71 (confidential relationship may exist between "priest and penitent"). Therefore, the Court of Appeal held that the priest in *Richelle L.* had formed a confidential (as opposed to fiduciary) relationship with his parishioner that gave rise to fiduciary obligations. *Id.* at 279. (The court never addressed the question of whether the Archdiocese, i.e., the church, had formed a fiduciary or confidential relationship with the plaintiff. *Id.* at 282.)

In the instant case, Plaintiffs' fourth cause of action in the amended complaint for breach of fiduciary duty is alleged against the Church Defendants, i.e., several in-state and out-of-state church corporations, but not against the individual, Mr. Villegas. *Amended Complaint*, ¶¶ 47-50. As a basis for this cause of action, Plaintiffs allege that they had a "fiduciary relationship" with the Church Defendants because: (1) the Church Defendants allegedly held Villegas out as a "qualified Elder and leader" and/or because of (2) the Church Defendants' "undertaking the religious instruction and spiritual and emotional counseling of Plaintiffs." *Id.*, ¶ 48.

First, it is important to note that the Plaintiffs, as parishioners, do not have a "legally recognized fiduciary relationship" with any of the various non-profit church corporations that make up the Church Defendants. *GAB Business Serv.*, 83 Cal.App.4th at 416. Fiduciary

relationships are typically statutorily created and defined with "considerable precision." *Richelle L.*, 106 Cal.App.4th at 272. As noted, several examples of the "technical, legal relationships" given by the courts include the guardian/ward, trustee/beneficiary, and principal/agent relationships. *GAB Business Serv.*, 83 Cal.App.4th at 416. However, neither the California legislature nor the California courts have ever defined the church/parishioner relationship as one of those traditional fiduciary relationships.

Second, the definition of a confidential relationship giving rise to fiduciary obligations forecloses any potential argument that Plaintiffs were in a confidential relationship with the Church Defendants. For example, Plaintiffs would have to show that they "reposed" their confidence in each of the Church corporations and, more importantly, that each of these same Church corporations "voluntarily accepted" their confidence. *Id.* at 417; *Richelle L.*, 106 Cal.App.4th at 271. While the existence of a confidential relationship is normally an issue of fact, how can a parishioner "repose" or "surrender[] ... some degree of control" to a church? *Richelle L.*, 106 Cal.App.4th at 272 n.6. Additionally, how can it be determined that a church corporation, or any corporation for that matter, has "voluntarily accepted" a confidential relationship with its parishioners or members?

As explained in the cases discussed above, a confidential relationship is one that may be formed between *two individuals*, not between an individual and a corporation. *Committee on Children's Television, Inc.*, 35 Cal.3d at 221; *GAB Business Serv., Inc*, 83 Cal.App.4th at 417; *Richelle L.*, 106 Cal.App.4th at 272 n.6. Arguably, if Plaintiffs had asserted a confidential relationship with Villegas, as opposed to a "fiduciary relationship" with the Church corporations, this could have presented a question of fact with respect to claims *against Villegas*. However, no California statute or case law supports the proposition that a parishioner can form a confidential relationship with a church entity or, even more broadly, that an individual can form a confidential relationship with a corporation.

Finally, Plaintiffs' two alleged bases for a "fiduciary relationship" are wholly inadequate as a matter of law. First, Plaintiffs allege that the Church Defendants' actions of allegedly holding out Villegas as a minister support the creation of a "fiduciary relationship." *Amended*

Complaint, ¶48. Even assuming, *arguendo,* that allegation is true, the allegation does not advance Plaintiffs' argument that the church/parishioner relationship is one of the "canonical" fiduciary relationships recognized by California law. Also, the amended complaint does not show or allege how any of the Church Defendants, as corporations, supposedly voluntarily accepted confidential relationships with any of its parishioners, including Plaintiffs.

Second, the allegation that the Church Defendants provided "religious instruction and spiritual and emotional counseling" does not support a fiduciary relationship. *See Amended Complaint,* ¶ 48. If this were the case, then every church, synagogue, and mosque would by law have fiduciary relationships with each and all of its members – an obviously untenable result. Also, the attempt to hold a religious organization or entity liable for "ecclesiastical teachings" and "spiritual counseling" is the classic fact pattern for prohibited and unconstitutional clergy malpractice claims. *Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278, 299, 253 Cal.Rptr. 97 (California law does not recognize clergy malpractice claims, hold that it is unconstitutional to impose a duty of care on a church for counseling).

Again, if this Court were to recognize the existence of a fiduciary relationship between a church and its parishioners on the basis of the priest/parishioner or church/parishioner relationship, it would be a novel cause of action in California. Because Plaintiffs have not alleged, and indeed, as a matter of law cannot allege, any facts that would support a fiduciary relationship between themselves and any of the Church Defendants, this Court should sustain the Church Defendants' demurrer against Plaintiffs' cause of action for breach of fiduciary duty.

3. Plaintiffs' Claim For Fraud, Fraudulent Concealment, And Conspiracy Similarly Should Be Dismissed For Failure To State A Claim.

Plaintiffs' amended cause of action for fraud, fraudulent concealment, and conspiracy should be dismissed, because it requires the establishment of a "special" or "fiduciary" relationship between themselves and the Church Defendants. *Peterson Dev. Co., Inc. v. Torrey Pines Bank* (1991) 233 Cal.App.3d 103, 116, 284 Cal.Rptr. 367.[3]

[3] The facts constituting every element of a cause of action for fraud must be alleged with particularity. *Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 72-76, 269 Cal.Rptr. 337 (affirming trial court ruling that sustained demurrer against fraud and conspiracy claims without leave to replead). As discussed *infra,* Plaintiffs have not done so here.

The common law does not impose a "duty to warn" on an individual or a corporation. RESTATEMENT (SECOND) OF TORTS (1965) § 314. The California Supreme Court has stated, "[a]s a general rule one has no duty to control the conduct of another, and *no duty to warn* those who may be endangered by such conduct." *Peterson v. San Francisco Cmty. College Dist.* (1984) 36 Cal.3d 799, 806, 205 Cal.Rptr. 842 (emphasis added). A "duty to warn" may only arise only when a "a special relation exists between the actor and the other which gives the other a right to protection." *Id.*; *see also* RESTATEMENT (SECOND) OF TORTS (1965) § 315(b).[4] Furthermore, as shown above, no special relationship exists as a matter of law between priest and parishioner or, as is significant here, between a church entity and parishioner. *Richelle L.*, 106 Cal.App.4th at 270.

Furthermore, and as discussed above, fiduciary relationships are defined as those that "arise out of certain canonical relationships that are legally defined and regulated." *Id.* at 271. Such relationships include "certain technical, legal relationships such as those between partners or joint venturers, [citations] guardians and wards, trustees and beneficiaries, principals and agents, and attorneys and clients [citations]." *GAB Business Serv., Inc.*, 83 Cal.App.4th at 416. Confidential relationships arise by agreement and only arise when one party "voluntarily accepts or assumes to accept the confidence" of the other. *Id.* at 417.

Plaintiffs' fifth cause of action alleges that the Church Defendants "willfully and intentionally kept material information from Plaintiffs" and "failed to disclose" information about Villegas to themselves, the congregation, and the "community-at-large." *Amended Complaint*, ¶ 52. In other words, Plaintiffs allege that each of the Church Defendants had a common law "duty to warn" everyone, including themselves, about Villegas. However, under California law, an essential element to this cause of action is the existence of a "special" or "fiduciary" relationship between Plaintiffs and each of the Church Defendants.

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[4] Whether or not there is a "duty to control" the conduct of a third person is a separate question. RESTATEMENT (SECOND) OF TORTS (1965) § 315(a). The Plaintiffs have alleged that the Church Defendants had a "duty to control" Villegas in their constitutionally dubious second cause of action for negligent appointment, retention, and supervision. *Amended Complaint*, ¶¶ 39, 41 (allegation that Church Defendants failed to "adequately investigate, evaluate, monitor and supervise the conduct of their agent, Edward Villegas").

As demonstrated above, absent a special or fiduciary relationship, the common law does not impose a "duty to warn" on an individual or corporation. *Peterson*, 36 Cal.3d at 806. Plaintiffs have not alleged and cannot allege any particular facts that would support the existence of a special relationship with any of the Church Defendants. *Richelle L.*, 106 Cal.App.4th at 270. Furthermore, Plaintiffs have not alleged and cannot allege any particular facts that would support the existence of a fiduciary relationship between themselves and the church corporations as a matter of law. *GAB Business Serv.*, 83 Cal.App.4th at 416.

Because Plaintiffs' cause of action for fraud, fraudulent concealment, and conspiracy depends on their having a "special relationship" or a "fiduciary relationship" with the religious corporations that constitute the Church Defendants, this Court should sustain the Church Defendants' demurrer on the Plaintiffs' fifth cause of action.

4. Plaintiffs' Allegations of Respondeat Superior Liability For Sexual Abuse Should be Stricken From The Amended Complaint.

Plaintiffs allege in various paragraphs of the amended complaint that Villegas sexually abused Plaintiffs by using his position as an Elder in the church. *E.g.*, *Amended Complaint*, ¶¶ 22, 26, 27, 28, 29, 30, 41, 52. For example, Plaintiffs allege that "Villegas used his appointed position as an Elder and leader in the Watchtower Defendants' organization to gain access to and sexually abuse Plaintiff[.]" *Id.*, ¶29.

However, claims like those detailed above cannot, as a matter of law, be alleged against church entities. California law is well settled that childhood sexual abuse perpetrated by clergy is not actionable against the church on a respondeat superior basis, "because the abuse is committed outside the scope of the cleric's employment[.]" *Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603, 609, 79 Cal.Rptr.2d 73.

Thus, Plaintiffs cannot rely on such allegations to support their causes of action here. Accordingly, such allegations should be dismissed and/or stricken from the amended complaint.

CONCLUSION

For the reasons set forth above, this Court should grant Church Defendants' demurrers against Plaintiffs' amended complaint.

DATED: January 13, 2004

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack
Attorneys for Church Defendants

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On January 13, 2004, the following ordinary business practice., I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS AGAINST AMENDED COMPLAINT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 13, 2004, at Gold River, California.

By Claudia Pohlman

4105581.1

JPM 1-21

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	FOR COURT USE ONLY
Rudy Nolen, Esq. SBN 59808 William L. Brelsford, Esq. SBN 202839 NOLEN SAUL BRELSFORD 350 University Avenue, Suite 280 Sacramento, CA 95825 TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Charissa W. and Nicole D.	FILED JAN 05 2004 Clerk of the Napa Superior Court By: _____ Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa STREET ADDRESS: 825 Brown St. MAILING ADDRESS: CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:	
PLAINTIFF/PETITIONER: Charissa W. and Nicole D. DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	
CASE MANAGEMENT STATEMENT (Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)	CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: January 21, 2004 Time: 8:30 a.m. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* Plaintiffs
   b. [ ] This statement is submitted **jointly** by parties *(names):*

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):* July 24, 2003
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [X] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Childhood sexual abuse and related causes of action against Watchtower Bible and Tract Society of New York, Inc. and its agents for sexual abuse of minor plaintiffs.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
This case arises from repeated acts of sexual abuse against the minor plaintiffs. Plaintiffs allege Watchtower defendants and its agents knew or should have known of the sexual abuse that was occuring, but failed to prevent it. Further, plaintiffs allege Watchtower defendants conspired to cover up the issue of sexual abuse, thereby allowing plaintiffs to be further victimized. Plaintiffs claim damages for personal injuries, emotional distress, wage loss and medical expenses in an unknown amount. An order for punitive damages will be sought in the future.

[ ] *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request [X] a jury trial [ ] a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
a. [ ] The trial has been set for *(date):*
b. [X] No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* This case is complex and will not be ready for trial within 12 months. Extensive discovery will be required and plaintiffs anticipate defendants to file motions regarding complex constitutional issues.
c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
Counsel is unavailable for the following dates due to prescheduled trials (continued to page 5):

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. [X] days *(specify number):* 20-25 days
b. [ ] hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial [X] by the attorney or party listed in the caption [ ] by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
[X] Additional representation is described in Attachment 8.

9. **Preference**
[ ] This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel [X] has [ ] has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. [ ] All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. [ ] The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [X] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [ ] Neutral case evaluation
    - (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

    g. [X] This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court *(specify exemption):*
    Complex constitutional law issues regarding the First Amendment and amount in controversy exceeds $50,000

11. **Settlement conference**

    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

    a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

    b. Reservation of rights: [ ] Yes [ ] No

    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

    [ ] Bankruptcy [ ] Other *(specify):*

    Status:

14. **Related cases, consolidation, and coordination**

    a. [X] There are companion, underlying, or related cases.
    - (1) Name of case: Wimberley v. Watchtower Bible and Tract Society of New York, Inc. et al.
    - (2) Name of court: Tehama County Superior Court
    - (3) Case number: 52598
    - (4) Status: Defendants' Demurrers and Motions to Quash are schedule to be heard Feb. 9, 2004.

    [X] Additional cases are described in Attachment 14a.

    b. [ ] A motion to [ ] consolidate [ ] coordinate will be filed by *(name party):*

15. **Bifurcation**

    [ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
    Motions in limine, Motions to compel

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. [ ] The party or parties have completed all discovery.
    b. [X] The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Written Discovery	August 2004
	Percipient Witness Depositions	January 2005
	Depositions of agents of defendant organizations	January 2005
	Expert Discovery	Pursuant to CCP Section 2034

    c. [X] The following discovery issues are anticipated *(specify):* Plaintiff anticipates defendants will exercise First Amendment privileges throughout this litigation requiring extensive law and motion. A special discovery master may be required.

18. **Economic Litigation**
    a. [ ] This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. [ ] This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    [X] The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):* Possible motion for complex litigation under Judical Council Rules

20. **Meet and confer**
    a. [ ] The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* [X] none [ ] attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: January 5, 2003

William L. Brelsford
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

[ ] Additional signatures are attached

SHORT TITLE: Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 6c

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1-6-04 to 1-9-04 Gowetski v. Kaiser, Sacramento County
1-26-04 to 1-30-04 Gleason v. Brizendine, Stanislaus County
2-3-04 to 2-6-04 Hasty v. Ehyai, Sacramento County
2-10-04 to 2-16-04 Manering v. McBride, Sacramento County
2-23-04 to 2-26-04 Rubitsky v. Sutter, Sacramento County
3-9-04 to 3-12-04 Stovall v. Ellyson, Yuba County
3-22-04 to 4-2-04 Lemus v. Derby, Sacramento County
3-26-04 to 4-6-04 Berkeley Ready Mix v. Schwing America, Alameda County
4-6-04 to 4-9-04 McDonald v. Sutter, Sacramento County
4-12-04 to 4-19-04 Friesen v. El Dorado County, El Dorado County
4-20-04 to 4-27-04 Wurzer v. Redding, Shasta County
4-20-04 to 4-27-04 Gonzales v. Kellogg Company, Nevada County
5-5-04 to 5-11-04 Gadberry v. Rossini, Stanislaus County
5-18-04 to 5-21-04 Dow v. West, Sacramento County
6-7-04 to 6-11-04 Newman v. Raley's, El Dorado County
6-7-04 to 6-11-04 Strange v. Cash-Dudley, Stanislaus County
7-6-04 to 7-13-04 Lindley v. Morgan, Fresno County
9-22-04 to 10-1-04 Fire Insurance v. Black & Decker, USDC, Eastern District
10-26-04 to 11-2-04 Cone v. American River, USDC, Eastern District
11-29-04 to 12-3-04 South Lake Tahoe Refuse v. USF, USDC, Eastern District

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
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Phone: (817) 335-2800
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1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. v. Watchtower Bible and Tract Society of New York, Inc.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: Tim W. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Tehama County Superior Court
3) Case Number: 52594
4) Status: Defendants' Demurrers and Motions to Quash are scheduled to be heard February 9, 2004.

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' Demurrers and Motions to Quash were heard December 4, 2003. The court took the case under submission and parties are still waiting the Court's ruling.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On January 5, 2004 I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

xxxx **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On January 5, 2004 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Attorneys for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 5, 2004, at Sacramento, California.

Deanna Czarnecki

OF 1-21

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
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Attorneys for Plaintiffs
CHARISSA W.

FILED
DEC 3 1 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. ROES 1 through 100, inclusive and DOES 110 through 120, inclusive. Defendants.	CASE NO: 26-22191 **DECLARATION OF WILLIAM BRELSFORD, ESQ., CONFIRMING CONTENTS OF SEALED ENVELOPE ATTACHED HERETO CONTAINING AMENDED CERTIFICATES OF CORROBORATIVE FACT**

I, WILLIAM BRELSFORD, Esq., hereby state that the forgoing is true and correct:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. In compliance with CCP § 340.1, the amended documents identified below, contained in a sealed envelope attached to this declaration, are filed in this matter to identify and confirm the specific defendant entities that will be pursued after agreeing to drop certain ROE defendants identified in the complaint originally filed in this matter.:

   i. Attorney Certificate of Corroborative Fact regarding Charissa W.

3. The above mentioned documents are sealed and subject to a request

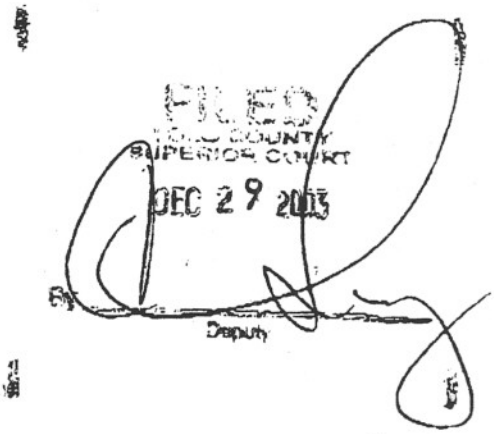
pursuant to CCP § 340.1 that they remain sealed after an *in camera* review by the Court, only.

I declare under penalty of perjury and under all laws within the State of California that the forgoing is true and correct.

Dated: 12/29/03

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorneys for Plaintiff



SUPERIOR COURT OF CALIFORNIA

COUNTY OF YOLO

Daniel West, et al., Plaintiffs, vs. Watchtower Bible and Tract Society of New York, Inc., et al., Defendants	Case No.: No. CV 03-1439 **ORDER AFTER HEARING** Date: December 4, 2003 Time: 8:30 Dept: 11

The motion to quash of defendants Kingdom Support Services, Religious Order of Jehovah's Witnesses and Watchtower Bible and Tract Society of Pennsylvania and the demurrer of defendants Watchtower Bible Tract Society of New York, Watchtower Bible and Tract Society of Pennsylvania, Kingdom Support Services, Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Woodland Congregation of Jehovah's Witnesses and Quincy Congregation of Jehovah's Witnesses were heard at the above-noted place and time. Rudy Nolen and William L. Brelsford, Jr., Attorneys at Law, appeared for the plaintiffs. Robert J. Schnack, Attorney at Law, appeared for the defendants.

Having considered all matters submitted in the pleadings and on oral argument, all admissible evidence, the file in this case and the applicable law, the court now rules as follows:

///

1. The motion of defendants Kingdom Support Services and Religious Order of Jehovah's Witnesses to quash service of the summons and complaint is **GRANTED**;

2. The motion of defendant Watchtower Bible and Tract Society of Pennsylvania to quash service of the summons and complaint is **DENIED WITHOUT PREJUDICE**. The plaintiffs are authorized to conduct limited written discovery regarding the entity's contacts with California. The plaintiffs are not authorized to depose Richard E. Abrahamson;

3. The demurrer to the first cause of action for respondeat superior is **SUSTAINED** without leave to amend. The complaint does not allege that defendant Silva was acting within the scope of his employment when he abused the plaintiffs. (*Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609.) The plaintiffs argue that a respondeat superior theory is available to them because the entity defendants ratified Silva's acts. However, as discussed below, the plaintiffs have not properly pleaded ratification or shown a reasonable possibility of amending to cure the defect. The cause of action for sexual battery remains pending as to defendant Silva;

4. The demurrer to the second cause of action for negligence, third cause of action for negligent appointment, retention and supervision, fourth cause of action for gross negligence with willful misconduct, fifth cause of action for breach of fiduciary duty and seventh cause of action for fraud, fraudulent concealment and conspiracy is **OVERRULED**. Although the complaint does contain some allegations about the practices of the Jehovah's Witness church (see e.g. Paragraph 25), the plaintiffs do not allege that they were vulnerable to Silva because of their religious piety. Such an allegation would bar their complaint under the First Amendment and the opinion in *Richelle L. v. Roman Catholic Archbishop of San*

Francisco (2003) 106 Cal.App.4th 257. It is clear from the complaint that the plaintiffs were vulnerable to Silva because of their youth;

5. The demurrer to the sixth cause of action for negligence per se and common law negligence for failure to report is **SUSTAINED** with leave to amend. The plaintiffs may amend the complaint to either (1) clearly allege that the defendants acquired knowledge or a reasonable suspicion of child abuse after January 1, 1997; or (2) delete the allegations concerning Penal Code §11164;

6. The demurrer to the eighth cause of action for ratification is **SUSTAINED** without leave to amend. "Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done *on his behalf* by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is 'inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it." (*Fretland v. City of Humboldt* (1999) 69 Cal.App.4th 1478, 1490-1491.) The plaintiffs have not shown, and have not shown a reasonable possibility of alleging, that Silva acted "on behalf of" the entity defendants when he molested the plaintiffs;

7. The demurrer to the ninth cause of action for alter ego and single business enterprise is **SUSTAINED** without leave to amend. The plaintiffs have conceded that this is not a separate cause of action;

8. The demurrer to the tenth cause of action for negligent usurpation of investigatory function is **SUSTAINED** without leave to amend. The plaintiffs have not cited any authority supporting this cause of action;

///

01/08/04 13:08 FAX 916 564 9991

9. The demurrer to the eleventh and twelfth causes of action for violations of the Penal Code is **SUSTAINED** with leave to amend. The cited code sections do not create private rights of action. However, there is a reasonable possibility that the plaintiffs could amend to allege negligence per se based on violations of the Penal Code sections.

Date: 12/29/03

By:

Hon. Thomas E. Warriner
Judge of the Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: WEST ET AL VS. WATCHTOWER BIBLE ET AL

CASE NO: CV-CV-03-0001439

By: _____ Deputy

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on January 6, 2004 I served true and correct copies of the foregoing ORDER AFTER HEARING FILED 12-29-03 by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

RUDY NOLEN
ATTORNEY AT LAW
350 UNIVERSITY AVENUE, SUITE 280
SACRAMENTO, CA 95825

ROBERT J. SCHNACK
ATTORNEY AT LAW
11335 GOLD EXPRESS DRIVE, SUITE 105
GOLD RIVER, CA 95670

MICHAEL W. JANSEN
ATTORNEY AT LAW
1301 COLLEGE STREET
WOODLAND, CA 95695

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: January 6, 2004

JAMES B. PERRY
COURT EXECUTIVE OFFICER

By: _____
CSANCHEZ, Deputy Clerk

certmail.s (CCM)

350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

December 17, 2003

Honorable W. Scott Snowden
Napa County Superior Court
Courtroom B
825 Brown Street
Napa, CA 94559
Via Facsimile (707) 259-8318

Re: **Charissa W., et al. v. Watchtower, et al.**
Case No.: 26-22191

Dear Judge Snowden:

This will serve as a notice to the court that the parties have mutually agreed upon and request a continuance of the Case Management Conference originally scheduled for December 31, 2003 to **January 21, 2004**, the same date Defendant's Motion to Quash Service of Summons Based on Lack of Personal Jurisdiction is scheduled to be heard. If the Court is agreeable to this continuance, please notify our office. We will be responsible for notifying defense counsel.

Thank you for your cooperation in this matter. Please do not hesitate to contact our office if you have any questions.

Very truly yours,

NOLEN SAUL BRELSFORD

Rudy Nolen

RN/dc

cc: Robert Schnack, Esq., Attorney for Defendants *(916) 852-5777*

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
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Fort Worth, TX 76102-7423
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
DEC 17 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **ORDER ON DEMURRER AND MOTION TO QUASH SERVICE OF SUMMONS** **Date: November 21, 2003** **Time: 8:30 a.m.** **Dept: B**

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

The Church Defendants Demur to each cause of action in Plaintiffs' amended complaint and Motion to Quash Service of Summons was regularly scheduled for hearing on November 21, 2003 in the Napa County Superior Court. None of the parties to the

action requested a hearing and the tentative ruling was recorded as stated below.

1) CHURCH DEFENDANTS' DEMURRER TO AMENDED COMPLAINT
TENTATIVE RULING: The Church defendants demur to each cause of action in plaintiffs' amended complaint. The court will overrule the demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12.

Tort Causes of action for Sexual Battery and Respondeat Superior (1st), Common Law Negligence (2nd), Negligent Appointment, Retention and Supervision (3rd), Gross Negligence/Wilful Misconduct (4th), Breach of Fiduciary Duty (5th), Fraud, Fraudulent Concealment and Conspiracy (7th), and Ratification (8th)

First Amendment

The defendants seek to characterize plaintiffs' action as one for clergy malpractice arising out of a counseling relationship, and as such contend that, under the First Amendment, this court may not interject itself into the inner workings of the church. They assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.

Plaintiffs' complaint alleges, generally, that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering sever sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of a Church Elder and about the defendants' failure to take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so.

Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendants' demurrer to plaintiffs' tort claims on the ground that they are barred by the First Amendment is OVERRULED.

Respondeat Superior (1st) and Ratification (8th)

As currently drafted the complaint fails to state facts to support claims against the church defendants on respondeat superior and ratification theories. (Mark K. v. Roman Catholic Archbishop (1998) 67 Cal.App.4th 603, 609; Fretland v. County of Humboldt (1999) 69 Cal.App.4th 1478, 1490.) The demurrer to these claims is sustained with leave to amend.

Cause of action for Negligence Per Se and Common Law Negligence (6th) and for Negligent Usurpation of Investigatory Function (10th)

The demurrer to the 6th cause of action is sustained as to the allegations of negligence per se premised upon the California Child Abuse and Neglect Reporting Act, Penal Code § 11164, et seq. This statute did not apply to the clergy during the

time period in question. Accordingly, it cannot support a negligence per se cause of action. The demurrer to the 6th cause of action is sustained with leave to amend to delete the allegations concerning Penal Code section 11164.

The 10th cause of action is premised entirely on Penal Code § 11164. Accordingly, the demurrer to that cause of action is sustained without leave to amend.

Cause of action for Alter Ego and Single Business Enterprise (9th)

"Alter ego" is not a separately cognizable cause of action, rather it is a contract law theory concerning business structures which allows a separate entity to be disregarded and another to be held responsible for the disregarded entities liabilities. Plaintiffs may amend their complaint to state their alter ego allegations generally, but not as a separate cause of action.

Violation of Penal Code sections 182 and 32 (11th and 12th causes of action)

Plaintiffs have presented no authority that allows them to state a private cause of action for asserted Penal Code violations. The demurrers to these causes of action are sustained without leave to amend.

Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

2) WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.'S MOTION TO QUASH SERVICE OF SUMMONS TENTATIVE RULING: Plaintiffs request for leave to conduct discovery is granted. Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. This motion shall be continued to January 21, 2004 at 8:30 in Dept. B.

IT IS ORDERED as follows:

The Court overrules the Defendants' demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12. Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

The Court grants Plaintiffs' request for leave to conduct discovery. Plaintiffs are permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. The motion is continued to January 21, 2004 at 8:30 in Dept. B.

DATED: 1-6-04

Judge of the Superior Court of California,
County of Napa

Approval as to form.

Dated: November 25, 2003

BULLIVANT HOUSER BAILEY

Robert J. Schnack

Dated: November 25, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford

Approval as to form.

Dated: November 25, 2003

BULLIVANT HOUSER BAILEY

Robert J. Schnack

Dated: November 25, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford

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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
DEC 10 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, and DOES 1 through 20, inclusive.

Defendants.

CASE NO: 26-22191

Jury Trial Demanded

Amended Complaint for Damages:

1. Common Law Negligence
2. Negligent Appointment, Retention, and Supervision
3. Gross Negligence - Wilful Misconduct
4. Breach of Fiduciary Duty
5. Fraud, Fraudulent Concealment, and Conspiracy

PLAINTIFFS' FIRST AMENDED COMPLAINT

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs in the above entitled cause, and files this, their First Amended Complaint, and allege as follows:

I.

PARTIES

1. Plaintiff CHARISSA W., born February 8, 1969, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

2. Plaintiff NICOLE D., born November 9, 1971, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

3. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and has appeared herein.

4. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of California through its agents and alter egos and has appeared herein for the purpose of seeking to quash service on jurisdictional grounds.

5. Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and has appeared herein.

6. Defendant NAPA KINGDOM HALL, now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and alter egos and has appeared herein.

7. OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES , NAPA, CA, INC., a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and has appeared herein.

8. Plaintiffs allege on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who therefore sues such defendants by such fictitious names, and will amend the complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

10. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.

II.

JURISDICTION AND VENUE

11. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

12. Venue is proper in Napa County, California because most of the acts or omissions that give rise to Plaintiffs' claims occurred in Napa County, California and Defendant NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SIVERADO CONGREGATION is a resident of Napa County.

III.

FACTS COMMON TO ALL CAUSES OF ACTION

13. In the past, certain Elders, Ministerial Servants, Pioneers, agents, volunteers and other leaders and representatives of the WATCHTOWER DEFENDANTS' organization, including Edward Villegas, have used their appointed positions of authority within the WATCHTOWER DEFENDANTS' organization to sexually abuse minors, including Plaintiffs. The WATCHTOWER DEFENDANTS were notified of the abuse of these minors by their appointed elder, Edward Villegas, and others, but intentionally concealed this information and continued to place Edward Villegas in positions of authority where he could abuse children while pursuing activities within the scope of his appointment. The WATCHTOWER DEFENDANTS failed to take reasonable steps to ensure the safety of Plaintiffs and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for Plaintiffs who were victims of this sexual abuse.

14. All paragraphs of this Complaint are based on information and belief, except for those allegations, which pertain to the Plaintiffs and their counsel. Plaintiffs' information and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint either has, or is likely to have, evidentiary support upon further investigation and discovery.

15. The WATCHTOWER DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY, consisting of a small group of men who operate out of various entities within the hierarchical structure, sits at the top of a chain of command that extends over each individual and Defendant entity in the organization

including its worldwide operations. These individuals and entities act as agents, servants and alter egos of each other. Authority for actions by the organization and its members derive from the GOVERNING BODY.

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

17. Through its hierarchical structure, the WATCHTOWER DEFENDANTS assume

responsibility for the development, protection and discipline of its membership, especially the children of members. Elders, Ministerial Servants, Pioneers and other leaders are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

18. To further their goals, the WATCHTOWER DEFENDANTS authorize male Elders, Ministerial Servants, Pioneers and other appointed male leaders to develop relationships of trust with women, children and families and to assume a role of counselor and advocate for problems that might arise, including claims of child abuse. It is the responsibility of the Elders and those higher in the chain of command, including the GOVERNING BODY, to decide if abuse has occurred and how it should be handled.

19. Despite knowledge of a problem with sexual abuse of minors by appointed leaders in the WATCHTOWER DEFENDANTS' organization, the WATCHTOWER DEFENDANTS acted to continue to appoint these sexual offenders to positions of authority with the opportunity to abuse children through activities within the scope of their appointment. The WATCHTOWER DEFENDANTS demonstrated willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the WATCHTOWER DEFENDANTS engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect the WATCHTOWER

DEFENDANTS' reputation as well as those within the WATCHTOWER DEFENDANTS' organization who committed acts of sexual molestation against children.

20. The WATCHTOWER DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers and other appointed leaders in the organization. The existence of these files and the contents thereof were not disclosed or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS furthered this conspiracy of concealment by, among other things, failing to properly report complaints of sexual misconduct to law enforcement authorities, failing to remove molesting leaders or prevent their access to children. Known molesting leaders were reaffirmed as leaders in good standing in the organization and were given authority that permitted continued frequent and unsupervised access to children in the organization.

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

22. The WATCHTOWER DEFENDANTS also failed to provide Plaintiffs and their families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The WATCHTOWER DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The WATCHTOWER DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access to and control over their victims.

23. Beginning in at least 1970, if not earlier, the WATCHTOWER DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women

and children in the WATCHTOWER DEFENDANTS' organization.

24. In approximately 1970, Plaintiff CHARISSA W. and her mother, Betty Hopkins, came under the instruction and care of the WATCHTOWER DEFENDANTS' organization through their agent, Edward Villegas, and his wife, Marsha Villegas. The WATCHTOWER DEFENDANTS used the daycare center run out of the Villegas home to attract new converts. Plaintiff CHARISSA W. was approximately 1 year old at the time. Betty Hopkins became one of those new converts and entrusted her daughter, Plaintiff CHARISSA W. to the WATCHTOWER DEFENDANTS' care.

25. In approximately 1971, Plaintiff Nicole D. and her family came under the care of the WATCHTOWER DEFENDANTS' organization and entrusted Nicole D. to the leadership of the WATCHTOWER DEFENDANTS' agent, Edward Villegas. Through his position of leadership with the WATCHTOWER DEFENDANTS, Edward Villegas developed a relationship of trust and confidence with Plaintiff Nicole D. and her family, working with them at WATCHTOWER DEFENDANT events and inviting them into his home.

26. Beginning by at least 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the WATCHTOWER DEFENDANTS organization and to sexually abuse them.

27. In about 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas began sexually molesting Plaintiff, CHARISSA W. by, among other things, fondling her genitals, digitally penetrating her vagina and forcing her to have oral sex. She was approximately three (3) or four (4) years old at the time. For the next twelve (12) to thirteen (13) years, the WATCHTOWER DEFENDANTS' agent, Edward Villegas continued to use his leadership position as an Elder to gain access to and sexually abuse Plaintiff, CHARISSA W., who was under the WATCHTOWER DEFENDANTS' care. Plaintiff's position as a minor in the WATCHTOWER DEFENDANTS' organization, as well Edward Villegas' position as a spiritual leader and authority figure in the WATCHTOWER DEFENDANTS' organization allowed him to maintain control and influence over Plaintiff

and others. The WATCHTOWER DEFENDANTS enabled Edward Villegas to abuse Plaintiff and others by appointing him to positions of authority to engage in activities that gave him access to children, and then actively concealing his ongoing sexual abuse. The WATCHTOWER DEFENDANTS, each of them, used their positions in the organization to aid and abet Edward Villegas and other leaders in the sexual abuse and exploitation of minors in the organization and in furtherance of the conspiracy to conceal the sexual molestation occurring within the WATCHTOWER DEFENDANTS' organization.

28. During this time period, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, was also using his appointed position of authority as an Elder to sexually abuse other children under the WATCHTOWER DEFENDANTS' care.

29. In approximately 1978, Edward Villegas used his appointed position as an Elder and leader in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiff, NICOLE D., a child under the care of the WATCHTOWER DEFENDANTS' organization. Plaintiff, NICOLE D. was approximately seven (7) years old when the abuse occurred. Using his delegated authority as a leader in the WATCHTOWER DEFENDANTS' organization, Edward Villegas forced Plaintiff, NICOLE D. to have oral sex with him.

30. When Plaintiff, NICOLE D. told her parents about the abuse, her father immediately reported it to the Elders of Defendant, NAPA KINGDOM HALL pursuant to instructions by the WATCHTOWER DEFENDANTS. In response, the WATCHTOWER DEFENDANTS privately reproved their agent for his conduct, but took no other steps to hold him accountable or to otherwise notify members and the families of the children whom they had placed under the authority of their agent, Edward Villegas to sexually abuse minor children. Instead, they intentionally concealed this information. Therefore, Edward Villegas was able to continue to use his position of authority.

31. For over two decades, the WATCHTOWER DEFENDANTS knew or should have known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents

under the care of the organization. Nevertheless, the WATCHTOWER DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the WATCHTOWER DEFENDANTS' local congregations. The WATCHTOWER DEFENDANTS' agent then used his position of authority in the organization to gain access to and sexually molest Plaintiffs and others. The WATCHTOWER DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the WATCHTOWER DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiffs and others, thereby aiding and abetting the abuse.

32. When the WATCHTOWER DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the WATCHTOWER DEFENDANTS assumed the exclusive responsibility for dealing with the problem. They instructed families of victims that they should leave the matter to the WATCHTOWER DEFENDANTS to handle. The WATCHTOWER DEFENDANTS chose not to report the abuse to law enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with authority over children. They did not act to help Plaintiffs or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The WATCHTOWER DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

33. Edward Villegas used the authority of his position in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiffs and others. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding and abetting the abuse of children by their appointed agents;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of

sexual abuse instead of the perpetrator;

c. intentionally failing to report such sexual abuse, including the abuse by Edward Villegas to law enforcement and governmental child welfare agencies and requiring that members not make such reports;

d. intentionally refusing to warn Plaintiffs, their families, and others of the risk of abuse by Edward Villegas after they knew or should have known of his propensities to use his positions of leadership to engage in acts of sexual abuse against children entrusted to the WATCHTOWER DEFENDANTS' care;

e. negligently failing to train its Elders, Overseers, Ministerial Servants and other appointed leaders to identify, investigate, prevent and respond to or report child abuse;

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

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

h. negligently failing to provide child abuse victims and their families with assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse;

i. intentionally concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that their agent, Edward Villegas was using his position of authority to abuse young children entrusted to their care by the WATCHTOWER DEFENDANTS;

j. negligently retaining and failing to properly supervise Edward Villegas as a leader in the organization or to monitor his activities after they knew or

should have known of his propensities to use his position of leadership to engage in acts of sexual abuse.

FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

34. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Edward Villegas, but failed to act to protect them from said harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

36. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

37. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 36 of this Complaint as if fully set forth herein.

38. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS knew or should have known of their agents, Edward Villegas', propensities to use his position as a leader in the local congregation to engage in acts of sexual abuse.

The WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, and otherwise research the background of their agent, Edward Villegas, prior to appointing him to leadership positions and entrusting children to his care.

39. Plaintiffs further allege that after Edward Villegas was appointed by WATCHTOWER DEFENDANTS acting on behalf of and under the supervision of the WATCHTOWER DEFENDANTS, WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, monitor and supervise the conduct of their agent, Edward Villegas, during his interactions with children entrusted to his care by WATCHTOWER DEFENDANTS.

40. Plaintiff's further allege that WATCHTOWER DEFENDANTS failed to provide adequate warning to Plaintiffs and their families of their agent's dangerous propensities and unfitness to lead.

41. Plaintiffs further allege the WATCHTOWER DEFENDANTS negligently investigated, appointed, retained and supervised Edward Villegas in the organization at a time when they knew or should have known of his propensities to use his appointed position to engage in acts of sexual abuse against Plaintiffs and other young children under the WATCHTOWER DEFENDANTS' care.

42. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
GROSS NEGLIGENCE/WILFUL MISCONDUCT

43. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1

through 42 of this Complaint as if fully set forth herein.

44. Plaintiffs allege, at all times herein mentioned, that the WATCHTOWER DEFENDANTS demonstrated a conscious indifference to the safety and welfare of Plaintiffs, who knew or should have known of the dangerous propensities of their agent, Edward Villegas, yet failed to act to protect the health, safety and welfare of children in the custody and care of WATCHTOWER DEFENDANTS, thereby allowing Plaintiffs to be sexually abused. But for the WATCHTOWER DEFENDANTS' wilful misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs, in violation of WATCHTOWER DEFENDANTS' duty to protect the children entrusted to their and Edward Villegas' care and custody, the sexual abuse would have been prevented.

45. Plaintiffs further allege that WATCHTOWER DEFENDANTS' actions, constituting wilful misconduct and gross negligence described hereinabove, caused significant mental, emotional, and physical injuries as a result of the acts of sexual abuse described hereinabove.

46. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

47. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 46 of this Complaint as if fully set forth herein.

48. Plaintiffs allege, at all times herein mentioned, that by holding Edward Villegas out as a qualified Elder and leader in the WATCHTOWER DEFENDANTS'

organization, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiffs, the WATCHTOWER DEFENDANTS, created a fiduciary relationship with Plaintiffs. The WATCHTOWER DEFENDANTS were in positions of trust and confidence with Plaintiffs and such relationship imposed on them a duty to act to protect Plaintiffs' best interests.

49. Plaintiffs further allege that because of this special relationship, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS to protect them from harm and to warn Plaintiffs of potential harm. This conduct was a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

50. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION
FRAUD, FRAUDULENT CONCEALMENT AND CONSPIRACY

51. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 50 of this Complaint as if fully set forth herein.

52. Plaintiffs allege, at all times herein mentioned, that after receiving reports that their appointed agents, Edward Villegas and others were using their positions of authority in the organization to abuse adolescents, the WATCHTOWER DEFENDANTS willfully and intentionally kept material information from Plaintiffs and other victims similarly situated and the community-at-large. The WATCHTOWER DEFENDANTS intentionally misrepresented to Plaintiffs, their families, and others that Edward Villegas and other appointed agents were leaders in good standing with authority to instruct Plaintiffs and other children in

spiritual, ethical and moral matters and that these agents were to be obeyed. The WATCHTOWER DEFENDANTS further intentionally misrepresented that they would act in the best interests of Plaintiffs and other children entrusted to their care. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Edward Villegas' propensity to use his leadership positions to sexually abuse Plaintiffs and others and that they were doing nothing to protect the children under their care. Plaintiffs did not know the WATCHTOWER DEFENDANTS had concealed this information and relied upon them, causing each of them serious injury and harm.

53. Plaintiffs further allege that by holding out Edward Villegas as an Elder and appointed leader, qualified to provide religious instruction and counsel, and by undertaking the religious instruction and spiritual and emotional counseling and training of plaintiff, and by accepting, through their agents Edward Villegas and other Elders, the control and responsibility of the Plaintiffs as minors, the WATCHTOWER DEFENDANTS and each of them entered into a fiduciary relationship with the minor Plaintiffs.

54. Plaintiffs further allege that as fiduciaries to Plaintiffs, the WATCHTOWER DEFENDANTS, and each of them, had a duty to obtain and disclose information relating to sexual misconduct by their agent Edward Villegas and other agents. The WATCHTOWER DEFENDANTS failed to disclose and later conspired to intentionally conceal such information from Plaintiffs.

55. The WATCHTOWER DEFENDANTS, in concert with each other and with the intent to conceal and defraud, conspired to conceal information relating to the sexual misconduct of their agent, Edward Villegas, as well as other agents. By concealing such information, the WATCHTOWER DEFENDANTS and each of them committed at least one act in furtherance of the conspiracy.

56. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were

prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

PRAYER

WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;
2. For past and future medical expenses according to proof;
3. For past and future loss of earnings according to proof;
4. For prejudgment interest;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Dated: 12.09.03

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On December 9, 2003, I caused the within **AMENDED COMPLAINT FOR DAMAGES,** the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On December 9, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

Attorneys for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 9, 2003, at Sacramento, California.

Deanna Czarnecki

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address):
Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive
Suite 105
Gold River, CA 95670
TELEPHONE NO.: 916-852-9100 FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

FILED

DEC 03 2003

Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
STREET ADDRESS: 825 Brown Street
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.

DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: December 31, 2003 Time: 8:30 A.M. Dept.: B Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* The Church Defendants
   b. [ ] This statement is submitted **jointly** by parties *(names):*

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):*
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Claims alleged concerning sex abuse of minors.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [New July 1, 2002]

Legal Solutions Plus

Cal. Rules of Court, rule 212

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
The adult plaintiffs allege claims relating to sex abuse that allegedly occurred when they were minors. Plaintiffs allege various legal theories under which they contend the Church Defendants liable.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* The Church Defendants have not decided whether to request a jury trial.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* This case raises complex issues and will not be ready for trial within 12 months.
c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 10-12
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

10. d. The party or parties are willing to participate in *(check all that apply):*
    (1) [X] Mediation
    (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    (4) [ ] Binding judicial arbitration
    (5) [ ] Binding private arbitration
    (6) [ ] Neutral case evaluation
    (7) [ ] Other *(specify):*

    e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
    f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
    g. [ ] This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court *(specify exemption):*

11. **Settlement conference**
    [ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**
    a. [ ] Insurance carrier, if any, for party filing this statement *(name):*
    b. Reservation of rights: [ ] Yes [ ] No
    c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**
    Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.
    [ ] Bankruptcy [ ] Other *(specify):*
    Status:

14. **Related cases, consolidation, and coordination**
    a. [ ] There are companion, underlying, or related cases.
        (1) Name of case:
        (2) Name of court:
        (3) Case number:
        (4) Status:
        [ ] Additional cases are described in Attachment 14a.
    b. [ ] A motion to [ ] consolidate [ ] coordinate will be filed by *(name party):*

15. **Bifurcation**
    [X] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):* The Church Defendants will consider a motion to bifurcate liability from damages.

16. **Other motions**
    [X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
    Possible further demurrers, depending on plaintiffs' allegations in a further amended complaint, motions for summary judgment and/or summary adjudication.

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Church Defendants	Written Discovery	June 2004
Church Defendants	Plaintiffs' Depositions	September 2004
Church Defendants	Plaintiffs' Witnesses	December 2004
Church Defendants	Expert Witnesses	Per Code

    c. ☐ The following discovery issues are anticipated *(specify):*

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☒ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):* Redesignation of case as Plan 3

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: December 2, 2003

Robert J. Schnack
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On December 2, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

CASE MANAGEMENT CONFERENCE STATEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[XX] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on December 2, 2003, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Motion: General **PID # :**	**Case #** 26-22191 **Event Date:** November 21, 2003 **Clerk:** D. Rey **Reporter:** Cynthia Lomeli **Cite/Report #:**

Appearances:

No appearance by either party

By order of the Court, the Tentative Ruling is adopted and incorporated in the minutes as follows:

1) CHURCH DEFENDANTS' DEMURRER TO AMENDED COMPLAINT

TENTATIVE RULING: The Church defendants demur to each cause of action in plaintiffs' amended complaint. The court will overrule the demurrers to causes of action 2 through 5 and 7 will sustain with leave to amend causes of action 1, 6, 8 and 9, and will sustain without leave to amend causes of action 10 through 12.

Tort Causes of action for Sexual Battery and Respondeat Superior (1st), Common Law Negligence (2nd), Negligent Appointment, Retention and Supervision (3rd), Gross Negligence/Wilful Misconduct (4th), Breach of Fiduciary Duty (5th), Fraud, Fraudulent Concealment and Conspiracy (7th), and Ratification (8th)

First Amendment

The defendants seek to characterize plaintiffs' action as one for clergy malpractice arising out of a counseling relationship, and as such contend that, under the First Amendment, this court may not interject itself into the inner workings of the church. They assert that the plaintiffs' claims are barred because they seek to impermissibly entangle the court in ecclesiastical affairs and in the interpretation of religious doctrine, practices and beliefs. Put plainly, this is simply not so.

Plaintiffs' complaint alleges, generally, that the plaintiffs and other minors were regularly sexually abused by church leaders, that the Church defendants were notified of the abuse, and that they failed to take steps to protect the children entrusted to their care and to take steps to prevent future acts of molestation. The complaint further alleges that "rather than implement measures to redress and prevent the sexual molestation of these children, the Watchtower defendants acted in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the [defendants'] organization who committed acts of sexual molestation against children." The complaint alleges that leaders who molested children were allowed to remain as leaders in good standing and were given continued access to children in the

organization, and that the organization prohibited the victims and accusers from speaking to anyone about the alleged abuse under threat of suffering sever sanctions. The complaint also contains specific allegations about the abuse allegedly suffered by the two individual plaintiffs at the hands of a Church Elder and about the defendants' failure to take steps to protect the plaintiffs or to prevent future abuse, when it was in their power to do so.

Defendants cannot use the First Amendment to shield them from these allegations, and none of the cases cited by defendants say otherwise. As made clear from plaintiffs' thorough review of the relevant case law, this court may hear plaintiffs' claims without treading on the Constitution's free exercise clause. Accordingly, defendants' demurrer to plaintiffs' tort claims on the ground that they are barred by the First Amendment is OVERRULED.

Respondeat Superior (1st) and Ratification (8th)

As currently drafted the complaint fails to state facts to support claims against the church defendants on respondeat superior and ratification theories. (*Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603, 609; *Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1490.) The demurrer to these claims is sustained with leave to amend.

Cause of action for Negligence Per Se and Common Law Negligence (6th) and for Negligent Usurpation of Investigatory Function (10th)

The demurrer to the 6th cause of action is sustained as to the allegations of negligence per se premised upon the California Child Abuse and Neglect Reporting Act, Penal Code § 11164, et seq. This statute did not apply to the clergy during the time period in question. Accordingly, it cannot support a negligence per se cause of action. The demurrer to the 6th cause of action is sustained with leave to amend to delete the allegations concerning Penal Code section 11164.

The 10th cause of action is premised entirely on Penal Code § 11164. Accordingly, the demurrer to that cause of action is sustained without leave to amend.

Cause of action for Alter Ego and Single Business Enterprise (9th)

"Alter ego" is not a separately cognizable cause of action, rather it is a contract law theory concerning business structures which allows a separate entity to be disregarded and another to be held responsible for the disregarded entities liabilities. Plaintiffs may amend their complaint to state their alter ego allegations generally, but not as a separate cause of action.

Violation of Penal Code sections 182 and 32 (11th and 12th causes of action)

Plaintiffs have presented no authority that allows them to state a private cause of action for asserted Penal Code violations. The demurrers to these causes of action are sustained without leave to amend.

Plaintiffs shall have 20 days to amend their complaint as specified herein. Defendants shall have 20 days thereafter to respond.

2) WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC.'S MOTION TO QUASH SERVICE OF SUMMONS

TENTATIVE RULING: Plaintiffs' request for leave to conduct discovery is granted. Plaintiff shall be permitted to conduct limited discovery concerning Watch Tower Pennsylvania's contacts in California during the relevant time period. This motion shall be continued to January 21, 2004 at 8:30 in Dept B.

-o0o-

11-14 AM

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 858-2263
E-mail: bob.schnack@bullivant.com

October 31, 2003

Via Facsimile

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Ste. 280
Sacramento, CA 95825

Re: *Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.*
Napa County Superior Court Case No. 26-22191

Dear Mr. Nolen:

This confirms that, pursuant to the request of the court, the hearings in this case have been continued to November 14, 2003 at 8:30 a.m. in Department B.

Very truly yours,

Robert J. Schnack

RJS:cp
cc: Clerk, Napa County Superior Court (via mail)

4103626.1

Nov 3

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., et al.

FILED
OCT 3 1 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **CHURCH DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRERS** DATE: November 14, 2003 TIME: 8:30 a.m. DEPT.: B TRIAL DATE: Not yet set

INTRODUCTION

At the outset, it is noteworthy that Plaintiffs have *not* presented any meaningful arguments to support several of the twelve separate causes of action alleged in the "shotgun" amended complaint. *See International Billing Services, Inc. v. Emigh* (2000) 84 Cal.App.4th 1175, 1179, 101 Cal.Rptr.2d 532, 534 (courts "disfavor shotgun (or 'chain letter') style of pleading"). Specifically, Plaintiffs have not presented any meaningful arguments to either support their pleading or counter the Church Defendants' arguments on demurrer regarding the following causes of action: respondeat superior for sexual assault (first cause of action); failure to report under CANRA (sixth cause of action); ratification (eighth cause of action); alter

ego/single business enterprise (ninth cause of action); negligent usurpation of investigatory function (tenth cause of action); violation of Penal Code § 182 (eleventh cause of action); and violation of Penal Code § 32 (twelfth cause of action). Plaintiffs also did not defend or even mention the "negligent appointment" allegations in the third cause of action, thereby effectively conceding that the claim also should be dismissed. Accordingly, the Court should grant the Church Defendants' demurrers on each of those causes of action. Plaintiffs' remaining causes of action are without legal merit and the Church Defendants' demurrers should be granted on them as well.

In their opposition, Plaintiffs' counsel improperly employs the tactic of citing to and relying on alleged evidence that lies wholly outside of the specific allegations of the amended complaint. As Plaintiffs' counsel and the Court certainly are aware, that tactic is indisputably improper, because demurrers challenge only the sufficiency of the pleading. Thus, the Court must ignore Plaintiffs' counsel's improper tactics here.

Finally, Plaintiffs' opposition to the demurrers often engages in inflammatory rhetoric and relies on conclusory statements without any analysis, and the opposition also does *not* cite at all to Plaintiffs' pleading. Plaintiffs' counsel often seeks to blur the line between viable claims against the alleged individual abuser, which are *not* at issue here, as opposed to the causes of action alleged against the Church Defendants, which *are* at issue here.

I. ARGUMENT

1. Plaintiffs' sexual assault cause of action against the Church Defendants based on alleged respondeat superior liability fails as a matter of law.

As previously briefed by the Church Defendants, California law is well settled that an employee who commits sexual assault or sexual abuse acts outside of the scope of his employment as a matter of law (the only exception being police officers in certain situations). Thus, with regard to an action like this one against a religious institution based on allegations of

childhood sexual abuse perpetrated by one of its clergy, the courts have held that "because the abuse is committed outside the scope of the cleric's employment, the doctrine of respondeat superior is not available." *Mark K. v Roman Catholic Archbishop* (1998) 67 Cal. App. 4th 603, 609, 79 Cal.Rptr. 2d 73, 77.

Because those are precisely the allegations made here by Plaintiffs (*i.e.*, that the alleged sex abuse was conducted within the course and scope of church duties), the first cause of action alleging respondeat superior liability for sexual assault against the Church Defendants fails as a matter of law. The demurrer on Plaintiffs' first cause of action should be sustained without leave to amend.

2. Plaintiffs' CANRA allegations do not allege any cognizable causes of action against the Church Defendants.

Plaintiffs have *not* presented any cogent arguments or cited any legal authority to support their causes of action based on reporting obligations or investigatory functions under the California Child Abuse and Neglect Reporting Act, or CANRA. Because no private right of action exists under CANRA and, in any event, because the Church Defendants were not required to report under CANRA during the relevant time period at issue here, the demurrers to Plaintiffs' sixth and tenth causes of action should each be sustained without leave to amend.

3. Plaintiffs' ratification cause of action fails as a matter of law.

Plaintiffs do not even remotely allege in the complaint (or suggest in the opposition brief) the requisite elements of a "cause of action" for ratification, *i.e.*, that the acts of child sexual abuse allegedly perpetrated on them were done for the benefit of the Church Defendants or that those acts were of a nature or kind to benefit the Church Defendants. (Indeed, any such allegation or suggestion would be patently absurd.)

Therefore, Plaintiffs' purported cause of action alleging "ratification" fails as a matter of law, and the demurrer against the eighth cause of action should be sustained without leave to replead.

4. Plaintiffs now belatedly admit that the alter ego/single business enterprise claim does not constitute a cognizable cause of action.

In the amended complaint, Plaintiffs' counsel specifically alleged a "NINTH CAUSE OF ACTION" denominated as "ALTER EGO AND SINGLE BUSINESS ENTERPRISE." Now, however, after the Church Defendants demurrer against that purported "cause of action," Plaintiffs' counsel disingenuously writes in the opposition that Plaintiffs pled those allegations only as "theories" and do "not assert these theories as causes of action[.]" Plaintiffs' opposition at p.32.

The Church Defendants accept Plaintiffs' concession that the alter ego/single business enterprise allegations do not state a viable cause of action, and the Court should accept the concession as well. Accordingly, the demurrer to Plaintiffs' ninth cause of action should be sustained without leave to amend.

5. Plaintiffs' allegations of Penal Code violations do not constitute cognizable causes of action.

Plaintiffs make a one-sentence conclusory statement (Plaintiffs' opposition at p.31) that "the criminal statutes set a standard by which their [the Church Defendants] conduct may be judged." However, Plaintiffs provide no analysis or case citations. The bottom line is that no California case has held that a violation of Penal Code § 32 or Penal Code § 182 will support a civil cause of action or creates a private right of action. The demurrers to Plaintiffs' eleventh and twelfth causes of action should be sustained without leave to amend.

6. Plaintiffs do not allege the unique circumstances necessary to support a breach of fiduciary duty claim against the Church Defendants.

While California law acknowledges that a priest can have a fiduciary relationship with a parishioner under certain limited circumstances, *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, 279, 130 Cal.Rptr.2d. 601, 616, Plaintiffs have not alleged the unique circumstances required to allege a breach of fiduciary cause of action against the Church Defendants. (Plaintiffs' argument in this regard in the opposition addresses the issue of *the minister's or cleric's* fiduciary duty under *Richelle L.*, not a breach of fiduciary cause of action

against the Church Defendants.)

Accordingly, Plaintiffs' fifth cause of action for breach of fiduciary duty against the Church Defendants fails as a matter of law and should be dismissed without leave to replead.

7. Plaintiffs cannot state a cause of action against the Church Defendants for negligence, gross negligence, breach of fiduciary duty, or fraud.

Plaintiffs do not contest the fact that the judicial sanctioning of recovery in tort constitutes state action sufficient to invoke constitutional protections. Instead, without any reference or citation to the complaint, Plaintiffs argue that their claims do not allege a prohibited clergy malpractice claim and otherwise do not implicate the constitutional protections afforded under the First Amendment to churches and religious institutions like the Church Defendants. However, Plaintiffs' own pleading refutes those arguments.

Nomenclature aside, the gravamen of all of Plaintiffs' claims is that Plaintiffs were vulnerable because of the way that the Jehovah's Witnesses organize their church and practice their faith. See Plaintiffs' amended complaint at ¶¶ 19, 21, and 22. Plaintiffs essentially allege that because of the hierarchical structure of the Jehovah's Witnesses church, persons like Plaintiff were vulnerable to being abused. Id. Those allegations are nothing other than a prohibited clergy malpractice claim.[1] For example, Plaintiffs allege that "all male members [of the church] are appointed and empowered to carry out this responsibility [for the development, protection and discipline of its membership, especially the children of members]." Plaintiffs' amended complaint at ¶21. Plaintiffs further allege that male members of the church are "authorize[d] . . . to develop relationships of trust with women, children and families and to assume a role of counselor and advocate [within the church] for any problems that might arise, including claims of child abuse." Plaintiffs' complaint at ¶22.

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[1] *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 298, 253 Cal.Rptr. 97, 763 P.2d 948 (clergy malpractice claims cannot be reconciled with the First Amendment and are thus prohibited under California law).

Plaintiffs thus ground their claims in the organizational structure of the church and how church members practice their faith. However, the California courts have rejected such claims as constitutionally improper. *Richelle L. v. Roman Catholic Archbishop*, 106 Cal.App.4th at 280-82 (rejecting the plaintiff's claims alleging that she was vulnerable to sex abuse because of her religious faith and trust in the clergy and because of the power the clergy held over her, on the basis that such claims are constitutionally impermissible). Any inquiry by the courts into a church's organizational structure and how the church members practice their faith necessarily requires an inquiry that violates the First Amendment, as already briefed. Thus, Plaintiffs' causes of action fail as a matter of law.

Plaintiffs also appear to suggest in the above-cited allegations from the amended complaint that the Jehovah's Witnesses' church assumed some legal duty to Plaintiffs, based on church organization and practices, and then negligently performed that duty. Again, however, any inquiry into those allegations would necessarily require inquiry into the Jehovah's Witnesses' hierarchical structure and their religious beliefs, policies, and practices. Because any such inquiry is barred by the free exercise of religion clause of the U.S. Constitution, that claim would also fail as a matter of law.

It follows that the demurrers to all of Plaintiffs' other causes of action should be sustained without leave to replead.

II. CONCLUSION

For the reasons set forth above and in the Church Defendants' original briefing, this Court should sustain the Church Defendants' demurrers on each of the twelve causes of action set forth in Plaintiffs' amended complaint.

DATED: October 30, 2003

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack, Esq.
Attorney for Church Defendants

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On October 30, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

CHURCH DEFENDANTS' REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

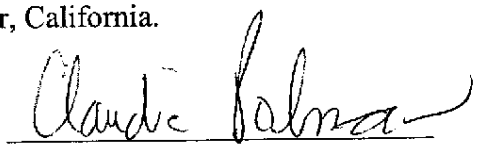
___ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on October 30, 2003 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on October 30, 2003, at Gold River, California.

By 
Claudia Pohlman

4103528.1

Robert J. Schnack, SBN 191987
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., et al.

FILED
OCT 3 1 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

MOVING CHURCH DEFENDANTS' REPLY IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS

DATE: November 14, 2003
TIME: 8:30 a.m.
DEPT.: B
TRIAL DATE: Not yet set

I. INTRODUCTION

Plaintiffs have conceded the motions of two of the Moving Church Defendants, Kingdom Support Services, Inc. ("KSS") and Religious Order of Jehovah's Witnesses ("ROJW"). Accordingly, the Court should grant the motions of KSS and ROJW and award each the costs they have incurred.

With respect to the third Moving Church Defendant, Watch Tower Bible and Tract Society of Pennsylvania, Inc. ("Watch Tower"), plaintiffs do not present any evidence to support the Court's exercise of "specific jurisdiction" over Watch Tower (i.e., personal jurisdiction with respect to plaintiff's particular claims alleged in this action). In addition, plaintiffs do not submit any evidence, properly authenticated or otherwise, that defendant Watch

Tower has the continuous and systematic contacts with California necessary to subject Watch Tower to "general jurisdiction" in California. Accordingly, the Court should also grant Watch Tower's motion to quash service of summons based on the personal jurisdiction defense.[1]

II. DISCUSSION

A. Plaintiffs improperly focus on the "Governing Body," apparently presenting an alter ego or veil piercing theory to support personal jurisdiction over defendant Watch Tower.

Plaintiffs repeatedly refer to the Governing Body and its authority within the Jehovah's Witnesses organization, stating, for example, that "some members" of the Governing Body also serve as members of the board of directors and as officers of defendant Watch Tower. E.g., plaintiffs' opposition at p.8. Plaintiffs also refer to the Governing Body's use of defendant Watch Tower to help carry out activities of Jehovah's Witnesses "worldwide" (although plaintiffs provide no specifics with respect to any such alleged activities in California). Id. [2]

Plaintiffs thus appear to argue that because defendant Watch Tower is the alter ego of the Governing Body (or that the Court should pierce the veil, so to speak, of the Governing Body), the Court therefore should rule that defendant Watch Tower is subject to personal jurisdiction in California. However, such veil piercing arguments simply are inappropriate with respect to the personal jurisdiction issue. What authority the Governing Body has and what the Governing Body does, or does not do, have no bearing on whether defendant Watch Tower is subject to personal jurisdiction in California. See Northern Natural Gas Co. of Omaha, Neb. V. Superior Court (1976) 64 Cal. App. 3d 983, 991 134 Cal. Rptr. 850, 855 (mere relationships

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[1] At least two other state courts have granted similar motions to dismiss defendant Watch Tower for lack of personal jurisdiction. Beal v. Broadard, et al., Suffolk (Massachusetts) Superior Court, Civil Action No. 02-5765-C (order issued August 12, 2003) (granting defendant Watch Tower's motion to dismiss for lack of personal jurisdiction); Albright v. District Court (real party in interest Watchtower Bible and Tract Society of Pennsylvania) (2000) 116 Nev. 1352, 62 P.3d 1135 (Table) (Nevada Supreme Court denied writ of mandamus challenging trial court order granting motion to dismiss for lack of personal jurisdiction). Those rulings are attached as Exhibits A and B. See Rule 313(f) of the California Rules of Court.

[2] Plaintiffs' citation to the defendants' answer in the Rodriguez v. Watchtower Bible and Tract Society of New York, et al., U.S. District Court (E.D. Wash.) No. CS-02-0190-EFS, does not assist plaintiffs here. The answer does not in any way reference California, but instead uses the term "worldwide." It simply does not refer to the moving defendant in this case as having any contacts with California. (In an unrelated development, earlier this month (on October 3, 2003) U.S. District Judge Edward F. Shea granted the defendants' motions for summary judgment in Rodriguez, dismissing the case in its entirety.)

between entities insufficient to establish jurisdiction over the entities, in that exercise of jurisdiction over wholly owned subsidiary does not automatically give courts jurisdiction over parent corporation).

Thus, plaintiffs' repeated discussions about, and focus on, the Governing Body are a red herring with respect to the question of personal jurisdiction over defendant Watch Tower and should be ignored.

B. Plaintiffs do not present any evidence that plaintiffs' claims arise out of defendant Watch Tower's alleged contacts with California.

Again, plaintiffs argue here that the Governing Body "exercises control, oversight and policy-making for the Jehovah's Witnesses organization." Plaintiffs' opposition at p.18. Plaintiffs then state in conclusory fashion, without any evidentiary support, that defendant Watch Tower was, in essence, an agent for the Governing Body in California. Id. Plaintiffs fail to present any evidence linking alleged activity of defendant Watch Tower in California to plaintiffs' claims alleged in this action. Accordingly, defendant Watch Tower is not subject to "specific jurisdiction" in California in this action.

C. Defendant Watch Tower also is not subject to general jurisdiction in California.

As previously briefed, the standard for establishing "general jurisdiction" is fairly high and requires that a defendant's contacts with the forum state approximate a physical presence there. Bancroft and Masters, Inc. v. Augusta Nat. Inc. (9th Cir. 2000) 223 F.3d 1082, 1086 (citations omitted). [A copy of the Augusta Nat. Inc. case was submitted to the Court with the Moving Church Defendants' original motion.]

In support of this motion, defendant Watch Tower earlier submitted a sworn declaration from the Secretary and Treasurer of defendant Watch Tower that negates any contacts of defendant Watch Tower with California that approximate the sort of physical presence in California necessary to exercise general jurisdiction over Watch Tower. Significantly, plaintiffs have not refuted the factual averments contained in that declaration.

Moreover, plaintiffs have not presented any evidence, much less authenticated and admissible evidence, that defendant Watch Tower has the continuous and systematic contacts

with California required to support the exercise of general jurisdiction in this state. The statements about defendant Watch Tower by plaintiffs' counsel are conclusory and in any event sufficiently vague such that they do not suffice to establish general jurisdiction over Watch Tower. Those conclusory statements also do not shift the burden of proof to the moving defendant. Similarly, alleged acts of the Governing Body cannot be used to support general jurisdiction over defendant Watch Tower. Kaiser Aetna v. Deal (1978) 86 Cal. App. 3d 896, 901, 150 Cal.Rptr. 615, 619 (acts of other parties cannot be imputed to a defendant for purpose of assuming personal jurisdiction; instead, assertion of personal jurisdiction must be based on a defendant's own forum-related acts) (citations omitted).

Accordingly, the Court should grant defendant Watch Tower's motion to quash service of summons based on Watch Tower's lack of continuous and systematic contacts with this state. California lacks personal jurisdiction over Watch Tower, and it should not be required to further participate in this action.

III. CONCLUSION

Plaintiffs have conceded that the California courts cannot properly exercise personal jurisdiction over defendants KSS and ROJW. Plaintiffs also have not met their burden of establishing that defendant Watch Tower has the requisite continuous and systematic contacts with California to approximate a physical presence here. Accordingly, the California courts also cannot properly exercise personal jurisdiction over defendant Watch Tower. The Court should grant each of the Moving Church Defendants' motions.

DATED: October 30, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

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

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION NO: 02-5765-C

LEON BEAL, As Father and Next Friend of SATEYDRA BEAL, ROBIN BEAL, As Mother and Next Friend of SATEYDRA BEAL AND SATEYDRA BEAL, A Minor,
Plaintiffs,

v.

RONALD BROADARD, WILLIAM BROADARD, ASHMONT CONGREGATION OF JEHOVAH'S WITNESSES, COLUMBUS PARK CONGREGATION OF JEHOVAH'S WITNESSES, WATCH TOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA,
Defendants.

notice sent
8/14/03
L.F.B.
J.M.D.
M M M
S.M.B.
A.H.G.
G.LAW

(mm)

DEFENDANTS', WILLIAM BROADARD, ASHMONT CONGREGATION OF JEHOVAH'S WITNESSES, COLUMBUS PARK CONGREGATION OF JEHOVAH'S WITNESSES, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, MOTION TO DISMISS PLAINTIFFS' COMPLAINT

The defendants, William Broadard, Ashmont Congregation of Jehovah's Witnesses, Columbus Park Congregation of Jehovah's Witnesses, Watchtower Bible & Tract Society of New York, Inc. and Watch Tower Bible & Tract Society of Pennsylvania, respectfully move this Court to dismiss counts I, II, III, IV, VI, VII and IX for lack of subject matter jurisdiction pursuant to Mass. R. Civ. P. 12(b)(1); for failure to state a claim upon which relief can be granted pursuant to Mass. R. Civ. P. 12(b)(6); and lack of personal jurisdiction pursuant to Mass. R. Civ. P. 12(b)(2).

1013314v1

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT ALBRIGHT,

Petitioner,

No. 34763

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR
THE COUNTY OF WASHOE, AND THE
HONORABLE STEVEN P. ELLIOTT,
DISTRICT JUDGE,
Respondents,
and
WATCHTOWER BIBLE *AND* TRACT SOCIETY
OF PENNSYLVANIA,
Real Party in Interest.

Files July 7, 2000

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This is an original petition for writ of mandamus challenging a district court order granting a motion to dismiss for lack of personal jurisdiction in a wrongful death action.

Petitioner contends that the district court erred in granting the motion of the real party in interest, Watchtower Bible and Tract Society of Pennsylvania, to dismiss for lack of personal jurisdiction. He contends that he presented a prima facie showing of both general and specific jurisdiction. We disagree. We note first, however, that a considerable portion of the argument advanced by the real party in interest focuses on conflicting evidence, particularly the affidavits of Richard E. Abrahamson and L. C. Colton. Were this a case of conflicting evidence alone, petitioner would be entitled to a writ of mandamus ordering the district court to vacate its order of dismissal, because all factual conflicts would have to be resolved in petitioner's favor for the purpose of deciding the motion to dismiss. See Trump v. District Court, 109 Nev. 687, 693, 857 P.2d 740, 744 (1993). Only at a full evidentiary hearing or trial would the conflicting evidence come into play, because only then would the district court act as fact-finder and make a

EXHIBIT B

determination as to whether there existed a preponderance of evidence in support of jurisdiction, rather than accepting as true petitioner's proffers of proof. Id.

Nevertheless, we conclude that petitioner failed to make a prima facie showing of jurisdiction, even without The considering the affidavits of Abrahamson and Colton. information from the internet site operated by the real party in interest was sufficiently vague concerning whether the real party in interest, a Pennsylvania corporation, or Watchtower Bible and Tract Society of New York, a New York Corporation, supervised the religious organization within the United States, and it failed to show that the real party in interest had minimum contacts with Nevada through local congregations of Jehovah's Witnesses. William Scott's deposition testimony, by the very fact that it was retracted as misinformation, cannot contribute to petitioner's prima facie case. The remaining evidence did not connect the real party in interest with either the hospital liaison committee or any congregations of Jehovah's Witnesses in Nevada. The district court correctly concluded that petitioner failed to make a showing of general or specific jurisdiction. Accordingly, the district court did not err in granting the motion to dismiss for lack of personal jurisdiction and we deny the petition for writ of mandamus.

We also conclude that the district court did not err in denying petitioner's motion for jurisdictional discovery, because petitioner has failed to demonstrate that the district court abused its "wide discretion" over pretrial discovery. Hahn v. Yackley, 84 Nev. 49, 54, 436 P.2d 215, 218 (1968).

It is so ORDERED.

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On October 30, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

MOVING CHURCH DEFENDANTS' REPLY IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on October 30, 2003 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on October 30, 2003, at Gold River, California.

By Claudia Pohlman
Claudia Pohlman

10/15 Jam

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
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September 26, 2003

Via Facsimile and U.S. Mail

Clerk
Napa County Superior Court
825 Brown Street
Napa, CA 94559

Re: *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
Napa County Superior Court Case No.: 26-22191

Dear Clerk:

matter cont'd. on cal 10/20

Please be advised that we request the court continue defendants' demurrers and motion to quash service currently set to be heard on October 20, 2003 at 8:30 a.m. in Department B, to November 6, 2003. Plaintiffs' counsel has agreed to such a continuance.

Thank you.

Very truly yours,

Robert J. Schnack

RJS:cp
cc: William L. Brelsford, Jr. (via facsimile)
4102247.1

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From: Robert J. Schnack **Date:** September 26, 2003

C/M #: 23491/00005 **Reference:** Charissa W. v. Watchtower

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11-6-03 JM 12 Cal

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 27 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF OPPOSITION TO DEFENDANTS' DEMURRERS

Date: November 6, 2003
Time: 8:30 a.m.
Dept: B

Cases **Exhibit No.**

Alberts v. Devine
(Mass. 1985) 479N.E.2d113.....1

Amato v. Greenquist
(Ill. App. 1997) 679 N.E.2d 446.....2

Ayon v. Gourley
(D. Colo. 1998) 47 F.Supp 2d. 1246 3

Bear Valley Church of Christ v. Dubose
(Colo. 1996) 928 P.2d 1315 4

Bivin v. Wright
(Ill. App. 1995) 656 N.E.2d 1121 5

Bob Jones University v. United States
(1983) 461 U.S. 574 6

Bollard v. California Province of the Society of Jesus
(9th Cir. 1999) 196 F.3d 940 7

Byrd v. Faber
(Oh. 1991) 565 N.E.2d 584 8

C.J.C. v. Corporation of the Catholic Bishop of Yakima
(Wash. 1999) 985 P.2d 262 9

Cantwell v. Connecticut
(1940) 310 U.S. 296 10

Christenson v. Erickson
(Or. Ct. App 1989) 781 P.2d 383 11

Dausch v. Rykse
(7th Circuit 1994) 52 F.3d 1425 12

Davis v. Beason
(1890) 133 U.S. 333 13

Destanfano v. Gabrian
(Colo. 1988) 763 P.2d 275 14

Doe v. Dorsey
(Fla.Dist.Ct.App.1996) 683 So.2d 614 15

Doe v. Hartz
(N.D. Iowa 1997) 970 F. Supp. 1375 16

Ehrens v. Lutheran Church-Missouri Synod
(S.D.N.Y. 2003) 269 F.Supp.2d 328 17

Employment Div. Dept. of Human Resources of Oregon v. Smith
(1990) 494 U.S. 872, 879 18

Erickson v. Christenson
(1989) 977 P.2d 1157 19

F.G. v. MacDonell
(N.J. 1996) 677 A.2d 258 20

General Council on Finance and Administration of the United Methodist Church v. Superior Court of California
(1978) 439 U.S. 1369 21

Gonzales v. Roman Catholic Archbishop of Manila
(1929) 280 U.S. 1 22

H.R.B. v. J.L.G.
(Mo.Ct. App. 1995) 913 S.W.2d 92 23

Isely v. Capuchin Province
(E.D. Mich. 1995) 880 F. Supp. 1138 24

Jehovah's Witnesses v. King County Hospital Unit No.1
(W.D. Washington 1967) 278 F. Supp 488,
judgment affirmed, 88 S.Ct. 1260 (1967) 25

JC2 v. Grammond
(D.Or. 2002) 232 F.Supp. 2d 1166 26

Jones by Jones v. Trane
(1992) 591 N.Y.S.2d 927 27

Jones v. Wolf
(1979) 443 U.S. 595 28

Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church
(1952) 344 U.S. 94 29

Kenneth R. v. Roman Catholic Defendants of Brooklyn
(1997) 654 N.Y.S.2d 791 30

Konkle v. Henson
(Ind.Ct.App.1996) 672 N.E.2d 450 31

Lemon v. Kurtzman
(1971) 403 U.S. 602 32

Malicki v. Jane Doe
(Fla. 2002) 814 So.2d 347 33

Martinelli v. Bridgeport Roman Catholic Diocesan
(2nd Cir. 1999) 196 F.3d 409 34

Martinez v. Primera Assemblea de Dios, Inc.
(Tex. Ct. App. May 15, 1998) No. 05-96-01458, 1998 WL 242412 35

Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.
(1970) 396 U.S. 367 36

McBride v McCorkle
(N.J. App. 1957) 130 A.2d 881 37

Moses v. Diocese of Colo
(Colo 1993)(*en banc)* 863 P.2d 310, *cert. denied,* (1994) 511 U.S. 1137 38

Mrozka v. Archdiocese of St. Paul and Minneapolis
(Minn. Ct. App. 1992) 482 N.W. 2d 806 39

Nutt v. Norwich Roman Catholic Defendants
(D. Conn. 1995) 921 F. Supp. 66 40

Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church
(1976) 393 U.S. 440 41

Prince v. Massachusetts
(1944) 321 U.S. 158 42

Rashedi v. General Board of the Church of the Nazarene
(Az. 2002) 54 P.3d 349 43

Reynolds v. United States
(1879) 98 U.S. 145 44

Sanders v. Casa View Baptist Church
(N.D. Texas 1995) 898 F. Supp. 1169 45

Schmidt v. Bishop
(S.D.N.Y. 1991) 779 F. Supp. 321 46

Serbian Eastern Orthodox Diocese v. Milivojevich
(1971) 426 U.S. 696 47

Sherbert v. Verner
(1963) 374 U.S. 398 48

Smith v. O'Connell
(D.R.I 1997) 986 F.Supp. 73 49

Smith v. Privette
(N.C. 1998) 495 S.E.2d 395 50

Thomas v. Review Bd. Of Indiana Employment Security Div.
(1981) 450 U.S. 707 51

United States v. Lee
(1982) 455 U.S. 252 52

Watson v. Jones
(1871) 80 U.S. 679 53

West Virginia State Board of Educ. V. Barnette
(1943) 319 U.S. 624 54

Wisconsin v. Yoder
(1971) 4406 U.S. 205 55

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF OPPOSITION TO DEFENDANTS' DEMURRERS** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

EXHIBIT 1

479 N.E.2d 113
(Cite as: 395 Mass. 59, 479 N.E.2d 113)

Supreme Judicial Court of Massachusetts, Norfolk.

William E. ALBERTS
v.
Donald T. DEVINE et al. [FN1]

FN1. Edward G. Carroll and John E. Barclay.

Argued Oct. 5, 1984.
Decided June 4, 1985.

Church minister brought action against his psychiatrist and two of his clerical superiors alleging that superiors had induced psychiatrist to disclose confidential information and had used that information to cause minister not to be reappointed. The Superior Court, Norfolk County, Elizabeth J. Dolan, J., reported questions of law to the Appeals Court. The Supreme Judicial Court transferred the case on its own initiative, and O'Connor, J., held that: (1) exception to rule of confidentiality when aspects of employee's health could affect employee's ability effectively to perform job duties is not so broad as to permit physician to disclose to patient's employer whatever information might bear on employee's ability effectively to perform job duties; (2) civil action will lie against anyone who, with requisite state of mind, induces violation of physician's duty of confidentiality and thereby causes injury or loss to patient; (3) even if it were assumed, without inquiry, that book of discipline or other rule of church provided that clerical superiors of minister had right, or even duty, to seek medical information about minister from minister's psychiatrist, First Amendment did not preclude imposition of liability on minister's superiors; and (4) First Amendment did not bar judicial inquiry into church's proceedings culminating in minister's failure to gain reappointment.

So ordered.

West Headnotes

[1] Appeal and Error ⇐719(8)
30k719(8) Most Cited Cases

Fairness required that Supreme Judicial Court treat minister's claims against two of his clerical superiors as if they were before Court on appeal, with minister assigning as error unfavorable rulings by trial judge on questions she had reported to Appeals Court where, although minister filed timely claim of appeal from entry of judgments of his superiors, he did not further perfect the appeal, in reliance on judge's report as vehicle for review. Rules App.Proc., Rule 5, 43B M.G.L.A.

[2] Health ⇐642
198Hk642 Most Cited Cases
(Formerly 299k15(9) Physicians and Surgeons)

Patient has valid interest in preserving confidentiality of medical facts communicated to physician or discovered by physician through examination.

[3] Health ⇐642
198Hk642 Most Cited Cases
(Formerly 299k15(9) Physicians and Surgeons)

Principle that society is entitled to every person's evidence in order that truth may be discovered may require physician to testify in court about information obtained from patient in course of treatment; however, that principle has no application to disclosures made out of court so that it does not preclude cause of action based on such disclosures.

[4] Health ⇐642
198Hk642 Most Cited Cases
(Formerly 299k15(9) Physicians and Surgeons)

Unless faced with serious danger to patients or to others, physician owes patient duty not to disclose without patient's consent medical information about patient gained in course of special relationship, and violation of that duty gives rise to civil action for whatever damages flow therefrom.

[5] Health ⇐642
198Hk642 Most Cited Cases
(Formerly 299k15(9) Physicians and Surgeons)

Exception to rule of confidentiality when aspects of employee's health could affect employee's ability effectively to perform job duties is not so broad as to permit physician to disclose to patient's employer whatever information might bear on employee's

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Even if First Amendment precludes judicial inquiry as to whether church rule provided that two of minister's clerical superiors had right to seek medical information from minister's psychiatrist, so that court must assume in superiors' favor the existence of church rule granting that right, it does not follow that religion clauses precluded imposition of liability on superiors. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1))

Although freedom to believe is absolute, freedom to act cannot be; conduct remains subject to regulation for protection of society and freedom to act must have appropriate definition to preserve enforcement of that protection. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1))

Law, legislatively or judicially created, that would regulate or prevent religiously motivated conduct does not violate First Amendment if state's interest in law's enforcement outweighs burden that law imposes on free exercise of religion; determination of constitutionality requires balancing of competing interests. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Even if it were assumed, without inquiry, that book of discipline or other rule of church provided that clerical superiors of minister had right, or even duty, to seek medical information about minister from minister's psychiatrist, First Amendment did not preclude imposition of liability on minister's superiors. U.S.C.A. Const.Amend. 1.

[19] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

First Amendment did not bar judicial inquiry in church's proceedings culminating in minister's failure to gain reappointment where minister alleged that two of his clerical superiors had induced his psychiatrist to wrongfully disclose information about him and that superiors subsequently informed various church officials and used information to cause minister not to be reappointed. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

First Amendment did not present obstacle to minister's right to discovery and trial evidence bearing on issue of whether minister's clerical superiors used information which he had induced minister's psychiatrist to wrongfully disclose to cause minister not to be reappointed, where litigation in no sense involved repetitious inquiry or continuing surveillance that would amount to excessive entanglement between government and religion. U.S.C.A. Const.Amend. 1.
****115 *60** Robert J. Doyle, Boston (Bruce V. Keary, Boston, with him), for plaintiff.

Florence E. Freeman, Weston, for John E. Barclay.

Deborah S. Griffin and Ripley E. Hastings, Boston, for Edward G. Carroll & another.

Jared H. Adams, Boston, for Donald T. Devine.

Ann M. Gilmore, Boston, for Ad-Hoc Committee of Methodist Ministers on the Separation of Church and State, amicus curiae, submitted a brief.

Before ***59** HENNESSEY, C.J., and WILKINS, ABRAMS, NOLAN and O'CONNOR, JJ.

***60** O'CONNOR, Justice.

In this action, brought by William E. Alberts, a minister of the United Methodist Church, against Donald T. Devine, a psychiatrist, and Edward G. Carroll and John E. Barclay, two of the plaintiff's clerical superiors, we hold that: (1) unless faced with a serious danger to the patient or to others, a physician owes a patient a duty not to disclose without the patient's consent medical information about the patient gained in the course of the professional relationship, and the violation of that duty gives rise to a civil action for whatever damages flow therefrom; (2) a civil action will lie against anyone who, with the requisite state of mind, induces a violation ***61** of the physician's

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duty of confidentiality and thereby causes injury or loss to the patient; and (3) in the circumstances of this case, the religion clauses of the First Amendment to the Constitution of the United States, [FN2] made applicable to the States by the Fourteenth Amendment, *Everson v. Board of Educ.*, 330 U.S. 1, 15, 67 S.Ct. 504, 511, 91 L.Ed. 711 (1947); *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), do not preclude **116 inquiry by the courts of the Commonwealth into church processes regarding the appointment and the discharge of ministers, nor do those clauses preclude the imposition of liability on the clerical defendants. [FN3]

FN2. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."

FN3. No contention has been made that the Constitution of the Commonwealth provides to any of the defendants greater protection than does the Constitution of the United States. Therefore, we do not consider any question of State constitutional law.

Alberts's amended complaint alleges that in April, 1973, and for some period of time before that, he was a minister with the Southern New England Conference of the United Methodist Church (conference), that he and the defendant Devine had entered into a contract for the provision of psychiatric services, and that implicit in their relationship was a warranty that Devine would keep confidential "all information, observations and opinions relating to the diagnosis, condition, behavior, and treatment" of Alberts that Devine might gain in his professional capacity. The complaint further alleges that on or about April 9, 1973, in violation of that warranty and in violation of Devine's explicit promise, made during the course of treatment, to "respect the confidential nature of the relationship between doctor and patient," Devine disclosed to the defendant Carroll, Resident Bishop of the Boston Area of the United Methodist Church and President of the conference, or to Carroll's representative, information about Alberts's "diagnosis, condition, behavior or treatment." The complaint alleges that Carroll and the defendant Barclay, District Superintendent of the Greater Boston District of the conference, intentionally induced the disclosure, and that Carroll and Barclay "informed numerous individual members of the [conference], *62 as well as the various boards, committees and subcommittees of that Conference concerned with the appointment of its ministers to local churches, of their opinions of [Alberts's] mental health." Furthermore, it is averred that Carroll expressed to the public and to news reporters his belief that Alberts "was mentally ill and therefore unappointable," and that his "belief was based on 'competent consultation.' " The complaint alleges that Carroll used the information he obtained from Devine to cause Alberts not to be reappointed as minister of the Old West Church in Boston, and that the unauthorized disclosures caused Alberts considerable loss of earning capacity and other financial losses, damage to his reputation, and great mental anguish requiring medical treatment.

The three defendants filed answers, and Carroll's and Barclay's answer, as amended, included the following defense: "The alleged actions by [Carroll and Barclay], if taken at all, were taken pursuant to their duties and authority as [Alberts's] superiors in the hierarchy of the United Methodist Church and as such are privileged and immune from inquiry by this Court under the First and Fourteenth Amendments of the United States Constitution."

The three defendants filed motions for summary judgment, and Devine filed a motion to dismiss. The judge allowed Carroll's and Barclay's motion for summary judgment, and she allowed their motions for entry of judgment pursuant to Mass.R.Civ.P. 54(b), 365 Mass. 820 (1974). She denied both of Devine's motions. The judge also denied a motion filed by Alberts to amend his complaint by adding a count for tortious interference with privacy rights. Carroll and Barclay filed a motion for a protective order quashing any subpoena that might be served on them in connection with a trial of the case or on "any other person who was a member of the United Methodist Church in 1972 or 1973." The motion further requested that the judge limit further disclosure of, and exclude from evidence at trial, deposition testimony previously given, and documents previously identified, by Carroll and Barclay or other named individuals associated with the United Methodist Church. Lastly, the motion requested

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that the judge rule inadmissible *63 at trial "any evidence relating in any way to the conduct, words and thoughts of defendants Barclay and Carroll and of any other members of the United **117 Methodist Church in 1972 or 1973." As grounds for their motion, Carroll and Barclay asserted a "constitutional prohibition of inquiry by the civil courts into matters of church doctrine and administration." The judge allowed the motion in its entirety.

At the same time that she made those rulings, the judge reported the following questions to the Appeals Court: (1) "[W]hether disclosures [of confidential medical information] by a psychiatrist of a former patient constitutes a cognizable cause of action within the Commonwealth of Massachusetts"; (2) "[W]hether a cause of action for invasion of privacy existed within the Commonwealth of Massachusetts prior to July 1, 1974"; (3) "[W]hether the actions of the defendants Barclay and Carroll are within the ambit of the privileges and immunities granted by the First and Fourteenth Amendments of the United States Constitution"; and (4) "[W]hether [the judge] properly invoked the First Amendment in entering the protective order for defendants Barclay and Carroll." We transferred the case to this court on our own initiative.

Before reaching the reported questions, we must consider a procedural matter: In light of the judgments entered for Carroll and Barclay, do our answers to the reported questions have any significance with respect to Alberts's claims against them? "[A]fter verdict or after a finding of facts under Rule 52 ... [i]f [the judge] is of opinion that an interlocutory finding or order made by [her] so affects the merits of the controversy that the matter ought to be determined by the Appeals Court before any further proceedings in the trial court, [the judge] may report such matter, and may stay all further proceedings except such as are necessary to preserve the rights of the parties." Mass.R.Civ.P. 64 , 365 Mass. 831 (1974). Under the rule, a trial judge may report a matter that ought to be determined at the appellate level before judgment is entered or before further proceedings take place. "In essence, the word 'report' connotes a suspension of the trial court's function pending decision by an appellate court." J.W. Smith & H.B. *64 Zobel, Rules Practice § 64.1 (1981). Rule 64 does not authorize a report after judgment.

[1] It is not clear from the report nor from the judge's memorandum explaining the reasons for the report whether the judge intended that the answers to the reported questions would apply only to the claims against Devine or whether she also intended them to apply to the claims against Carroll and Barclay. In the memorandum, the judge discusses the relevancy of the questions to the claims against Devine, suggesting that, in keeping with rule 64, the judge reported the case solely to expedite the disposition of the claims against Devine. For example, the judge explained that the questions involving the religion clauses are important to the claims against Devine because, in order to establish damages as to Devine, particularly with respect to loss of earnings, Alberts would have to show that the information allegedly disclosed by Devine contributed to Alberts's loss of employment. The judge also observed that, in order to present that proof, inquiry will be necessary into "the processes of appointment or nonappointment by the governing body of the church together with consideration by a civil court of the interpretation and application of certain codes or canons of [the] church as embodied within its 'Book of Discipline.' " Other language in the memorandum, however, suggests that the judge intended that the Appeals Court's answers to the reported questions would also affect the claims against Carroll and Barclay. For example, the memorandum's concluding paragraph states: "The issues raised on the summary judgments are reported after decision and entry of final judgments as to Barclay and Carroll and the issues raised on interlocutory matters of the plaintiff's motion to amend to add a count of invasion of privacy and the denial of the defendant Devine's motion to dismiss for failure to state a cause of action cognizable by this court are further reported due to the nature of the complaint as filed and the **118 status of the pleadings." Without arguing the procedural point, counsel for Carroll and Barclay have assumed that our answers to the questions will apply to Alberts's claims against them. In his brief, Alberts urges us to reverse the grant of summary judgment in favor of Carroll and Barclay, and, in *65 their briefs, Carroll and Barclay request that we affirm that grant. Carroll and Barclay also ask us to affirm the judge's denial of Albert's motion to add to his complaint a common law claim for invasion of privacy. Although Alberts filed a timely claim of appeal from the entry of judgments in favor of Carroll and Barclay, he has not further perfected the appeal, apparently in reliance on the judge's report

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as a vehicle for review. See Mass.R.A.P. 5, as amended, 378 Mass. 930 (1979). In light of that reliance, fairness requires that we treat the claims against Carroll and Barclay as if they were here on appeal, with Alberts assigning as error the unfavorable rulings by the trial judge on the reported questions. Therefore, our answers to the questions affect Alberts's claims against Devine, Carroll, and Barclay.

Reported Question 1. A physician's duty not to disclose confidential information. Until this case, we have not confronted the question whether a patient has a nonstatutory, civil remedy against a physician if the physician, without the patient's consent, makes an out-of-court disclosure of confidential information obtained in the course of the physician-patient relationship. In *Bratt v. International Business Machs. Corp.*, 392 Mass. 508, 467 N.E.2d 126 (1984), although we focused our attention on a different issue--whether the disclosure of medical information concerning an employee to an employer by a company physician violated the employee's statutory right of privacy granted by G.L. c. 214, § 1B--we "recognize[d] a patient's valid interest in preserving the confidentiality of medical facts relayed to a physician." *Id.* at 522, 467 N.E.2d 126. We also quoted with approval in *Bratt* the New Jersey Supreme Court's statement that "[a] patient should be entitled to freely disclose his symptoms and condition to his doctor in order to receive proper treatment without fear that those facts may become public property. Only thus can the purpose of the relationship be fulfilled." *Bratt v. International Business Machs. Corp., supra* at 522-523, 467 N.E.2d 126, quoting *Hague v. Williams*, 37 N.J. 328, 336, 181 A.2d 345 (1962).

[2] We continue to recognize a patient's valid interest in preserving the confidentiality of medical facts communicated to a physician or discovered by the physician through examination. ***66** "The benefits which inure to the relationship of physician-patient from the denial to a physician of any right to promiscuously disclose such information are self-evident. On the other hand, it is impossible to conceive of any countervailing benefits which would arise by according a physician the right to gossip about a patient's health." *Hague v. Williams, supra* at 335-336, 181 A.2d 345. "To foster the best interest of the patient and to insure a climate most favorable to a complete recovery, men of medicine have urged that patients be totally frank in their discussions with their physicians. To encourage the desired candor, men of law have formulated a strong policy of confidentiality to assure patients that only they themselves may unlock the doctor's silence in regard to those private disclosures. The result which these joint efforts of the two professions have produced ... has been urged or forecast *in una voce* by commentators in the field of medical jurisprudence." *Hammonds v. Aetna Casualty & Sur. Co.*, 243 F.Supp. 793, 797 (N.D.Ohio 1965), and authorities cited therein. The Supreme Court of Oregon has recently held that a patient in that State has a civil right of recovery if a physician discloses without privilege confidential information obtained from the patient in the course of the physician-patient relationship. *Humphers v. First Interstate Bank*, 298 Or. 706, 696 P.2d 527 (1985). Patients in Massachusetts deserve no less protection.

Few cases consider the out-of-court physician-patient privilege. "That is undoubtedly ****119** due to the fact that the confidentiality of the relationship is a cardinal rule of the medical profession, faithfully adhered to in most instances, and thus has come to be justifiably relied upon by patients seeking advice and treatment." *MacDonald v. Clinger*, 84 A.D.2d 482, 483, 446 N.Y.S.2d 801 (N.Y.1982). Of the courts that have considered the question, most have held that a patient can recover damages if the physician violates the duty of confidentiality that plays such a vital role in the physician-patient relationship. See *Humphers v. First Interstate Bank, supra; Horne v. Patton*, 291 Ala. 701, 708-709, 287 So.2d 824 (1974); *Simonsen v. Swenson*, 104 Neb. 224, 227, 177 N.W. 831 (1920); *Hague v. Williams, supra* 37 N.J. at 336, 181 A.2d 345; *MacDonald v. Clinger, supra* 84 A.D.2d at 482, 446 N.Y.S.2d 801; ***67** *Hammonds v. Aetna Casualty & Sur. Co., supra* at 802 (Ohio law). Only three decisions have come to our attention in which courts have declined to recognize such a cause of action, and we do not find their reasoning persuasive. See *Logan v. District of Columbia*, 447 F.Supp. 1328, 1335 (D.D.C.1978) (D.C. law); *Collins v. Howard*, 156 F.Supp. 322, 324 (S.D.Ga.1957) (Georgia law); *Quarles v. Sutherland*, 215 Tenn. 651, 657, 389 S.W.2d 249 (1965).

[3] The courts that have imposed on physicians a duty of confidentiality and have recognized a cause

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131 (1929). *Kaufmann v. Sheehan,* 707 F.2d 355, 358-359 (8th Cir.1983). However, this case does not involve the propriety of the United Methodist Church's refusal to reappoint Alberts as minister of the Old West Church. Nor does this case involve Alberts's qualifications to serve as a minister. A controversy concerning whether a church rule grants religious superiors the civil right to induce a psychiatrist to violate the duty of silence that he owes to a patient, who happens to be a minister, is not a dispute about religious faith or doctrine nor about church discipline or internal organization. Nor is a controversy concerning the causal connection between a psychiatrist's disclosure of confidential information and a minister's failure to gain reappointment such a dispute.

[15][16] Even if the First Amendment precludes judicial inquiry as to whether a church rule provided that Carroll and Barclay had the right to seek medical information from Alberts's psychiatrist, so that the court must assume in Carroll's and Barclay's favor the existence of a church rule granting that right, it does not follow that the religion clauses preclude the imposition of liability on Carroll and Barclay. Although the freedom to believe "is absolute," the freedom to act "cannot be. Conduct remains subject to regulation for the **123 protection of society. The freedom to act must have appropriate definition to preserve the enforcement of that protection." *Attorney Gen. v. Bailey,* 386 Mass. 367, 375, 436 N.E.2d 139 (1982), quoting *Cantwell v. Connecticut,* 310 U.S. 296, 303-304, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). See *Braunfeld v. Brown,* 366 U.S. 599, 603, 81 S.Ct. 1144, 1146, 6 L.Ed.2d 563 (1961); *Reynolds v. United States,* 98 U.S. (8 Otto) 145, 164, 25 L.Ed. 244 (1878).

[17] A law, legislatively or judicially created, that would regulate or prevent religiously motivated conduct does not violate the First Amendment if the State's interest in the law's enforcement outweighs the burden that the law imposes on the free exercise of religion. A determination of constitutionality requires a balancing of the competing interests. See *Wisconsin v. Yoder,* 406 U.S. 205, 215-229, 92 S.Ct. 1526, 1533-1540, 32 L.Ed.2d 15 (1972). *74 *Prince v. Massachusetts,* 321 U.S. 158, 164-170, 64 S.Ct. 438, 441-444, 88 L.Ed. 645 (1944). *Cantwell v. Connecticut, supra* 310 U.S. at 307, 60 S.Ct. at 905. *Catholic High School Ass'n of the Archdiocese of N.Y. v. Culvert,* 753 F.2d 1161, 1169 (2d Cir.1985). Obviously, the imposition of liability on Carroll and Barclay for inducing a violation of Devine's duty to Alberts would inhibit such conduct. We must determine whether such inhibition burdens the free exercise of religion by Carroll, Barclay, or the United Methodist Church, and if it does, we must then determine whether the Commonwealth possesses an interest sufficiently compelling to justify the burden. See *Wisconsin v. Yoder, supra. Sherbert v. Verner,* 374 U.S. 398, 403-409, 83 S.Ct. 1790, 1793-1796, 10 L.Ed.2d 965 (1963). *Catholic High School Ass'n of the Archdiocese of N.Y. v. Culvert, supra* at 1171. *Attorney Gen. v. Bailey, supra* 386 Mass. at 375, 436 N.E.2d 139.

[18][19] As we have observed, churches have a significant interest in assessing the qualifications of their ministers, and in appointing and retiring them. But, in view of the freedom that ecclesiastical authorities and church members have to determine who the church's ministers will be, and in view of the numerous sources of relevant information available to assist those making such determinations--other than information available only from a minister's physician--a rule that prevents interference with physician-patient relationships will have little impact on the free exercise of religion. On the other hand, as we have discussed earlier in this opinion, public policy strongly favors judicial recognition of a physician's duty to honor the confidentiality of information gained through the physician-patient relationship. We conclude, therefore, that even if it be assumed, without inquiry, that the Book of Discipline or other rule of the United Methodist Church provides that Carroll and Barclay had a right, or even a duty, to seek medical information about Alberts from Devine, the First Amendment does not preclude the imposition of liability on those defendants. We also conclude that the First Amendment does not bar judicial inquiry into the church's proceedings culminating in Alberts's failure to gain reappointment.

[20] *Reported Question 4. Protective order.* The final reported question asks: "[w]hether the [judge] properly invoked the First Amendment in entering the protective order for defendants *75 Barclay and Carroll." We answer that question "no." As we have stated, the First Amendment does not preclude civil courts from examining the proceedings that resulted in Alberts's failure to gain reappointment as

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EXHIBIT 2

C

Appellate Court of Illinois,
First District, Third Division.

Duane F. AMATO, Plaintiff-Appellant,
v.
Pastor Vernon C. GREENQUIST, an individual, Bishop Sherman Hicks, an individual, Metropolitan Chicago Synod of the Evangelical Lutheran Church of America, an Illinois not-for-profit corporation, Evangelical Lutheran Church in America a/k/a ELCA, a foreign not-for-profit corporation, and Peace Lutheran Church of Lake Zurich, an Illinois not-for-profit corporation, Defendants-Appellees.

Nos. 1-94-2763, 1-95-0350.

April 16, 1997.

Plaintiff sued pastor, bishop, and institutional hierarchy of church, alleging intentional infliction of emotional distress, breach of fiduciary duty, common- law fraud, and psychotherapy malpractice. The Circuit Court, Cook County, Kenneth Gillis, J., dismissed all counts but fraud for failure to state claim. Plaintiff appealed. The Appellate Court, Leavitt, J., held that: (1) complaint did not state justiciable claim for psychotherapy malpractice against pastor; (2) contentions that pastor and bishop breached duties as fiduciaries were not actionable; (3) plaintiff stated claim against pastor for intentional infliction of emotional distress; and (4) plaintiff could not establish church defendants' liability under respondeat superior theory.

Affirmed in part, vacated in part, and remanded.

West Headnotes

[1] Appeal and Error ⇐893(1)
30k893(1) Most Cited Cases

[1] Appeal and Error ⇐895(2)
30k895(2) Most Cited Cases

On motion to dismiss for failure to state claim, appellate court reviews allegations of complaint de novo accepting as true all well-pleaded allegations and drawing all reasonable inferences in light most favorable to plaintiff. S.H.A. 735 ILCS 5/2-615.

[2] Appeal and Error ⇐863
30k863 Most Cited Cases

Appellate court will uphold dismissal for failure to state claim only if it clearly appears that no set of facts can be proved which will entitle plaintiff to recover. S.H.A. 735 ILCS 5/2-615.

[3] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

When doctrinal controversy is not involved in dispute between claimant and church, First Amendment does not require judicial deference to religious authority; courts may entertain lawsuits alleging tortious conduct by churches and their employees, so long as resolution does not require interpretation of either religious doctrine or religious duties imposed on individual by particular church. U.S.C.A. Const.Amend. 1.

[4] Action ⇐6
13k6 Most Cited Cases

Appellate Court would not determine justiciability of malpractice claims against pastor and bishop based upon nomenclature used in entitling counts. U.S.C.A. Const.Amend. 1.

[5] Religious Societies ⇐30
332k30 Most Cited Cases

Plaintiff's claim for psychotherapy malpractice, alleging that pastor, while counselling plaintiff in accordance with duties established by church doctrine, breached his duty as professional marriage counselor by trying to hide his affair with plaintiff's wife, did not state claim that could be addressed by court, as court would be required to investigate nature of counseling, as well as training of counsellors, within particular church. U.S.C.A. Const.Amend. 1.

[6] Religious Societies ⇐30
332k30 Most Cited Cases

Allegations of fraud were not germane to count alleging professional negligence of pastor, be it negligence of psychotherapist or cleric.

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[7] **Religious Societies** ⚿30
332k30 Most Cited Cases

Allegation regarding pastor's conspiracy with plaintiff's wife to undermine marriage had nothing to do with pastor's counselling relationship with plaintiff, and, thus failed to state claim for professional negligence.

[8] **Religious Societies** ⚿30
332k30 Most Cited Cases

Plaintiff's allegations of psychotherapy malpractice against bishop did not properly allege counselling relationship, let alone actionable duty; in response to plaintiff's request that bishop render counselling services to him as result of pastor's counselling plaintiff while secretly having affair with plaintiff's wife, bishop responded that plaintiff should seek professional counselling, and disciplinary action that bishop subsequently did or did not take with regard to pastor was outside any relationship he had with plaintiff. U.S.C.A. Const.Amend. 1.

[9] **Fraud** ⚿7
184k7 Most Cited Cases

Fiduciary relationship is recognized to exist when special confidence is reposed in one who, by reason of such confidence, must act in good faith and with due regard to interests of person reposing such confidence.

[10] **Fraud** ⚿7
184k7 Most Cited Cases

Fiduciary relationship may exist as a matter of law, or it may be result of more informal relationship, and be moral, social, domestic or even personal in its origin.

[11] **Religious Societies** ⚿30
332k30 Most Cited Cases

Contention that cleric has breached his duty as fiduciary to parishioner is not actionable; when parishioner lodges such a claim, religion is not merely incidental to parishioner's relationship with cleric, it is foundation for it, and fiduciary relationship is inescapably premised upon cleric's status as expert in theological and spiritual matters. U.S.C.A. Const.Amend. 1.

[12] **Damages** ⚿50.10
115k50.10 Most Cited Cases

To plead claim for intentional infliction of emotional distress, plaintiff must allege facts establishing that defendant's conduct was extreme and outrageous and that defendant either intended his conduct to inflict severe emotional distress or knew that there was high probability that conduct would cause such distress, and that conduct in fact caused severe emotional distress.

[13] **Damages** ⚿50.10
115k50.10 Most Cited Cases

Complaint for intentional infliction of emotional distress may stand only where conduct complained of is so outrageous as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civil community.

[14] **Damages** ⚿50.10
115k50.10 Most Cited Cases

On claim for intentional infliction of emotional distress, court may assess outrageousness of defendant's actions based in part upon defendant's improper use of position of power which gives him ability to adversely affect plaintiff's interests.

[15] **Damages** ⚿149
115k149 Most Cited Cases

Plaintiff adequately stated claim against pastor for intentional infliction of emotional distress; plaintiff alleged that he sought counselling concerning his failing marriage, that pastor intentionally acted in extreme and outrageous manner by counselling plaintiff while pastor was involved with plaintiff's wife and by counselling in manner designed to covertly undermine couple's marriage, and that as result of pastor's actions he had suffered depression, despair, insomnia, anxiety, nervousness and emotional trauma.

[16] **Master and Servant** ⚿302(2)
255k302(2) Most Cited Cases

[16] **Master and Servant** ⚿302(6)
255k302(6) Most Cited Cases

Under doctrine of respondeat superior, employer may be liable for torts of his servant when such acts

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Pastor Greenquist and that Greenquist held himself out as a professional counsellor. Yet, the complaint also states that Greenquist "encouraged [congregants] to seek counselling from the church and its clergy before seeking secular professionals in order 'to promote unity, closeness and interdependence within members of the congregation' (in accordance with stated church doctrine)." Furthermore, Greenquist "was acting * * * in furtherance of stated church doctrine when he counselled" the plaintiff. The plaintiff then lodges six specific charges against Pastor Greenquist, all premised on the allegation that the Pastor "failed to exercise ordinary care" and "wilfully defrauded and deceived" the plaintiff. According to the complaint the Pastor (1) coconspired with the plaintiff's wife to undermine the marriage; (2) did not divulge his conflict of interest; (3) failed to refer the plaintiff to a neutral counsellor; (4) rendered bad advice to further his own goals and sexual gratification; (5) divulged confidences to Linda; and (6) disregarded "all indicia of the transference and counter transference phenomena which normally occurs in the course of psychotherapy."

[6][7] We note, initially, that each of these allegations are based, in part, on an underlying allegation of fraud. The trial judge has permitted the plaintiff to replead a separate fraud count, the allegations of which essentially duplicate the ones above. Fraud is a distinct cause of action in Illinois. To that extent, we do not believe the allegations of fraud are germane to a count alleging professional negligence, be it that of a psychotherapist or a cleric. Cf. *Williams v. Chicago Osteopathic Health Systems,* 274 Ill.App.3d 1039, 1048, 211 Ill.Dec. 151, 654 N.E.2d 613 (1995) (recognizing differing elements and standard of proof between medical malpractice and fraud.) Therefore, we address the count for malpractice solely to the extent it alleges that the Pastor breached a duty of care owed to the plaintiff. Furthermore, the allegation regarding the Pastor's conspiracy with Linda also has nothing to do **452 ***267 with the Pastor's counselling relationship with the plaintiff, and, hence, we find that it fails to state a claim for professional negligence.

As to the remaining allegations, were this case to involve directly the sexual relationship between cleric and counsellee, we might be inclined to consider the reasoning of the court in *MacDonell,* 677 A.2d. at 263, which, as noted, permitted a claim of clergy malpractice, stressing the "bright line between counselling culminating in a sexual relationship with a counsellee *929 and other types of harm allegedly resulting from a failed counselling relationship." As in *Bivin,* the *MacDonell* court considered that when sexual misconduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involved "no impenetrable barrier." *MacDonell,* 677 A.2d at 264.

However, unlike in *Bivin* and *MacDonell,* the sexual liaison here, while impacting upon the plaintiff, involved his wife, who is not a plaintiff. Furthermore, to the extent the plaintiff alleges mishandling of the transference phenomenon, the Pastor did so with regard to Linda. Indeed, the plaintiff concedes in his brief that the Pastor's sexual liaison with Linda is not the focal point of his claim of negligent counselling.

In essence, the plaintiff's complaint alleges that Pastor Greenquist, while counselling him in accordance with duties established by church doctrine, breached his duty as a professional marriage counsellor. We believe there is an inherent contradiction in this core allegation which exposes the problem with claims of malpractice against members of the clergy, even when couched in terms of professional or psychotherapy malpractice.

Nonetheless, the plaintiff urges, relying on the allegations of his complaint in conjunction with the decision in *Horak v. Biris,* 130 Ill.App.3d 140, 85 Ill.Dec. 599, 474 N.E.2d 13 (1985), that Pastor Greenquist was required "to exercise the same professional care expected of other professionals in the field of psychotherapy." In *Horak,* a licensed social worker counselled the plaintiff on marital matters while he was engaged in a sexual relationship with the plaintiff's wife. The court recognized an action for social worker malpractice. However, central to the decision in that case was that the defendant held himself out as a social worker licensed by the State of Illinois. As such, he was required to exercise the degree of skill possessed by members of that profession.

The plaintiff's complaint does not allege that Greenquist is either a licensed social worker, licensed psychotherapist or a licensed marriage counsellor or that he held himself out as one.

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Indeed, during the time when the plaintiff's claims accrued, the statutes in force authorizing the licensing of and the establishment of standards for practitioners of these professions specifically exempted religious practitioners from their ambit, so long as they do not hold themselves out as qualified under the acts. E.g. 225 ILCS 55/15(d) (West 1994) (Marriage and Family Therapy Licensing Act); 225 ILCS 20/4(2) (West 1994) (Clinical Social Work and Social Work Practice Act). Furthermore, to the extent Illinois has, subsequent to the alleged actions ***930** involved in this case, statutorily recognized an action for sexual exploitation within the confines of a psychotherapeutic relationship, it has limited recovery under that act to the victims of the exploitation and, in addition, excluded "counselling of a religious nature" from the definition of "psychotherapy." 740 ILCS 140/1(e) (West 1992) (Sexual Exploitation in Psychotherapy Act).

Finally, although the plaintiff does allege that Greenquist mishandled psychotherapeutic principles, such as the transference phenomenon, he does not allege that Pastor Greenquist had either formal training in and knowledge of these principles or any counselling training outside of his training by the defendant ELCA. Indeed, the plaintiff's allegations presuppose that a Pastor is under the same ethical obligations the State imposes upon therapists it licenses. We cannot impose such obligations on a church within the constricts of the first amendment. That is the holding of *Baumgartner,* in which the court refused to impose the standards of the licensed medical professional upon a Christian Science practitioner. Accordingly, we will not uphold the plaintiff's complaint based upon the *Horak* decision.

****453 ***268** The plaintiff also urges that our supreme court's decision in *Corgan v. Muehling,* 143 Ill.2d 296, 158 Ill.Dec. 489, 574 N.E.2d 602 (1991), permits his claims. The plaintiff contends that, as in *Corgan,* because he alleged that Greenquist held himself out as a "professional counsellor," Greenquist may be held accountable for his negligent counselling, generally. *Corgan* involved the allegations of a plaintiff involved in a sexual relationship with the defendant psychologist. Even accepting *Corgan* for the broad proposition advanced by the plaintiff, we note again that the allegations of the complaint indicate that Pastor Greenquist's training as a counsellor was solely under the aegis of ELCA and was, thus, religious in nature.

The complaint does allege that the Pastor held himself out as a "skilled professional" in matters of counselling, but it also admits that the Pastor counselled in accordance with stated church doctrine and encouraged members to seek counselling within the church "before seeking secular professionals." The plaintiff alleged that Pastor Greenquist provided marriage counselling to him in accordance with church doctrine. That is not the same as a situation in which a plaintiff alleges that "a particular church * * * also offer[s] purely secular counselling as a service to members of its congregation or to a broader segment of the population in need of such services." *Dausch v. Rykse,* 52 F.3d 1425, 1433 (7th Cir. 1994). We believe that given the particular facts alleged by the plaintiff, a trial court would be required to investigate the nature of counselling, as well as the training ***931** of counsellors, within this particular church. That is not permitted in Illinois (*Baumgartner v. First Church of Christ, Scientist,* 141 Ill.App.3d 898, 96 Ill.Dec. 114, 490 N.E.2d 1319 (1986)), or in any other jurisdiction. See *Dausch,* 52 F.3d at 1432 n. 2.

This area requires, as the *MacDonell* court recognized, that a bright line be drawn between those claims actionable and those which impinge on first amendment guarantees. In the factual context of this case, we believe that "line" requires us to uphold the trial judge's ruling. At core, the plaintiff has alleged that Pastor Greenquist is a very bad counsellor who tried during counselling sessions to hide an illicit affair with the plaintiff's wife. Yet, according to the complaint, he was performing the counselling itself in the context of duties imposed upon him as a cleric by church doctrine. And, as the plaintiff concedes, this case is about the counselling. We believe that to permit the plaintiff's claims would effectively erase the bright line espoused by the *MacDonell* court, a line we agree must be drawn. Accordingly, the trial judge did not err in dismissing the count for psychotherapy malpractice against Pastor Greenquist.

[8] As to the plaintiff's allegations of malpractice against Bishop Hicks, we hold that the plaintiff has not properly alleged a counselling relationship, let alone an actionable duty. In response to the

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plaintiff's request that Bishop Hicks render counselling services to him as a result of Pastor Greenquist's activities, the Bishop responded that the plaintiff should seek professional counselling. The plaintiff fails to allege any facts that support a conclusion that this was a "counselling" session. Rather, his complaint centers on the Bishop's refusal to counsel him. First, we believe that the allegations clearly indicate that the plaintiff approached the Bishop within the context of his duties as the head of the church. As such, the claim is clearly non-justiciable. Furthermore, we fail to perceive how the Bishop's response is actionable, even if he was acting in order to effect damage control, as the plaintiff alleges. We also conclude that the disciplinary action that Bishop Hicks subsequently did or did not take with regard to Pastor Greenquist is, as regards this case, outside any relationship he had with the plaintiff. The trial judge properly dismissed the psychotherapy malpractice claim against Bishop Hicks.

The plaintiff also alleges that both Pastor Greenquist and Bishop Hicks breached a fiduciary duty owed to the plaintiff. In the count against the Pastor, the plaintiff assigns, as breaches of the duty, the same allegations, save the mishandling of the transference phenomenon, as he did in his count for malpractice. That is, that the Pastor "wilfully defrauded" him by undermining the marital relationship; divulging confidences to Linda; not revealing his conflict of **454 ***269 interest; and rendering advice against the plaintiff's best interest.

[9][10] *932 Under Illinois law, a fiduciary relationship is recognized to exist when "a special confidence [is] reposed in one who, by reason of such confidence, must act in good faith and with due regard to the interests of the person reposing such confidence." *Estate of Osborn,* 128 Ill.App.3d 453, 455, 83 Ill.Dec. 694, 470 N.E.2d 1114 (1984). Such a relationship may exist as a matter of law, "or it may be the result of a more informal relationship--moral, social, domestic or even personal in its origin." *Estate of Osborn,* 128 Ill.App.3d at 455, 83 Ill.Dec. 694, 470 N.E.2d 1114.

Applying this definition in *Dausch v. Rykse,* the United States Court of Appeals for the Seventh Circuit held that Illinois law, in conjunction with the first amendment, prohibited the recognition of an action for breach of fiduciary duty premised upon the counselling relationship between a cleric and a church member with whom the cleric had been sexually involved. *Dausch,* 52 F.3d at 1438.

The *Dausch* court reasoned that in order to determine such a duty would require the court

> "to define a reasonable duty standard and to evaluate [the cleric's] conduct against that standard, an inquiry identical to that which Illinois has declined to undertake in the context of a clergy malpractice claim and one that is of doubtful validity under the Free Exercise Clause. It is clear that Illinois would not entertain a claim for breach of fiduciary obligation under the circumstances alleged here." *Dausch,* 52 F.3d at 1438.

However, other jurisdictions which have faced this question have had "no difficulty" in concluding that a cleric's sexual activity with a counsellee or the spouse of a counsellee may be used by the counsellee as the basis to state a cause of action for breach of fiduciary duty. *Destefano v. Grabrian,* 763 P.2d 275, 289 (Colo.1988). See also *MacDonell,* 677 A.2d at 264-65; *Sanders v. Casa View Baptist Church,* 898 F.Supp. 1169 (N.D.Tex.1995).

[11] Although we agree with the courts in these jurisdictions that the relationship between a cleric and parishioner reflects many aspects of a fiduciary one, we hold that under Illinois law, a contention that a cleric has breached his duty as a fiduciary is not actionable. We believe that when a parishioner lodges such a claim, religion is not "merely incidental" to a plaintiff's relationship with a defendant, "it [is] the foundation for it." *H.R.B. v. J.L.G.,* 913 S.W.2d 92, 99 (Mo.App.1995). The fiduciary relationship is inescapably premised upon the cleric's status as an expert in theological and spiritual matters. The plaintiff's complaint confirms this.

In lodging his claim for breach of fiduciary duty, the plaintiff alleged that in divulging confidences to the Pastor, he relied on the Pastor's "representations concerning his professionalism, training, *933 skill, and experience, *as well as [his] commitment to God and religion.*" We consider it imprudent for a court to attempt to dissect the secular from the sectarian in this equation. While we would consider unlikely the Pastor's ability to establish that his behavior in this case was religiously

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motivated (cf. *H.R.B.*, 913 S.W.2d at 98-99), the plaintiff's relief lies in other well- recognized causes of action, such as the count alleging intentional infliction of emotional distress, which we reinstate, as well as the fraud count which the trial judge permitted the plaintiff to replead and which repeatedly finds its way into every allegation of both malpractice and breach of fiduciary duty raised by the plaintiff. Thus, we affirm the dismissal of the counts for breach of fiduciary duty as against both Pastor Greenquist and Bishop Hicks. Furthermore, in light of our holding in this regard, we affirm the dismissal of counts seven, nine, twelve and thirteen of the plaintiff's complaint in that they are all claims of respondeat superior against the church defendants arising out of the alleged breaches of fiduciary duty by Pastor Greenquist and Bishop Hicks.

[12] The trial judge also dismissed the plaintiff's count alleging intentional infliction of emotional distress against Pastor Greenquist. In order to plead such a claim, the plaintiff must allege facts establishing that the defendant's conduct was "extreme and **455 ***270 outrageous and that the defendant either intended his conduct to inflict severe emotional distress or knew that there was a high probability that the conduct would cause such distress." The plaintiff also must allege that the conduct, in fact, caused severe emotional distress. *McGrath v. Fahey,* 126 Ill.2d 78, 86, 127 Ill.Dec. 724, 533 N.E.2d 806 (1988).

[13][14] A complaint for intentional infliction of emotional distress may stand "only where the conduct complained of [is] so outrageous 'as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civil community.' " *Pavilon v. Kaferly,* 204 Ill.App.3d 235, 245, 149 Ill.Dec. 549, 561 N.E.2d 1245 (1990) . We may assess the outrageousness of a defendant's actions based, in part, upon a "defendant's improper use of a position of power which gives him the ability to adversely affect the plaintiff's interests." *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1, 22, 180 Ill.Dec. 307, 607 N.E.2d 201 (1992).

[15] The plaintiff alleged that he sought counselling "concerning his failing marriage." Pastor Greenquist acted in an extreme and outrageous manner by counselling the plaintiff while the Pastor was involved with Linda Amato and by counselling in a manner designed to "covertly undermine" the couple's marriage. The plaintiff discovered the relationship between Greenquist and Linda when he found correspondences the two had been exchanging, including *934 Christmas and Valentine's Day cards, as well as "enclosed love letters." Greenquist told the plaintiff that his relationship with Linda was " God's will." The plaintiff concludes that as a result of the Pastor's actions, he has suffered "depression, despair, insomnia, anxiety, nervousness and emotional trauma."

We believe these allegations satisfy the plaintiff's pleading burden. The defendant allegedly used his position to learn confidential information, which he divulged to Linda in an effort to destroy the plaintiff's marriage. The plaintiff has alleged that the Pastor's actions were intentional and that he has suffered various and severe emotional distresses as a result. Cf. *Kolegas,* 154 Ill.2d at 21-25, 180 Ill.Dec. 307, 607 N.E.2d 201. Therefore, we vacate the portion of the trial judge's order dismissing count II of the plaintiff's complaint.

[16] The remaining counts are against the church defendants and sound in respondeat superior based upon the intentional infliction of emotional distress by Greenquist, as well as emotional distress occasioned by Bishop Hicks. Under the doctrine of respondeat superior, an employer may be liable for the torts of his servant when such acts are committed in the course of employment and in furtherance of the employer's business; however, the employer is not liable if the employee commits the acts solely for his own benefit. *Giraldi v. Lamson,* 205 Ill.App.3d 1025, 1030, 150 Ill.Dec. 829, 563 N.E.2d 956 (1990).

[17] As to the church defendants' liability for Pastor Greenquist's actions (counts VIII, X and XIV), we hold that the complaint fails to allege that the Pastor's actions in deceiving and otherwise counselling the plaintiff were for anything other than his own benefit. For instance, paragraph 25 of the common allegations states, "PASTOR did not reject DUANE'S requests for counselling or refer said request to an independent third party* * *, but rather welcomed the opportunity to counsel DUANE in order to further his own personal goals." Furthermore, paragraph 26 of the common allegations states that "PASTOR * * * counselled DUANE against DUANE'S best interests in order to

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EXHIBIT 3

▷

United States District Court,
D. Colorado.

John Dean AYON, Plaintiff,
v.
Reverend Marshall GOURLEY, Archdiocese of Denver, and Most Reverend Charles J. Chaput, His Predecessors and Successors, as Archbishop of the Roman Catholic Archdiocese of Denver, Defendants.

Civ. A. No. 97-S-1936.

July 15, 1998.

Sexual abuse suit was brought against priest and Archdiocese. On defendants' motions to dismiss, the District Court, Sparr, J., held that: (1) First Amendment barred negligent hiring and outrageous conduct claims asserted against Archdiocese, and (2) plaintiff's claims accrued at time of abuse, rather than date of subsequent psychological treatment.

Motions granted.

West Headnotes

[1] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

When court is required to interpret Canon Law or internal church policies and practices, First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Any judicial inquiry into decision of who should be permitted to become or remain Catholic priest necessarily would involve prohibited excessive entanglement with religion. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[3] Religious Societies ⇐30
332k30 Most Cited Cases

Negligent hiring and outrageous conduct claims asserted against Archdiocese by plaintiff who was allegedly abused by priest were precluded as requiring excessive entanglement with, and inquiry into, church policy and doctrine, in violation of Free Exercise and Establishment Clauses. U.S.C.A. Const.Amend. 1.

[4] Damages ⇐50.10
115k50.10 Most Cited Cases

Archdiocese could not be held liable for outrageous conduct, based on its failure to act after allegedly being notified that priest had sexually abused boy, where alleged notice occurred at least two years after abuse complained of by plaintiff.

[5] Estoppel ⇐90(1)
156k90(1) Most Cited Cases

Person whose act is claimed to have been ratified must have been acting on behalf of person benefitted; if actor's actions are in his own behalf, doctrine of ratification is inapplicable.

[6] Religious Societies ⇐30
332k30 Most Cited Cases

Archdiocese did not ratify actions of priest, who allegedly abused plaintiff, absent showing Archdiocese was aware of priest's alleged conduct, or that priest's alleged actions were done with any intent to benefit Archdiocese.

[7] Limitation of Actions ⇐95(4.1)
241k95(4.1) Most Cited Cases

Under Colorado law, plaintiff's claim against priest for sexual abuse accrued at time of abuse, rather than date of subsequent psychological treatment, despite claim that it was treatment that allowed him to acknowledge connection between his psychological problems and abuse. West's C.R.S.A. §§ 13-80- 102, 13-80-108(1).

*1247 Windle Turley, Dallas, TX, Juanita June Benetin, Juanita Benetin, PC, Denver, CO, Joyce Ann Seelen, Seelen & Associates, Denver, CO, for John Dean Ayon, plaintiff.

Gary B. Blum, Walter N. Houghtaling, Christina L. Lindsay, Long & Jaudon, Denver, CO, for Marshall

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particularly persuasive in light of the analysis by federal courts on this issue. [FN1]

> FN1. Likewise, the Court is not inclined to place any emphasis on any of the many other state court cases cited by the parties.

Furthermore, while *Smith* 's neutral principles exception is valid, it is not very helpful under the facts as alleged in this case. Plaintiff's claims rely on general tort liability theories, which do not fit the *1249 description of "valid and neutral law[s] of general applicability." *Smith,* 494 U.S. at 879, 110 S.Ct. 1595. The law at issue in *Smith* was a straightforward prohibition on the possession of certain specified controlled substances. Consequently, the law in that case does not translate well to a situation in which the Defendants are charged with outrageous conduct and negligent hiring and/or supervision. [FN2] Those claims, by definition, require much more subjective judgment on the appropriateness of the conduct than the across-the-board prohibition in *Smith.*

> FN2. The Court notes that Defendant Gourley has not made an argument based on the First Amendment. Consequently, Plaintiff's argument that the First Amendment does not shield claims based on the neutral law providing for the protection of children against sexual abuse is more tenuous when applied to hiring/supervision claims than it would be claims against an individual who is actually accused of perpetrating the abuse.

Consequently, the Court must focus its analysis on the claims against these Defendants and move directly to the issue of whether considering those claims would violate either the Free Exercise clause or the Establishment clause.

[1][2] "It is well-settled that when a court is required to interpret Canon Law or internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion." *Isely v. Capuchin Province,* 880 F.Supp. 1138, 1150 (E.D.Mich.1995), citing *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) and numerous other cases. "The foregoing cases make clear that any inquiry into the decision of who should be permitted to become or remain a priest necessarily would involve prohibited excessive entanglement with religion." *Id.*

"[A]ny inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems discussed above, which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs." *Schmidt v. Bishop,* 779 F.Supp. 321, 332 (S.D.N.Y.1991). The Court has also considered *Doe v. Hartz,* 970 F.Supp. 1375, 1431 (N.D.Iowa 1997) which found that "who may become or remain a priest must, almost inevitably involve an inquiry into church doctrine or policies, barring a negligent hiring or retention claim on First Amendment grounds." That court also held that it was premature to dismiss the negligent supervision claim prior to the summary judgment stage because the pleadings were inadequate to establish excessive entanglement.

In addition to the Colorado caselaw with which the Court has already dealt, Plaintiff relies on *Smith v. O'Connell,* 986 F.Supp. 73 (D.R.I.1997). That court held that it had jurisdiction over the negligent supervision claim as it could be decided based on neutral tort law principles of general application without the need to interpret religious doctrine. It also held that the Free Exercise Clause was not violated by the exercise of such jurisdiction.

The Court notes that the *Smith v. O'Connell* opinion dealt with motions to dismiss which were not directed at specific counts in the voluminous complaints. Consequently, the court dealt with what it perceived to be the plaintiffs "core claims." *Id.* at 75. With regard to the Free Exercise Clause, the Court found that the defendants had not established that religious doctrine would have prevented them from exercising reasonable care to preclude the sexual abuse of children. In dealing with the Establishment Clause, the court again reiterated that the motions were not directed at particular claims but found that it was "unlikely" that exercising jurisdiction over the case would cause excessive entanglement because no interpretation of religious doctrine appeared

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Consequently, Plaintiff's claim against the Archdiocese Defendants for breach of fiduciary duty is dismissed for failure to state a claim.

Motions for Summary Judgment

Statute of Limitations

All Defendants have moved for summary judgment on the basis of the statute of limitations. Granting summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions, or affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Redmon v. United States,* 934 F.2d 1151, 1155 (10th Cir.1991); *Devery Implement Company v. J.I. Case Company,* 944 F.2d 724, 726 (10th Cir.1991); *Ash Creek Mining Co. v. Lujan,* 934 F.2d 240, 242 (10th Cir.1991); *Continental Casualty Co. v. P.D.C., Inc.,* 931 F.2d 1429, 1430 (10th Cir.1991).

Summary judgment may be granted if the court concludes that no "rational trier of fact" could find for the nonmoving party based on the showing made in the motion and response. *Matsushita Electric Industrial Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). After the moving party has come forward with the motion showing no issue of fact for trial, the party resisting a summary judgment motion must "come forward with specific facts showing that there is a genuine issue for trial." *Id.* The finding of no factual issue must be based upon the record as a whole. *Id.*

It is the nonmoving party's burden to show that there are genuine issues of material fact to be determined. *Celotex Corp. v. Catrett,* 477 U.S. 317, 320, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The court must view the evidence and its reasonable inferences in the light most favorable to the party who opposes the motion for summary judgment. *Palermo v. First National Bank and Trust Co.,* 894 F.2d 363, 365 (10th Cir.1990). Evidence that is merely colorable or not significantly probative is inadequate to withstand a summary judgment motion. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 249, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Redmon,* 934 F.2d at 1155. Immaterial factual disputes will not defeat a motion for summary judgment. *Palermo,* 894 F.2d at 366; *Anderson,* 477 U.S. at 247-48, 106 S.Ct. 2505.

[7] The arguments regarding the summary judgment issue have been clarified somewhat by oral argument on the motions. Plaintiff has conceded that the two year statute of limitations set forth in C.R.S. § 13-80-102 applies to the claims against the Archdiocese Defendants. Defendant Gourley appears to have conceded that the six year statute of limitations in C.R.S. § 13-80-103.7 would apply if it is found that Plaintiff's cause of action did not accrue until after that statute took effect in July 1993. It also appears that the parties have agreed that the real issue on the statute of limitations is when the cause of action accrued. If the cause of action accrued at the time of the alleged events at issue, the statute will have run on all of Plaintiff's claims. If the cause of action did not accrue until July 1997, when Plaintiff started treatment with his current treating psychologist, Dr. James Shenk, ***1253** the statute had not yet run when this action was filed in September 1997.

The statute that defines the accrual of causes of actions is C.R.S. § 13-80-108(1). It provides that "a cause of action for injury to person ... shall be considered to accrue on the date, both the injury and its cause are known or should have been known by the exercise of reasonable diligence." The parties' arguments on this issue are not complicated. Defendants argue that Plaintiff has made admissions which establish conclusively that he knew or should have known of the injury and its cause at the time of the alleged abuse. Plaintiff argues that there is a genuine issue of material fact on whether he understood the injury and its cause at the time of the alleged incidents or only after he started treatment with Dr. Shenk.

The parties agree that the case which is most informative on the issue of accrual of this type of cause of action is *Cassidy v. Smith,* 817 P.2d 555 (Colo.App.1991). That case involved sisters who brought an action against a former friend of the family for claims based on his alleged sexual abuse of the sisters. The defendant moved to dismiss based on the statute of limitations but the plaintiffs argued that "they were unaware of the wrongful nature of the acts, the resulting damage from the acts, and the causal relationship between the two." *Id.* at 557. While defendant argued that the causes accrued at the time the plaintiffs reached the age of 18, the plaintiffs contended that they did not

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discover the essential elements until at least 10 years later when they were confronted by their mother.

The court in *Cassidy* considered C.R.S. § 13-80-108 in light of the affidavits filed by the plaintiffs and at least one treating psychologist. Those affidavits revealed that "from the time the incidents began, there was a negative impact upon their emotional well-being which indicated psychological problems and guilt were being caused by this relationship." *Id.* One plaintiff admitted experiencing "pain and despair, alienation from her peers, parents and sisters" and leading a "divided and compartmentalized life." *Id.* Both knew that the activity was improper, inappropriate and illegal at the time it occurred and both admitted feeling bewilderment, shame, anger and/or confusion at the time of the activity. The court also remarked on the fact that both plaintiffs were college educated and had spent a significant period of time away from the defendant.

The court's conclusion was that there was no genuine issue of material fact regarding the timing of the plaintiffs' knowledge of the injury and its cause. "[W]e conclude, as a matter of law, that plaintiffs were aware of the wrongful nature of defendant's acts and that they had sufficient knowledge concerning the existence of resulting psychological harm that the statute of limitations began to run when they achieved their majority." *Id.* at 558.

Plaintiff's argument on this subject is basically that he repressed knowledge of the injury and its cause until he established a therapy relationship with Dr. Shenk. The affidavit of Dr. Shenk, attached to Plaintiff's response to Defendants' motions as Exhibit 2, states that there were several reasons for this repression. One was the threats made to Plaintiff by Gourley. Another was Gourley's status as a "high-profile community leader" and "spiritual authority." Dr. Shenk states that the repression caused Plaintiff to be unable to acknowledge and address the reality that he had been sexually abused and harmed by that abuse. Dr. Shenk further states that these circumstances led Plaintiff to blame himself rather than attribute blame to Gourley and that only psychological treatment in June or July of 1997 allowed him to acknowledge the connection between his psychological problems and the abuse by Gourley.

Defendants' argument on this subject is based on references to specific evidence which they contend meets the standard set forth in *Cassidy*. They argue that this evidence shows that Plaintiff did acknowledge the assaults and resulting harm prior ***1254** to June or July 1997. This evidence includes:

1. A statement on page 4 of the original complaint which says that Plaintiff has been continually subject to coercion, duress, religious duress, mental infirmity, disability and unsound mind "from the dates of the abuse to the present, and largely because of his abuse." [FN4]

> FN4. Although the Court's Order dated July 10, 1998 allowed Plaintiff to amend his complaint, that Order also stated that the factual statements in the original complaint would be considered judicial admissions.

2. A statement in paragraph 13 of Plaintiff's affidavit that he "was embarrassed, humiliated, ashamed and fearful about what happened."

3. A statement in paragraph 12 of Plaintiff's affidavit that said Gourley threatened to kill Plaintiff and his mother if Plaintiff told anyone what happened.

4. A statement in the report of Plaintiff's treating psychologist, Dr. Shenk, dated August 4, 1997, that Plaintiff "had been" reluctant to pursue the issues regarding Gourley "because his grandmother likes the priest, as does his aunt." [FN5]

> FN5. This report is attached to Gourley's reply brief in support of his motion for summary judgment as Exhibit B.

5. A statement on page 2 of the statement from Plaintiff's Press Release which stated that while he was "unable to acknowledge the sexual assault and abuse by Gourley as such," he was always "cognizant of [those] actions."

6. A statement on page 7 of the original complaint that Gourley's actions resulted in the infliction of

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EXHIBIT 4

928 P.2d 1315
20 Colorado Journal 1902
(Cite as: 928 P.2d 1315)

Supreme Court of Colorado,
En Banc.

BEAR VALLEY CHURCH OF CHRIST, a Colorado corporation, Petitioner/Cross-Respondent,
v.
Denise DeBOSE, and J.D.B., a minor child, by and through his parent and next friend, Denise DeBose, Respondents/Cross-Petitioners,
and
Homer Wolfe, Respondent/Cross-Petitioner.

No. 95SC42.

Dec. 23, 1996.
Rehearing Denied Jan. 13, 1997.

Child brought action against church and minister, alleging that minister engaged in pattern of inappropriate touching during child's counseling sessions. The District Court, City and County of Denver, Herbert L. Stern, III, J., entered judgment in favor of child, and appeal was taken. The Court of Appeals, 890 P.2d 214, reversed and remanded, and certiorari was granted. The Supreme Court, Lohr, J., held that: (1) free exercise clause of First Amendment did not provide defense to minister; (2) free exercise clause of First Amendment did not protect church from liability; (3) expert testimony concerning minister's alleged examination of another young counselee's genitals was relevant; (4) testimony concerning minister's use of therapeutic massage with young counselees was not directed toward establishing impermissible claim for clergy malpractice; and (5) whether jury verdicts were inconsistent or duplicative was not preserved for review.

Reversed and remanded with instructions.

West Headnotes

[1] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[1] Religious Societies ⇐30
332k30 Most Cited Cases

Free exercise clause of First Amendment did not provide minister with defense to tort claims arising when he allegedly engaged in pattern of inappropriate touching during child's counseling sessions, where minister never asserted religious belief for his utilization of massage techniques with counselees. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies ⇐30
332k30 Most Cited Cases

Free exercise clause of First Amendment did not protect church from liability with regard to its actions in hiring, supervising, disciplining and ultimately discharging minister who allegedly engaged in pattern of inappropriate touching during child's counseling sessions. U.S.C.A. Const.Amend. 1.

[3] Evidence ⇐512
157k512 Most Cited Cases

In action against church based on minister's alleged pattern of inappropriate touching during child's counseling sessions, expert testimony concerning minister's alleged examination of another young counselee's genitals was relevant and properly admitted on question of whether church had requisite notice to prevent reasonably foreseeable harm to child.

[4] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[4] Religious Societies ⇐31(5)
332k31(5) Most Cited Cases

Testimony calling into question validity of minister's beliefs concerning efficacy of touching during counseling session was not barred by First Amendment in action arising when minister allegedly engaged in pattern of inappropriate touching during child's counseling sessions, where minister never presented jury with religious basis for his use of massage techniques with counselees, but rather explained his use of massage in terms of secular rationale. U.S.C.A. Const.Amend. 1.

[5] Religious Societies ⇐31(5)

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332k31(5) Most Cited Cases

In action against church and minister based on minister's alleged pattern of inappropriate touching during child's counseling sessions, testimony concerning minister's use of therapeutic massage with young counselees was not directed toward establishing impermissible claim for clergy malpractice, but instead potentially supported claim that church should have been aware that minister was utilizing counseling techniques with young boys that did not conform with church's own counseling expectations. U.S.C.A. Const.Amend. 1.

[6] Evidence ⇐512
157k512 Most Cited Cases

Expert testimony that "nudity or partial nudity" is "inappropriate in the pastoral relationship" was not impermissibly directed to professional standard of care for professional counselors in action against church and minister arising when minister allegedly engaged in pattern of inappropriate touching during child's counseling sessions; testimony was properly received as relevant to notice and reasonably foreseeable harm.

[7] Appeal and Error ⇐218.2(3.1)
30k218.2(3.1) Most Cited Cases

[7] Appeal and Error ⇐241
30k241 Most Cited Cases

Whether jury verdicts were inconsistent or duplicative in action against church and minister based on minister's alleged pattern of inappropriate touching during child's counseling sessions was not preserved for review, where church and minister did not enter objections to verdict forms or instructions, prior to submission to jury, on basis that instructions allowed jury to assess inconsistent or duplicative damages, and instead raised issue of duplicative for inconsistent verdicts for first time in course of postverdict motions. Rules Civ.Proc., Rule 51.

[8] Appeal and Error ⇐216(1)
30k216(1) Most Cited Cases

Party cannot seek appellate review of propriety of jury instruction unless counsel tenders such instruction prior to court's presentation of instructions to jury. Rules Civ.Proc., Rule 51.

[9] Appeal and Error ⇐230
30k230 Most Cited Cases

Action against church and minister based on minister's alleged pattern of inappropriate touching during child's counseling sessions was not case in which equitable concerns warranted appellate review of whether jury verdicts were inconsistent or duplicative, despite lack of contemporaneous objection to jury instruction; trial court specifically cautioned jurors to avoid duplicative damages by written jury instructions, and verdict form admonished jury not to include award of damages for which child had been compensated on any other theory.

***1317** Quigley & Bruce, Neil Quigley, Denver, for Petitioner/Cross- Respondent.

Holland, Seelen & Pagliuca, Joyce Seelen, Jeffrey S. Pagliuca, Denver, for Respondents/Cross-Petitioners Denise DeBose, and J.D.B., a minor child.

Hibschweiler & Johnson, James D. Johnson, Sheila E. Barthel, Denver, for Respondent/Cross-Petitioner Homer Wolfe.

Justice LOHR delivered the Opinion of the Court.

This case presents constitutional, evidentiary, and jury instruction issues arising from the trial of tort claims brought against a religious institution and one of its former pastors. The plaintiffs, a mother and her son, filed suit against their former church and the pastor, alleging a variety of tortious offenses stemming from the pastor's conduct during counseling sessions with the son. The trial court allowed a jury to consider the claims, and the jury returned several verdicts for the plaintiffs. In a divided opinion, the Colorado Court of Appeals reversed the judgment entered on the verdicts and remanded the case for a new trial. *DeBose v. Bear Valley Church of Christ,* 890 P.2d 214, 218, 231 (Colo.App.1994). We granted certiorari and now reverse the judgment of the court of appeals and remand with directions to reinstate the trial court's judgment.

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FN4. Sanderson so testified despite admitting that he was aware of Mrs. Wygal's express concern that her son might be the victim of sexual molestation.

The initial meeting in May of 1987 resulted in a meeting in June or July of 1987, where Wygal and his wife, Mary Wygal, met with Wolfe and the Bear Valley elders. The Wygals testified that the June or July of 1987 meeting served as a forum for the Wygals to express their concerns about Wolfe's counseling methods with their son, including Wolfe's questions regarding circumcision. [FN5] Mrs. Wygal testified that Wolfe explained at the June or July of 1987 meeting that there must be a "misunderstanding" because "he was just going to take [the Wygals' child] to a book and show him what his private parts would look like if he was properly circumcised."

FN5. The record reflects that the Wygals also brought the complaints of either one or two other children to the attention of the elders during the meeting in June or July of 1987. Mrs. Wygal testified that her son appeared at the meeting to confront Wolfe with the claims of a friend who asserted that Wolfe asked "to examine him" and "rubbed his back or stroked his back." Mr. Wygal testified that he told Wolfe and the elders that a young male counselee had complained to one of the Wygals' children that "Homer [Wolfe] was rubbing on him all the time." The record is unclear whether the same child made both complaints.

Mr. Wygal testified that the elders asked the Wygals in the June or July of 1987 meeting to allow the elders to investigate the *1319 situation, "[a]nd they assured us that they would take care of it." The elders had already spoken to Wolfe in April of 1986 about the need to focus on "biblical" counseling, as opposed to "professional and medical" counseling. Although Sanderson thought that the Wygals' concerns were a "family issue" and expressed that view to the other elders, Wolfe agreed in testimony that the elders instructed him on August 13, 1987, that "they wanted it clearly to be pastoral counseling and not anything in the clinical area." [FN6]

FN6. The minutes from the elders' August 13, 1987, meeting also include a notation that the "[e]lders postponed the class taught by [Wolfe] to a later date as a result of the recent Wygal situation."

Still, the elders allowed Wolfe to continue counseling those persons who were, in Wolfe's words, "sensitive" or in need of "emotional stability," including the DeBose child. Wolfe asked permission from the elders to continue his counseling in this limited fashion, and remained "open about the amount of counseling that he was doing." Wolfe testified that the elders never asked him about his counseling techniques, even after the Wygals complained, and that he would have been forthright with the elders about his methods if they had.

The Wygals were not satisfied when the elders concluded after the meeting in June or July of 1987 that the Wygals' complaint was simply the product of a "misunderstanding." The Wygals were also concerned that they had never heard back from the elders regarding any resolution of the complaints voiced at the meeting in June or July of 1987. As a result, Mr. Wygal shared his concerns with his teacher at the Bear Valley School of Preaching, Jack Carter, who testified that he in turn spoke with the elders about the Wygals' complaints. Mr. Carter agreed in testimony that the elders responded that they had already placed restrictions on Wolfe "in the areas of sexual activity or sexual counseling."

The Wygals remained dissatisfied with the elders' handling of their complaints. Approximately nine months after the first meeting in June or July of 1987, the Wygals met with the elders and Wolfe again in March of 1988, and discussed, according to one of the elders, "the matter of touching," "[Wolfe's] manner of hugging the [Wygal] boy," and "massaging on the [Wygal boy's] back." Mr. Wygal testified that Wolfe explained to the elders during the March 1988 meeting that it was necessary to examine the genitals of the Wygals' son because if the boy was not properly circumcised, it could cause the boy to be "easily

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FN8. The judgment, as amended, awarded Denise DeBose $11,487.73 against Wolfe and $30,502.39 against Bear Valley. Wolfe was jointly and severally liable for $9,168.73 of DeBose's award against Bear Valley. The DeBose child was awarded $157,835.76 against Wolfe and $458,098.07 against Bear Valley. Wolfe was jointly and severally liable for $75,516.68 of the DeBose child's award against Bear Valley.

On appeal, the Colorado Court of Appeals, with one of the three panel members specially concurring and one dissenting, reversed the judgment and remanded the case for a new trial. *DeBose v. Bear Valley Church of Christ,* 890 P.2d 214, 218, 231 (Colo.App.1994). The court of appeals held that (1) Wolfe was entitled to a jury instruction reflecting his theory that his counseling activities were protected by the First Amendment, *id.* at 221-222, (2) the trial court erred in permitting expert witnesses to testify regarding a professional standard for pastoral counseling, *id.* at 224-28, and (3) the jury awards were either inconsistent or duplicative, *id.* at 222- 24. We then granted certiorari to review the case. [FN9]

FN9. We granted certiorari on the following issues, as reframed by the court:
1. Whether the First Amendment provides a defense to tort claims if the alleged tortious conduct is motivated by a sincerely held religious belief.
2. Whether the court of appeals erred in holding that expert testimony regarding conduct appropriate in counseling a minor was admitted in error.
3. Whether the court of appeals departed from accepted precedent in reversing verdicts where the defendants did not object to the instructions or verdict forms at trial and on appeal.
4. Whether the court of appeals erred in reversing the jury verdicts based on their form.

II. *First Amendment Issues*
A. *First Amendment Defense of Homer Wolfe*

1.

[1] In *Destefano v. Grabrian,* we held that when a defendant raises the Free Exercise Clause of the First Amendment as a defense, "the threshold question is whether the conduct of the defendant is religious." 763 P.2d 275, 283 (Colo.1988) (citing ***1321** *Wisconsin v. Yoder,* 406 U.S. 205, 215- 16, 92 S.Ct. 1526, 1533-34, 32 L.Ed.2d 15 (1972); Note, *Intentional Infliction of Emotional Distress by Spiritual Counselors: Can Outrageous Conduct be "Free Exercise"?,* 84 Mich.L.Rev. 1269, 1302 (1986)). *Destefano* involved a Catholic priest who engaged in an adulterous relationship with a woman to whom the priest was providing marital counseling. 763 P.2d at 279. The woman and her husband asserted tort claims against the priest and his diocese. *Id.* at 277-79. We recognized that the Catholic Church requires its priests to take a vow of celibacy, a principle the defendants acknowledged in their brief by agreeing that "sexual activity by a priest is fundamentally antithetical to Catholic doctrine." *Id.* at 284. Noting that the defendants did not claim that the priest was motivated by a sincerely held religious belief to engage in an adulterous relationship with his counselee, we concluded that "[w]hen the alleged wrongdoing of a cleric clearly falls outside the beliefs and doctrine of his religion, he cannot avail himself of the protection afforded by the first amendment." *Id.* We foresaw, however, that "[i]f the alleged conduct of Grabrian was dictated by his sincerely held religious beliefs or was consistent with the practice of his religion, we would have to resolve a difficult first amendment issue." *Id.*

In *Destefano,* we reversed the summary judgment against the plaintiff on her breach of fiduciary duty claim after determining that neither the priest nor the diocese had argued that the priest's adulterous relationship with the counselee plaintiff was motivated by a sincerely held religious belief. *Id.* at 284. Similarly, we must determine as a threshold matter whether Wolfe or Bear Valley asserted a sincere religious basis for Wolfe's use of therapeutic massage with counselees.

2.

The court of appeals concluded that Wolfe summarized his massaging of counselees as "a technique based upon his desire to facilitate

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through denim jeans and hard fabrics you don't get contact, and the whole thing here is--the purpose of [massage] is to assist in communication."

Evidenced by the testimony presented at trial, Wolfe never asserted a religious belief for his utilization of massage techniques with counselees. [FN11] As noted in the dissent to the court of appeals' decision:

> FN11. Wolfe's attorney, in the course of opening statements, explained Wolfe's use of therapeutic massage techniques in counseling in terms of wholly secular reasons:
> And Homer [Wolfe] did learn in his counseling that sometimes if a person was having trouble communicating with him, he couldn't break through the inhibitions or impediments to be able to communicate or receive communications from the counselee, he also found that hugging or massaging would sometimes be of assistance in helping people to relax and communicate. In fact, I think Homer's testimony will be that he had first discovered the success of massaging as a means of helping people to communicate when his own sons were growing up, and at times, as all adolescents or preadolescents do, go through a period of time when they may feel rebellious or dissatisfied with the acceptance of authority. And there would be times when his sons were not able to respond to efforts to discuss things and bring them out into the open, and he found that if he would massage them, it helped them to relax, and then they were able to communicate in many things that might have otherwise become problems that we hear about so much of teenagers, who not only become rebellious but would act on their rebellion.
> Those circumstances were averted in Homer's family, and he had a very happy married life, and his sons were happy and grew up to be happy men, who now have happy families of their own, because Homer had the wisdom to help them to communicate.
> According to the record, even though he claimed that he could not remember using *1323 massage on the minor plaintiff, Wolfe explained that he used massage to assist his counselees in communicating their problems to him so he could help them. Since he believed human touch to be one of the best methods of communication between people, he chose this type of massage to help counselees relax and, consequently, communicate more freely *with him.*
> Thus, although his ultimate goal in spiritual counseling was for counselees to receive help from God in resolving their problems, by Wolfe's own testimony, his choice to use massage with children had no biblical, doctrinal, or spiritual basis, justification, or underpinning. Despite the religious setting, the described massage technique simply reflects Wolfe's choice of a relaxation and communication method between himself and his counselees.

Id. at 236 (Davidson, J., dissenting) (emphasis in original). [FN12] We agree with those observations and conclusions.

> FN12. In view of our determination that Wolfe never asserted a religious belief for his utilization of massage techniques with young counselees, we will not address several arguments of the parties, including whether (1) Wolfe engaged in religious "conduct" or "belief," *compare DeBose v. Bear Valley Church of Christ,* 890 P.2d 214, 220 (Colo.App.1994) *with DeBose,* 890 P.2d at 236-38 (Davidson, J., dissenting), and any resulting implications; (2) the trial court was obligated to provide the jury with a First Amendment instruction that was not tendered by the defendants; (3) the torts of breach of fiduciary duty and outrageous conduct are religion-neutral laws according to *Employment Division, Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 876-82, 110 S.Ct. 1595, 1598-1602, 108 L.Ed.2d 876 (1990), and *Church of the Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 540-42, 113 S.Ct. 2217, 2230-32, 124 L.Ed.2d 472 (1993), and any resulting implications; and (4) the compelling state interest test

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required by the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb (1993), is constitutional and supersedes *Smith,* and if so, whether we could apply RFRA to this case retroactively, *but see Van Osdol v. Vogt,* 908 P.2d 1122, 1130 n. 12 (Colo.1996) (RFRA inapplicable to events preceding its passage).

B. *First Amendment Defense of Bear Valley*

[2] Regardless of any alleged religious basis for Wolfe's decision to treat young counselees with therapeutic massage, Bear Valley contends that it is entitled to First Amendment protection for its actions in hiring, supervising, disciplining and ultimately discharging Wolfe. We disagree, as did the court of appeals. *See DeBose,* 890 P.2d at 221. In *Van Osdol v. Vogt,* 908 P.2d 1122, 1128 (Colo.1996), we held that "[t]he decision to hire or discharge a minister is itself inextricable from religious doctrine." However, we took care to distinguish internal hiring disputes within religious organizations from general negligence claims filed by injured third parties:

> While claims for illegal hiring or discharge of a minister inevitably involve religious doctrine, that is not the case for a claim of negligent hiring of a minister. The claim of negligent hiring is brought after an employee has harmed a third party through his or her office of employment. An employer is found liable for negligent hiring if, at the time of hiring, the employer had reason to believe that hiring this person would create an undue risk of harm to others. *Connes v. Molalla Transp. System, Inc.,* 831 P.2d 1316, 1321 (Colo.1992); Restatement (Second) of Agency § 213 cmt. d (1958). Hence, the court does not inquire into the employer's broad reasons for choosing this particular employee for the position, but instead looks to whether the specific danger which ultimately manifested itself could have reasonably been foreseen at the time of hiring. This inquiry, even when applied to a minister employee, is so limited and factually based that it can be accomplished with no inquiry into religious beliefs. *See Moses v. Diocese of Colo.,* 863 P.2d 310, 320-21 (Colo.1993) (holding that although courts must not become embroiled in interpreting or weighing church doctrine, a claim of negligent hiring of a minister is actionable because it does not require such interpretation or weighing of religious belief but instead is merely application of a secular *1324 standard to secular conduct), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994).

Van Osdol, 908 P.2d at 1132-33 n. 17. As we noted in *Van Osdol, id.,* courts may review an injured third party's claim that a religious institution negligently hired, supervised, or failed to discharge one of its employees without implicating or running afoul of the First Amendment. *See, e.g., Moses,* 863 P.2d at 321, 329-31 ("Tenantry's claims in this case do not involve disputes within the church....").

III. *Expert Testimony Issues*

The court of appeals held that the trial court erred in admitting certain expert testimony, and concluded that the admission of such testimony constituted prejudicial error. *DeBose,* 890 P.2d at 224, 228. The court determined that the tendered expert testimony was prejudicial for three reasons. *Id.* at 227-28. First, the court held that a portion of the testimony was irrelevant. *Id.* at 227. "[T]here was no evidence that Wolfe asked the minor to compare his genitals to photographs in any book.... At best, it related to incidents allegedly occurring during sessions with other counselees." *Id.* Second, the court determined that some of the testimony presented the jury with an inquiry prohibited by the First Amendment, i.e., "whether Wolfe's techniques were, in fact, valid from a Biblical standpoint." *Id.* Third, the court held that some of the testimony provided the jurors with professional standards for both secular and pastoral therapeutic counseling. *Id.* The court concluded that a secular standard was irrelevant in the pastoral counseling context, and that a pastoral standard impermissibly allowed the jurors to render a decision based on "clergy malpractice." *Id.* The court also noted that the prejudicial impact of the expert testimony was "exacerbated" by the trial court's failure to instruct the jury that Wolfe might be insulated from liability pursuant to the First Amendment. *Id.* We do not agree that the trial court erred in admitting the expert testimony, and will address each of the court of appeals' concerns in turn. [FN13]

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FN13. In view of our resolution of this issue, we will not address the impact that the defendants' legal strategy otherwise might have on our analysis. In his disclosure certificate, Wolfe affirmatively placed the plaintiffs on notice that "[d]efendant Wolfe may call one or more experts to testify about the appropriateness of his counseling practices." Furthermore, Bear Valley's attorney specifically asked one of the witnesses in question about "standards" for "pastoral counselors."

A.

[3] First, the court of appeals incorrectly concluded that the expert testimony concerning Wolfe's alleged examination of a young counselee's genitals was "irrelevant." *Id.* at 227. The testimony at issue focused on the accusations of the Wygals' son. The appropriateness of the therapy techniques Wolfe used on the Wygals' son directly related to questions of (1) whether Bear Valley was on notice of alleged improprieties in Wolfe's practice but continued to allow Wolfe to see other counselees, including the DeBose child, and (2) whether Bear Valley could have prevented reasonably foreseeable harm to DeBose. *See Destefano,* 763 P.2d at 288 ("a person who knows or should have known that an employee's conduct would subject third parties to an unreasonable risk of harm may be directly liable to third parties for harm proximately caused by his conduct") (footnote omitted). The DeBoses' attorney offered the expert in part as one qualified to render opinions on "responsibility of supervision in church settings and avoiding reasonable foreseeable injury." The trial court took care to preface the introduction of this testimony with extensive and repeated cautionary instructions, limiting the evidentiary use of the testimony to the relevant issue of notice as it relates to prevention of reasonably foreseeable harm:

> [DeBoses' attorney, in sidebar discussion with court]: The testimony you're about to hear may be used for the purpose of showing notice
>
> ....
>
> The Court: Okay. I'll make an instruction, but you can make further record if you need to.
>
> *1325 Jurors, you have already heard some references to statements or testimony of two individuals, Mr. and Mrs. Gary Wygal, W-y-g-a-l, and this witness is about to refer to statements that they allegedly made involving themselves or their children, as the case may be. This is one of those situations where evidence can be admitted for one purpose, but not for another purpose, and is an appropriate time for me to caution you about this particular type of testimony. I mentioned this yesterday as a possibility.
>
> We have two defendants in this case. We have Homer Wolfe, and we have the Bear Valley Church of Christ. There may be a time when evidence would be allowed as against one of the Defendants,. but not the other Defendant. There may be a time when the evidence is allowed as against both Defendants, but only for a specific purpose.
>
> The Defendants dispute these so-called--using [Wolfe's counsel's] language-- other acts that are alleged to have occurred or taken piace by Homer Wolfe. Other acts meaning, other reportedly improper acts, which are of a nature--a similar nature as what Plaintiffs in this case assert happened. We are not here to determine whether these other acts, in fact, occurred or not. They are disputed. That is not what this case is about.
>
> I am permitting this testimony with respect to what the Wygals informed the church about--or at least about their concerns, for the limited purpose of allowing Plaintiff to present evidence, and whether you accept or reject it is your choice, but allow the Plaintiff to present evidence that the church was aware of possible problems involving Homer Wolfe's counseling. So it is being admitted for the purpose of what the church knew and when.
>
> It's what we call--we lawyers call a notice issue. The fact that there's testimony that these things occurred does not mean that they did, in fact, occur, because that is essentially hearsay. We don't have, for instance, I think, the son coming into court to say what did or did not happen to him. So it's important that you understand the fine evidentiary line that we are drawing here.
>
> ....
>
> ... Again, jurors, I want to emphasize that these allegations are not being presented to you for the truth of the matter asserted. It is simply information which was available to the church and it goes to the issue of notice, which you'll hear more about in the instructions. It is disputed whether these actions actually occurred

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regarding the Wygal child or children.
....
[DeBoses' attorney]: Could you explain to the jury, without using any names, with the exception of Mr. Wolfe's name, how he applied [a book entitled "The Gift of Sex"] to therapy?
[Wolfe's attorney]: I object. I object on the grounds that it has to apply to [the Debose child] or Denise DeBose in order to have any relevance to this case.
[DeBoses' attorney]: Your Honor, we're talking about the reasonableness or unreasonableness of his counseling and whether or not the Elders should have known. Your Honor, if you'll allow me to make a little bit more of a foundation.
[The Court initially sustained the objection but, after additional foundation evidence and argument, permitted Debose's attorney to proceed.]
[Mr. Schoener]: Could you restate your question? I'm sorry.
[DeBoses' attorney]: Is there anything about the way that Homer Wolfe used *The Gift of Sex* in therapy that was dangerous?
[Mr. Schoener]: Yes.
[DeBoses' attorney]: Describe that to the jury.
[Mr. Schoener]: The notion of having people compare their genitals to those in the book to see if they've been properly *1326 circumcised, I think, is not something that's legitimate counseling or likely to be helpful. It's quite likely to be confusing and harmful, particularly in the pastoral counseling context.

The trial court took the additional step of instructing the jurors in writing at the conclusion of the case that "[e]vidence from or regarding [the Wygals' son] ... may be considered only as evidence for the purpose of showing notice to the Church, but you should not consider it as evidence for any other purpose." Jury Instruction No. 12.

We hold that the court of appeals erred in determining that the expert witness testimony was "irrelevant" and "prejudicial" in applicable part. *DeBose,* 890 P.2d at 224-28. The notice and foreseeability issues directly related to the DeBoses' theories of the case, embodied in the court's instructions to the jury regarding the DeBoses' claim of negligent hiring or supervision:

Negligence as to negligent hiring or supervision means a failure to do an act which a reasonably careful Church employer would do, or the doing of an act which a reasonably careful Church employer would not do, under the same or similar circumstances, to protect others from harm.
....
The negligence, if any, of the defendant Bear Valley is not a cause of any injuries to either plaintiff, unless injury to a person in the plaintiff's situation was a reasonably foreseeable consequence of that negligence. The exact precise injury need not have been foreseeable, but it is sufficient if a reasonably careful person, under the same or similar circumstances, would have anticipated that injury to a person in the plaintiff's situation might result from the defendant's conduct.

Jury Instructions Nos. 18, 23. We conclude that the expert testimony concerning the Wygals' accusations was relevant and properly admitted on the question of whether Bear Valley had the requisite notice to prevent reasonably foreseeable harm to the DeBose child. [FN14]

FN14. Indeed, Bear Valley highlights in a brief the limited purpose, i.e., notice and foreseeability, that this testimony served in summarizing the testimony under a heading entitled "The Setting of Secular Standards for Pastoral Counseling of Minors is Barred by the First Amendment:"
The trial court permitted the DeBoses to put on the following evidence involving the church's clergy handling activity by the Elders:
Wolfe was hired by the church without adequate investigation; Wolfe was not qualified to counsel; Wolfe's methods were improper; Wolfe was not equipped to counsel emotional matters; Wolfe improperly touched people; Wolfe required a qualified supervisor; no one at the church was qualified to supervise Wolfe; the Elders' supervision resulted in harm by Wolfe; the Elders acted improperly in processing the Wygal complaint; the Elders did not investigate the Wygal complaint properly; the Elders improperly defined Wolfe's job duties; the church improperly defined the counseling

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> service of Wolfe; the church failed to inform the congregation of Wygals' complaint; and the church failed to properly advise the congregation upon terminating Wolfe.
> Answer/Reply Brief of Bear Valley at 27-28, *Bear Valley v. DeBose,* (Jan. 26, 1996) (No. 95SC42) (citations to record omitted).

B.

[4] Second, the court of appeals incorrectly determined that some of the testimony presented the jury with an inquiry prohibited by the First Amendment. *DeBose,* 890 P.2d at 227. The court of appeals held:

> [S]ome of this testimony called into question the validity of Wolfe's beliefs concerning the efficacy of touching, which he claimed to be grounded in his religious principles. To the extent that such testimony was intended to present a jury question as to whether Wolfe's techniques were, in fact, valid from a Biblical standpoint, the First amendment prohibited its consideration for this purpose.

Id. (citation omitted). The court of appeals premised its criticism on the conclusion that Wolfe claimed a religious basis for his use of therapeutic massage with young counselees. *Id.* However, as previously noted, *supra* part II(A)(2), Wolfe never presented the jury *1327 with a religious basis for his use of massage techniques with counselees but rather explained his use of massage in terms of secular rationale. We disagree with the court of appeals because the jury never had to consider whether Wolfe's beliefs concerning the efficacy of touching were grounded in his religious principles. *See DeBose,* 890 P.2d at 227.

C.

[5] Third, the court of appeals incorrectly held that some of the testimony provided the jurors with professional standards for both secular and pastoral therapeutic counseling, in effect subjecting Wolfe to a claim for clergy malpractice. *Id.* The court explained:

> [T]his testimony sought to establish a professional standard for *pastoral* counseling, *i.e.,* that a minor counselee should never be touched by any counselor. And, unless the proffering of such testimony was intended to allow the jurors to determine that Wolfe violated this professional standard, it was irrelevant to any issue that they were to decide. But, to allow the jurors to assess liability against Wolfe for violating this standard was tantamount to imposing liability for "malpractice," *i.e.,* for the violation of a professional standard of conduct.

DeBose, 890 P.2d at 227. The court then noted that the trial court "exacerbated" the prejudicial impact of the expert testimony by failing to instruct the jury that the First Amendment might insulate Wolfe from liability. *Id.* Again, we disagree.

The testimony concerning Wolfe's use of therapeutic massage with young counselees was not directed toward establishing an impermissible claim for clergy malpractice. *See Moses,* 863 P.2d at 321 n. 13 ("In Colorado, breach of fiduciary duty is actionable, clergy malpractice is not.") (citation omitted). Instead, the testimony potentially supported the DeBoses' claim that Bear Valley should have been aware that Wolfe was utilizing counseling techniques with young boys that did not conform with Bear Valley's own counseling expectations. According to one of the plaintiffs' theories of the case, if Bear Valley had notice that Wolfe employed counseling techniques with the Wygal youth that were allegedly inappropriate, the Bear Valley elders could have prevented any harm that the DeBose child experienced subsequent to the initial complaint by the Wygals. *See supra* part III(A). The trial court appropriately allowed expert testimony relating to the propriety of Wolfe's therapeutic massage technique for this limited purpose. [FN15]

> FN15. In any case, we do not believe that the alleged error was "exacerbated" in any way by the trial court's refusal to provide the jury with an instruction regarding Wolfe's First Amendment defense. Neither Wolfe nor Bear Valley contended that the counseling techniques to which the DeBoses objected were grounded in religious belief. *See supra* part II(A)(2).

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[6] The court of appeals also erred in analyzing the testimony of another expert witness, Reverend Marie Fortune, with regard to the incident concerning the Wygals' son. The court of appeals characterized the testimony as evidence impermissibly directed toward a professional standard of care for pastoral counselors:

> [O]ver objection, this witness was also allowed to testify that "nudity or partial nudity" is "inappropriate in the pastoral relationship." This witness said that, while such might be appropriate in either a "medical setting" or in a "situation with a licensed massage therapist," such activity is "unnecessary" and "inappropriate" in either a therapeutic or a pastoral relationship.

DeBose, 890 P.2d at 226. In fact, the relevant testimony was directly applicable to the questions of notice and reasonably foreseeable harm. The relevant testimony reads:

> [DeBoses' attorney]: Do you have an opinion within a reasonable degree of certainty as to whether or not the Bear Valley Church of Christ failed in its supervision of Homer Wolfe in preventing reasonable foreseeable harm?
> [Reverend Fortune]: Yes. I think that was inadequate.
> *1328 [DeBoses' attorney]: Explain to the jury in what way they failed?
> [Reverend Fortune]: As best I can. I could tell, again, from the depositions there was no supervision of Mr. Wolfe by anyone qualified to supervise the work that he was doing. There seemed to be confusion about the nature of the work that he was doing and some concern expressed by the Elders as to whether he was overstepping his--the bounds of his job. But it seemed to me that that concern was not pursued in terms of--particularly the allegations--but it was not pursued in any way that was effectively supervising him regarding that.
> My other concern that has to do with both the hiring and supervision and the lack of qualifications for the job that he was asked to do. As I recall, the only reference to qualifications had to do with the fact that he had been a preacher for a number of years and that he was a former director of education at the churches he served previously. In my opinion, neither of these things qualified him for the position that he was being asked to serve in. So that, combined with lack of oversight and supervision, seemed to me inadequate.
> [DeBoses' attorney]: When the allegations of [the Wygals' son] were brought to the Elders in either May or June of 1987, what should they have done?
> [Reverend Fortune]: In my opinion, they should have investigated further beyond those allegations. It would have been advisable, it seems to me, for them to have suspended Mr. Wolfe's counseling work that he was doing until an investigation could have been completed, so that there would not have been any chance for further access to persons who might possibly have been harmed.
> ....
> [DeBoses' attorney]: ... Reverend Fortune, where a minister admits to employing nudity and partial nudity in the counseling setting, is injury to the counselee reasonably foreseeable?
> [Reverend Fortune]: It seems to me that it is, because that is inappropriate in the pastoral relationship.
> [DeBoses' attorney]: Why is that?
> [Wolfe's attorney]: Your honor, I object to the testimony about the standard of care in the pastoral relationship on the same grounds.
> [DeBoses' attorney]: Your honor--
> The Court: Objection overruled.
> [DeBoses' attorney]: Why is that inappropriate?
> [Reverend Fortune]: In my opinion there are two situations, it seems to me, in which disrobing is appropriate, and there may be others, but it seems to me, two. In particular, in a helping relationship where we are seeking out a professional to assist us with a particular problem. One would be a medical setting, and the other would be a situation with a licensed massage therapist.
> [DeBoses' attorney]: Beyond that, in any counseling--therapeutic, pastoral-- relationship, disrobing is inappropriate?
> [Reverend Fortune]: It's unnecessary and it's inappropriate.

The plaintiffs specifically presented this witness "as an expert in theology *relative* to procedures and practices reasonably necessary in a church setting to prevent foreseeable harm." (Emphasis added.) *But cf. DeBose,* 890 P.2d at 225 (incorrectly stating that expert "was tendered as an 'expert in theology' *and* upon 'procedures and practices in church settings necessary to prevent reasonably foreseeable harm.'

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") (emphasis added). Again, neither Wolfe nor Bear Valley contended that the use of nudity as a counseling technique had roots in religious belief. We do not view Reverend Fortune's testimony as directed toward a standard of care for pastoral counselors. Rather, it was properly received as relevant to notice and reasonably foreseeable harm.

IV. *Inconsistent or Duplicative Jury Awards*

[7] Finally, Wolfe and Bear Valley contend that the jury verdicts were either inconsistent ***1329** or duplicative. In reviewing this claim, the court of appeals acknowledged that "[t]he record here does not contain a transcript of any discussion with respect to the instructions or verdict forms. Hence, it does not reflect any objection interposed by defendants to the verdict forms." *DeBose,* 890 P.2d at 223. Nevertheless, the court of appeals addressed the defendants' claims for the following reason:

> However, after the verdicts were received, defendants sought to have them set aside, claiming that they resulted in the award of duplicate damages. Plaintiffs have not asserted, either in the trial court or here, that defendants' failure to object to the form of the verdicts prevented them from raising this issue, and the trial court addressed the merits of defendants' assertion. We shall do likewise....

Id. We disagree with the court of appeals' analysis of the record, *id.,* and conclude that the defendants did not preserve their contention adequately for appellate review.

We agree with the court of appeals that the record does not contain any evidence that the defendants entered objections to the verdict forms or instructions, prior to submission to the jury, on the basis that the instructions allowed the jury to assess inconsistent or duplicative damages. *Id.* Our review of the record indicates that the defendants raised the issue of duplicative or inconsistent verdicts for the first time in the course of post-verdict motions. However, the DeBoses responded to the defendants' post- trial contention by asserting that the defendants never raised the issue at trial, and the trial court summarily rejected the defendants' claim of inconsistent and duplicative damages in part because of the DeBoses' assertion that the defendants did not adequately preserve the issue.

In a memorandum in support of its post-trial motions, [FN16] Bear Valley asserted that the jury verdict forms resulted in conflicting and duplicative verdicts. Bear Valley did not assert in the memorandum that either defendant objected to the jury instructions or verdict forms prior to submission to the jury. Similarly, Wolfe filed a post-trial motion for an amendment of the judgment, claiming that the jury verdicts were duplicative. Again, Wolfe did not contend that either defendant objected to the verdict forms or instructions prior to judgment, even though his post-trial motion contained an entire section devoted to a motion for new trial based on "Defendant Wolfe's Tendered and Refused Jury Instructions." Defendant Wolfe's Post-Trial Motions at 18- 19, 31-34, *DeBose v. Wolfe,* (Denver District Court, Sept. 10, 1992) (No. 91CV4346).

> FN16. Bear Valley filed a post-trial motion seeking, either in conjunction or in the alternative, a new trial, judgment notwithstanding the verdict, amendment of the judgment, and remittitur. In its post-trial motion, Bear Valley also adopted all of the claims that Wolfe asserted in his own post-trial motion.

The defendants never argued in the district court that they objected to the verdict forms and instructions on the basis that they were inconsistent or duplicative prior to submission to the jury, and the court of appeals correctly concluded that the record does not contain any evidence of such objections. *DeBose,* 890 P.2d at 223. However, the court of appeals misconstrued the procedural history of the case in determining that "[p]laintiffs have not asserted, either in the trial court or here, that defendants' failure to object to the form of the verdicts prevented them from raising this issue, and the trial court addressed the merits of defendants' assertion." *Id.* Indeed, the DeBoses responded to Bear Valley's post-trial assertion that the jury instructions and forms resulted in duplicative or inconsistent verdicts by arguing, in relevant part:

> [Bear Valley] did not argue that the verdict forms were insufficient prior to tendering them to the jury. In fact, [Bear Valley] asserted a position which required that simple verdict forms originally tendered by [the DeBoses] be revised

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into multiple forms with multiple sets of damage figures. [Bear Valley] then agreed to the forms as revised.

*1330 Plaintiff DeBoses' Response to Defendant Bear Valley Church of Christ's Motion for New Trial, and/or Judgment Notwithstanding the Verdict and/or Amendment of Judgment and/or for Remittitur at 8, *DeBose v. Wolfe,* (Denver District Court, Sept. 15, 1992) (No. 91CV4346) (parenthetical reference to attached exhibits omitted). The DeBoses incorporated this argument into their response to Wolfe's post-trial assertion that the verdicts were duplicative or inconsistent. The trial court, having presided over the trial and having heard any objections by counsel to the jury verdict forms and instructions, agreed with the DeBoses' response to Wolfe's post-trial argument that the verdict forms allowed for duplicative or inconsistent verdicts, and refused to address Wolfe's substantive contention in summarily denying Wolfe's post-trial motions:

> Defendant Wolfe's Post-Trial Motions are denied for the reasons previously articulated by the Court during the trial of the within action, as well as for the reasons articulated by [the DeBoses] in their Response to Defendant Wolfe's Post-Trial Motions.

In short, contrary to the court of appeals' conclusions, the DeBoses *did* argue "that defendants' failure to object [prior to judgment] to the form of the verdicts prevented them from raising this issue," *see DeBose,* 890 P.2d at 223, and the trial court accepted that argument in denying the defendants' post-trial motions. [FN17]

> FN17. The court of appeals also erred in concluding that the "[p]laintiffs have not asserted, either in the trial court or here, that defendants' failure to object to the form of the verdicts prevented them from raising this issue," because the plaintiffs did raise this objection in their briefs to the court of appeals. *DeBose v. Bear Valley Church of Christ,* 890 P.2d 214, 223 (Colo.App.1994). In two separate documents filed with the court of appeals prior to its decision, the plaintiffs responded to the defendants' duplicative damages claim by arguing that "[n]one of the instructions concerning damages or the verdict forms were objected to by either Defendant." [Plaintiff DeBoses] Answer Brief to Defendant-Appellant Homer Wolfe at 37, *DeBose v. Wolfe,* (Colorado Court of Appeals, June 4, 1993) (No. 92CA001929); [Plaintiff DeBoses'] Answer Brief to Defendant-Appellant Bear Valley and Opening Brief on Cross Appeal at 44, *DeBose v. Wolfe,* (Colorado Court of Appeals, May 14, 1993) (No. 92CA001929).

[8] Based on the foregoing procedural history, culled from the record before this court, we conclude that the defendants did not preserve any objections to the jury verdict instructions or forms for the purposes of appellate review. According to our rules of civil procedure, a party cannot seek appellate review of the propriety of a jury instruction unless counsel tenders such an objection prior to the court's presentation of the instructions to the jury:

> All instructions shall be submitted to the parties, who shall make *all* objections thereto *before* they are given to the jury. *Only the grounds so specified* shall be considered on motion for a new trial or on appeal or certiorari.

C.R.C.P. 51 (emphasis added). Relying on C.R.C.P. 51, we have stated that "[c]ounsel has the duty to examine the instructions, and his failure to detect errors and call the trial court's attention to them ordinarily operates as a waiver of the objection." *Scheer v. Cromwell,* 158 Colo. 427, 429, 407 P.2d 344, 345 (1965) (citing *Gilligan v. Blakesley,* 93 Colo. 370, 380, 26 P.2d 808, 812 (1933)); *accord, e.g., Blakesley,* 93 Colo. at 380, 26 P.2d at 812 ("[I]t is the duty of counsel to examine--or at least to listen to the reading of--the instructions at the time they are given; and, by not detecting errors promptly and not calling the trial court's attention thereto, so as to enable the appropriate correction to be made, the point must ordinarily be deemed waived."). As we noted in *Cromwell,* "[t]he 'contemporaneous objection' rule has a salutary purpose in the orderly administration of justice. Its principle is to enable trial judges to clarify or correct misleading or erroneous instructions before they are given to a jury, and thereby prevent costly retrials necessitated by

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EXHIBIT 5

Appellate Court of Illinois,
Fifth District.

Germaine L. BIVIN and Robert L. Bivin,
Plaintiffs-Appellants,
v.
James H. WRIGHT; Deacon Ronald Stewart; and
First Baptist Church of Energy,
Illinois, Defendants-Appellees.

No. 5-93-0770.

Oct. 18, 1995.

Husband and wife brought action for damages against church, alleging that church was negligent in supervision of minister who initiated and continued sexual relationship with wife, during course of marital counseling with husband and wife. The Circuit Court, Williamson County, C. David Nelson, J., dismissed action for failure to state cause of action based on constitutional guarantee of right to freely exercise one's religion. The Appellate Court, Welch, J., held that action would not require court to inquire into, or attempt to adjudicate, determine, or interpret church's religious policies, practices, doctrines, or tenets, and so was not barred by church's right to freely exercise its religion.

Reversed and remanded.

West Headnotes

[1] Pretrial Procedure ⇐534
307Ak534 Most Cited Cases

Decision of whether to grant motion to dismiss is within sound discretion of trial court.

[2] Appeal and Error ⇐863
30k863 Most Cited Cases

[2] Appeal and Error ⇐919
30k919 Most Cited Cases

In reviewing propriety of dismissal for failure to state cause of action, Appellate Court must determine whether complaint, when viewed in light most favorable to plaintiff, alleges sufficient facts to establish cause of action upon which relief can be granted.

[3] Pretrial Procedure ⇐624
307Ak624 Most Cited Cases

Cause of action will not be dismissed on pleadings unless it clearly appears that no set of facts can be proved which will entitled plaintiff to recover.

[4] Appeal and Error ⇐919
30k919 Most Cited Cases

In reviewing propriety of dismissal for failure to state cause of action, all well-pleaded facts and inferences drawn therefrom must be accepted as true, and reviewing court should interpret facts alleged in complaint in light most favorable to plaintiff.

[5] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Negligence action against church for failure to protect plaintiffs from sexual misconduct of member of its clergy would not require court to inquire into, or attempt to adjudicate, determine, or interpret church's religious policies, practices, doctrines, or tenets, and so action was not barred by church's right to freely exercise its religion; alleged sexual misconduct of member of clergy was not rooted in his religious beliefs, or those of church. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

First Amendment prohibits civil courts from resolving church disputes on basis of religious doctrine and practice. U.S.C.A. Const.Amend. 1.
****1122 *899 ***288** Jay B. Howd, Carbondale, for Appellants.

James B. Bleyer, Bleyer and Bleyer, Marion, for Appellees.

***900** Justice WELCH delivered the opinion of the court:

Germaine L. Bivin and Robert L. Bivin, husband and wife, filed suit in the circuit court of

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known of Reverend Wright's emotional and physical attraction to Germaine, as well as previous such attractions; failing to warn members of the congregation, including plaintiffs, of Reverend Wright's previous attachments, creating an unreasonable risk of marital discord among members of the congregation; and failing to dismiss or reassign Reverend Wright as minister and counselor notwithstanding the fact that it knew or should have known that his attractions to female congregation **902** members created an unreasonable risk that his religious and marital counseling would be ineffective and potentially detrimental to those being counseled, including plaintiffs.

The complaint alleges that, as a direct and proximate result of the church's negligence, Germaine contracted two venereal diseases, plaintiffs have suffered irreparable deterioration in their marital relationship, plaintiffs have been and will be forced to pay and become liable for various sums for psychological expenses and other forms of emotional treatment, and plaintiffs have incurred various sums for medical and hospital expenses for treatment of the venereal diseases. The trial court dismissed this count for failure to state a cause of action based upon the constitutional guarantee of the right of free exercise of religion.

[1][2][3][4] The decision whether to grant a motion to dismiss is within the sound discretion of the trial court. (*Faulkner v. Gilmore* (1993), 251 Ill.App.3d 34, 190 Ill.Dec. 455, 458, 621 N.E.2d 908, 911.) In reviewing the propriety of a dismissal for failure to state a cause of action, this court must determine whether the complaint, when viewed in the light most favorable to plaintiff, alleges sufficient facts to establish a cause of action upon which relief can be granted. (*Faulkner*, 251 Ill.App.3d 34, 190 Ill.Dec. at 457, 621 N.E.2d at 910.) A cause of action will not be dismissed on the pleadings unless it clearly appears that no set of facts can be proved which will entitle plaintiff to recover. (*Faulkner*, 251 Ill.App.3d 34, 190 Ill.Dec. at 457, 621 N.E.2d at 910.) All well-pleaded facts and inferences drawn therefrom must be accepted as true, and a reviewing court should interpret the facts alleged in the complaint in the light most favorable to plaintiff. *Paskarnis v. Darien-Woodridge Fire Protection District* (1993), 251 Ill.App.3d 585, 191 Ill.Dec. 138, 139, 623 N.E.2d 383, 384.

[5] Viewing the allegations of plaintiffs' complaint in the light most favorable to them, we conclude that the trial court abused its discretion in dismissing the complaint for failure to state a cause of action based on the constitutional guarantee of the right of free **1124 ***290 exercise of religion. It simply does not appear from plaintiffs' complaint that no set of facts can be proved which would entitle plaintiffs to recover without violating the church defendant's right to freely exercise its religion.

We begin our analysis by pointing out that the church defendant does not claim that the alleged sexual misconduct of its minister was part of its religious beliefs or practices or was in any way sanctioned or condoned by the church. The minister's alleged sexual misconduct was not rooted in his religious beliefs or those of his church. We note also that the church defendant does not argue that plaintiffs have *903 failed to state a cause of action for negligence against the church. The church defendant argues only that plaintiffs' cause of action is barred by the constitutional guarantee of the right of free exercise of religion.

A court's authority to resolve disputes involving a church is narrowly circumscribed by the first amendment's guarantee that the right to the free exercise of religion will not be abridged. (*Hines v. Turley* (1993), 246 Ill.App.3d 405, 186 Ill.Dec. 194, 203, 615 N.E.2d 1251, 1259.) Illinois courts have generally refused to decide cases that require a judicial interpretation of religious doctrine or church law. (*Hines*, 246 Ill.App.3d 405, 186 Ill.Dec. at 203, 615 N.E.2d at 1259.) However, where doctrinal controversy is not involved in a church dispute, mandatory deference to religious authority is not required by the first amendment, and the court may choose from a variety of approaches in resolving the dispute. (*Hines*, 246 Ill.App.3d 405, 186 Ill.Dec. at 203, 615 N.E.2d at 1259.) Thus, in disputes over church property, Illinois courts have applied a "neutral principles of law" approach, objectively examining pertinent church characteristics, constitutions and bylaws, deeds, State statutes, and other evidence to resolve the matter the same as it would a secular dispute. (*Hines*, 246 Ill.App.3d 405, 186 Ill.Dec. at 203-04, 615 N.E.2d at 1259-60.) Using such an approach, the dispute must be resolved applying neutral legal principles, using purely secular analysis without relying on religious precepts. *Hines*, 246 Ill.App.3d

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405, 186 Ill.Dec. at 204, 615 N.E.2d at 1260.

[6] Although the neutral principles of law approach is usually applied to disputes over church property, we cannot conclude from plaintiffs' complaint that the instant cause cannot be decided using neutral principles of negligence law, developed for use in all negligence disputes, without interpretation of religious doctrine or church law, just as would be a secular dispute in a negligence case. Resolution of the instant dispute may not involve any searching inquiry into religious matters in violation of the first amendment. The first amendment prohibits civil courts from resolving church disputes on the basis of religious doctrine and practice. (*Jones v. Wolf* (1979), 443 U.S. 595, 602, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, 784.) We cannot conclude from plaintiffs' complaint that the instant case cannot be decided on the basis of neutral principles of law and without reference to religious doctrine and practice.

We cannot conclude from plaintiffs' complaint that their cause of action against First Baptist Church of Energy will infringe upon, or place a burden upon, the church's freedom to exercise its religion. Inquiring into whether the church was negligent in its failure to protect plaintiffs from the sexual misconduct of its minister may not call into question the church's religious beliefs or practices or subject ***904** them to analysis or scrutiny. As we have pointed out, the minister's sexual misconduct was not rooted in the church's religious beliefs and was outside the boundaries of the church's ecclesiastical beliefs and practices. Thus, resolving this dispute may not require any interpretation of church doctrine or any regulation of ecclesiastical activity. We cannot conclude from plaintiffs' complaint that resolution of this dispute will require the court to inquire into, or attempt to adjudicate, determine, or interpret the church's religious policies, practices, doctrines, or tenets.

We are careful to express no view as to the final outcome of this controversy, whether by further motion to dismiss, motion for summary judgment, or trial. We now find only that the trial court abused its discretion in dismissing plaintiffs' complaint for failure to state a cause of action based on the constitutional ****1125 ***291** guarantee of the right to freely exercise one's religion.

For the foregoing reasons, the judgment of the circuit court of Williamson County is reversed, and this cause is remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

CHAPMAN and RARICK, JJ., concur.

656 N.E.2d 1121, 275 Ill.App.3d 899, 212 Ill.Dec. 287

END OF DOCUMENT

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EXHIBIT 6

103 S.Ct. 2017
76 L.Ed.2d 157, 52 A.F.T.R.2d 83-5001, 83-1 USTC P 9366, 10 Ed. Law Rep. 918
(Cite as: 461 U.S. 574, 103 S.Ct. 2017)

Supreme Court of the United States

BOB JONES UNIVERSITY, Petitioner
v.
UNITED STATES.
GOLDSBORO CHRISTIAN SCHOOLS, INC., Petitioner
v.
UNITED STATES.

Nos. 81-3, 81-1.

Argued Oct. 12, 1982.
Decided May 24, 1983.

University, denied tax-exempt status because of its racially discriminatory admissions policy, sought refund of federal unemployment tax payments, and Government counterclaimed for unpaid taxes. The United States District Court for the District of South Carolina entered judgment in favor of university, and the IRS appealed. The Court of Appeals, 639 F.2d 147, reversed, and certiorari was granted. In a second case, another school sought refund of social security and unemployment taxes paid, and the IRS counterclaimed for unpaid taxes. The United States District Court for the Eastern District of North Carolina entered summary judgment for the Government, the Court of Appeals, 644 F.2d 879, affirmed, and certiorari was granted. The Supreme Court, Chief Justice Burger, held that nonprofit private schools that prescribe and enforce racially discriminatory admission standards on the basis of religious doctrine do not qualify as tax-exempt organizations under the Internal Revenue Code, nor are contributions to such schools deductible as charitable contributions.

Affirmed.

Justice Powell filed an opinion concurring in part and concurring in the judgment.

Justice Rehnquist filed a dissenting opinion.

West Headnotes

[1] Internal Revenue ⇐4053
220k4053 Most Cited Cases

Nonprofit private schools that prescribe and enforce racially discriminatory admission standards on the basis of religious doctrine do not qualify as tax-exempt organizations under the Internal Revenue Code, nor are contributions to such schools deductible as charitable contributions. 26 U.S.C.A. §§ 170, 501(c)(3).

[2] Statutes ⇐189
361k189 Most Cited Cases

A court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute.

[3] Internal Revenue ⇐4048
220k4048 Most Cited Cases

An examination of the Internal Revenue Code's framework and the background of congressional purposes revealed unmistakable evidence that underlying all relevant parts of the Code is the intent that entitlement to tax exemption depends on meeting certain common-law standards of charity, namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. 26 U.S.C.A. §§ 1 et seq., 170, 501(c)(3).

[4] Internal Revenue ⇐4046
220k4046 Most Cited Cases

Congress, in enacting those provisions of the Internal Revenue Code pertaining to the tax exempt status of religious, charitable or education corporations, and the deductibility of charitable contributions to such corporations, sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind. 26 U.S.C.A. §§ 170, 501(c)(3).

[5] Charities ⇐10
75k10 Most Cited Cases

Purpose of a charitable trust may not be illegal or violate established public policy.

[6] Internal Revenue ⇐4045
220k4045 Most Cited Cases

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When the government grants exemptions or allows deductions, all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious "donors."

[7] **Internal Revenue** ⚿**4045**
220k4045 Most Cited Cases

Charitable exemptions are justified on the basis that the exempt entity confers a public benefit--a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues. 26 U.S.C.A. § 501(c)(3)

[8] **Internal Revenue** ⚿**4048**
220k4048 Most Cited Cases

To warrant exemption under the Internal Revenue Code as a charitable corporation, an institution must fall within a category specified in the pertinent Code section and must demonstrably serve and be in harmony with the public interest, and the institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred. 26 U.S.C.A. § 501(c)(3).

[9] **Internal Revenue** ⚿**4048**
220k4048 Most Cited Cases

A declaration that a given institution is not "charitable," and thus not entitled to tax-exempt status under the Internal Revenue Code, should be made only where there can be no doubt that the activity involved is contrary to a fundamental public policy. 26 U.S.C.A. § 501(c)(3).

[10] **Civil Rights** ⚿**1060**
78k1060 Most Cited Cases
(Formerly 78k127.1, 78k127, 78k3)

Racial discrimination in education violates deeply and widely accepted views of elementary justice.

[11] **Civil Rights** ⚿**1060**
78k1060 Most Cited Cases
(Formerly 78k127.1, 78k127, 78k3)

Racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals.

[12] **Schools** ⚿**1**
345k1 Most Cited Cases

Educational institutions that, for whatever reasons, practice racial discrimination are not institutions exercising "beneficial and stabilizing influences in community life," nor should they be encouraged by having all taxpayers share in their support by way of special tax status. 26 U.S.C.A. § 501(c)(3).

[13] **Internal Revenue** ⚿**4053**
220k4053 Most Cited Cases

It would be wholly incompatible with the concepts underlying tax exemption to grant the benefit of tax-exempt status to racially discriminatory educational entities; whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy. 26 U.S.C.A. § 501(c)(3).

[14] **Internal Revenue** ⚿**4053**
220k4053 Most Cited Cases

Racially discriminatory educational institutions cannot be viewed as conferring a public benefit within the congressional intent underlying those provisions of the Internal Revenue Code relating to the tax-exempt status of religious, charitable or educational institutions, and the deductibility of charitable contributions thereto. 26 U.S.C.A. §§ 170, 501(c)(3).

[15] **Internal Revenue** ⚿**4053**
220k4053 Most Cited Cases

Internal Revenue Service did not exceed its authority when it announced its interpretation of the Internal Revenue Code's tax-exempt organizations provision as excluding racially discriminatory private schools; such interpretation was wholly consistent with what Congress, the Executive, and the courts had previously declared, and the actions of Congress since 1970 left no doubt that the IRS reached the correct conclusion in exercising its authority. 26 U.S.C.A. § 501(c)(3).

[16] **Internal Revenue** ⚿**3038**

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220k3038 Most Cited Cases

In an area as complex as the tax system, the agency Congress vests with administrative responsibility must be able to exercise its authority to meet changing conditions and new problems.

[17] Internal Revenue ⚿4048
220k4048 Most Cited Cases

Internal Revenue Service has the responsibility, in the first instance, to determine whether a particular entity is "charitable" for purposes of the relevant Internal Revenue Code provisions, and this in turn may necessitate later determinations of whether given activities so violate public policy that the entities involved cannot be deemed to provide a public benefit worthy of "charitable" status. 26 U.S.C.A. §§ 170, 501(c)(3).

[18] Internal Revenue ⚿4053
220k4053 Most Cited Cases

Ordinarily, courts are slow to attribute significance to the failure of Congress to act on particular legislation, but in view of its prolonged and acute awareness of so important an issue as the tax-exempt status of private schools that prescribe and enforce racially discriminatory admission standards, Congress' failure to act on the various bills proposed on that subject provided additional support for concluding that Congress acquiesced in the IRS rulings of 1970 and 1971 that such schools are not tax-exempt. 26 U.S.C.A. §§ 170, 501(c)(3).

[19] Constitutional Law ⚿84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Free exercise clause of the First Amendment constitutes an absolute prohibition against governmental regulation of religious beliefs. U.S.C.A. Const.Amend. 1.

[20] Constitutional Law ⚿84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Free exercise clause of the First Amendment provides substantial protection for lawful conduct grounded in religious belief. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Not all burdens on religion are unconstitutional; the state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest.

[22] Constitutional Law ⚿84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4), 92k84)

Government's fundamental, overriding interest in eradicating racial discrimination in education substantially outweighed whatever burden denial of tax benefits placed on the exercise of their religious beliefs by petitioners, nonprofit private schools that prescribe and enforce racially discriminatory admission standards on the basis of religious doctrine; petitioners' asserted interest could not be accommodated with that compelling governmental interest, and no less restrictive means were available to achieve the governmental interest. 26 U.S.C.A. § § 170, 501(c)(3); U.S.C.A. Const.Amend. 1.

[23] Constitutional Law ⚿84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4), 92k84)

Denial of tax-exempt status to a nonprofit private school that prescribes and enforces racially discriminatory admission standards on the basis of religious doctrine did not violate the establishment clause by preferring religions whose tenets do not require racial discrimination over those which believe racial intermixing is forbidden. 26 U.S.C.A. §§ 170, 501(c)(3); U.S.C.A. Const.Amend. 1.

[24] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

A regulation does not violate the establishment clause merely because it happens to coincide or harmonize with the tenets of some or all religions.

[25] Internal Revenue ⚿4053
220k4053 Most Cited Cases

Internal Revenue Service properly applied to both

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petitioners its policy of denying tax-exempt status to private schools that prescribe and enforce racially discriminatory admission standards; one petitioner admitted that it maintains racially discriminatory policies, and, contrary to the other petitioner's contention that it is not racially discriminatory, discrimination on the basis of racial affiliation and association was a form of racial discrimination. 26 U.S.C.A. §§ 170, 501(c)(3).

**574 **2019 Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Section 501(c)(3) of the Internal Revenue Code of 1954 (IRC) provides that "[c]orporations ... organized and operated exclusively for religious, charitable ... or educational purposes" are entitled to tax exemption. Until 1970, the Internal Revenue Service (IRS) granted tax-exempt status under § 501(c)(3) to private schools, ****2020** independent of racial admissions policies, and granted charitable deductions for contributions to such schools under § 170 of the IRC. But in 1970, the IRS concluded that it could no longer justify allowing tax-exempt status under § 501(c)(3) to private schools that practiced racial discrimination, and in 1971 issued Revenue Ruling 71-447 providing that a private school not having a racially nondiscriminatory policy as to students is not "charitable" within the common- law concepts reflected in §§ 170 and 501(c)(3). In No. 81-3, petitioner Bob Jones University, while permitting unmarried Negroes to enroll as students, denies admission to applicants engaged in an interracial marriage or known to advocate interracial marriage or dating. Because of this admissions policy, the IRS revoked the University's tax-exempt status. After paying a portion of the federal unemployment taxes for a certain taxable year, the University filed a refund action in Federal District Court, and the Government counterclaimed for unpaid taxes for that and other taxable years. Holding that the IRS exceeded its powers in revoking the University's tax-exempt status and violated the University's rights under the Religion Clauses of the First Amendment, the District Court ordered the IRS to refund the taxes paid and rejected the counterclaim. The Court of Appeals reversed. In No. 81-1, petitioner Goldsboro Christian Schools maintains a racially discriminatory admissions policy based upon its interpretation of the Bible, accepting for the most part only Caucasian students. The IRS determined that Goldsboro was not an organization described in § 501(c)(3) and hence was required to pay federal social security and unemployment taxes. After paying a portion of such taxes for certain years, Goldsboro filed a refund suit in Federal District Court, and the IRS counterclaimed for unpaid taxes. The District Court entered summary judgment for ***575** the Government, rejecting Goldsboro's claim to tax-exempt status under § 501(c)(3) and also its claim that the denial of such status violated the Religion Clauses of the First Amendment. The Court of Appeals affirmed.

Held: Neither petitioner qualifies as a tax-exempt organization under § 501(c)(3). Pp. 2025-2035.

(a) An examination of the IRC's framework and the background of congressional purposes reveals unmistakable evidence that underlying all relevant parts of the IRC is the intent that entitlement to tax exemption depends on meeting certain common-law standards of charity--namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy. Thus, to warrant exemption under § 501(c)(3), an institution must fall within a category specified in that section and must demonstrably serve and be in harmony with the public interest, and the institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred. Pp. 2025-2028.

(b) The IRS's 1970 interpretation of § 501(c)(3) was correct. It would be wholly incompatible with the concepts underlying tax exemption to grant tax-exempt status to racially discriminatory private educational entities. Whatever may be the rationale for such private schools' policies, racial discrimination in education is contrary to public policy. Racially discriminatory educational institutions cannot be viewed as conferring a public benefit within the above "charitable" concept or within the congressional intent underlying § 501(c)(3). Pp. 2028-2030.

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(c) The IRS did not exceed its authority when it announced its interpretation of § 501(c)(3) in 1970 and 1971. Such interpretation is wholly consistent with what Congress, the Executive, and the courts had previously declared. And the actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority. Pp. 2030-2033.

(d) The Government's fundamental, overriding interest in eradicating racial discrimination in education substantially outweighs whatever burden denial of tax benefits **2021 places on petitioners' exercise of their religious beliefs. Petitioners' asserted interests cannot be accommodated with that compelling governmental interest, and no less restrictive means are available to achieve the governmental interest. Pp. 2033-2034.

(e) The IRS properly applied its policy to both petitioners. Goldsboro admits that it maintains racially discriminatory policies, and, contrary to Bob Jones University's contention that it is not racially discriminatory, discrimination on the basis of racial affiliation and association is a form of racial discrimination. Pp. 2034-2035.

No. 81-1, 644 F.2d 879 (4th Cir., 1981), and No. 81-3, 639 F.2d 147 (4th Cir., 1980), affirmed.

*576 *William G. McNairy* argued the cause for petitioner in No. 81-1. With him on the briefs were *Claude C. Pierce, Edward C. Winslow,* and *John H. Small. William Bentley Ball* argued the cause for petitioner in No. 81-3. With him on the briefs were *Philip J. Murren* and *Richard E. Connell.*

Assistant Attorney General Reynolds argued the cause for the United States in both cases. With him on the briefs were *Acting Solicitor General Wallace* and *Deputy Assistant Attorney General Cooper.*

William T. Coleman, Jr., pro se, by invitation of the Court, 456 U.S. 922, argued the cause as *amicus curiae* urging affirmance. With him on the brief were *Richard C. Warmer, Donald T. Bliss, John W. Stamper, Ira M. Feinberg,* and *Eric Schnapper.*†

† Briefs of *amici curiae* urging reversal in No. 81-3 were filed by *Earl W. Trent, Jr.,* and *John W. Baker* for the American Baptist Churches in the U.S.A. et al.; by *William H. Ellis* for the Center for Law and Religious Freedom of the Christian Legal Society; by *Forest D. Montgomery* for the National Association of Evangelicals; and by *Congressman Trent Lott, pro se.*

Briefs of *amici curiae* urging affirmance in both cases were filed by *Nadine Strossen, E. Richard Larson,* and *Samuel Rabinove* for the American Civil Liberties Union et al.; by *Harold P. Weinberger, Lawrence S. Robbins, Justin J. Finger, Jeffrey P. Sinensky,* and *David M. Raim* for the Anti-Defamation League of B'nai B'rith; by *John H. Pickering, William T. Lake,* and *Adam Yarmolinsky* for Independent Sector; by *Amy Young-Anawaty, David Carliner, Burt Neuborne,* and *Harry A. Inman* for the International Human Rights Law Group; by *Robert H. Kapp, Walter A. Smith, Jr., Joseph M. Hassett, David S. Tatel, Richard C. Dinkelspiel, William L. Robinson, Norman J. Chachkin,* and *Frank R. Parker* for the Lawyers' Committee for Civil Rights Under Law; by *Thomas I. Atkins, J. Harold Flannery,* and *Robert D. Goldstein* for the National Association for the Advancement of Colored People et al.; by *Leon Silverman, Linda R. Blumkin, Ann F. Thomas, Marla G. Simpson,* and *Jack Greenberg* for the NAACP Legal Defense and Educational Fund, Inc.; by *Harry K. Mansfield* for the National Association of Independent Schools; by *Charles E. Daye* for the North Carolina Association of Black Lawyers; by *Earle K. Moore* for the United Church of Christ; and by *Lawrence E. Lewy, pro se.*

Briefs of *amici curiae* in both cases were filed by *Martin B. Cowan* and *Dennis Rapps* for the National Jewish Commission on Law and Public Affairs; and by *Laurence H. Tribe, pro se,* and *Bernard Wolfman, pro se.*

*577 Chief Justice BURGER delivered the opinion of the Court.

[1] We granted certiorari to decide whether petitioners, nonprofit private schools that prescribe and enforce racially discriminatory admissions standards on the basis of religious doctrine, qualify as tax-exempt organizations under § 501(c)(3) of the Internal Revenue Code of 1954.

I

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A

Until 1970, the Internal Revenue Service granted tax-exempt status to private schools, without regard to their racial admissions policies, under § 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), [FN1] and granted charitable ***578** deductions for contributions to such schools under § 170 of the Code, 26 U.S.C. § 170. [FN2]

FN1. Section 501(c)(3) lists the following organizations, which, pursuant to § 501(a), are exempt from taxation unless denied tax exemptions under other specified sections of the Code:
"Corporations, and any community chest, fund, or foundation, *organized and operated exclusively for religious, charitable,* scientific, testing for public safety, literary, *or educational purposes,* or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation ..., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." (Emphasis added).

FN2. Section 170(a) allows deductions for certain "charitable contributions." Section 170(c)(2)(B) includes within the definition of "charitable contribution" a contribution or gift to or for the use of a corporation "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes...."

On January 12, 1970, a three-judge District Court for the District of Columbia issued a preliminary injunction prohibiting the IRS from according tax-exempt status to private schools in Mississippi that discriminated as to admissions on the basis of race. *Green v. Kennedy,* 309 F.Supp. 1127 (D.D.C.), *app. dismissed sub nom. Cannon v. Green,* 398 U.S. 956, 90 S.Ct. 2169, 26 L.Ed.2d 539 (1970). Thereafter, in July 1970, the IRS concluded that it could "no longer legally justify allowing tax-exempt status [under § 501(c)(3)] to private schools which practice racial discrimination." IRS News Release (7/10/70), reprinted in App. in No. 81-3, p. A235. At the same time, the IRS announced that it could not "treat gifts to such schools as charitable deductions for income tax purposes [under § 170]." *Ibid.* By letter dated November 30, 1970, the IRS formally notified private schools, including those involved in this case, of this change in policy, "applicable to all private ****2022** schools in the United States at all levels of education." See *id.,* at A232.

On June 30, 1971, the three-judge District Court issued its opinion on the merits of the Mississippi challenge. *Green v. Connally,* 330 F.Supp. 1150 (D.D.C.), *aff'd sub nom. Coit v. Green,* 404 U.S. 997, 92 S.Ct. 564, 30 L.Ed.2d 550 (1971) (*per curiam*). That court approved the IRS' amended construction of the Tax Code. The court also held that racially discriminatory private schools were not entitled to exemption under § 501(c)(3) and that donors were not entitled to deductions for contributions to such schools under § 170. The court permanently enjoined the Commissioner of ***579** Internal Revenue from approving tax-exempt status for any school in Mississippi that did not publicly maintain a policy of nondiscrimination.

The revised policy on discrimination was formalized in Revenue Ruling 71- 447, 1971-2 Cum.Bull. 230:

"Both the courts and the Internal Revenue Service have long recognized that the statutory requirement of being 'organized and operated exclusively for religious, charitable, ... or educational purposes' was intended to express the basic common law concept [of 'charity']... All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy." *Id.,* at 230.

Based on the "national policy to discourage racial discrimination in education," the IRS ruled that "a private school not having a racially

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nondiscriminatory policy as to students is not 'charitable' within the common law concepts reflected in sections 170 and 501(c)(3) of the Code." *Id.*, at 231. [FN3]

FN3. Revenue Ruling 71-447, 1971-2 Cum.Bull. 230, defined "racially nondiscriminatory policy as to students" as meaning that:
"[T]he school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school- administered programs."

The application of the IRS construction of these provisions to petitioners, two private schools with racially discriminatory admissions policies, is now before us.

B

No. 81-3, Bob Jones University v. United States

Bob Jones University is a nonprofit corporation located in Greenville, South Carolina. [FN4] Its purpose is "to conduct an institution ***580** of learning ..., giving special emphasis to the Christian religion and the ethics revealed in the Holy Scriptures." Certificate of Incorporation, Bob Jones University, Inc., of Greenville, S.C., *reprinted in* App. in No. 81-3, pp. A118- A119. The corporation operates a school with an enrollment of approximately 5,000 students, from kindergarten through college and graduate school. Bob Jones University is not affiliated with any religious denomination, but is dedicated to the teaching and propagation of its fundamentalist Christian religious beliefs. It is both a religious and educational institution. Its teachers are required to be devout Christians, and all courses at the University are taught according to the Bible. Entering students are screened as to their religious beliefs, and their public and private conduct is strictly regulated by standards promulgated by University authorities.

FN4. Bob Jones University was founded in Florida in 1927. It moved to Greenville, South Carolina, in 1940, and has been incorporated as an eleemosynary institution in South Carolina since 1952.

The sponsors of the University genuinely believe that the Bible forbids interracial dating and marriage. To effectuate these views, Negroes were completely excluded until 1971. From 1971 to May 1975, the University accepted no applications from unmarried Negroes, [FN5] but did accept applications ****2023** from Negroes married within their race.

FN5. Beginning in 1973, Bob Jones University instituted an exception to this rule, allowing applications from unmarried Negroes who had been members of the University staff for four years or more.

Following the decision of the United States Court of Appeals for the Fourth Circuit in *McCrary v. Runyon*, 515 F.2d 1082 (CA4 1975), *aff'd* 427 U.S. 160, 96 S.Ct. 2586, 49 L.Ed.2d 415 (1976), prohibiting racial exclusion from private schools, the University revised its policy. Since May 29, 1975, the University has permitted unmarried Negroes to enroll; but a disciplinary rule prohibits interracial dating and marriage. That rule reads:

There is to be no interracial dating

1. Students who are partners in an interracial marriage will be expelled.

***581** 2. Students who are members of or affiliated with any group or organization which holds as one of its goals or advocates interracial marriage will be expelled.

3. Students who date outside their own race will be expelled.

4. Students who espouse, promote, or encourage others to violate the University's dating rules and regulations will be expelled. App. in No. 81-3, p. A197.

The University continues to deny admission to applicants engaged in an interracial marriage or known to advocate interracial marriage or dating. *Id.*, at A277.

Until 1970, the IRS extended tax-exempt status to

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Bob Jones University under § 501(c)(3). By the letter of November 30, 1970, that followed the injunction issued in *Green v. Kennedy, supra,* the IRS formally notified the University of the change in IRS policy, and announced its intention to challenge the tax-exempt status of private schools practicing racial discrimination in their admissions policies.

After failing to obtain an assurance of tax exemption through administrative means, the University instituted an action in 1971 seeking to enjoin the IRS from revoking the school's tax-exempt status. That suit culminated in *Bob Jones University v. Simon,* 416 U.S. 725, 94 S.Ct. 2038, 40 L.Ed.2d 496 (1974), in which this Court held that the Anti-Injunction Act of the Internal Revenue Code, 26 U.S.C. § 7421(a), prohibited the University from obtaining judicial review by way of injunctive action before the assessment or collection of any tax.

Thereafter, on April 16, 1975, the IRS notified the University of the proposed revocation of its tax-exempt status. On January 19, 1976, the IRS officially revoked the University's tax-exempt status, effective as of December 1, 1970, the day after the University was formally notified of the change in IRS policy. The University subsequently filed returns under the Federal Unemployment Tax Act for the period from December 1, 1970, to December 31, 1975, and paid a tax ***582** totalling $21.00 on one employee for the calendar year of 1975. After its request for a refund was denied, the University instituted the present action, seeking to recover the $21.00 it had paid to the IRS. The Government counterclaimed for unpaid federal unemployment taxes for the taxable years 1971 through 1975, in the amount of $489,675.59, plus interest.

The United States District Court for the District of South Carolina held that revocation of the University's tax-exempt status exceeded the delegated powers of the IRS, was improper under the IRS rulings and procedures, and violated the University's rights under the Religion Clauses of the First Amendment. 468 F.Supp. 890, 907 (D.S.C.1978). The court accordingly ordered the IRS to pay the University the $21.00 refund it claimed and rejected the IRS counterclaim.

The Court of Appeals for the Fourth Circuit, in a divided opinion, reversed. 639 F.2d 147 (CA4 1980). Citing *Green v. Connally, supra,* with approval, the Court of Appeals concluded that § 501(c)(3) must be read against the background of charitable trust law. To be eligible for an exemption under that section, an institution must be "charitable" in the common law sense, and therefore must not be contrary to public policy. In the court's ****2024** view, Bob Jones University did not meet this requirement, since its "racial policies violated the clearly defined public policy, rooted in our Constitution, condemning racial discrimination and, more specifically, the government policy against subsidizing racial discrimination in education, public or private." *Id.,* at 151. The court held that the IRS acted within its statutory authority in revoking the University's tax-exempt status. Finally, the Court of Appeals rejected petitioner's arguments that the revocation of the tax exemption violated the Free Exercise and Establishment Clauses of the First Amendment. The case was remanded to the District Court with instructions to dismiss the University's claim for a refund and to reinstate the Government's counterclaim.

***583** C
No. 81-1, Goldsboro Christian Schools, Inc. v. United States

Goldsboro Christian Schools is a nonprofit corporation located in Goldsboro, North Carolina. Like Bob Jones University, it was established "to conduct an institution of learning ..., giving special emphasis to the Christian religion and the ethics revealed in the Holy scriptures." Articles of Incorporation, ¶ 3(a); see Complaint, ¶ 6, reprinted in App. in No. 81-1, pp. 5-6. The school offers classes from kindergarten through high school, and since at least 1969 has satisfied the State of North Carolina's requirements for secular education in private schools. The school requires its high school students to take Bible-related courses, and begins each class with prayer.

Since its incorporation in 1963, Goldsboro Christian Schools has maintained a racially discriminatory admissions policy based upon its interpretation of the Bible. [FN6] Goldsboro has for the most part accepted only Caucasians. On occasion, however, the school has accepted children from racially mixed marriages in which one of the

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parents is Caucasian.

FN6. According to the interpretation espoused by Goldsboro, race is determined by descendance from one of Noah's three sons--Ham, Shem and Japheth. Based on this interpretation, Orientals and Negroes are Hamitic, Hebrews are Shemitic, and Caucasians are Japhethitic. Cultural or biological mixing of the races is regarded as a violation of God's command. App. in No. 81-1, pp. 40-41.

Goldsboro never received a determination by the IRS that it was an organization entitled to tax exemption under § 501(c)(3). Upon audit of Goldsboro's records for the years 1969 through 1972, the IRS determined that Goldsboro was not an organization described in § 501(c)(3), and therefore was required to pay taxes under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act.

*584 Goldsboro paid the IRS $3,459.93 in withholding, social security, and unemployment taxes with respect to one employee for the years 1969 through 1972. Thereafter, Goldsboro filed a suit seeking refund of that payment, claiming that the school had been improperly denied § 501(c)(3) exempt status. [FN7] The IRS counterclaimed for $160,073.96 in unpaid social security and unemployment taxes for the years 1969 through 1972, including interest and penalties. [FN8]

FN7. Goldsboro also asserted that it was not obliged to pay taxes on lodging furnished to its teachers. Petitioner does not ask this Court to review the rejection of that claim.

FN8. By stipulation, the IRS agreed to abate its assessment for 1969 and most of 1970 to reflect the fact that the IRS did not begin enforcing its policy of denying tax-exempt status to racially discriminatory private schools until November 30, 1970. As a result, the amount of the counterclaim was reduced to $116,190.99. App. in No. 81-1, pp. 104, 110.

The District Court for the Eastern District of North Carolina decided the action on cross-motions for summary judgment. 436 F.Supp. 1314 (E.D.N.C.1977). In addressing the motions for summary judgment, the court assumed that Goldsboro's racially discriminatory admissions policy was based upon a sincerely held religious belief. The court nevertheless rejected Goldsboro's claim to tax-exempt status under § 501(c)(3), finding that "private schools maintaining racially **2025 discriminatory admissions policies violate clearly declared federal policy and, therefore, must be denied the federal tax benefits flowing from qualification under Section 501(c)(3)." *Id.*, at 1318 . The court also rejected Goldsboro's arguments that denial of tax-exempt status violated the Free Exercise and Establishment Clauses of the First Amendment. Accordingly, the court entered summary judgment for the Government on its counterclaim.

The Court of Appeals for the Fourth Circuit affirmed, 644 F.2d 879 (CA4 1981) (*per curiam*). That court found an "identity for present purposes" between the *Goldsboro* case and the *Bob Jones University* case, which had been decided shortly *585 before by another panel of that court, and affirmed for the reasons set forth in *Bob Jones University*.

We granted certiorari in both cases, 454 U.S. 892, 102 S.Ct. 386, 70 L.Ed.2d 205 (1981), [FN9] and we affirm in each.

FN9. After the Court granted certiorari, the Government filed a motion to dismiss, informing the Court that the Department of Treasury intended to revoke Revenue Ruling 71-447 and other pertinent rulings and to recognize § 501(c)(3) exemptions for petitioners. The Government suggested that these actions were therefore moot. Before this Court ruled on that motion, however, the United States Court of Appeals for the District of Columbia Circuit enjoined the Government from granting § 501(c)(3) tax-exempt status to any school that discriminates on the basis

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of race. *Wright v. Regan,* No. 80-1124 (CADC Feb. 18, 1982) (*per curiam* order). Thereafter, the Government informed the Court that it would not revoke the revenue rulings and withdrew its request that the actions be dismissed as moot. The Government continues to assert that the IRS lacked authority to promulgate Revenue Ruling 71-447, and does not defend that aspect of the rulings below.

II

A

In Revenue Ruling 71-447, the IRS formalized the policy first announced in 1970, that § 170 and § 501(c)(3) embrace the common law "charity" concept. Under that view, to qualify for a tax exemption pursuant to § 501(c)(3), an institution must show, first, that it falls within one of the eight categories expressly set forth in that section, and second, that its activity is not contrary to settled public policy.

Section 501(c)(3) provides that "[c]orporations ... organized and operated exclusively for religious, charitable ... or educational purposes" are entitled to tax exemption. Petitioners argue that the plain language of the statute guarantees them tax-exempt status. They emphasize the absence of any language in the statute expressly requiring all exempt organizations to be "charitable" in the common law sense, and they contend that the disjunctive "or" separating the categories in § 501(c)(3) precludes such a reading. Instead, they argue that if an institution falls within one or more of ***586** the specified categories it is automatically entitled to exemption, without regard to whether it also qualifies as "charitable." The Court of Appeals rejected that contention and concluded that petitioners' interpretation of the statute "tears section 501(c)(3) from its roots." *United States v. Bob Jones University, supra,* 639 F.2d, at 151.

[2] It is a well-established canon of statutory construction that a court should go beyond the literal language of a statute if reliance on that language would defeat the plain purpose of the statute:

"The general words used in the clause ..., taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal--because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, *but will take in connection with it the whole statute ... and the objects and policy of the law....*" *Brown v. Duchesne,* 19 How. 183, 194, 15 L.Ed. 595 (1857) (emphasis added).

****2026** [3] Section 501(c)(3) therefore must be analyzed and construed within the framework of the Internal Revenue Code and against the background of the Congressional purposes. Such an examination reveals unmistakable evidence that, underlying all relevant parts of the Code, is the intent that entitlement to tax exemption depends on meeting certain common law standards of charity--namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy.

[4] This "charitable" concept appears explicitly in § 170 of the Code. That section contains a list of organizations virtually identical to that contained in § 501(c)(3). It is apparent that Congress intended that list to have the same meaning in both ***587** sections. [FN10] In § 170, Congress used the list of organizations in defining the term "charitable contributions." On its face, therefore, § 170 reveals that Congress' intention was to provide tax benefits to organizations serving charitable purposes. [FN11] The form of § 170 simply makes plain what common sense and history tell us: in enacting both § 170 and ***588** § 501(c)(3), Congress sought to provide tax benefits to charitable organizations, to encourage the development of private institutions that serve a useful public purpose or supplement or take the place of public institutions of the same kind.

FN10. The predecessor of § 170 originally was enacted in 1917, as part of the War Revenue Act of 1917, ch. 63, § 1201(2), 40 Stat. 300, 330 (1917), whereas the predecessor of § 501(c)(3) dates back to the income tax law of 1894, Act of August

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27, 1894, ch. 349, 28 Stat. 509, see n. 14, *infra.* There are minor differences between the lists of organizations in the two sections, see generally Liles & Blum, Development of the Federal Tax Treatment of Charities, 39 L. & Contemp. Prob. 6, 24-25 (No. 4, 1975) (hereinafter Liles & Blum). Nevertheless, the two sections are closely related; both seek to achieve the same basic goal of encouraging the development of certain organizations through the grant of tax benefits. The language of the two sections is in most respects identical, and the Commissioner and the courts consistently have applied many of the same standards in interpreting those sections. See 5 J. Mertens, The Law of Federal Income Taxation § 31.12 (1980); 6 *id.* §§ 34.01-34.13 (1975); B. Bittker & L. Stone, Federal Income Taxation 220-222 (5th ed. 1980). To the extent that § 170 "aids in ascertaining the meaning" of § 501(c)(3), therefore, it is "entitled to great weight," *United States v. Stewart,* 311 U.S. 60, 64-65, 61 S.Ct. 102, 105-106, 85 L.Ed. 40 (1940). See *Harris v. Commissioner,* 340 U.S. 106, 107, 71 S.Ct. 181, 182, 95 L.Ed. 111 (1950).

FN11. The dissent suggests that the Court "quite adeptly avoids the statute it is construing," *post,* at 2039, and "seeks refuge ... by turning to § 170," *post,* at 2040. This assertion dissolves when one sees that § 501(c)(3) and § 170 are construed together, as they must be. The dissent acknowledges that the two sections are "mirror" provisions; surely there can be no doubt that the Court properly looks to § 170 to determine the meaning of § 501(c)(3). It is also suggested that § 170 is "at best of little usefulness in finding the meaning of § 501(c)(3)," since "§ 170(c) simply tracks the requirements set forth in § 501(c)(3)," *post,* at 2040. That reading loses sight of the fact that § 170(c) defines the term "charitable contribution." The plain language of § 170 reveals that Congress' objective was to employ tax exemptions and deductions to promote certain *charitable* purposes. While the eight categories of institutions specified in the statute are indeed presumptively charitable in nature, the IRS properly considered principles of charitable trust law in determining whether the institutions in question may truly be considered "charitable," for purposes of entitlement to the tax benefits conferred by § 170 and § 501(c)(3).

Tax exemptions for certain institutions thought beneficial to the social order of the country as a whole, or to a particular community, are deeply rooted in our history, as in that of England. The origins of such exemptions lie in the special privileges that have long been extended to charitable trusts. [FN12]

FN12. The form and history of the charitable exemption and deduction sections of the various income tax acts reveal that Congress was guided by the common law of charitable trusts. See Simon, The Tax-Exempt Status of Racially Discriminatory Religious Schools, 36 Tax L.Rev. 477, 485-489 (1981) (hereinafter Simon). Congress acknowledged as much in 1969. The House Report on the Tax Reform Act of 1969, Pub.L. 91-172, 83 Stat. 487, stated that the § 501(c)(3) exemption was available only to institutions that served "the specified charitable purposes," H.R.Rep. No. 413 (Part 1), 91st Cong., 1st Sess. 35 (1969), U.S.Code Cong. & Admin.News 1969, p. 1645, and described "charitable" as "a term that has been used in the law of trusts for hundreds of years." *Id.,* at 43, U.S.Code Cong. & Admin.News 1969, p. 1688. We need not consider whether Congress intended to incorporate into the Internal Revenue Code any aspects of charitable trust law other than the requirements of public benefit and a valid public purpose.

**2027 More than a century ago, this Court announced the caveat that is critical in this case:

"[I]t has now become an established principle of

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American law, that courts of chancery will sustain and protect ... a gift ... to public charitable uses, *provided the same is consistent with local laws and public policy....*" *Perin v. Carey,* 24 How. 465, 501, 16 L.Ed. 701 (1861) (emphasis added).

Soon after that, in 1878, the Court commented:

"A charitable use, *where neither law nor public policy forbids,* may be applied to almost any thing *that tends to promote the well-doing and well-being of social man.*" *Ould v. Washington Hospital for Foundlings,* 95 U.S. 303, 311, 24 L.Ed. 450 (1878) (emphasis added). ***589** See also, *e.g., Jackson v. Phillips,* 96 Mass. 539, 556 (1867).

In 1891, in a restatement of the English law of charity [FN13] which has long been recognized as a leading authority in this country, Lord MacNaghten stated:

FN13. The draftsmen of the 1894 income tax law, which included the first charitable exemption provision, relied heavily on English concepts of taxation; and the list of exempt organizations appears to have been patterned upon English income tax statutes. See 26 Cong.Rec. 584-588, 6612-6615 (1894).

" 'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; *trusts for the advancement of education;* trusts for the advancement of religion; and trusts for *other purposes beneficial to the community,* not falling under any of the preceding heads." *Commissioners v. Pemsel,* [1891] A.C. 531, 583 (emphasis added). See, *e.g.,* 4 A. Scott, The Law of Trusts § 368, at 2853-2854 (3d ed. 1967) (hereinafter Scott).

These statements clearly reveal the legal background against which Congress enacted the first charitable exemption statute in 1894: [FN14] charities were to be given preferential treatment because they provide a benefit to society.

FN14. Act of August 27, 1894, ch. 349, § 32, 28 Stat. 509, 556-557 (1894). The income tax system contained in the 1894 Act was declared unconstitutional, *Pollock v. Farmers' Loan and Trust Co.,* 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108 (1895), for reasons unrelated to the charitable exemption provision. The terms of that exemption were in substance included in the corporate income tax contained in the Payne Aldrich Tariff Act of 1909, ch. 6, § 38, 36 Stat. 11, 112 (1909). A similar exemption has been included in every income tax act since the adoption of the Sixteenth Amendment, beginning with the Revenue Act of 1913, ch. 16, § II(G), 38 Stat. 114, 172 (1913). See generally Reiling, Federal Taxation: What Is a Charitable Organization?, 44 ABA J. 525 (1958); Liles & Blum.

What little floor debate occurred on the charitable exemption provision of the 1894 Act and similar sections of later statutes leaves no doubt that Congress deemed the specified organizations entitled to tax benefits because they served desirable public purposes. See, *e.g.,* 26 Cong.Rec. 585-586 ***590** (1894); *id.,* at 1727. In floor debate on a similar provision in 1917, for example, Senator Hollis articulated the rationale:

"For every dollar that a man contributes to these public charities, educational, scientific, or otherwise, the public gets 100 percent." 55 *id.,* at 6728 (1917). See also, *e.g.,* 44 *id.,* at 4150 (1909); 50 *id.,* at 1305-1306 (1913).

In 1924, this Court restated the common understanding of the charitable exemption provision:

"Evidently the exemption is made in recognition of the benefit which the public derives from corporate activities of the class named, and is intended to aid them when not conducted for private gain." *Trinidad v. Sagrada Orden,* 263 U.S. 578, 581, 44 S.Ct. 204, 205, 68 L.Ed. 458 (1924). [FN15]

FN15. That same year, the Bureau of Internal Revenue expressed a similar view of the charitable deduction section of the estate tax contained in the Revenue Act of 1918, ch. 18, § 403(a)(3), 40 Stat. 1057, 1098 (1919). The Solicitor of Internal Revenue looked to the common law of charitable trusts in construing that provision, and noted that "generally bequests for the benefit and advantage of

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the general public are valid as charities." Sol.Op. 159, III-1 C.B. 480 (1924).

**2028 In enacting the Revenue Act of 1938, ch. 289, 52 Stat. 447 (1938), Congress expressly reconfirmed this view with respect to the charitable deduction provision:

"The exemption from taxation of money and property devoted to charitable and other purposes is based on the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare." H.R.Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938). [FN16]

FN16. The common law requirement of public benefit is universally recognized by commentators on the law of trusts. For example, Bogert states:

"In return for the favorable treatment accorded charitable gifts which imply some disadvantage to the community, the courts must find in the trust which is to be deemed 'charitable' some real advantages to the public which more than offset the disadvantages arising out of special privileges accorded charitable trusts." G. Bogert & G. Bogert, The Law of Trusts and Trustees § 361, at 3 (rev. 2d ed. 1977) (hereinafter Bogert).

For other statements of this principle, see, *e.g.*, 4 Scott § 348, at 2770; Restatement (Second) of Trusts § 368, comment b (1959); E. Fisch, D. Freed & E. Schachter, Charities and Charitable Foundations § 256 (1974).

[5] *591 A corollary to the public benefit principle is the requirement, long recognized in the law of trusts, that the purpose of a charitable trust may not be illegal or violate established public policy. In 1861, this Court stated that a public charitable use must be "consistent with local laws and public policy," *Perin v. Carey, supra,* 24 How., at 501. Modern commentators and courts have echoed that view. See, *e.g.*, Restatement (Second) of Trusts, § 377, comment c (1959); 4 Scott § 377, and cases cited therein; Bogert § 378, at 191-192. [FN17]

FN17. Cf. *Tank Truck Rentals, Inc. v. Commissioner,* 356 U.S. 30, 35, 78 S.Ct. 507, 510, 2 L.Ed.2d 562 (1958), in which this Court referred to "the presumption against congressional intent to encourage violation of declared public policy" in upholding the Commissioner's disallowance of deductions claimed by a trucking company for fines it paid for violations of state maximum weight laws.

[6][7][8] When the Government grants exemptions or allows deductions all taxpayers are affected; the very fact of the exemption or deduction for the donor means that other taxpayers can be said to be indirect and vicarious "donors." Charitable exemptions are justified on the basis that the exempt entity confers a public benefit--a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues. [FN18] History buttresses *592 logic to make clear that, to warrant exemption under § 501(c)(3), an institution must fall within a category specified in that section and must demonstrably serve and be in harmony with the public **2029 interest. [FN19] The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.

FN18. The dissent acknowledges that "Congress intended ... to offer a tax benefit to organizations ... providing a public benefit," *post,* at 2040, but suggests that Congress itself fully defined what organizations provide a public benefit, through the list of eight categories of exempt organizations contained in § 170 and § 501(c)(3). Under that view, any nonprofit organization that falls within one of the specified categories is automatically entitled to the tax benefits, provided it does not engage in expressly prohibited lobbying or political activities. *Post,* at 2042. The dissent thus would have us conclude, for example, that any nonprofit

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organization that does not engage in prohibited lobbying activities is entitled to tax exemption as an "educational" institution if it is organized for the "instruction or training of the individual for the purpose of improving or developing his capabilities," 26 CFR § 1.501(c)(3)-1(d)(3). See *post,* at 2045. As Judge Leventhal noted in *Green v. Connally,* 330 F.Supp. 1150, 1160 (D.D.C.), *aff'd sub nom. Coit v. Green,* 404 U.S. 997, 92 S.Ct. 564, 30 L.Ed.2d 550 (1971) (*per curiam*), Fagin's school for educating English boys in the art of picking pockets would be an "educational" institution under that definition. Similarly, a band of former military personnel might well set up a school for intensive training of subversives for guerrilla warfare and terrorism in other countries; in the abstract, that "school" would qualify as an "educational" institution. Surely Congress had no thought of affording such an unthinking, wooden meaning to § 170 and § 501(c)(3) as to provide tax benefits to "educational" organizations that do not serve a public, charitable purpose.

FN19. The Court's reading of § 501(c)(3) does not render meaningless Congress' action in specifying the eight categories of presumptively exempt organizations, as petitioners suggest. See Brief of Petitioner Goldsboro Christian Schools 18-24. To be entitled to tax- exempt status under § 501(c)(3), an organization must first fall within one of the categories specified by Congress, and in addition must serve a valid charitable purpose.

B

[9][10] We are bound to approach these questions with full awareness that determinations of public benefit and public policy are sensitive matters with serious implications for the institutions affected; a declaration that a given institution is not "charitable" should be made only where there can be no doubt that the activity involved is contrary to a fundamental public policy. But there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice. Prior to 1954, public education in many places still was conducted under the pall of **593 Plessy v. Ferguson,* 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896); racial segregation in primary and secondary education prevailed in many parts of the country. See, *e.g.,* Segregation and the Fourteenth Amendment in the States (B. Reams & P. Wilson, eds. 1975). [FN20] This Court's decision in *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), signalled an end to that era. Over the past quarter of a century, every pronouncement of this Court and myriad Acts of Congress and Executive Orders attest a firm national policy to prohibit racial segregation and discrimination in public education.

FN20. In 1894, when the first charitable exemption provision was enacted, racially segregated educational institutions would not have been regarded as against public policy. Yet contemporary standards must be considered in determining whether given activities provide a public benefit and are entitled to the charitable tax exemption. In *Walz v. Tax Comm'n,* 397 U.S. 664, 672-673, 90 S.Ct. 1409, 1413, 25 L.Ed.2d 697 (1970), we observed:
"Qualification for tax exemption is not perpetual or immutable; some tax- exempt groups lose that status when their activities take them outside the classification and new entities can come into being and qualify for the exemption."
Charitable trust law also makes clear that the definition of "charity" depends upon contemporary standards. See, *e.g.,* Restatement (Second) of Trusts, § 374, comment a (1959); Bogert § 369, at 65-67; 4 Scott § 368, at 2855-2856.

[11] An unbroken line of cases following *Brown v. Board of Education* establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals.

"The right of a student not to be segregated on racial grounds in schools ... is indeed so

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fundamental and pervasive that it is embraced in the concept of due process of law." *Cooper v. Aaron,* 358 U.S. 1, 19, 78 S.Ct. 1401, 1410, 3 L.Ed.2d 19 (1958).

In *Norwood v. Harrison,* 413 U.S. 455, 468-469, 93 S.Ct. 2804, 2812, 37 L.Ed.2d 723 (1973), we dealt with a non-public institution:

"[A] private school--even one that discriminates--fulfills an important educational function; *however, ... [that] legitimate educational function cannot be isolated from* *594 *discriminatory practices ... [D]iscriminatory treatment exerts a pervasive influence on the entire educational process.*" (Emphasis added). See also *Runyon v. McCrary,* 427 U.S. 160, 96 S.Ct. 2586, 49 L.Ed.2d 415 (1976); *Griffin v. County School Board,* 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964).

Congress, in Titles IV and VI of the Civil Rights Act of 1964, Pub.L. 88- 352, 78 Stat. 241, 42 U.S.C. §§ 2000c et seq., 2000c-6, 2000-d et seq., clearly expressed its agreement that racial discrimination in education violates a fundamental public policy. Other sections of that Act, and numerous enactments since then, testify to the public **2030 policy against racial discrimination. See, *e.g.,* the Voting Rights Act of 1965, Pub.L. 89-110, 79 Stat. 437, 42 U.S.C. §§ 1971 *et seq.;* Title VIII of the Civil Rights Act of 1968, Pub.L. 90-284, 82 Stat. 81, 42 U.S.C. §§ 3601 *et seq.;* the Emergency School Aid Act of 1972, Pub.L. 92-318, 86 Stat. 354 (repealed effective Sept. 30, 1979; replaced by similar provisions in the Emergency School Aid Act of 1978, Pub.L. 95-561, 92 Stat. 2252, 20 U.S.C. §§ 3191-3207 (1980 Supp.)).

The Executive Branch has consistently placed its support behind eradication of racial discrimination. Several years before this Court's decision in *Brown v. Board of Education, supra,* President Truman issued Executive Orders prohibiting racial discrimination in federal employment decisions, Exec. Order No. 9980, 3 CFR 720 (1943-1948 Comp.), and in classifications for the Selective Service, Exec. Order No. 9988, *id.* 726, 729. In 1957, President Eisenhower employed military forces to ensure compliance with federal standards in school desegregation programs. Exec. Order No. 10730, 3 CFR 389 (1954-1958 Comp.). And in 1962, President Kennedy announced:

"[T]he granting of federal assistance for ... housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of *595 the United States as manifested in its Constitution and laws." Exec. Order No. 11063, 3 CFR 652 (1959-1963 Comp.).

These are but a few of numerous Executive Orders over the past three decades demonstrating the commitment of the Executive Branch to the fundamental policy of eliminating racial discrimination. See, *e.g.,* Exec. Order No. 11197, 3 CFR 278 (1964-1965 Comp.); Exec. Order No. 11478, 3 CFR 803 (1966- 1970 Comp.); Exec. Order No. 11764, 3 CFR 849 (1971-1975 Comp.); Exec. Order No. 12250, 3 CFR 298 (1981).

[12] Few social or political issues in our history have been more vigorously debated and more extensively ventilated than the issue of racial discrimination, particularly in education. Given the stress and anguish of the history of efforts to escape from the shackles of the "separate but equal" doctrine of *Plessy v. Ferguson, supra,* it cannot be said that educational institutions that, for whatever reasons, practice racial discrimination, are institutions exercising "beneficial and stabilizing influences in community life," *Walz v. Tax Comm'n,* 397 U.S. 664, 673, 90 S.Ct. 1409, 1413, 25 L.Ed.2d 697 (1970), or should be encouraged by having all taxpayers share in their support by way of special tax status.

[13][14] There can thus be no question that the interpretation of § 170 and § 501(c)(3) announced by the IRS in 1970 was correct. That it may be seen as belated does not undermine its soundness. It would be wholly incompatible with the concepts underlying tax exemption to grant the benefit of tax-exempt status to racially discriminatory educational entities, which "exer [t] a pervasive influence on the entire educational process." *Norwood v. Harrison, supra,* 413 U.S., at 469, 93 S.Ct., at 2812. Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial discrimination in education is contrary to public policy. Racially discriminatory educational institutions cannot be viewed as conferring a public benefit within the "charitable" concept discussed earlier, *596 or within the Congressional intent underlying § 170 and § 501(c)(3). [FN21]

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FN21. In view of our conclusion that racially discriminatory private schools violate fundamental public policy and cannot be deemed to confer a benefit on the public, we need not decide whether an organization providing a public benefit and otherwise meeting the requirements of § 501(c)(3) could nevertheless be denied tax-exempt status if certain of its activities violated a law or public policy.

C

[15] Petitioners contend that, regardless of whether the IRS properly concluded **2031 that racially discriminatory private schools violate public policy, only Congress can alter the scope of § 170 and § 501(c)(3). Petitioners accordingly argue that the IRS overstepped its lawful bounds in issuing its 1970 and 1971 rulings.

[16] Yet ever since the inception of the tax code, Congress has seen fit to vest in those administering the tax laws very broad authority to interpret those laws. In an area as complex as the tax system, the agency Congress vests with administrative responsibility must be able to exercise its authority to meet changing conditions and new problems. Indeed as early as 1918, Congress expressly authorized the Commissioner "to make all needful rules and regulations for the enforcement" of the tax laws. Revenue Act of 1918, ch. 18, § 1309, 40 Stat. 1057, 1143 (1919). The same provision, so essential to efficient and fair administration of the tax laws, has appeared in tax codes ever since, see 26 U.S.C. § 7805(a) (1976); and this Court has long recognized the primary authority of the IRS and its predecessors in construing the Internal Revenue Code, see, *e.g., Commissioner v. Portland Cement Co.,* 450 U.S. 156, 169, 101 S.Ct. 1037, 1045, 67 L.Ed.2d 140 (1981); *United States v. Correll,* 389 U.S. 299, 306-307, 88 S.Ct. 445, 449, 19 L.Ed.2d 537 (1967); *Boske v. Comingore,* 177 U.S. 459, 469-470, 20 S.Ct. 701, 705, 44 L.Ed. 846 (1900).

Congress, the source of IRS authority, can modify IRS rulings it considers improper; and courts exercise review over IRS actions. In the first instance, however, the responsibility *597 for construing the Code falls to the IRS. Since Congress cannot be expected to anticipate every conceivable problem that can arise or to carry out day-to-day oversight, it relies on the administrators and on the courts to implement the legislative will. Administrators, like judges, are under oath to do so.

In § 170 and § 501(c)(3), Congress has identified categories of traditionally exempt institutions and has specified certain additional requirements for tax exemption. Yet the need for continuing interpretation of those statutes is unavoidable. For more than 60 years, the IRS and its predecessors have constantly been called upon to interpret these and comparable provisions, and in doing so have referred consistently to principles of charitable trust law. In Treas.Reg. 45, art. 517(1) (1921), for example, the IRS denied charitable exemptions on the basis of proscribed political activity before the Congress itself added such conduct as a disqualifying element. In other instances, the IRS has denied charitable exemptions to otherwise qualified entities because they served too limited a class of people and thus did not provide a truly "public" benefit under the common law test. See, *e.g., Crellin v. Commissioner,* 46 B.T.A. 1152, 1155-1156 (1942); *James Sprunt Benevolent Trust v. Commissioner,* 20 B.T.A. 19, 24-25 (1930). See also Treas.Reg. § 1.501(c)(3)-1(d)(1)(ii) (1959). Some years before the issuance of the rulings challenged in these cases, the IRS also ruled that contributions to community recreational facilities would not be deductible and that the facilities themselves would not be entitled to tax-exempt status, unless those facilities were open to all on a racially nondiscriminatory basis. See Rev.Rul. 67-325, 1967-2 Cum.Bull. 113. These rulings reflect the Commissioner's continuing duty to interpret and apply the Internal Revenue Code. See also *Textile Mills Securities Corp. v. Commissioner,* 314 U.S. 326, 337-338, 62 S.Ct. 272, 279, 86 L.Ed. 249 (1941).

[17] Guided, of course, by the Code, the IRS has the responsibility, in the first instance, to determine whether a particular *598 entity is "charitable" for purposes of § 170 and § 501(c)(3). [FN22] This in turn may necessitate later determinations of whether given activities so violate public policy that the entities involved cannot be deemed to provide **2032 a public benefit worthy of "charitable" status. We emphasize, however, that these sensitive determinations should be made only where

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there is no doubt that the organization's activities violate fundamental public policy.

> FN22. In the present case, the IRS issued its rulings denying exemptions to racially discriminatory schools only after a three-judge District Court had issued a preliminary injunction. See *supra,* at 2021-2022.

On the record before us, there can be no doubt as to the national policy. In 1970, when the IRS first issued the ruling challenged here, the position of all three branches of the Federal Government was unmistakably clear. The correctness of the Commissioner's conclusion that a racially discriminatory private school "is not 'charitable' within the common law concepts reflected in ... the Code," Rev.Rul. 71-447, 1972-2 Cum.Bull., at 231, is wholly consistent with what Congress, the Executive and the courts had repeatedly declared before 1970. Indeed, it would be anomalous for the Executive, Legislative and Judicial Branches to reach conclusions that add up to a firm public policy on racial discrimination, and at the same time have the IRS blissfully ignore what all three branches of the Federal Government had declared. [FN23] Clearly an educational institution engaging in ***599** practices affirmatively at odds with this declared position of the whole government cannot be seen as exercising a "beneficial and stabilizing influenc[e] in community life," *Walz v. Tax Comm'n, supra,* 397 U.S., at 673, 90 S.Ct., at 1413, and is not "charitable," within the meaning of § 170 and § 501(c)(3). We therefore hold that the IRS did not exceed its authority when it announced its interpretation of § 170 and § 501(c)(3) in 1970 and 1971. [FN24]

> FN23. Justice POWELL misreads the Court's opinion when he suggests that the Court implies that "the Internal Revenue Service is invested with authority to decide which public policies are sufficiently 'fundamental' to require denial of tax exemptions," *post,* at 2039. The Court's opinion does not warrant that interpretation. Justice POWELL concedes that "if any national policy is sufficiently fundamental to constitute such an overriding limitation on the availability of tax-exempt status under § 501(c)(3), it is the policy against racial discrimination in education." *Post,* at 2037. Since that policy is sufficiently clear to warrant Justice POWELL's concession and for him to support our finding of longstanding Congressional acquiescence, it should be apparent that his concerns about the Court's opinion are unfounded.

> FN24. Many of the *amici curiae,* including Amicus William T. Coleman, Jr. (appointed by the Court), argue that denial of tax-exempt status to racially discriminatory schools is independently required by the equal protection component of the Fifth Amendment. In light of our resolution of this case, we do not reach that issue. See, *e.g., United States v. Clark,* 445 U.S. 23, 27, 100 S.Ct. 895, 899, 63 L.Ed.2d 171 (1980); *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 504, 99 S.Ct. 1313, 1320, 59 L.Ed.2d 533 (1979).

D

The actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority. It is, of course, not unknown for independent agencies or the Executive Branch to misconstrue the intent of a statute; Congress can and often does correct such misconceptions, if the courts have not done so. Yet for a dozen years Congress has been made aware--acutely aware--of the IRS rulings of 1970 and 1971. As we noted earlier, few issues have been the subject of more vigorous and widespread debate and discussion in and out of Congress than those related to racial segregation in education. Sincere adherents advocating contrary views have ventilated the subject for well over three decades. Failure of Congress to modify the IRS rulings of 1970 and 1971, of which Congress was, by its own studies and by public discourse, constantly reminded; and Congress' awareness of the denial of tax-exempt status for racially discriminatory schools when enacting other and related legislation make out an

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unusually strong case of legislative acquiescence in and ratification by implication of the 1970 and 1971 rulings.

[18] ***600** Ordinarily, and quite appropriately, courts are slow to attribute significance to the failure of Congress to act on particular legislation. See, *e.g., Aaron v. SEC,* 446 U.S. 680, 694 n. 11, 100 S.Ct. 1945, 1954 n. 11, 64 L.Ed.2d 611 (1980). We have observed that "unsuccessful attempts at legislation are not the best of guides to legislative ****2033** intent," *Red Lion Broadcasting Co. v. FCC,* 395 U.S. 367, 381-382 n. 11, 89 S.Ct. 1794, 1801-1802 n. 11, 23 L.Ed.2d 371 (1969). Here, however, we do not have an ordinary claim of legislative acquiescence. Only one month after the IRS announced its position in 1970, Congress held its first hearings on this precise issue. *Equal Educational Opportunity: Hearings Before the Senate Select Comm. on Equal Educational Opportunity,* 91st Cong., 2d Sess. 1991 (1970). Exhaustive hearings have been held on the issue at various times since then. These include hearings in February 1982, after we granted review in this case. *Administration's Change in Federal Policy Regarding the Tax Status of Racially Discriminatory Private Schools: Hearing Before the House Comm. on Ways and Means,* 97th Cong., 2d Sess. (1982).

Non-action by Congress is not often a useful guide, but the non-action here is significant. During the past 12 years there have been no fewer than 13 bills introduced to overturn the IRS interpretation of § 501(c)(3). [FN25] Not one of these bills has emerged from any committee, although Congress has enacted numerous other amendments to § 501 during this same period, including an amendment to § 501(c)(3) itself. Tax Reform Act of 1976, Pub.L. 94-455, § 1313(a), 90 Stat. 1520, 1730 (1976). It is hardly conceivable that Congress--and in this setting, any Member of Congress--was not abundantly ***601** aware of what was going on. In view of its prolonged and acute awareness of so important an issue, Congress' failure to act on the bills proposed on this subject provides added support for concluding that Congress acquiesced in the IRS rulings of 1970 and 1971. See, *e.g., Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran,* 456 U.S. 353, 379-382, 102 S.Ct. 1825, 1839-1841, 72 L.Ed.2d 182 (1982); *Haig v. Agee,* 453 U.S. 280, 300-301, 101 S.Ct. 2766, 2778-2779, 69 L.Ed.2d 640 (1981); *Herman & MacLean v. Huddleston,* --- U.S. ----, ----, 103 S.Ct. 683, 689, 74 L.Ed.2d 548 (1983); *United States v. Rutherford,* 442 U.S. 544, 554 n. 10, 99 S.Ct. 2470, 2476 n. 10, 61 L.Ed.2d 68 (1979).

FN25. H.R. 1096, 97th Cong., 1st Sess. (1981); H.R. 802, 97th Cong., 1st Sess. (1981); H.R. 498, 97th Cong., 1st Sess. (1981); H.R. 332, 97th Cong., 1st Sess. (1981); H.R. 95, 97th Cong., 1st Sess. (1981); S. 995, 96th Cong., 1st Sess. (1979); H.R. 1905, 96th Cong., 1st Sess. (1979); H.R. 96, 96th Cong., 1st Sess. (1979); H.R. 3225, 94th Cong., 1st Sess. (1975); H.R. 1394, 93d Cong., 1st Sess. (1973); H.R. 5350, 92d Cong., 1st Sess. (1971); H.R. 2352, 92d Cong., 1st Sess. (1971); H.R. 68, 92d Cong., 1st Sess. (1971).

The evidence of Congressional approval of the policy embodied in Revenue Ruling 71-447 goes well beyond the failure of Congress to act on legislative proposals. Congress affirmatively manifested its acquiescence in the IRS policy when it enacted the present § 501(i) of the Code, Act of October 20, 1976, Pub.L. 94-568, 90 Stat. 2697 (1976). That provision denies tax- exempt status to social clubs whose charters or policy statements provide for "discrimination against any person on the basis of race, color, or religion." [FN26] Both the House and Senate committee reports on that bill articulated the national policy against granting tax exemptions to racially discriminatory private clubs. S.Rep. No. 1318, 94th Cong., 2d Sess., 8 (1976); H.R.Rep. No. 1353, 94th Cong., 2d Sess., 8 (1976), U.S.Code Cong. & Admin.News 1976, p. 6051.

FN26. Prior to the introduction of this legislation, a three-judge district court had held that segregated social clubs were entitled to tax exemptions. *McGlotten v. Connally,* 338 F.Supp. 448 (D.D.C.1972). Section 501(i) was enacted primarily in response to that decision. See S.Rep. No. 1318, 94th Cong., 2d Sess., 7-8 (1976); H.R.Rep. No. 1353, 94th Cong., 2d Sess., 8 (1976), U.S.Code Cong. & Admin.News

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1976, p. 6051.

Even more significant is the fact that both reports focus on this Court's affirmance of *Green v. Connally, supra,* as having established that "discrimination on account of race is inconsistent with an *educational institution's* tax exempt status." S.Rep. No. 1318, *supra,* at 7-8 and n. 5; H.R.Rep. No. 1353, *supra,* at 8 and n. 5 (emphasis added), U.S.Code Cong. & Admin.News, p. 6058. These references in Congressional committee reports on an enactment denying **2034 tax exemptions to racially discriminatory private social clubs cannot be read *602 other than as indicating approval of the standards applied to racially discriminatory private schools by the IRS subsequent to 1970, and specifically of Revenue Ruling 71-447. [FN27]

FN27. Reliance is placed on scattered statements in floor debate by Congressmen critical of the IRS' adoption of Revenue Ruling 71-447. See, *e.g.,* Brief of Petitioner Goldsboro Christian Schools 27-28. Those views did not prevail. That several Congressmen, expressing their individual views, argued that the IRS had no authority to take the action in question, is hardly a balance for the overwhelming evidence of Congressional awareness of and acquiescence in the IRS rulings of 1970 and 1971. Petitioners also argue that the Ashbrook and Dornan Amendments to the Treasury, Postal Service, and General Government Appropriations Act of 1980; Pub.L. 96-74 ; §§ 103, 614, 615; 93 Stat. 559, 562, 576-577 (1979), reflect Congressional opposition to the IRS policy formalized in Revenue Ruling 71-447. Those amendments, however, are directly concerned only with limiting more aggressive enforcement procedures proposed by the IRS in 1978 and 1979 and preventing the adoption of more stringent substantive standards. The Ashbrook Amendment, § 103 of the Act, applies only to procedures, guidelines or measures adopted after August 22, 1978, and thus in no way affects the status of Revenue Ruling 71-447. In fact, both Congressman Dornan and Congressman Ashbrook explicitly stated that their amendments would have no effect on prior IRS policy, including Revenue Ruling 71-447, see 125 Cong.Rec. H5982 (daily ed. July 16, 1979) (Cong. Dornan: "[M]y amendment will not affect existing IRS rules which IRS has used to revoke tax exemptions of white segregated academies under Revenue Ruling 71-447...."); 125 Cong.Rec. H5882 (daily ed. July 13, 1979) (Cong. Ashbrook: "My amendment very clearly indicates on its face that all the regulations in existence as of August 22, 1978, would not be touched."). These amendments therefore do not indicate Congressional rejection of Revenue Ruling 71-447 and the standards contained therein.

III

Petitioners contend that, even if the Commissioner's policy is valid as to nonreligious private schools, that policy cannot constitutionally be applied to schools that engage in racial discrimination on the basis of sincerely held religious beliefs. [FN28] *603 As to such schools, it is argued that the IRS construction of § 170 and § 501(c)(3) violates their free exercise rights under the Religion Clauses of the First Amendment. This contention presents claims not heretofore considered by this Court in precisely this context.

FN28. The District Court found, on the basis of a full evidentiary record, that the challenged practices of petitioner Bob Jones University were based on a genuine belief that the Bible forbids interracial dating and marriage. 468 F.Supp., at 894. We assume, as did the District Court, that the same is true with respect to petitioner Goldsboro Christian Schools. See 436 F.Supp., at 1317.

[19][20][21] This Court has long held the Free Exercise Clause of the First Amendment an absolute prohibition against governmental regulation of religious beliefs, *Wisconsin v. Yoder,* 406 U.S. 205, 219, 92 S.Ct. 1526, 1535, 32 L.Ed.2d 15 (1972);

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generally U.S. Comm'n on Civil Rights, Discriminatory Religious Schools and Tax Exempt Status 10-17 (1982). In addition, as the Court of Appeals noted, "the uniform application of the rule to all religiously operated schools *avoids* the necessity for a potentially entangling inquiry into whether a racially restrictive practice is the result of sincere religious belief." *United States v. Bob Jones Univ.*, 639 F.2d 147, 155 (CA4 1980) (emphasis in original). Cf. *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 99 S.Ct. 1313, 59 L.Ed.2d 533 (1979). But see generally Note, 90 Yale L.J. 350 (1980).

*605 IV

[25] The remaining issue is whether the IRS properly applied its policy to these petitioners. Petitioner Goldsboro Christian Schools admits that it "maintain[s] racially discriminatory policies," Brief of Petitioner, Goldsboro Christian Schools, No. 81-1, at 10, but seeks to justify those policies on grounds we have fully discussed. The IRS properly denied tax- exempt status to Goldsboro Christian Schools.

Petitioner Bob Jones University, however, contends that it is not racially discriminatory. It emphasizes that it now allows all races to enroll, subject only to its restrictions on the conduct of all students, including its prohibitions of association between men and women of different races, and of interracial marriage. [FN31] Although a **2036 ban on intermarriage or interracial dating applies to all races, decisions of this Court firmly establish that discrimination on the basis of racial affiliation and association is a form of racial discrimination, see, *e.g., Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967); *McLaughlin v. Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964); *Tillman v. Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 93 S.Ct. 1090, 35 L.Ed.2d 403 (1973). We therefore find that the IRS properly applied Revenue Ruling 71- 447 to Bob Jones University. [FN32]

FN31. This argument would in any event apply only to the final eight months of the five tax years at issue in this case. Prior to May 1975, Bob Jones University's admissions policy was racially discriminatory on its face, since the University excluded unmarried Negro students while admitting unmarried Caucasians.

FN32. Bob Jones University also argues that the IRS policy should not apply to it because it is entitled to exemption under § 501(c)(3) as a "religious" organization, rather than as an "educational" institution. The record in this case leaves no doubt, however, that Bob Jones University is both an educational institution and a religious institution. As discussed previously, the IRS policy properly extends to all private schools, including religious schools. See n. 29, *supra*. The IRS policy thus was properly applied to Bob Jones University.

The judgments of the Court of Appeals are, accordingly,

Affirmed.

*606 Justice POWELL, concurring in part and concurring in the judgment.

I join the Court's judgment, along with part III of its opinion holding that the denial of tax exemptions to petitioners does not violate the First Amendment. I write separately because I am troubled by the broader implications of the Court's opinion with respect to the authority of the Internal Revenue Service (IRS) and its construction of §§ 170(c) and 501(c)(3) of the Internal Revenue Code.

I

Federal taxes are not imposed on organizations "operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes ...." 26 U.S.C. § 501(c)(3). The Code also permits a tax deduction for contributions made to these organizations. § 170(c) . It is clear that petitioners, organizations

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incorporated for educational purposes, fall within the language of the statute. It also is clear that the language itself does not mandate refusal of tax-exempt status to any private school that maintains a racially discriminatory admissions policy. Accordingly, there is force in Justice REHNQUIST's argument that §§ 170(c) and 501(c)(3) should be construed as setting forth the only criteria Congress has established for qualification as a tax-exempt organization. See *post,* at 2039-2041 (REHNQUIST, J., dissenting). Indeed, were we writing prior to the history detailed in the Court's opinion, this could well be the construction I would adopt. But there has been a decade of acceptance that is persuasive in the circumstances of this case, and I conclude that there are now sufficient reasons for accepting the IRS's construction of the Code as proscribing ***607** tax exemptions for schools that discriminate on the basis of race as a matter of policy.

I cannot say that this construction of the Code, adopted by the IRS in 1970 and upheld by the Court of Appeals below, is without logical support. The statutory terms are not self-defining, and it is plausible that in some instances an organization seeking a tax exemption might act in a manner so clearly contrary to the purposes of our laws that it could not be deemed to serve the enumerated statutory purposes. [FN1] And, as the Court notes, if any national policy is sufficiently fundamental to constitute such an overriding limitation on the availability of tax-exempt status under § 501(c)(3), it is the policy against racial discrimination in education. See *ante,* at 2030-2031. Finally, and of critical importance for me, the subsequent actions of Congress present "an unusually strong case of legislative acquiescence in and ratification ****2037** by implication of the [IRS'] 1970 and 1971 rulings" with respect to racially discriminatory schools. *Ante,* at 2033. In particular, Congress' enactment of § 501(i) in 1976 is strong evidence of agreement with these particular IRS rulings. [FN2]

FN1. I note that the Court has construed other provisions of the Code as containing narrowly defined public-policy exceptions. See *Commissioner v. Tellier,* 383 U.S. 687, 693-694, 86 S.Ct. 1118, 1121- 1122, 16 L.Ed.2d 185 (1966); *Tank Truck Rentals, Inc. v. Commissioner,* 356 U.S. 30, 35, 78 S.Ct. 507, 510, 2 L.Ed.2d 562 (1958).

FN2. The District Court for the District of Columbia in *Green v. Connally,* 330 F.Supp. 1150 (three-judge court), aff'd *sub nom. Coit v. Green,* 404 U.S. 997, 92 S.Ct. 564, 30 L.Ed.2d 550 (1971) (*per curiam*), held that racially discriminatory private schools were not entitled to tax- exempt status. The same District Court, however, later ruled that racially segregated social clubs could receive tax exemptions under § 501(c)(7) of the Code. See *McGlotten v. Connally,* 338 F.Supp. 448 (D.D.C.1972) (three-judge court). Faced with these two important three- judge court rulings, Congress expressly overturned the relevant portion of *McGlotten* by enacting § 501(i), thus conforming the policy with respect to social clubs to the prevailing policy with respect to private schools. This affirmative step is a persuasive indication that Congress has not just silently acquiesced in the result of *Green.* Cf. *Merrill Lynch, Pierce, Fenner & Smith v. Curran,* 456 U.S. 353, 402, 102 S.Ct. 1825, 1852, 72 L.Ed.2d 182 (1982) (POWELL, J., dissenting) (rejecting theory "that congressional intent can be inferred from silence, and that legislative inaction should achieve the force of law").

***608** II

I therefore concur in the Court's judgment that tax-exempt status under §§ 170(c) and 501(c)(3) is not available to private schools that concededly are racially discriminatory. I do not agree, however, with the Court's more general explanation of the justifications for the tax exemptions provided to charitable organizations. The Court states:

"Charitable exemptions are justified on the basis that the exempt entity confers a public benefit--a benefit which the society or the community may not itself choose or be able to provide, or which supplements and advances the work of public institutions already supported by tax revenues. History buttresses logic to make clear that, to warrant exemption under § 501(c)(3), an

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institution must fall within a category specified in that section and must demonstrably serve and be in harmony with the public interest. The institution's purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred." *Ante,* at 2028-2029 (footnote omitted).

Applying this test to petitioners, the Court concludes that "[c]learly an educational institution engaging in practices affirmatively at odds with [the] declared position of the whole government cannot be seen as exercising a 'beneficial and stabilizing influenc[e] in community life,' ... and is not 'charitable,' within the meaning of § 170 and § 501(c)(3)." *Ante,* at 2032 (quoting *Walz v. Tax Comm'n,* 397 U.S. 664, 673, 90 S.Ct. 1409, 1413, 25 L.Ed.2d 697 (1970)).

With all respect, I am unconvinced that the critical question in determining tax-exempt status is whether an individual organization provides a clear "public benefit" as defined by the Court. Over 106,000 organizations filed § 501(c)(3) returns in 1981. Internal Revenue Service, 1982 Exempt ***609** Organization/Business Master File. I find it impossible to believe that all or even most of those organizations could prove that they "demonstrably serve and [are] in harmony with the public interest" or that they are "beneficial and stabilizing influences in community life." Nor I am prepared to say that petitioners, because of their racially discriminatory policies, necessarily contribute nothing of benefit to the community. It is clear from the substantially secular character of the curricula and degrees offered that petitioners provide educational benefits.

Even more troubling to me is the element of conformity that appears to inform the Court's analysis. The Court asserts that an exempt organization must "demonstrably serve and be in harmony with the public interest," must have a purpose that comports with "the common community conscience," and must not act in a manner "affirmatively at odds with [the] declared position of the whole government." Taken together, these passages suggest that the primary function of a tax-exempt organization ****2038** is to act on behalf of the Government in carrying out governmentally approved policies. In my opinion, such a view of § 501(c)(3) ignores the important role played by tax exemptions in encouraging diverse, indeed often sharply conflicting, activities and viewpoints. As Justice BRENNAN has observed, private, nonprofit groups receive tax exemptions because "each group contributes to the diversity of association, viewpoint, and enterprise essential to a vigorous, pluralistic society." *Walz, supra,* at 689, 90 S.Ct., at 1421 (BRENNAN, J., concurring). Far from representing an effort to reinforce any perceived "common community conscience," the provision of tax exemptions to nonprofit groups is one indispensable means of limiting the influence of governmental orthodoxy on important areas of community life. [FN3] ***610** Given the importance of our tradition of pluralism, [FN4] "[t]he interest in preserving an area of untrammeled choice for private philanthropy is very great." *Jackson v. Statler Foundation,* 496 F.2d 623, 639 (CA2 1974) (Friendly, J., dissenting from denial of reconsideration en banc).

FN3. Certainly § 501(c)(3) has not been applied in the manner suggested by the Court's analysis. The 1,100-page list of exempt organizations includes--among countless examples--such organizations as American Friends Service Committee, Inc., Committee on the Present Danger, Jehovah's Witnesses in the United States, Moral Majority Foundation, Inc., Friends of the Earth Foundation, Inc., Mountain States Legal Foundation, National Right to Life Educational Foundation, Planned Parenthood Federation of America, Scientists and Engineers for Secure Energy, Inc., and Union of Concerned Scientists Fund, Inc. See Internal Revenue Service, Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1954, at 31, 221, 376, 518, 670, 677, 694, 795, 880, 1001, 1073 (Rev'd Oct. 1981). It would be difficult indeed to argue that each of these organizations reflects the views of the "common community conscience" or "demonstrably ... [is] in harmony with the public interest." In identifying these organizations, largely taken at random from the tens of thousands on the list, I of course do not imply disapproval of their being exempt from

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taxation. Rather, they illustrate the commendable tolerance by our Government of even the most strongly held divergent views, including views that at least from time to time *are* "at odds" with the position of our Government. We have consistently recognized that such disparate groups are entitled to share the privilege of tax exemption.

FN4. "A distinctive feature of America's tradition has been respect for diversity. This has been characteristic of the peoples from numerous lands who have built our country. It is the essence of our democratic system." *Mississippi University for Women v. Hogan,* 458 U.S. ----, ----, 102 S.Ct. 3331, 3347, 73 L.Ed.2d 1090 (1982) (POWELL, J., dissenting). Sectarian schools make an important contribution to this tradition, for they "have provided an educational alternative for millions of young Americans" and "often afford wholesome competition with our public schools." *Wolman v. Walter,* 433 U.S. 229, 262, 97 S.Ct. 2593, 2613, 53 L.Ed.2d 714 (1977) (POWELL, J., concurring in part, concurring in the judgment in part, and dissenting in part).

I do not suggest that these considerations always are or should be dispositive. Congress, of course, may find that some organizations do not warrant tax-exempt status. In this case I agree with the Court that Congress has determined that the policy against racial discrimination in education should override the countervailing interest in permitting unorthodox private behavior.

*611 I would emphasize, however, that the balancing of these substantial interests is for *Congress* to perform. I am unwilling to join any suggestion that the Internal Revenue Service is invested with authority to decide which public policies are sufficiently "fundamental" to require denial of tax exemptions. Its business is to administer laws designed to produce revenue for the Government, not to promote "public policy." As former IRS Commissioner Kurtz has noted, questions concerning religion and civil rights "are far afield from the more typical tasks of tax administrators--determining taxable income." Kurtz, Difficult Definitional Problems in Tax Administration: Religion and Race, 23 Catholic Lawyer 301, 301 (1978). This Court often has expressed concern that the scope of an agency's authorization be limited to those areas in which the agency fairly may be **2039 said to have expertise, [FN5] and this concern applies with special force when the asserted administrative power is one to determine the scope of public policy. As Justice BLACKMUN has noted,

FN5. See, *e.g., Community Television of Southern California v. Gottfried,* 459 U.S. ----, ----, n. 17, 103 S.Ct. 885, 893, n. 17, 74 L.Ed.2d 705 (1983) ("[A]n agency's general duty to enforce the public interest does not require it to assume responsibility for enforcing legislation that is not directed at the agency"); *Hampton v. Mow Sun Wong,* 426 U.S. 88, 114, 96 S.Ct. 1895, 1910, 48 L.Ed.2d 495 (1976) ("It is the business of the Civil Service Commission to adopt and enforce regulations which will best promote the efficiency of the federal civil service. That agency has no responsibility for foreign affairs, for treaty negotiations, for establishing immigration quotas or conditions of entry, or for naturalization policies"); *NAACP v. FPC,* 425 U.S. 662, 670, 96 S.Ct. 1806, 1811, 48 L.Ed.2d 284 (1976) ("The use of the words 'public interest' in the Gas and Power Acts is not a directive to the [Federal Power] Commission to seek to eradicate discrimination, but, rather, is a charge to promote the orderly production of supplies of electric energy and natural gas at just and reasonable rates").

"where the philanthropic organization is concerned, there appears to be little to circumscribe the almost unfettered power of the Commissioner. This may be very well so long as one subscribes to the particular brand of social policy the Commissioner happens to be advocating *612 at the time ..., but application of our tax laws should not operate in so fickle a fashion. Surely, social policy in the first instance is a matter for legislative concern."

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Commissioner v. "Americans United" Inc., 416 U.S. 752, 774-775, 94 S.Ct. 2053, 2065, 40 L.Ed.2d 518 (1974) (BLACKMUN, J., dissenting).

III

The Court's decision upholds IRS Revenue Ruling 71-447, and thus resolves the question whether tax-exempt status is available to private schools that openly maintain racially discriminatory admissions policies. There no longer is any justification for *Congress* to hesitate--as it apparently has--in articulating and codifying its desired policy as to tax exemptions for discriminatory organizations. Many questions remain, such as whether organizations that violate other policies should receive tax-exempt status under § 501(c)(3). These should be legislative policy choices. It is not appropriate to leave the IRS "on the cutting edge of developing national policy." Kurtz, *supra,* at 308. The contours of public policy should be determined by Congress, not by judges or the IRS.

Justice REHNQUIST, dissenting.

The Court points out that there is a strong national policy in this country against racial discrimination. To the extent that the Court states that Congress in furtherance of this policy could deny tax-exempt status to educational institutions that promote racial discrimination, I readily agree. But, unlike the Court, I am convinced that Congress simply has failed to take this action and, as this Court has said over and over again, regardless of our view on the propriety of Congress' failure to legislate we are not constitutionally empowered to act for them.

In approaching this statutory construction question the Court quite adeptly avoids the statute it is construing. This I am sure is no accident, for there is nothing in the language *613 of § 501(c)(3) that supports the result obtained by the Court. Section 501(c)(3) provides tax-exempt status for:

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise**2040 provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. § 501(c)(3).

With undeniable clarity, Congress has explicitly defined the requirements for § 501(c)(3) status. An entity must be (1) a corporation, or community chest, fund, or foundation, (2) organized for one of the eight enumerated purposes, (3) operated on a nonprofit basis, and (4) free from involvement in lobbying activities and political campaigns. Nowhere is there to be found some additional, undefined public policy requirement.

The Court first seeks refuge from the obvious reading of § 501(c)(3) by turning to § 170 of the Internal Revenue Code which provides a tax deduction for contributions made to § 501(c)(3) organizations. In setting forth the general rule, § 170 states:

> "There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified *614 under regulations prescribed by the Secretary." 26 U.S.C. § 170(a)(1).

The Court seizes the words "charitable contribution" and with little discussion concludes that "[o]n its face, therefore, § 170 reveals that Congress' intention was to provide tax benefits to organizations serving charitable purposes," intimating that this implies some unspecified common law charitable trust requirement. *Ante,* at 2026.

The Court would have been well advised to look to subsection (c) where, as § 170(a)(1) indicates, Congress has defined a "charitable contribution":

> "For purposes of this section, the term 'charitable contribution' means a contribution or gift to or for the use of ... [a] corporation, trust, or community chest, fund, or foundation ... organized and

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operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals; ... no part of the net earnings of which inures to the benefit of any private shareholder or individual; and ... which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." 26 U.S.C. § 170(c).

Plainly, § 170(c) simply tracks the requirements set forth in § 501(c)(3). Since § 170 is no more than a mirror of § 501(c)(3) and, as the Court points out, § 170 followed § 501(c)(3) by more than two decades, *ante,* at 2026, n. 10, it is at best of little usefulness in finding the meaning of § 501(c)(3).

Making a more fruitful inquiry, the Court next turns to the legislative history of § 501(c)(3) and finds that Congress intended ***615** in that statute to offer a tax benefit to organizations that Congress believed were providing a public benefit. I certainly agree. But then the Court leaps to the conclusion that this history is proof Congress intended that an organization seeking § 501(c)(3) status "must fall within a category specified in that section *and must demonstrably serve and be in harmony with the public interest.*" *Ante,* at 2029 (emphasis added). To the contrary, I think that the legislative history of § 501(c)(3) unmistakably makes clear that *Congress has decided* what organizations are serving a public purpose and providing a public benefit within the meaning of § 501(c)(3) and has clearly set forth in § 501(c)(3) the characteristics of such organizations. In fact, there are few examples which better illustrate Congress' effort to define and redefine the requirements of a legislative act.

The first general income tax law was passed by Congress in the form of the Tariff Act of 1894. A provision of that Act ****2041** provided an exemption for "corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes." Ch. 349, § 32, 28 Stat. 509, 556 (1894). The income tax portion of the 1894 Act was held unconstitutional by this Court, see *Pollock v. Farmers' Loan & Trust Co.,* 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108 (1895), but a similar exemption appeared in the Tariff Act of 1909 which imposed a tax on corporate income. The 1909 Act provided an exemption for "any corporation or association organized and operated exclusively for religious, charitable, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual." Ch. 6, § 38, 36 Stat. 11, 113 (1909).

With the ratification of the Sixteenth Amendment, Congress again turned its attention to an individual income tax with the Tariff Act of 1913. And again, in the direct predecessor of § 501(c)(3), a tax exemption was provided for "any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, ***616** no part of the net income of which inures to the benefit of any private stockholder or individual." Ch. 16, § II(G)(a), 38 Stat. 114, 172 (1913). In subsequent acts Congress continued to broaden the list of exempt purposes. The Revenue Act of 1918 added an exemption for corporations or associations organized "for the prevention of cruelty to children or animals." Ch. 18, § 231(6), 40 Stat. 1057, 1076 (1918). The Revenue Act of 1921 expanded the groups to which the exemption applied to include "any community chest, fund, or foundation" and added "literary" endeavors to the list of exempt purposes. Ch. 136, § 231(6), 42 Stat. 227, 253 (1921). The exemption remained unchanged in the Revenue Acts of 1924, 1926, 1928, and 1932. [FN1] In the Revenue Act of 1934 Congress added the requirement that no substantial part of the activities of any exempt organization can involve the carrying on of "propaganda" or "attempting to influence legislation." Ch. 277, § 101(6), 48 Stat. 680, 700 (1934). Again, the exemption was left unchanged by the Revenue Acts of 1936 and 1938. [FN2]

FN1. See Revenue Act of 1924, ch. 234, § 231(6), 43 Stat. 253, 282; Revenue Act of 1926, ch. 27, § 231(6), 44 Stat. 9, 40; Revenue Act of 1928, ch. 852, § 103(6), 45 Stat. 791, 813; Revenue Act of 1932, ch. 209, § 103(6), 47 Stat. 169, 193.

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FN2. See Revenue Act of 1936, ch. 690, § 101(6), 49 Stat. 1648, 1674; Revenue Act of 1938, ch. 289, § 101(6), 52 Stat. 447, 481.

The tax laws were overhauled by the Internal Revenue Code of 1939, but this exemption was left unchanged. Ch. 1, § 101(6), 53 Stat. 1, 33 (1939). When the 1939 Code was replaced with the Internal Revenue Code of 1954, the exemption was adopted in full in the present § 501(c)(3) with the addition of "testing for public safety" as an exempt purpose and an additional restriction that tax-exempt organizations could not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office." Ch. 1, § 501(c)(3), 68A Stat. 1, 163 (1954). Then in 1976 the statute was again amended adding to the purposes for which an exemption would be authorized, "to foster national or international amateur *617 sports competition," provided the activities did not involve the provision of athletic facilities or equipment. Tax Reform Act of 1976, Pub.L. No. 94-455, § 1313(a), 90 Stat. 1520, 1730 (1976).

One way to read the opinion handed down by the Court today leads to the conclusion that this long and arduous refining process of § 501(c)(3) was certainly a waste of time, for when enacting the original 1894 statute Congress intended to adopt a common law term of art, and intended that this term of art carry with it all of the common law baggage which defines it. Such a view, however, leads also to the unsupportable idea that Congress has spent almost a century adding illustrations simply to clarify an already defined common law term.

**2042 Another way to read the Court's opinion leads to the conclusion that even though Congress has set forth *some* of the requirements of a § 501(c)(3) organization, it intended that the IRS additionally require that organizations meet a higher standard of public interest, not stated by Congress, but to be determined and defined by the IRS and the courts. This view I find equally unsupportable. Almost a century of statutory history proves that Congress itself intended to decide what § 501(c)(3) requires. Congress has expressed its decision in the plainest of terms in § 501(c)(3) by providing that tax-exempt status is to be given to any corporation, or community chest, fund, or foundation that is organized for one of the eight enumerated purposes, operated on a nonprofit basis, and uninvolved in lobbying activities or political campaigns. The IRS certainly is empowered to adopt regulations for the enforcement of these specified requirements, and the courts have authority to resolve challenges to the IRS's exercise of this power, but Congress has left it to neither the IRS nor the courts to select or add to the requirements of § 501(c)(3).

The Court suggests that unless its new requirement be added to § 501(c)(3), nonprofit organizations formed to teach pickpockets and terrorists would necessarily acquire tax exempt *618 status. *Ante,* at 2028 n. 18. Since the Court does not challenge the characterization of *petitioners* as "educational" institutions within the meaning of § 501(c)(3), and in fact states several times in the course of its opinion that petitioners *are* educational institutions, see, *e.g., ante,* at 2022, 2024, 2035 n. 29, 2036 n. 32, it is difficult to see how this argument advances the Court's reasoning for disposing of petitioners' cases.

But simply because I reject the Court's heavy-handed creation of the requirement that an organization seeking § 501(c)(3) status must "serve and be in harmony with the public interest," *ante,* at 2029, does not mean that I would deny to the IRS the usual authority to adopt regulations further explaining what Congress meant by the term "educational." The IRS has fully exercised that authority in 26 CFR § 1.501(c)(3)-1(d)(3), which provides:

"(3) *Educational defined* --(i) *In general.* The term "educational", as used in section 501(c)(3), relates to--

"(a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

"(b) The instruction of the public on subjects useful to the individual and beneficial to the community.

"An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an

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organization is not educational if its principal function is the mere presentation of unsupported opinion.

"(ii) *Examples of educational organizations.* The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

**619 "*Example (1).* An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

"*Example (2).* An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

"*Example (3).* An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

"*Example (4).* Museums, zoos, planetariums, symphony orchestras, and other similar organizations."

**2043 I have little doubt that neither the "Fagin School for Pickpockets" nor a school training students for guerrilla warfare and terrorism in other countries would meet the definitions contained in the regulations.

Prior to 1970, when the charted course was abruptly changed, the IRS had continuously interpreted § 501(c)(3) and its predecessors in accordance with the view I have expressed above. This, of course, is of considerable significance in determining the intended meaning of the statute. *NLRB v. Boeing Co.*, 412 U.S. 67, 75, 93 S.Ct. 1952, 1957, 36 L.Ed.2d 752 (1973); *Power Reactor Development Co. v. Electricians*, 367 U.S. 396, 408, 81 S.Ct. 1529, 1535, 6 L.Ed.2d 924 (1961).

In 1970 the IRS was sued by parents of black public school children seeking to enjoin the IRS from according tax-exempt status under § 501(c)(3) to private schools in Mississippi that discriminated against blacks. The IRS answered, consistent with its long standing position, by maintaining a lack of authority to deny the tax-exemption if the schools met the specified requirements of § 501(c)(3). Then "[i]n the midst of this litigation", *Green v. Connally*, 330 F.Supp. 1150, 1156 (D.D.C.), aff'd per curiam sub nom. *Coit v. Green*, 404 U.S. 997, 92 S.Ct. 564, 30 L.Ed.2d 550 (1971), and in the face of a preliminary injunction, *620 the IRS changed its position and adopted the view of the plaintiffs.

Following the close of the litigation, the IRS published its new position in Revenue Ruling 71-447, stating that "a school asserting a right to the benefits provided for in section 501(c)(3) of the Code as being organized and operated exclusively for educational purposes must be a common law charity in order to be exempt under that section." Rev.Rul. 71-447, 1971-2 Cum.Bull. 230. The IRS then concluded that a school that promotes racial discrimination violates public policy and therefore cannot qualify as a common law charity. The circumstances under which this change in interpretation was made suggest that it is entitled to very little deference. But even if the circumstances were different, the latter-day wisdom of the IRS has no basis in § 501(c)(3).

Perhaps recognizing the lack of support in the statute itself, or in its history, for the 1970 IRS change in interpretation, the Court finds that "[t]he actions of Congress since 1970 leave no doubt that the IRS reached the correct conclusion in exercising its authority," concluding that there is "an unusually strong case of legislative acquiescence in and ratification by implication of the 1970 and 1971 rulings." *Ante*, at 2033. The Court relies first on several bills introduced to overturn the IRS interpretation of § 501(c)(3). *Ante*, at 2033 and n. 25. But we have said before, and it is equally applicable here, that this type of congressional inaction is of virtually no weight in determining legislative intent. See *United States v. Wise*, 370 U.S. 405, 411, 82 S.Ct. 1354, 1358, 8 L.Ed.2d 590 (1962); *Waterman Steamship Corp. v. United States*, 381 U.S. 252, 269, 85 S.Ct. 1389, 1398, 14 L.Ed.2d 370 (1965). These bills and related hearings indicate little more than that a vigorous debate has existed in Congress concerning the new IRS position.

The Court next asserts that "Congress affirmatively manifested its acquiescence in the IRS policy when it enacted the present § 501(i) of the Code," a provision that "denies tax exempt status to social clubs whose charters or policy statements *621 provide for" racial discrimination. *Ante*, at 2033.

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Quite to the contrary, it seems to me that in § 501(i) Congress showed that when it wants to add a requirement prohibiting racial discrimination to one of the tax-benefit provisions, it is fully aware of how to do it. Cf. *Commissioner v. Tellier,* 383 U.S. 687, 693 n. 10, 86 S.Ct. 1118, 1121 n. 10, 16 L.Ed.2d 185 (1966).

The Court intimates that the Ashbrook and Dornan Amendments also reflect an intent by Congress to acquiesce in the new IRS position. *Ante,* at 2034 n. 27. The amendments were passed to limit certain enforcement procedures proposed by the IRS in 1978 and 1979 for determining whether a school operated in a racially ****2044** nondiscriminatory fashion. The Court points out that in proposing his amendment, Congressman Ashbrook stated: " 'My amendment very clearly indicates on its face that all the regulations in existence as of August 22, 1978, would not be touched.' " *Ante,* at 2034 n. 27. The Court fails to note that Congressman Ashbrook also said:

> "The IRS has no authority to create public policy.... So long as the Congress has not acted to set forth a national policy respecting denial of tax exemptions to private schools, it is improper for the IRS or any other branch of the Federal Government to seek denial of tax-exempt status.... There exists but a single responsibility which is proper for the Internal Revenue Service: To serve as tax collector." 125 Cong.Rec. H5879-80 (daily ed. July 13, 1979).

In the same debate, Congressman Grassley asserted: "Nobody argues that racial discrimination should receive preferred tax status in the United States. However, the IRS should not be making these decisions on the agency's own discretion. Congress should make these decisions." *Id.,* at 5884. The same debates are filled with other similar statements. While on the whole these debates do not show conclusively that Congress believed the IRS had exceeded its authority with the 1970 change in position, they likewise are ***622** far less than a showing of acquiescence in and ratification of the new position.

This Court continuously has been hesitant to find ratification through inaction. See *United States v. Wise, supra.* This is especially true where such a finding "would result in a construction of the statute which not only is at odds with the language of the section in question and the pattern of the statute taken as a whole, but also is extremely far reaching in terms of the virtually untrammeled and unreviewable power it would vest in a regulatory agency." *SEC v. Sloan,* 436 U.S. 103, 121, 98 S.Ct. 1702, 1713, 56 L.Ed.2d 148 (1978). Few cases would call for more caution in finding ratification by acquiescence than the present one. The new IRS interpretation is not only far less than a long standing administrative policy, it is at odds with a position maintained by the IRS, and unquestioned by Congress, for several decades prior to 1970. The interpretation is unsupported by the statutory language, it is unsupported by legislative history, the interpretation has lead to considerable controversy in and out of Congress, and the interpretation gives to the IRS a broad power which until now Congress had kept for itself. Where in addition to these circumstances Congress has shown time and time again that it is ready to enact positive legislation to change the tax code when it desires, this Court has no business finding that Congress has adopted the new IRS position by failing to enact legislation to reverse it.

I have no disagreement with the Court's finding that there is a strong national policy in this country opposed to racial discrimination. I agree with the Court that Congress has the power to further this policy by denying § 501(c)(3) status to organizations that practice racial discrimination. [FN3] But as of yet Congress has failed to do so. Whatever the reasons for the failure, this Court should not legislate for Congress. [FN4]

> FN3. I agree with the Court that such a requirement would not infringe on petitioners' First Amendment rights.

> FN4. Because of its holding, the Court does not have to decide whether it would violate the equal protection component of the Fifth Amendment for Congress to grant § 501(c)(3) status to organizations that practice racial discrimination. *Ante,* at 2032 n. 24. I would decide that it does not. The statute is facially neutral; absent a showing of a discriminatory purpose, no equal protection violation is established. *Washington v. Davis,* 426 U.S. 229, 241-244, 96 S.Ct. 2040, 2048-2049, 48

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L.Ed.2d 597 (1976).

*623 Petitioners are each organized for the "instruction or training of the individual for the purpose of improving or developing his capabilities," 26 CFR § 1.501(c)(3)-1(d)(3), and thus are organized for "educational purposes" within the meaning of § 501(c)(3). Petitioners' nonprofit status **2045 is uncontested. There is no indication that either petitioner has been involved in lobbying activities or political campaigns. Therefore, it is my view that unless and until Congress affirmatively amends § 501(c)(3) to require more, the IRS is without authority to deny petitioners § 501(c)(3) status. For this reason, I would reverse the Court of Appeals.

103 S.Ct. 2017, 461 U.S. 574, 76 L.Ed.2d 157, 52 A.F.T.R.2d 83-5001, 83-1 USTC P 9366, 10 Ed. Law Rep. 918

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EXHIBIT 7

196 F.3d 940
81 Fair Empl.Prac.Cas. (BNA) 660, 76 Empl. Prac. Dec. P 46,184, 99 Cal. Daily Op. Serv. 9360, 1999 Daily Journal D.A.R. 12,095
(Cite as: 196 F.3d 940)

United States Court of Appeals,
Ninth Circuit.

John BOLLARD, Plaintiff-Appellant,
v.
THE CALIFORNIA PROVINCE OF THE SOCIETY OF JESUS; The Maryland Province of the Society of Jesus; The Oregon Province of the Society of Jesus; The Jesuit Conference; Father John Privett, S.J.; Father Andrew Sotelo, S.J.; Father Thomas Gleeson, S.J.; Father Anton Harris, S.J., Defendants-Appellees.

No. 98-16194.

Argued and Submitted June 17, 1999
Filed Dec. 1, 1999

Former novice brought Title VII claim against order of priests and individual priests alleging that he was sexually harassed while training to become a priest. Defendants responded that they were protected by Title VII's ministerial exception. The United States District Court for the Northern District of California, Susan Yvonne Illston, J., 1998 WL 273011, dismissed for lack of subject matter jurisdiction. Former novice appealed. The Court of Appeals, William A. Fletcher, Circuit Judge, held that: (1) allowing Title VII claim to proceed did not violate free exercise clause, and (2) allowing Title VII claim to proceed did not violate establishment clause.

Reversed and remanded.

West Headnotes

[1] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

[1] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

The free exercise and establishment clauses of the First Amendment compel the ministerial exception to the otherwise fully applicable commands of Title VII when the disputed employment practices involve a church's freedom to choose its ministers or to practice its beliefs. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[2] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

[2] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

Title VII applies without an exception compelled by the First Amendment where a defendant church is neither exercising its constitutionally protected prerogative to choose its ministers nor embracing the behavior at issue as a constitutionally protected religious practice. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[3] Federal Courts ⇦776
170Bk776 Most Cited Cases

The Court of Appeals reviews de novo a dismissal for lack of subject matter jurisdiction, which is the same standard under which it reviews a dismissal for failure to state a claim. Fed.Rules Civ.Proc.Rule 12(b)(1, 6), 28 U.S.C.A.

[4] Federal Courts ⇦797
170Bk797 Most Cited Cases

In reviewing a dismissal for lack of subject matter jurisdiction, the Court of Appeals takes the allegations in a complaint as true. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[5] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

The ministerial exception to Title VII precludes civil courts from adjudicating employment discrimination suits by ministers against the church or religious institution employing them. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

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[6] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

The source of the ministerial exception to Title VII is the Constitution rather than the statute. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[7] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases

The free exercise clause of the First Amendment restricts the government's ability to intrude into ecclesiastical matters or to interfere with a church's governance of its own affairs. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases

In determining whether the proposed application of a statute would violate the free exercise clause of the First Amendment, courts must weigh three factors: (1) the magnitude of the statute's impact upon the exercise of the religious belief; (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief; and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the state. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases

Some religious interests under the free exercise clause of the First Amendment are so strong that no compelling state interest justifies government intrusion into the ecclesiastical sphere. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases

A secular court may not, consistent with the free exercise clause of the First Amendment, adjudicate matters that necessarily require it to decide among competing interpretations of church doctrine, or other matters of an essentially ecclesiastical nature, even if they also touch upon secular rights. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

A church's selection of its own clergy is a core matter of ecclesiastical self- governance with which the state may not interfere without violating the free exercise clause of the First Amendment. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

Under the free exercise clause of the First Amendment, a church must retain unfettered freedom in its choice of ministers because ministers represent the church to the people. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

The ministerial relationship lies so close to the heart of the church that it would offend the free exercise clause of the First Amendment simply to require the church to articulate a religious justification for its personnel decisions. U.S.C.A. Const.Amend. 1.

[14] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

The scope of the ministerial exception to Title VII is limited to what is necessary to comply with the First Amendment. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[15] Civil Rights ⇦1114
78k1114 Most Cited Cases
(Formerly 78k143)

The ministerial exception to Title VII does not apply to lay employees of a religious institution if they are not serving the function of ministers. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[16] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases

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[16] Religious Societies ⚿30
332k30 Most Cited Cases

Free exercise clause of First Amendment was not violated by allowing novice to proceed with Title VII action against order of priests alleging he was sexually harassed while training to become priest, where order did not offer religious justification for alleged harassment but condemned it as inconsistent with its beliefs, and novice did not allege that order refused to ordain him so as to implicate concerns about order's choice of representative. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[17] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

The rationale under the free exercise clause of the First Amendment for protecting a church's personnel decisions concerning its ministers is the necessity of allowing the church to choose its representatives using whatever criteria it deems relevant. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

[18] Religious Societies ⚿30
332k30 Most Cited Cases

Allowing novice to proceed with Title VII action against order of priests alleging he was sexually harassed while training to become priest did not foster impermissible government entanglement with religion, so as to violate establishment clause of First Amendment; no substantive entanglement was at issue, and procedural entanglement that would result from action was not great given that any affirmative defense by order that it exercised reasonable care to prevent harassment would not require evaluation of religious doctrine, and no continuing court surveillance would be required given that novice sought damages as sole remedy. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[19] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases

Government entanglement with religion violating the establishment clause of the First Amendment has both substantive and procedural dimensions. U.S.C.A. Const.Amend. 1.

[20] Civil Rights ⚿1114
78k1114 Most Cited Cases
(Formerly 78k143)

[20] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

Applying Title VII to the clergy-church employment relationship creates an entanglement with religion in violation of the establishment clause of the First Amendment if the church's freedom to choose its ministers is at stake. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases

Under the establishment clause of the First Amendment, a court may not be in the position of having to evaluate competing opinions on religious subjects. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law ⚿84.5(7.1)
92k84.5(7.1) Most Cited Cases

As a procedural matter, government entanglement with religion violating the establishment clause of the First Amendment might result from a protracted legal process pitting church and state as adversaries. U.S.C.A. Const.Amend. 1.

[23] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

The potential for protracted government surveillance of church activities resulting from applying Title VII to a clergy-church employment relationship poses a grave concern under the establishment clause of the First Amendment. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[24] Constitutional Law ⚿84.5(7.1)
92k84.5(7.1) Most Cited Cases

In a Title VII case, the dangers of procedural entanglement between government and religion

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violating the establishment clause of the First Amendment are most acute where there is also a substantive entanglement at issue; where such a concern is absent, procedural entanglement considerations are reduced to the constitutional propriety of subjecting a church to the expense and indignity of the civil legal process. U.S.C.A. Const.Amend. 1; Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[25] Constitutional Law ⚖84.5(10)
92k84.5(10) Most Cited Cases

Under the First Amendment, there must be a ministerial exception to any state law cause of action that would otherwise impinge on a church's prerogative to choose its ministers or to exercise its religious beliefs in the context of employing its ministers. U.S.C.A. Const.Amend. 1.

[26] Federal Civil Procedure ⚖1742(2)
170Ak1742(2) Most Cited Cases

[26] Federal Courts ⚖225
170Bk225 Most Cited Cases

Novice's sexual harassment claim against order of priests, had it been barred under Title VII's ministerial exception, should have been dismissed for failure to state claim, not for want of subject matter jurisdiction, inasmuch as novice asserted non-frivolous federal claim, thus establishing federal question jurisdiction. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.; 28 U.S.C.A. § 1331; Fed.Rules Civ.Proc.Rule 12(b)(1, 6), 28 U.S.C.A.

[27] Federal Courts ⚖241
170Bk241 Most Cited Cases

Any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if that claim is later dismissed on the merits for failure to state a claim. 28 U.S.C.A. § 1331; Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[28] Federal Civil Procedure ⚖1742(1)
170Ak1742(1) Most Cited Cases

Jurisdiction is not defeated by the possibility that the averments in a complaint might fail to state a cause of action on which petitioners could actually recover; if the court exercises its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(1, 6), 28 U.S.C.A.

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William F. Terheyden, Littler Mendelson, San Francisco, California, for defendant-appellee Father Anton Harris, S.J.

*944 Appeal from the United States District Court for the Northern District of California; Susan Yvonne Illston, District Judge, Presiding. D.C. No. CV- 97-03006-SI.

Before: DAVID R. THOMPSON and W. FLETCHER, Circuit Judges, and SUSAN OKI MOLLWAY, [FN1] District Judge.

FN1. Honorable Susan Oki Mollway, United States District Judge for the District of Hawaii, sitting by designation.

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William A. FLETCHER, Circuit Judge:

[1][2] We must decide in this case whether the so-called "ministerial exception" to Title VII of the Civil Rights Act of 1964 bars plaintiff John Bollard's claim of sexual harassment against the Jesuit order. Simply stated, the ministerial exception insulates a religious organization's employment decisions regarding its ministers from judicial scrutiny under Title VII. The Free Exercise and Establishment Clauses of the First Amendment compel this exception to the otherwise fully applicable commands of Title VII when the disputed employment practices involve a church's freedom to choose its ministers or to practice its beliefs. Because Title VII applies without a constitutionally compelled exception where, as here, the defendant church is neither exercising its constitutionally protected prerogative to choose its ministers nor embracing the behavior at issue as a constitutionally protected religious practice, we find that plaintiff Bollard has stated a claim sufficient to overcome a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).

I. *Background*

In August 1988, plaintiff John Bollard became a novice of the Society of Jesus, an order of Roman Catholic priests more commonly known as the Jesuits. As a novice, Bollard began the process of formation, during which men train and study to be ordained. Bollard alleges that, between 1990 and 1996, he was sexually harassed by his Jesuit superiors at the St. Ignatius College Preparatory School in San Francisco and at the Jesuit School of Theology in Berkeley, California. He claims that various superiors at these two institutions sent him pornographic material, made unwelcome sexual advances, and engaged him in inappropriate and unwelcome sexual discussions. Between mid-1995 and 1996, Bollard reported the harassment to superiors within the Jesuit order, but, so far as he knows, his reports prompted no corrective action. He alleges that the harassing conduct was so severe that he was forced to leave the Jesuit order in December 1996 before taking vows to become a priest.

Bollard filed a timely complaint of sexual harassment with the California Department of Fair Employment and Housing, which automatically cross-filed his complaint with the federal Equal Employment Opportunity Commission. He received a right-to-sue letter in January 1997 and filed a complaint in federal district court for the Northern District of California the following August. His complaint asserts a federal cause of action for sexual harassment in violation of section 703(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), as well as state law claims for failure to investigate, for constructive wrongful discharge, and for breach of contract.

[3][4] The district court found the ministerial exception applicable and held that Bollard had no valid claim under Title VII. It dismissed Bollard's Title VII claim for want of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) and declined to exercise supplemental jurisdiction over his state law claims pursuant to 28 U.S.C. § 1367(c)(3). We review *de novo* a dismissal for lack of subject matter jurisdiction under Rule 12(b)(1), *see Crist v. Leippe*, 138 F.3d 801, 803 (9th Cir.1998), which is the same standard under which we review a dismissal for failure to state a ***945** claim under Federal Rule of Civil Procedure 12(b)(6), *see Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295 (9th Cir.1998). At this stage in the proceedings, we take the allegations in Bollard's complaint as true. *See Big Bear Lodging Ass'n v. Snow Summit, Inc.*, 182 F.3d 1096, 1099 (9th Cir.1999).

II. *The Ministerial Exception to Title VII*

[5] The ministerial exception to Title VII "precludes civil courts from adjudicating employment discrimination suits by ministers against the church or religious institution employing them." *EEOC v. Catholic Univ. of Am.*, 83 F.3d 455, 461 (D.C.Cir.1996). We have previously acknowledged the existence of such an exception in other circuits, but we have never been asked to define its scope or to apply it. *See EEOC v. Fremont Christian Sch.*, 781 F.2d 1362, 1369-70 (9th Cir.1986); *EEOC v. Pacific Press Publ'g Ass'n*, 676 F.2d 1272, 1278 (9th Cir.1982).

[6] The source of the ministerial exception is the Constitution rather than the statute. *See, e.g., Fremont Christian Sch.*, 781 F.2d at 1365; *Pacific*

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Press, 676 F.2d at 1276; *Rayburn v. General Conf. of Seventh-Day Adventists,* 772 F.2d 1164, 1167 (4th Cir.1985). Insofar as race, sex, and national origin are concerned, the text of Title VII treats an employment dispute between a minister and his or her church like any other employment dispute. The statute does provide two exemptions from its non-discrimination mandate for religious groups. One permits a religious entity to restrict employment "connected with the carrying on ... of its activities" to members of its own faith, 42 U.S.C. § 2000e-1(a); the other permits parochial schools to do the same, *id.* § 2000e-2(e). But neither of these statutory exceptions removes race, sex, or national origin as an impermissible basis of discrimination against employees of religious institutions. Nor do they single out ministerial employees for lesser protections than those enjoyed by other church employees.

Despite the lack of a statutory basis for the ministerial exception, and despite Congress' apparent intent to apply Title VII to religious organizations as to any other employer, courts have uniformly concluded that the Free Exercise and Establishment Clauses of the First Amendment require a narrowing construction of Title VII in order to insulate the relationship between a religious organization and its ministers from constitutionally impermissible interference by the government. *See, e.g., Combs v. Central Texas Annual Conf. of United Methodist Church,* 173 F.3d 343 (5th Cir.1999); *Catholic Univ.,* 83 F.3d 455; *Young v. Northern Ill. Conf. of United Methodist Church,* 21 F.3d 184 (7th Cir.1994); *Scharon v. St. Luke's Episcopal Presbyterian Hosps.,* 929 F.2d 360 (8th Cir.1991); *Rayburn,* 772 F.2d 1164; *McClure v. Salvation Army,* 460 F.2d 553 (5th Cir.1972). These First Amendment restrictions on Title VII provide important protections to churches that seek to choose their representatives free from government interference and according to the dictates of faith and conscience.

A. *The Free Exercise Clause*

[7][8] The Free Exercise Clause of the United States Constitution provides that "Congress shall make no law ... prohibiting the free exercise [of religion]." U.S. Const. amend. I. The Free Exercise Clause restricts the government's ability to intrude into ecclesiastical matters or to interfere with a church's governance of its own affairs. *See, e.g., Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church in North America,* 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 (1952) (explaining that the Free Exercise Clause protects the power of religious organizations "to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine"); *see also* ***946***Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190, 191, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960) (per curiam) (forbidding the courts as well as the legislature from interfering with Free Exercise rights). In determining whether the proposed application of a statute would violate the Free Exercise Clause, courts must weigh three factors: "(1) the magnitude of the statute's impact upon the exercise of the religious belief, (2) the existence of a compelling state interest justifying the burden imposed upon the exercise of the religious belief, and (3) the extent to which recognition of an exemption from the statute would impede the objectives sought to be advanced by the state." *Pacific Press,* 676 F.2d at 1279; *see also Sherbert v. Verner,* 374 U.S. 398, 403-07, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

[9][10] Some religious interests under the Free Exercise Clause are so strong that no compelling state interest justifies government intrusion into the ecclesiastical sphere. A secular court may not, for example, adjudicate matters that necessarily require it to decide among competing interpretations of church doctrine, or other matters of an essentially ecclesiastical nature, even if they also touch upon secular rights. *See, e.g., Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) (reversing the Illinois Supreme Court's determinations regarding several matters of internal church governance, because "religious controversies are not the proper subject of civil court inquiry"); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) (explaining that "First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice"); *Kedroff,* 344 U.S. at 115, 73 S.Ct. 143 (prohibiting judicial resolution of the question of which church patriarch was

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entitled to use St. Nicholas Cathedral because it is "strictly a matter of ecclesiastical government"); *Gonzalez v. Roman Catholic Archbishop of Manila,* 280 U.S. 1, 16, 50 S.Ct. 5, 74 L.Ed. 131 (1929) (holding that a secular court may not decide competing claims to a chaplaincy, because "the appointment is a canonical act, [and] it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them"); *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 729, 20 L.Ed. 666 (1871) ("It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.").

[11][12][13] A church's selection of its own clergy is one such core matter of ecclesiastical self-governance with which the state may not constitutionally interfere. *See, e.g., Milivojevich,* 426 U.S. at 717, 96 S.Ct. 2372; *Kedroff,* 344 U.S. at 116, 73 S.Ct. 143; *Gonzalez,* 280 U.S. at 16, 50 S.Ct. 5. A church must retain unfettered freedom in its choice of ministers because ministers represent the church to the people. As the Fifth Circuit has written, they act as the church's "lifeblood." *McClure,* 460 F.2d at 558. Indeed, the ministerial relationship lies so close to the heart of the church that it would offend the Free Exercise Clause simply to require the church to articulate a religious justification for its personnel decisions. *See Rayburn,* 772 F.2d at 1169 ("[T]he free exercise clause of the First Amendment protects the act of a decision rather than a motivation behind it."); *see also Young,* 21 F.3d at 186; *Scharon,* 929 F.2d at 363. In the words of the Fifth Circuit,

> [W]e cannot conceive how the federal judiciary could determine whether an employment decision concerning a minister was based on legitimate or illegitimate grounds without inserting ourselves into a realm where the Constitution forbids us to tread, the internal management of a church.

Combs, 173 F.3d at 350.

[14][15] Because the plain language of Title VII purports to reach a church's *947 employment decisions regarding its ministers, courts have had to carve a ministerial exception out of Title VII in order to reconcile the statute with the Constitution. But the scope of the ministerial exception to Title VII is limited to what is necessary to comply with the First Amendment. For example, it does not apply to lay employees of a religious institution if they are not serving the function of ministers. *See Fremont Christian Sch.,* 781 F.2d 1362; *Pacific Press,* 676 F.2d 1272. In the case of lay employees, the particularly strong religious interests surrounding a church's choice of its representative are missing, and we have concluded that applying Title VII is constitutionally permissible.

[16] In this case, as in the case of lay employees, the Free Exercise rationales supporting an exception to Title VII are missing. The Jesuits do not offer a religious justification for the harassment Bollard alleges; indeed, they condemn it as inconsistent with their values and beliefs. There is thus no danger that, by allowing this suit to proceed, we will thrust the secular courts into the constitutionally untenable position of passing judgment on questions of religious faith or doctrine. The Jesuits' disavowal of the harassment also reassures us that application of Title VII in this context will have no significant impact on their religious beliefs or doctrines. *See Fremont Christian Sch.,* 781 F.2d at 1368; *Pacific Press,* 676 F.2d at 1279.

Moreover, this is not a case about the Jesuit order's choice of representative, a decision to which we would simply defer without further inquiry. Bollard does not complain that the Jesuits refused to ordain him or engaged in any other adverse personnel action. *Cf. McClure,* 460 F.2d at 559 ("Just as the initial function of selecting a minister is a matter of church administration and government, so are the functions which accompany such a selection. It is unavoidably true that these include the determination of a minister's salary, his place of assignment, and the duty he is to perform in the furtherance of the religious mission of the church."). On the contrary, according to the allegations in Bollard's complaint, the Jesuit order has enthusiastically encouraged Bollard's pursuit of the priesthood. It is true that Bollard alleges constructive discharge, but unlike actual discharge, constructive discharge does not refer to a decision by the Jesuits to terminate Bollard's employment. Instead, constructive discharge in the context of Bollard's Title VII sexual harassment claim functions only to signal his estimation of the

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severity of the harassment and to lay the foundation for including lost wages in a calculation of damages.

[17] The only relevant decision that we can reasonably attribute to the Jesuits on the facts alleged here is the decision not to intervene to stop or curtail the sexual harassment Bollard reported. *See Black v. Snyder,* 471 N.W.2d 715, 723 (Minn.Ct.App.1991) (Randall, J., dissenting). But, in our view, it strays too far from the rationale of the Free Exercise Clause to extend constitutional protection to this sort of disciplinary inaction simply because a minister is the target as well as the agent of the harassing activity. That Bollard has sued under an employment discrimination statute does not mean that the aspect of the church-minister employment relationship that warrants heightened constitutional protection--a church's freedom to choose its representatives--is present. The Free Exercise Clause rationale for protecting a church's personnel decisions concerning its ministers is the necessity of allowing the church to choose its representatives using whatever criteria it deems relevant. That rationale does not apply here, for the Jesuits most certainly do not claim that allowing harassment to continue unrectified is a method of choosing their clergy. Because there is no protected-choice rationale at issue, we intrude no further on church autonomy in allowing this case to proceed than we do, for example, in allowing parishioners' civil suits against a church for the negligent supervision ***948** of ministers who have subjected them to inappropriate sexual behavior. *See Martinelli v. Bridgeport Roman Catholic Diocesan Corp.,* 10 F.Supp.2d 138 (D.Conn.1998); *Nutt v. Norwich Roman Catholic Diocese,* 921 F.Supp. 66 (D.Conn.1995); *Moses v. Diocese of Colorado,* 863 P.2d 310 (Colo.1993).

Thus, we believe that we must apply the *Sherbert* balancing test in roughly the same manner as in cases involving lay employees in order to determine whether the application of Title VII in this case would violate the Free Exercise Clause. We conclude that it would not. Because the Jesuit order doctrinally disavows the harassment, the danger that the application of Title VII in this case will interfere with its religious faith or doctrine is particularly low. And while we recognize that applying any laws to religious institutions necessarily interferes with the unfettered autonomy churches would otherwise enjoy, this sort of generalized and diffuse concern for church autonomy, without more, does not exempt them from the operation of secular laws. Otherwise, churches would be free from all of the secular legal obligations that currently and routinely apply to them. For these reasons, we do not think that applying Title VII in the circumstances of this case will have an unconstitutional impact on the free exercise of the Jesuits' religious beliefs. At the same time, the strength of the government's interest, expressed in the text of Title VII, in protecting employees against sexual harassment is difficult to overstate. As we have said previously, it is a matter of the "highest priority." *Pacific Press,* 676 F.2d at 1280. Further, we know from the text of Title VII that Congress intended it to apply to churches. Where the church provides no doctrinal nor protected-choice based rationale for its alleged actions, and indeed expressly disapproves of the alleged actions, a balancing of interests strongly favors application of the statute. We therefore conclude that Bollard's sexual harassment claim does not run afoul of the Free Exercise Clause.

B. *The Establishment Clause*

[18] The Establishment Clause serves as a separate constitutional basis for the ministerial exception to Title VII. It provides that "Congress shall make no law respecting an establishment of religion ..." U.S. Const. amend. I. In *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971), the Supreme Court articulated a three-part test to determine whether a statute violates the Establishment Clause: "First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster an excessive government entanglement with religion." *Id.* at 612-13, 91 S.Ct. 2105 (internal citations and quotations omitted). [FN2] This court has already held that Title VII has an obvious secular legislative purpose, and that its principal effect neither advances nor inhibits religion. *Pacific Press,* 676 F.2d at 1281-82. The only open question is whether applying Title VII in the circumstances of this case would foster an impermissible government entanglement with religion.

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FN2. We realize that dissatisfaction with the *Lemon* test has led several Justices to advocate alternative analytical frameworks, *see, e.g., Lee v. Weisman,* 505 U.S. 577, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) (Kennedy, J.) (advocating and applying a coercion test); *Lynch v. Donnelly,* 465 U.S. 668, 688-94, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring) (advocating adoption of an endorsement test). A new Establishment Clause test may well be on the horizon. *See generally* Kent Greenawalt, *Quo Vadis: The Status and Prospects of "Tests" Under the Religion Clauses,* 1995 Sup.Ct. Rev. 323, 359-60. Still, because the Court has not yet reached consensus on *Lemon* 's successor, we continue to apply its test.

[19][20][21] Entanglement has both substantive and procedural dimensions. On a substantive level, applying the statute to the clergy-church employment relationship *949 creates a constitutionally impermissible entanglement with religion if the church's freedom to choose its ministers is at stake. A religious organization's decision to employ or to terminate employment of a minister is at the heart of its religious mission. The "determination of 'whose voice speaks for the church' is *per se* a religious matter.... We cannot imagine an area of inquiry less suited to a temporal court for decision; evaluation of the 'gifts and graces' of a minister must be left to ecclesiastical institutions." *Minker v. Baltimore Annual Conf. of United Methodist Church,* 894 F.2d 1354, 1356-57 (D.C.Cir.1990) (holding that the First Amendment prevented a claim under the federal Age Discrimination in Employment Act). "The application of Title VII to employment decisions of this nature would result in an intolerably close relationship between church and state...." *Rayburn,* 772 F.2d at 1170. Nor may a court be in the "impermissible position of having 'to evaluate ... competing opinions on religious subjects.' " *Catholic Univ.,* 83 F.3d at 465 (applying the ministerial exception to Title VII in a case involving the denial of tenure to a professor of canon law). But as we have explained above in discussing the Free Exercise Clause, such substantive concerns are absent from this case.

[22][23] As a procedural matter, "entanglement might also result from a protracted legal process pitting church and state as adversaries...." *Rayburn,* 772 F.2d at 1171; *see also NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 502, 99 S.Ct. 1313, 59 L.Ed.2d 533 (1979) ("It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions."). As the Fourth Circuit explained in *Rayburn,*

> A Title VII action is potentially a lengthy proceeding, involving state agencies and commissions, the EEOC, the federal trial courts and courts of appeal. Church personnel and records would inevitably become subject to subpoena, discovery, cross-examination, the full panoply of legal process designed to probe the mind of the church in the selection of its ministers. The remedies that a district court may impose, 42 U.S.C. § 2000e- 5(g) (1982), may be far-reaching in their impact upon religious organizations. Even after entry of judgment, questions of compliance may result in continued court surveillance of the church's policies and decisions.

772 F.2d at 1171. Of this list of concerns, we believe that the potential for protracted government surveillance of church activities poses the gravest concern under the Establishment Clause. *See, e.g., Aguilar v. Felton,* 473 U.S. 402, 413, 105 S.Ct. 3232, 87 L.Ed.2d 290 (1985), *overruled on other grounds by Agostini v. Felton,* 521 U.S. 203, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997) ("[P]ervasive monitoring by public authorities ... infringes precisely those Establishment Clause values at the root of the prohibition of excessive entanglement.").

[24] In a Title VII case, the dangers of procedural entanglement are most acute where there is also a substantive entanglement at issue. *See Catholic Univ.,* 83 F.3d at 467; *Scharon,* 929 F.2d at 363; *Rayburn,* 772 F.2d at 1171. Where such a concern is absent, procedural entanglement considerations are reduced to the constitutional propriety of subjecting a church to the expense and indignity of the civil legal process. In this case, we believe that the entanglement between church and state that would result if Bollard pursued his sexual

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harassment claim is not sufficiently significant to violate the Establishment Clause.

The issue in the case is whether Bollard was subjected to sex-based harassment by his superiors that was sufficiently severe or pervasive as to be actionable under Title VII. *See Burlington Indus., Inc. v. Ellerth,* 524 U.S. 742, 118 S.Ct. 2257, 2264, 2270, 141 L.Ed.2d 633 (1998). The Jesuit order may assert as an affirmative defense ***950** that it exercised reasonable care to prevent and correct the harassment, and that Bollard failed to take advantage of these opportunities to avoid or limit harm. *Id.* at 2270. This is a restricted inquiry. Nothing in the character of this defense will require a jury to evaluate religious doctrine or the "reasonableness" of the religious practices followed within the Jesuit order. Instead, the jury must make secular judgments about the nature and severity of the harassment and what measures, if any, were taken by the Jesuits to prevent or correct it. The limited nature of the inquiry, combined with the ability of the district court to control discovery, can prevent a wide-ranging intrusion into sensitive religious matters.

Further, Bollard seeks damages as his sole remedy. He seeks neither reinstatement nor any other equitable relief that might require continuing court surveillance. Nor, beyond filing his initial claim, awaiting receipt of the standard right-to-sue letter, and filing his complaint in district court, has Bollard involved any government entity. Given the limited and retrospective nature of the damages remedy Bollard seeks, it is clear that none of these entities will be involved in future or ongoing monitoring of church activities.

Taken as a whole, we conclude that the procedural entanglement between church and state that will result from allowing Bollard to pursue his claim is no greater than that attendant on any other civil suit a private litigant might pursue against a church. Accordingly, we fail to see an Establishment Clause violation in applying the commands of Title VII to this case.

III. *State Law Claims*

Bollard included in his complaint claims under California law for failure to investigate, for constructive discharge, and for breach of contract. When the district court dismissed Bollard's claim under Title VII, it dismissed those claims under the federal supplemental jurisdiction statute, 28 U.S.C. § 1367(c). Because we hold that Bollard has stated a claim under Title VII, the dismissal of his state law claims is no longer warranted. Assuming the district court reaches the merits of Bollard's state law claims on remand, it will have to perform the same First Amendment analysis with respect to those claims as the analysis we have performed with respect to Bollard's claim under Title VII. We do not mean inappropriately to anticipate the legal analysis of the district court by stating here what is already obvious: The fact that Bollard's Title VII claim for sexual harassment may go forward despite the First Amendment does not necessarily mean that his state law claims may also go forward.

[25] As the analysis earlier in this opinion makes clear, the ministerial exception to Title VII is based not on Title VII but, rather, on the First Amendment. Just as there is a ministerial exception to Title VII, there must also be a ministerial exception to any state law cause of action that would otherwise impinge on the church's prerogative to choose its ministers or to exercise its religious beliefs in the context of employing its ministers. To take a clear example, had Bollard brought a state law claim for breach of contract with an associated remedy of reinstatement, that would run afoul of the Free Exercise Clause because the remedy would require the church to employ Bollard, thereby interfering with the church's constitutionally protected choice of its ministers. Whether the exception applies in a particular instance will depend on the nature of the state law claim and its associated remedy, and the district court will be in a position to undertake that analysis on remand.

IV. *Nature of the District Court's Dismissal*

[26][27][28] Upon finding that the ministerial exception applied to Bollard's claim under Title VII, the district court dismissed his complaint under Federal Rule of Civil Procedure 12(b)(1) for want of ***951** subject matter jurisdiction. We reverse that dismissal, but we also wish to make clear that, had Bollard's claim indeed been barred, it should have been dismissed for failure to state a claim

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under Federal Rule of Civil Procedure 12(b)(6). Failure to state a claim under federal law is not the same thing as failure to establish federal question jurisdiction under 28 U.S.C. § 1331. Any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if that claim is later dismissed on the merits under Rule 12(b)(6). As the Supreme Court wrote in *Bell v. Hood,* 327 U.S. 678, 682, 66 S.Ct. 773, 90 L.Ed. 939 (1946),

> Jurisdiction ... is not defeated ... by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover.... If the court ... exercise[s] its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction.

See also Wheeldin v. Wheeler, 373 U.S. 647, 649, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963) ("We agree ... that on the face of the complaint the federal court had jurisdiction.... But on the undisputed facts, ... no federal cause of action can be made out."). Bollard asserted a non-frivolous federal claim, and even if the district court had been correct in dismissing it, that dismissal should have been on the merits under Rule 12(b)(6) for failure to state a claim for which relief can be granted.

We **REVERSE** and **REMAND** for further proceedings consistent with this opinion.

196 F.3d 940, 81 Fair Empl.Prac.Cas. (BNA) 660, 76 Empl. Prac. Dec. P 46,184, 99 Cal. Daily Op. Serv. 9360, 1999 Daily Journal D.A.R. 12,095

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EXHIBIT 8

565 N.E.2d 584
5 A.L.R.5th 1115
(Cite as: 57 Ohio St.3d 56, 565 N.E.2d 584)

Supreme Court of Ohio.

BYRD et al., Appellees,
v.
FABER;
Ohio Conference of Seventh-day Adventists et al., Appellants.

No. 89-1722.

Submitted Oct. 24, 1990.
Decided Jan. 16, 1991.

In parishioners' suit arising out of pastor's alleged nonconsensual sexual conduct with parishioner wife, the Court of Common Pleas, Knox County, granted church's motion for judgment on the pleadings on respondeat superior and negligent hiring claims, and parishioners appealed. The Court of Appeals for Knox County reversed, and motion to certify the record was allowed. The Supreme Court, Alice Robie Resnick, J., held that: (1) parishioners could not maintain separate cause of action for clergy malpractice; (2) church could not be held liable under doctrine of respondeat superior for nonconsensual sexual conduct between pastor and parishioner; and (3) parishioners failed to state claim against church for negligent hiring.

Reversed.

Sweeney, J., dissented.

West Headnotes

[1] **Charities** ⚖45(2)
75k45(2) Most Cited Cases

[1] **Religious Societies** ⚖30
332k30 Most Cited Cases

Doctrine of charitable immunity does not protect religious institutions and other nonprofit organizations from tort liability; consequently, church may be held liable both for negligence of its employees who are acting within scope of their employment as well as for its own negligence.

[2] **Religious Societies** ⚖30
332k30 Most Cited Cases

Parishioners could not maintain separate cause of action for clergy malpractice based on pastor's nonconsensual sexual conduct with parishioner wife, as all aspects of alleged conduct fell within scope of other recognized torts.

[3] **Master and Servant** ⚖302(1)
255k302(1) Most Cited Cases

[3] **Master and Servant** ⚖306
255k306 Most Cited Cases

In order for employer to be liable under doctrine of respondeat superior, tort of employee must be committed within scope of employment; moreover, where tort is intentional, behavior giving rise to the tort must be calculated to facilitate or promote business for which servant was employed.

[4] **Master and Servant** ⚖302(6)
255k302(6) Most Cited Cases

Employer is not liable for independent self-serving acts of his employees which in no way facilitate or promote his business.

[5] **Religious Societies** ⚖30
332k30 Most Cited Cases

Church could not be held liable under doctrine of respondeat superior for nonconsensual sexual conduct between pastor and parishioner, where church did not promote or advocate such activity and could not have foreseen that pastor would behave in this manner toward his parishioners.

[6] **Religious Societies** ⚖30
332k30 Most Cited Cases

Parishioners failed to state claim against church for negligent hiring of pastor who allegedly engaged in nonconsensual sexual conduct with parishioner wife, absent allegation of any facts indicating that pastor had past history of criminal or tortious conduct about which church knew or should have known. Rules Civ.Proc., Rule 12(B)(6); U.S.C.A. Const.Amend. 1.

[7] **Pleading** ⚖18
302k18 Most Cited Cases

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As with fraud claims and intentional tort claims against employers, greater specificity in pleading is required when claim is brought against religious institution for negligent hiring, due to the myriad First Amendment problems which accompany such a claim. Rules Civ.Proc., Rule 12(B)(6); U.S.C.A. Const.Amend. 1.

[8] **Pleading** ⇦18
302k18 Most Cited Cases

In order to survive motion to dismiss, plaintiff bringing negligent hiring claim against religious institution must plead operative facts with particularity; specifically, plaintiff must plead facts which indicate that individual hired had past history of criminal, tortious, or otherwise dangerous conduct about which religious institution knew or could have discovered through reasonable investigation. Rules Civ.Proc., Rule 12(B)(6); U.S.C.A. Const.Amend. 1.

****585** Syllabus by the Court

A plaintiff bringing a negligent hiring claim against a religious institution must plead operative facts with particularity in order to survive a Civ.R. 12(B)(6) motion to dismiss.

Appellees, Leroy and Garnet Byrd, and their children, Jennifer and Heather, are Seventh-day Adventists who attended the Hill Church in Knox County, Ohio during the period relevant to this case. While the Byrds attended the Hill Church they were under the guidance of Reverend Richard P. Faber, who was assigned to the church as pastor by the Seventh-day Adventist organization. In 1984, the Byrds requested that Faber provide them with counseling for their marital and personal problems. Faber agreed and provided counseling for the appellees from 1984 until 1987.

During the course of the counseling, Faber allegedly forced Garnet Byrd to engage in sexual activity with him. As a result, the Byrds filed suit against Faber in the Knox County Court of Common Pleas, alleging professional malpractice, fraud, intentional infliction of emotional distress, and nonconsensual sexual conduct. The Byrds also filed suit against the Ohio Conference of Seventh-day Adventists, Columbia Union Conference of Seventh-day Adventists and the General Conference of Seventh-day Adventists, appellants herein. The Byrds' complaint alleges liability for Faber's actions under the doctrine of respondeat superior and the negligent hiring of Faber.

The appellants subsequently filed a Civ.R. 12(C) motion for judgment on the pleadings on the respondeat superior and ****586** negligent hiring claims. [FN1] The trial court granted the motion and the Byrds appealed. On appeal, the appellate court reversed, holding that the allegations of the complaint, when taken as true, do state a cause of action against the appellants.

> FN1. Even though the trial court characterized the motion as a Civ.R. 12(C) motion for judgment on the pleadings, on appeal the parties acknowledged that the motion should be treated as a Civ.R. 12(B)(6) motion for failure to state a claim. Thus, both the court of appeals' opinion and this opinion treat the appellants' motion as a Civ.R. 12(B)(6) motion for failure to state a claim.

The cause is now before this court pursuant to the allowance of a motion to certify the record.

Alan P. Gustafson, Utica, for appellees.

Vorys, Sater, Seymour & Pease, ***57** Bruce L. Ingram, Tony C. Merry, Columbus, and Richard B. Murray, Mount Vernon, for appellants.

Dobbs & Dobbs and James B. Dobbs, Columbus, urging reversal for amici curiae, Baptist Joint Committee on Public Affairs, American Jewish Congress, Christian Legal Society, Nat. Ass'n of Evangelicals and Nat. Council of Churches of Christ in the U.S.A.

ALICE ROBIE RESNICK, Justice.

This appeal is concerned solely with the liability of the appellants, the Ohio Conference of Seventh-day Adventists et al. The claims against Faber are still pending in the trial court, and consequently, are not before us at this time. However, as the appellants'

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liability is in several respects dependent upon the liability of their employee, Faber, it is necessary for us to discuss certain aspects of the appellees' case against Faber. Initially, we must determine whether it is possible for the appellees to bring a claim against Faber for clergy malpractice. If such a cause of action is viable, then it is conceivable that recovery might also be available against the appellants through application of the doctrine of respondeat superior.

In their complaint, appellees allege that Faber "did not exercise the degree of care and skill ordinarily exercised by others of his profession * * *." This allegation is advanced as a claim separate and distinct from their claims of fraud, intentional infliction of emotional distress, and nonconsensual sexual conduct. In its opinion, the court of appeals assumed that through this allegation, the appellees had stated a valid claim for clergy malpractice. However, our holding in *Strock v. Pressnell* (1988), 38 Ohio St.3d 207, 527 N.E.2d 1235, prevents the appellees, based upon the facts as presented in their complaint, from maintaining a separate cause of action for clergy malpractice.

[1] As we noted in *Strock, supra,* the doctrine of charitable immunity no longer protects religious institutions and other nonprofit organizations from tort liability. *Albritton v. Neighborhood Centers Assn.* (1984), 12 Ohio St.3d 210, 12 OBR 295, 466 N.E.2d 867. Consequently, a church may be held liable both for the negligence of its employees who are acting within the scope of their employment as well as for its own negligence. For example, it has been held that if a church hires an individual despite knowledge of prior improper behavior in his former church-related employment, the church may be liable in tort for negligent hiring. *Bender v. First Church of the Nazarene* (Sept. 7, 1989), Licking App. No. CA-3448, unreported, 1989 WL 104765; see, also, *Matthews v. Wittenberg College* (1960), 113 Ohio App. 387, 17 O.O.2d 431, 178 N.E.2d 526 .

However, there is considerable disagreement regarding the potential liability of a member of the clergy for "clergy malpractice." "Clergy malpractice" has been defined as the failure to exercise the degree of care and skill normally exercised by members of the clergy in carrying out their professional duties. In *Strock v. Pressnell, supra,* we held that in order to generate a cause of action for "clergy malpractice," the cleric's behavior must "fall outside the scope of other recognized torts." *Id.* 38 Ohio St.3d at 212, 527 N.E.2d at 1239. If the cleric's behavior fits within an established category of liability, such as ****587** fraud, duress, assault, or battery, it would be redundant to simultaneously hold the cleric liable for "clergy malpractice": " '[t]o avoid a redundant remedy, * * * any functional theory of clergy malpractice needs [to] address incidents of the clergy-communicant relationship ***58** not already actionable.' " *Id.,* citing *Hester v. Barnett* (Mo.App.1987), 723 S.W.2d 544, 551.

[2] The appellees' claim for clergy malpractice does not address any aspect of the clergy-communicant relationship not already actionable. The gravamen of their complaint is that Faber forced Garnet Byrd to engage in sexual conduct with him. For this activity, Faber may be found liable not only for nonconsensual sexual conduct, *i.e.,* battery, but also for fraud and intentional infliction of emotional distress. In essence, through the creative use of tort law, appellees may recover several times for the same injury. To then allow recovery for clergy malpractice on the basis of this same conduct would be to grant a redundant remedy. Appellees have not named any activity engaged in by Faber for which recovery in tort is not available. Hence, under *Strock, supra,* there is no basis for recognizing their claim for clergy malpractice, either against Faber, or, through application of the doctrine of respondeat superior, against the appellants.

We move now to the appellees' claims for nonconsensual sexual conduct, fraud, and intentional infliction of emotional distress. If the appellees are able to prove any of these claims as against Faber, then they may be able to recover against the appellants through application of the doctrine of respondeat superior. This case differs from *Strock, supra,* where the plaintiff was unable to recover from the employer because he had no underlying claim against the employee. As we stated in *Strock,* "[i]t is axiomatic that for the doctrine of respondeat superior to apply, an employee must be liable for a tort committed in the scope of his employment." *Id.,* 38 Ohio St.3d at 217, 527 N.E.2d at 1244. Here, the possibility

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exists that Faber is liable in tort to the Byrds for nonconsensual sexual conduct, fraud, and intentional infliction of emotional distress. Thus, theoretically, the appellants may be liable to the appellees under the doctrine of respondeat superior.

However, close examination of the appellees' complaint and of the principles of respondeat superior liability reveals that the appellees have failed to state a viable claim against the appellants. As noted above, the gravamen of the appellees' complaint is that Faber engaged in nonconsensual sexual conduct with Garnet Byrd. Without this allegation, the appellees would have no basis for claiming that Faber engaged in fraud or the intentional infliction of emotional distress; without it, their complaint would have no factual basis. Consequently, in order to determine whether the appellants may be liable for the alleged wrongs of Faber, we must decide whether a church may be held liable under the doctrine of respondeat superior for nonconsensual sexual conduct between a pastor and a parishioner.

[3] It is well-established that in order for an employer to be liable under the doctrine of respondeat superior, the tort of the employee must be committed within the scope of employment. Moreover, where the tort is intentional, as in the case at bar, the behavior giving rise to the tort must be "calculated to facilitate or promote the business for which the servant was employed * * *." *Little Miami RR. Co. v. Wetmore* (1869), 19 Ohio St. 110, 132; *Taylor v. Doctor's Hosp.* (1985), 21 Ohio App.3d 154, 21 OBR 165, 486 N.E.2d 1249. For example, an employer might be liable for an intentional tort if an employee injures a patron when removing her from the employer's business premises or blocking her entry. The removal of patrons, who ***59** may be unruly, underage, or otherwise ineligible to enter, is calculated to facilitate the peaceful and lawful operation of the business. Consequently, an employer might be liable for an injury inflicted by an employee in the course of removal of a patron. See, *e.g., Stewart v. Napuche* (1952), 334 Mich. 76, 53 N.W.2d 676; *Kent v. Bradley* (Tex.Civ.App.1972), 480 S.W.2d 55.

****588** [4] However, the employer would not be liable if an employee physically assaulted a patron without provocation. As we held in *Vrabel v. Acri* (1952), 156 Ohio St. 467, 474, 46 O.O. 387, 390, 103 N.E.2d 564, 568, "an intentional and wilful attack committed by an agent or employee, to vent his own spleen or malevolence against the injured person, is a clear departure from his employment and his principal or employer is not responsible therefor." See, also, *Schulman v. Cleveland* (1972), 30 Ohio St.2d 196, 59 O.O.2d 196, 283 N.E.2d 175. In other words, an employer is not liable for independent self-serving acts of his employees which in no way facilitate or promote his business.

These general principles have been specifically applied when analyzing the liability of religious organizations for the activities of individual clerics whom they employ. In *Milla v. Roman Catholic Archbishop of Los Angeles* (1986), 187 Cal.App.3d 1453, 232 Cal.Rptr. 685, the plaintiff, a sixteen-year- old girl, was allegedly seduced by seven priests of the Archdiocese of Los Angeles. The priests purportedly used their positions to entice the girl to remain silent while they had sexual intercourse with her, impregnated her, and sent her to the Phillipine Islands to give birth. The California appellate court stated that in order for the Archdiocese to be liable under the theory of respondeat superior for the priests' actions, their conduct must be characteristic of the activities of the church or otherwise reasonably foreseeable. Applying that principle to the facts before it the court concluded:

"It would defy every notion of logic and fairness to say that sexual activity between a priest and a parishioner is characteristic of the Archbishop of the Roman Catholic Church. * * * Similarly, appellant has not pointed out any fact which could lead this court to the conclusion that the Archbishop 'ratified' the concupiscent acts of the priests." *Id.* at 1461, 232 Cal.Rptr. at 690.

Another district of the California Court of Appeals reached a similar conclusion in *Scott v. Central Baptist Church* (1988), 197 Cal.App.3d 718, 243 Cal.Rptr. 128. In *Scott,* the court was asked to decide whether a church should be held liable for repeated acts of sexual assault on a minor perpetrated by a Sunday school teacher. Applying the standard enunciated in *Milla, supra,* the court noted that the church could only be held liable if the teacher's acts were required or incident to his duties or, if not, could have been reasonably foreseen by the church. *Id.* at 721, 243 Cal.Rptr. at 130. All

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the evidence suggested that the teacher's acts were independent self-serving pursuits unrelated to church activities. *Id.* at 722, 243 Cal.Rptr. at 130. Moreover, the teacher's acts of sexual molestation were not foreseeable in light of the duties he was hired to perform. *Id.* Consequently, the *Scott* court concluded that the church could not be held liable under the doctrine of respondeat superior for the teacher's activities.

[5] The doctrine of respondeat superior is similarly inapplicable in the case at bar. The Seventh-day Adventist organization in no way promotes or advocates nonconsensual sexual conduct ***60** between pastors and parishioners. The appellants did not hire Faber to rape, seduce, or otherwise physically assault members of his congregation. Furthermore, appellees have alleged no fact indicating that the appellants should reasonably have foreseen that Faber would behave in this manner toward his parishioners. Consequently, appellees have failed to state a claim of respondeat superior liability on the part of the church, and the trial court was correct in dismissing that portion of their complaint.

[6] The appellees have similarly failed to state a claim for negligent hiring on the part of the appellants. Count Five of their complaint states in pertinent part: "The Defendant employees [*sic*] knew, or should have known of the inclination for Defendant Faber to commit such actions and was reckless or negligent in allowing said Defendant to assume the position of pastor in Knox County, Ohio * * *." The trial court held that this language failed to state a claim against the appellants. The court of appeals reversed, but did not engage in a separate discussion of the negligent hiring ****589** claim, choosing instead to conflate this issue with the issue of respondeat superior liability.

Under Ohio law, when a party files a motion to dismiss for failure to state a claim, all the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192, 532 N.E.2d 753, 756. In order for a judge to grant a motion to dismiss for failure to state a claim, it must appear " 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, 245, 71 O.O.2d 223, 224, 327 N.E.2d 753, 755, citing *Conley v. Gibson* (1957), 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80. While there is no question regarding this standard, there is considerable debate about how much specificity is required in order for a plaintiff to survive a motion to dismiss. A survey of Ohio law reveals, however, that where important public policies warrant a limitation on the number of claims, this court has refused to allow a plaintiff to survive a motion to dismiss through the mere incantation of an abstract legal standard.

In *Mitchell, supra,* the plaintiff filed an intentional tort claim against an employer after an employee was fatally shot while working alone in the employer's store at night. The plaintiff claimed that the employer knew or should have known that its employees were subject to armed robberies and other violent acts and that the employer had wilfully and intentionally failed to provide protection. Although the plaintiff advanced this allegation in his complaint, he included no facts to support it. In granting the defendant's Civ.R. 12(B)(6) motion to dismiss, this court stated, "[u]nsupported *conclusions* that appellant committed an intentional tort are not taken as admitted by a motion to dismiss and are not sufficient to withstand such a motion." (Emphasis *sic.*) *Id.,* 40 Ohio St.3d at 193, 532 N.E.2d at 756. We then proceeded to carve out a heightened standard of review for Civ.R. 12(B)(6) motions in the intentional tort context. Citing the need to deter the number of baseless claims against employers, the importance of preventing every workplace injury from being converted into an intentional tort claim, and the goal of facilitating the efficient administration of justice, we held that in order to survive a Civ.R. 12(B)(6) motion to dismiss, a plaintiff bringing an intentional tort claim against an ***61** employer must allege certain facts with particularity. [FN2]

> FN2. Specifically, we held in *Mitchell, supra,* in the syllabus, that "claim of intentional tort against an employer will be dismissed as failing to establish that the pleader is entitled to relief unless the complaint alleges facts showing that the employer: (1) specifically desired to injure the employee; or (2) knew that injury to

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> an employee was certain or substantially certain to result from the employer's act and despite this knowledge, still proceeded. * * * "

A heightened standard of pleading is also required when a plaintiff brings a claim for fraud. Civ.R. 9(B) states that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The chief purpose of this rule is to protect defendants from unfounded charges of wrongdoing which may injure their reputations. See *In re Commonwealth Oil/Tesoro Petroleum Corp. Securities Litigation* (W.D.Tex.1979), 467 F.Supp. 227; *Haddon View Investment Co. v. Coopers & Lybrand* (1982), 70 Ohio St.2d 154, 24 O.O.3d 268, 436 N.E.2d 212. While a complete reversion to fact pleading is to be avoided, the goal of protecting the reputations of upstanding members of the community is important enough to require that facts be pled with particularity in order for a plaintiff to survive a motion to dismiss.

[7][8] We hold today that as with fraud claims and intentional tort claims against employers, greater specificity in pleading is required when a claim is brought against a religious institution for negligent hiring due to the myriad First Amendment problems which accompany such a claim. In order to survive a Civ.R. 12(B)(6) motion to dismiss, a plaintiff bringing a negligent hiring claim against a religious institution **590 must plead operative facts with particularity. See *Mitchell, supra,* at, 40 Ohio St.3d 194, 532 N.E.2d at 757 (Douglas, J., concurring). Specifically, the plaintiff must plead facts which indicate that the individual hired had a past history of criminal, tortious, or otherwise dangerous conduct about which the religious institution knew or could have discovered through reasonable investigation. The mere incantation of the elements of a negligent hiring claim, *i.e.,* the abstract statement that the religious institution knew or should have known about the employee's criminal or tortious propensities, without more, is not enough to enable a plaintiff to survive a motion to dismiss for failure to state a claim.

As with fraud claims and intentional tort claims against employers, an important principle underlies our decision to require that the plaintiff plead operative facts with particularity. In order to determine whether a religious organization has exercised due care in hiring, it is necessary to examine its employment policies and practices. In all probability, these policies will be infused with the religious tenets of the particular sect involved. If the state becomes involved in assessing the adequacy of these standards, serious entanglement problems may arise under the First Amendment. See, *e.g., Lemon v. Kurtzman* (1971), 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745. While even the most liberal construction of the First Amendment will not protect a religious organization's decision to hire someone who it knows is likely to commit criminal or tortious acts, the mere incantation of an abstract legal standard should not subject a religious organization's employment policies to state scrutiny. Consequently, in order to survive a motion to dismiss, a plaintiff *62 bringing a negligent hiring claim must allege some fact indicating that the religious institution knew or should have known of the employee's criminal or tortious propensities.

Applying this standard to the case at bar, we hold that the trial court was correct in dismissing the appellees' complaint for failure to state a claim. The appellees alleged no fact indicating that Faber had a past history of criminal or tortious conduct about which the appellants knew or should have known. In fact, beyond discussing Faber's conduct toward Mrs. Byrd, the appellees do not discuss any of his activities either before or after he was hired. They do not refer to any fact within the knowledge of the appellants which should have prevented them from employing Faber. Appellees' complaint merely recites the elements of a negligent hiring claim and then seeks recovery. As the appellees have alleged no fact suggesting that the appellants were negligent in hiring Faber, the trial court was correct in dismissing their complaint as to the appellants for failure to state a claim.

For reason of the foregoing, the judgment of the court of appeals is reversed.

Judgment reversed.

MOYER, C.J., and HOLMES, DOUGLAS, WRIGHT and HERBERT R. BROWN, JJ., concur.

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SWEENEY, J., dissents.

565 N.E.2d 584, 57 Ohio St.3d 56, 5 A.L.R.5th 1115

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EXHIBIT 9

985 P.2d 262
(Cite as: 138 Wash.2d 699, 985 P.2d 262)

Supreme Court of Washington,
En Banc.

C. J.C., Respondent,
v.
CORPORATION OF the CATHOLIC BISHOP OF YAKIMA, a sole corporation; Father Richard Scully; and Father Dale Calhoun, Petitioners.
Juanita Funkhouser, a married woman; Sheri Lewis, a married woman; and Janelle Larson, a married woman, Respondents,
v.
David Wilson, as personal representative for the Estate of Orin Wilson; Gerry Wilson, a single woman; David Schulz; Calvary Baptist Church of Twisp, Washington, formerly known as Calvary Bible and/or First Baptist Church, the Columbia Baptist Conference, a Washington corporation, Petitioners.
E.R.B., a single person, and John Bales and Jody Bales, husband and wife,
Petitioners,
v.
Church of God, a Washington corporation; and Rick Shaw and "Jane Doe" Shaw, husband and wife; A B C Church of God and X Y Z Church of God, Respondents.
Nos. 66252-5, 66580-0, 65654-1.

Argued Sept. 22, 1998.
Decided July 29, 1999.
As Amended Sept. 8, 1999.

Adult victim of alleged sexual abuse by priests brought suit against priests and diocese. The Superior Court, King County, John Darrah, J., dismissed the lawsuits as barred by statute of limitations. The Court of Appeals, 88 Wash.App. 70, 943 P.2d 1150, affirmed in part, reversed in part, and remanded. Similar claims were brought against church and church officials by adults who were allegedly molested as children by deacon. Claims were dismissed on summary judgment by the Superior Court, King County, Sharon Armstrong, J., and the Court of Appeals, 89 Wash.App. 644, 950 P.2d 501, reversed and remanded. In another case, claims were brought by both victim and his parents against church, officials, and church's state office. The Superior Court, Pierce County, Karen Strombom, J., granted summary judgment to defendants on statute of limitations grounds, and the Court of Appeals, 89 Wash.App. 670, 950 P.2d 29, affirmed. Cases were consolidated for review. The Supreme Court, Johnson, J., held that: (1) statute of limitations encompassed causes of action sounding in negligence against parties who did not themselves directly perpetrate acts of childhood sexual abuse, but who allegedly failed to protect child victims, overruling *Jamerson v. Vandiver,* 85 Wash.App. 564, 934 P.2d 1199. West's RCWA 4.16.340; (2) priest's conduct constituted "childhood sexual abuse" under statute; (3) diocese could not be held liable on respondeat superior or strict liability theory; (4) on issue of first impression, church owed duty of reasonable care to affirmatively act to prevent foreseeable harm to children; (5) church was not shielded from imposition of duty by constitutional principles; and (6) claims of parents begin to run at same time as those of their children.

Affirmed in part and reversed in part; remanded.

Madsen, J., filed opinion concurring in part and dissenting in part.

Durham, J., filed dissenting opinion, in which Guy, C.J., and Dolliver, J. Pro Tem., joined.

Sanders, J., concurred in dissents of both Madsen and Durham, JJ.

West Headnotes

[1] Statutes ⇐188
361k188 Most Cited Cases

Words in statute are given their plain and ordinary meaning unless a contrary intent is evidenced in the statute.

[2] Statutes ⇐190
361k190 Most Cited Cases

[2] Statutes ⇐217.4
361k217.4 Most Cited Cases

Where statutory language is clear and unambiguous, statute's meaning is determined from its language

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alone; court may not look beyond language nor consider legislative history.

[3] **Statutes** ⚿205
361k205 Most Cited Cases

[3] **Statutes** ⚿206
361k206 Most Cited Cases

Act is construed as a whole, giving effect to all language used.

[4] **Statutes** ⚿223.2(.5)
361k223.2(.5) Most Cited Cases

Related statutory provisions are interpreted in relation to each other and all provisions harmonized.

[5] **Limitation of Actions** ⚿31
241k31 Most Cited Cases

For purposes of statute of limitations governing civil claims "based on intentional childhood sexual abuse," action is based on intentional conduct if intentional sexual abuse is the starting point or foundation of the claim. West's RCWA 4.16.340.

[6] **Negligence** ⚿1507
272k1507 Most Cited Cases

Statute of limitations on civil claims "based on intentional childhood sexual abuse" encompasses claims sounding in negligence when claims stem from injuries suffered as result of intentional childhood sexual abuse. West's RCWA 4.16.340.

[7] **Limitation of Actions** ⚿31
241k31 Most Cited Cases

Definition of "childhood sexual abuse" in statute of limitations for civil actions based on intentional childhood sexual abuse does not limit statute's applicability to claims brought by a victim against actual perpetrator; definition, which refers to act committed in violation of specified criminal statutes by defendant against complainant who was less than eighteen years of age, limits only specific predicate sexual conduct upon which all claims must be based. West's RCWA 4.16.340(5).

[8] **Limitation of Actions** ⚿31
241k31 Most Cited Cases

Purpose of statute of limitations that tolls civil claims based on intentional childhood sexual abuse is to provide broad avenue of redress for victims who were often left without remedy under previous statutes of limitation. West's RCWA 4.16.340.

[9] **Negligence** ⚿1507
272k1507 Most Cited Cases

Statute of limitations for civil claims "based on" intentional childhood sexual abuse encompasses causes of action sounding in negligence against parties who did not themselves directly perpetrate acts of childhood sexual abuse, but who allegedly failed to protect child victims or to otherwise prevent the abuse, overruling *Jamerson v. Vandiver*, 85 Wash.App. 564, 934 P.2d 1199. West's RCWA 4.16.340.

[10] **Infants** ⚿13
211k13 Most Cited Cases

[10] **Limitation of Actions** ⚿31
241k31 Most Cited Cases

Priests' conduct in allegedly masturbating teenage boy constituted "childhood sexual abuse" for purpose of statute broadening limitations period on civil claims, even though priests' conduct was not specifically proscribed under applicable sections of then-existing Criminal Code; conduct fit within criminal statute prohibiting "communication with a minor for immoral purposes," which reached any course of conduct with minor for purpose of sexual misconduct. West's RCWA 4.16.340, 9.68A.040; West's RCWA 9A.44.110 (Repealed).

[11] **Witnesses** ⚿185
410k185 Most Cited Cases

Legislative grants of testimonial privilege conflict with the inherent power of the courts to compel the production of relevant evidence and are, therefore, strictly construed.

[12] **Witnesses** ⚿184(1)
410k184(1) Most Cited Cases

Where childhood sexual abuse is at issue, even long established privileges do not apply.

[13] **Witnesses** ⚿214.5
410k214.5 Most Cited Cases

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A patient's intent that communication with psychologist be confidential must be reasonable in light of circumstances surrounding communication; patient's subjective expectations of confidence, while relevant, should not be given more weight than objective evidence. West's RCWA 18.83.110.

[14] Witnesses ⇐214.5
410k214.5 Most Cited Cases

Reports sent to diocese concerning mental health treatment of two priests were not protected under patient-psychologist privilege; reports were not confidential communications with psychologists, as priests clearly intended that diocese, a third party, be provided with reports. West's RCWA 18.83.110.

[15] Religious Societies ⇐30
332k30 Most Cited Cases

Respondeat superior liability could not be applied to hold diocese liable for alleged sexual abuse of teenager by two of its priests, even if priests, from perspective of teenager, were acting within scope of their authority.

[16] Religious Societies ⇐30
332k30 Most Cited Cases

Diocese could not be held strictly liable on basis of quid pro quo sexual harassment for priests' sexual molestation of teenage altar boy; situation arising out of religious relationship was not comparable to supervisory harassment of employee who wants to keep job, on basis of altar boy's alleged belief that priests had power to gain him entry into heaven.

[17] Negligence ⇐220
272k220 Most Cited Cases

Where a special relationship exists, a duty to protect against the intentional or criminal acts of third parties may arise.

[18] Negligence ⇐220
272k220 Most Cited Cases

A special relationship between the defendant and the intentional tortfeasor may give rise to a duty to control the tortfeasor's conduct for the benefit of third persons.

[19] Negligence ⇐220
272k220 Most Cited Cases

A special relationship between the defendant and the victim may give rise to a duty to protect the victim against foreseeable harms by third party, including harms intentionally caused.

[20] Religious Societies ⇐30
332k30 Most Cited Cases

There is a special relationship between a church and the children of its congregation that may give rise to a duty to protect the children against foreseeable harms; churches and other religious organizations are subject to the same duties of reasonable care as would be imposed on any person or entity in selecting and supervising their workers, or protecting vulnerable persons within their custody, so as to prevent reasonably foreseeable harm.

[21] Religious Societies ⇐30
332k30 Most Cited Cases

Church and church official owed duty of reasonable care to affirmatively act to prevent foreseeable harm to children from abuse by prominent church deacon, regardless of whether abuse occurred on church grounds or during church activities, in view of their relationship to children, their relationship to church deacon, whose position brought him into close contact with children, and their alleged knowledge that deacon had abused another child.

[22] Religious Societies ⇐31(6)
332k31(6) Most Cited Cases

Whether causal connection existed between church deacon's alleged abuse of children of church members and deacon's position of authority within church, and whether risk of harm was or should have been reasonably foreseen by church at time harm occurred, so that church might be held liable for breach of duty of reasonable care, presented questions of fact for jury.

[23] Principal and Agent ⇐130.1
308k130.1 Most Cited Cases

Where a special protective relationship exists a principal may not turn a blind eye to a known or reasonably foreseeable risk of harm posed by its agents toward those it would otherwise be required to protect simply because the injury is arbitrarily

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perpetrated off premises or after-hours.

[24] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[24] Religious Societies ⇐30
332k30 Most Cited Cases

Neither First Amendment nor Washington Constitution prevented imposition on church of duty of reasonable care to prevent foreseeable harm to children of church members in form of sexual molestation by church deacon, as liability was predicated on secular conduct and did not involve interpretation of church doctrine or religious beliefs. U.S.C.A. Const.Amend. 1; West's RCWA Const. Art. 1, § 11.

[25] Appeal and Error ⇐761
30k761 Most Cited Cases

Appellate rule allowing shared briefing on shared issues does not allow one party to present amicus argument relating to another party's case on issue not shared in common. RAP 10.1(g).

[26] Limitation of Actions ⇐95(3)
241k95(3) Most Cited Cases

Claims of parents begin to run at same time as underlying claims of their children under statute of limitations for civil actions based on childhood sexual abuse, notwithstanding parents' alleged prior knowledge of abuse, as commencement of limitations period was determined by reference to knowledge possessed by child victims, not that of parents. West's RCWA 4.16.340.

**265 *703 Debra Stephens, Bryan Harnetiaux, Spokane, Amicus Curiae on Behalf of Washington State Trial Lawyers Association.

Andrew L. Subin, Vashon, Amicus Curiae on Behalf of Northwest Womens Law Center.

Thomas West, Martin Burns, Tacoma, Sheryl Willert, Mary Spillane, Nancy Harriss, David Smith , Michael Bolasina, Kenneth Hobbs, Stephen Larson , Thomas Frey, Keith Kemper, Mary Kinerk, Neil Cable, Seattle, Lee Kraft, Joel Salmi, Bellevue, for Petitioners.

Sandra Bobrick, Tacoma, Stephen Hansen, Paul McConnell, James Rogers, Mary Fleck, Stewert Estes, James Dixon, Robert Dickerson, David Jacobi , Seattle, Frederic Fancher, Spokane, for Respondents.

*704 JOHNSON, J.

In these consolidated cases we are asked to determine the scope of RCW 4.16.340, the statute of limitations applicable to civil claims "based on" intentional childhood sexual abuse. Specifically, we must decide whether negligence claims brought against church entities and individual church officials who did not themselves directly perpetrate intentional acts of childhood sexual abuse, but who allegedly failed to protect the child victims or otherwise prevent the abuse, fall within the broad limitations period allowed under the statute.

*705 We answer in the affirmative. [FN1] Each case also raises questions specific to the individual case. These questions are answered after the common question is addressed.

FN1. As a result, we do not reach plaintiffs' alternative theory that claims were timely filed under the common law discovery rule.

FACTS [FN2]

FN2. The facts are described in the light most favorable to plaintiffs whose claims were dismissed on summary judgment. For a more detailed recounting of the facts in each case, *see Funkhouser v. Wilson,* 89 Wash.App. 644, 950 P.2d 501 (1998); *E.R.B. v. Church of God,* 89 Wash.App. 670, 950 P.2d 29 (1998); *C.J.C. v. Corporation of the Catholic Bishop,* 88 Wash.App. 70, 943 P.2d 1150 (1997).

Plaintiff C.J.C. was an altar boy at St. Paul's Parish of the Corporation of the Catholic Bishop of Yakima (Diocese). C.J.C. alleges that two priests, Fathers Scully and Calhoun, sexually molested him on separate occasions during the years 1980 through 1981, when he was 15 and 16 years old,

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respectively. The abuse consisted of fondling and masturbatory acts performed on C.J.C. by the priests. C.J.C. claims the Diocese was aware of the risk Fathers Scully and Calhoun presented before the abuse occurred, but did nothing to prevent it.

Plaintiffs Juanita Funkhouser, Sheri Lewis, and Janelle Larson are sisters whose father was a pastor at the Calvary Baptist Church of Twisp (Church) between 1969 and 1973, and again between 1978 and 1989. Orin Wilson was a prominent member and one-time deacon of the Church. The sisters claim they were sexually molested on multiple occasions by Wilson when they were children. (Wilson has since died and his estate has been substituted). Sheri and Janelle, the older sisters, allege they were molested between the years 1969 and 1973. Juanita claims she was molested on four occasions, the first occurring between 1970 and 1971, and on three other occasions between 1978 and 1980. In written letters before his death, Wilson admitted to the abuse. The sisters claim the Church and its governing body, the Calvary Baptist Conference, had prior knowledge of Wilson's alleged abuse of other young girls *706 but negligently failed to **266 prevent their subsequent abuse, or to otherwise warn or protect them against Wilson.

Plaintiffs E.R.B. and his parents were members of the New Life Fellowship Church of God (Local Church) in Longview. The Local Church is governed by the New Life Church of God State Offices and Parsonages. Rick Shaw became an associate pastor at the Local Church in 1985. Shaw began sexually abusing E.R.B. in 1985, when E.R.B. was 14 years old. The abuse continued until July 1990, and consisted mainly of fondling E.R.B. and performing oral sex on him. E.R.B. and his parents claim the Local Church failed to properly investigate Shaw's conduct after numerous allegations were made against him. They allege the Local Church negligently supervised Shaw, and the Local Church failed to protect E.R.B. from Shaw's sexual misconduct.

All three trial courts held RCW 4.16.340 applied only to claims against the actual perpetrator of the abuse. In all cases, the trial courts dismissed (on various grounds) all claims against church entities and members who had not themselves directly perpetrated the abuse.

In each case, the Court of Appeals affirmed the trial courts on the applicability of RCW 4.16.340, holding the statute applied only to claims against the actual abusers. [FN3] We address this common issue first.

FN3. Divisions I and II of the Court of Appeals split on the applicability of the common law discovery rule. In *C.J.C.* and *Funkhouser,* Division I applied the discovery rule and reversed summary judgment; under similar facts, Division II in *E.R.B.* refused to apply the discovery rule and affirmed summary judgment. *Compare C.J.C.,* 88 Wash.App. 70, 943 P.2d 1150, *and Funkhouser,* 89 Wash.App. at 669, 950 P.2d 501, *with E.R.B.,* 89 Wash.App. at 683-84, 950 P.2d 29. Because we find the claims against nonabusers and church entities fall under RCW 4.16.340, we do not decide whether the common law discovery rule would otherwise apply.

ANALYSIS

RCW 4.16.340 [FN4] reads in pertinent part:

FN4. In *Tyson v. Tyson,* 107 Wash.2d 72, 79, 727 P.2d 226 (1986), this court, in a plurality decision, held the discovery rule did not apply to intentional tort claims where the plaintiff has suppressed the memory of the abuse during the period of the statute of limitations. RCW 4.16.340 was enacted in 1988 in response to our decision in *Tyson.* Laws of 1988, ch. 144, § 1.

(1) All claims or causes of action based on intentional *707 conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:
(a) Within three years of the act alleged to have caused the injury or condition;
(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or

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(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:
PROVIDED, That the time limit for commencement of an action under this section is tolled for a child until the child reaches the age of eighteen years.
....
(5) As used in this section, "childhood sexual abuse" means any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A.040 or prior laws of similar effect at the time the act was committed.

In addition, as part of the same act, the Legislature amended RCW 4.16.350, the statute of limitations for professional *negligence* by health care providers. That amendment reads:

This section [RCW 4.16.350(3)] does not apply to a civil action based on intentional conduct brought against those individuals *or entities* specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in [RCW 4.16.340(5)]....

Laws of 1988, ch. 144, § 2 (emphasis added).

In *Jamerson v. Vandiver,* 85 Wash.App. 564, 934 P.2d 1199, *review denied,* 133 Wash.2d 1005, 943 P.2d 663 (1997), the Court of Appeals restricted the scope of RCW 4.16.340 to claims against ***708** the actual ****267** perpetrator of the alleged childhood sexual abuse. The court reasoned the statutory definition of "childhood sexual abuse," which limits the predicate conduct to acts in violation of the criminal code, precludes negligence claims against those who have not themselves committed intentional acts of sexual abuse. *Jamerson,* 85 Wash.App. at 567, 934 P.2d 1199. In each of the cases before us now, relying on *Jamerson,* the trial courts and the Court of Appeals refused to apply RCW 4.16.340 to claims brought against persons other than the actual abusers. Plaintiffs argue *Jamerson* was wrongly decided and should be overturned. Plaintiffs argue the language contained in RCW 4.16.340 encompasses claims of negligence against individuals and entities secondarily liable for failing to prevent the alleged abuse. We agree.

[1][2][3][4] We give words in a statute their plain and ordinary meaning unless a contrary intent is evidenced in the statute. *Erection Co. v. Department Labor & Indus.,* 121 Wash.2d 513, 518, 852 P.2d 288 (1993). Where the statutory language is clear and unambiguous, the statute's meaning is determined from its language alone; we may not look beyond the language nor consider the legislative history. *Multicare Med. Ctr. v. Department of Soc. & Health Servs.,* 114 Wash.2d 572, 582, 790 P.2d 124 (1990). We construe an act as a whole, giving effect to all the language used. *State v. S.P.,* 110 Wash.2d 886, 890, 756 P.2d 1315 (1988). Related statutory provisions are interpreted in relation to each other and all provisions harmonized. *S.P.,* 110 Wash.2d at 890, 756 P.2d 1315.

We are primarily concerned with the language contained in subsection (1) and subsection (5) of RCW 4.16.340, as well as the related amendment to RCW 4.16.350. Specifically, we must decide whether the act contemplates causes of action sounding in negligence. If it does, we must then decide whether the definition of "childhood sexual abuse" contained in subsection (5) nevertheless limits the act's applicability only to claims brought by a victim against the actual perpetrator of the abuse.

Subsection (1) of RCW 4.16.340 controls the scope of the ***709** statute's applicability. The relevant language is expansive. It permits "[a]ll claims or causes of action" brought by "any person" provided only that claims be "based on intentional conduct" involving "childhood sexual abuse." RCW 4.16.340(1).

[5] By its plain terms, the statute encompasses *all* causes of action "based on intentional conduct." The question is whether "based on intentional conduct" includes negligence causes of action. "Based on" is undefined in the statute. We, therefore, turn to the ordinary dictionary meaning. *American Legion Post No. 32 v. City of Walla Walla,* 116 Wash.2d 1, 8, 802 P.2d 784 (1991). Webster's dictionary defines "base" as "that on which something rests or stands: FOUNDATION ... the point or line from which a start is made in an action or undertaking...." Webster's Third New International Dictionary 180 (1986). Accordingly, under the plain meaning of the statute, an action is "based on intentional conduct" if intentional sexual

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abuse is the starting point or foundation of the claim.

We have already reached a similar conclusion regarding the meaning and effect of RCW 4.16.340. *See DeYoung v. Providence Med. Ctr.*, 136 Wash.2d 136, 960 P.2d 919 (1998). In *DeYoung*, although not engaging in statutory construction per se, we recognized the statute contemplates professional negligence causes of action where "the *gravamen* of the action is [childhood sexual] abuse...." *DeYoung*, 136 Wash.2d at 147, 960 P.2d 919 (emphasis added). We noted the statute applies to medical malpractice actions where the underlying "child sexual abuse *forms the grounds* for the action...." *DeYoung*, 136 Wash.2d at 147, 960 P.2d 919 (emphasis added).

[6] Similarly, under the facts presented here, intentional sexual abuse is the predicate conduct upon which all claims are based, including the negligence claims. The alleged sexual abuse is essentially an element of the plaintiffs' negligence claims. Absent the abuse, plaintiffs would not have suffered any injury and their negligence claims could not stand. Thus, the "gravamen" of plaintiffs' claims is that defendants are liable for injuries resulting from acts of ***710** intentional sexual ****268** abuse. *See DeYoung*, 136 Wash.2d at 147, 960 P.2d 919. Equal to any other element of the negligence causes of action, the injury resulting from the abuse "forms the grounds" for the claims. As such, the negligence claims are "based on intentional conduct" within the meaning of the statute because they stem from injuries suffered as a result of intentional childhood sexual abuse. [FN5] *See DeYoung*, 136 Wash.2d at 146-47, 960 P.2d 919.

> FN5. In addition to conforming to the language of the statute, our interpretation is entirely consistent with traditional tort principles. *See, e.g., McLeod v. Grant County Sch. Dist. No. 128*, 42 Wash.2d 316, 321, 255 P.2d 360 (1953) ("[b]ut intervening criminal acts may be found to be foreseeable, and if so found, actionable negligence may be predicated thereon").

At least one other state court has reached the same conclusion when interpreting identical statutory language. *Werre v. David*, 275 Mont. 376, 386, 913 P.2d 625 (1996) (holding that negligence claim against party who herself did not engage in intentional abuse is "based on intentional conduct," because intentional sexual abuse provided the "starting point or foundation for the [negligence] claim").

We find further support to conclude RCW 4.16.340 encompasses negligence causes of action in the simultaneously enacted amendment to RCW 4.16.350. That amendment expressly provides that RCW 4.16.340 applies to the *negligence* of a health care provider where the claim is based on injuries suffered as a result of childhood sexual abuse. Taken as a whole, therefore, the statute is not limited in scope to intentional torts, but specifically includes negligence causes of action.

[7] Defendants argue that RCW 4.16.340's definition of "childhood sexual abuse" necessarily limits its application to only those claims brought by "a" victim against "the" perpetrator of the abuse. RCW 4.16.340(5) (defining "childhood sexual abuse" as "any act committed by the defendant against a complainant ... and which act would have been a violation of [the applicable criminal code]").

Defendants draw our attention to two cases in which the courts of California and Rhode Island reached the result ***711** defendants argue for here. *See Debbie Reynolds Prof'l Rehearsal Studios v. Superior Court*, 25 Cal.App.4th 222, 231, 30 Cal.Rptr.2d 514 (1994) (holding that statute of limitations, which defined "childhood sexual abuse" as any act "proscribed" under the applicable penal code, necessarily limited the statute's applicability to causes of action against defendants who had themselves perpetrated "certain intentional criminal acts prohibited by law"); *Kelly v. Marcantonio*, 678 A.2d 873, 875-76 (R.I.1996) (holding that statute of limitations, which defined "childhood sexual abuse" as any act by "the defendant against a complainant," and which act would have been a violation of the applicable criminal code, necessarily limited the statute's applicability to causes of action against "the" defendant who had himself engaged in the criminal conduct).

We decline to adopt the reasoning of these cases. Initially, we note the statutory definition of "childhood sexual abuse" does not on its face specifically include or exclude those persons who may bring claims, or against whom claims may be

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brought. Ultimately, however, we find that to read the definition of "childhood sexual abuse" as necessarily implying that claims may be brought only by the victim against the alleged abuser would deny other words contained in the statute their ordinary meaning, deprive them of meaningful effect, and create discord between related provisions of the act.

The act plainly provides that "any person" may bring claims under its provisions, not just the victim. RCW 4.16.340(1). More significantly, the act expressly includes within its scope suits against *negligent* entities. RCW 4.16.350. By definition, a negligent actor does not act intentionally. Furthermore, entities, ipso facto, cannot directly perpetrate sexual abuse. Entity liability is, in all circumstances, derived from the acts of its agents, whether it be under theories of respondeat superior, negligence, or other imputed conduct (civil or criminal).

Rather than a limitation on the *parties* who may sue or be sued under the act, we read the statutory definition of **712 "childhood sexual abuse" as limiting only the specific **269 predicate sexual *conduct* upon which all claims or causes of action must be based. Thus, the alleged sexual abuse must amount to a violation of the criminal code. If it does not, no claim of any type, against any person, lies.

We find this interpretation best preserves express language contained within the act, harmonizes related provisions, and leaves intact the primary meaning of the definition of "childhood sexual abuse"--that claims must be based on serious sexual misconduct of criminal proportions.

The defendants contend the definitional language creates ambiguity in the meaning of the statute and argue the legislative history supports their position. Even were we to agree that the statute is ambiguous, which we do not, the defendants' interpretation is contrary to the legislative intent. *See Marquis v. City of Spokane,* 130 Wash.2d 97, 108, 922 P.2d 43 (1996) (where language creates ambiguity in the overall meaning or purpose of the statute, this court must attempt to fulfill the legislative intent).

[8] As noted earlier, RCW 4.16.340 was enacted in response to our decision in *Tyson v. Tyson,* 107 Wash.2d 72, 727 P.2d 226. In doing so, the Legislature specifically provided for a broad and generous application of the discovery rule to civil actions for injuries caused by childhood sexual abuse. *See* Laws of 1991, ch. 212, § 1(6), amending RCW 4.16.340 in part to clarify the Legislature's original intent in enacting the statute ("[t]he legislature enacted RCW 4.16.340 to clarify the application of the discovery rule to childhood sexual abuse cases"). The Legislature adopted "findings and intent," which make clear that its primary concern was to provide a broad avenue of redress for victims of childhood sexual abuse who too often were left without a remedy under previous statutes of limitation. *See* Laws of 1991, ch. 212, § 1 (finding that childhood sexual abuse is a pervasive problem and causes long lasting damage; that victims of childhood sexual abuse may repress the memory of the abuse or be unable to connect the abuse to any injury *713 until the statute of limitations has run; that victims may be unable to understand or make the connection between the abuse and the emotional damages it causes; that even though victims may be aware of injuries related to the abuse, more serious injuries may be discovered many years later.).

Significantly, in 1991, the statute was broadened in order to make clear that the discovery of less serious injuries did not commence the period of limitations. In addition, the Legislature specifically superseded a line of cases that had strictly applied the discovery rule in cases involving childhood sexual abuse. Laws of 1991, ch. 212. At least one of the superseded cases, *Raymond v. Ingram,* 47 Wash.App. 781, 737 P.2d 314 (1987), involved negligence claims against nonabusers which had been dismissed by the court. Given this context, we conclude the Legislature intended a broad reading and application of the statute.

Nowhere in RCW 4.16.340 does the Legislature articulate concern for defendants who might be sued. If the Legislature had intended the act to apply exclusively to the perpetrators of the abuse, the statute would have included specific limitations to that effect. It does not do so. [FN6]

FN6. Legislative history which purportedly shows the statute was intended to apply only to actions against the abusers themselves is inconclusive. The Senate

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Bill Report states, in summary, that the new legislation would allow "an action against the abuser...." Senate Comm. on Law & Justice, S.B. Rep. 6305, at 1 (Jan. 19, 1988). The House Bill Report summarizes, by stating, a "cause of action for intentional childhood sexual abuse" must be commenced within the time allowed by the discovery rule. H.B. Rep. E.S.S.B. 6305 at 2 (Mar. 3, 1988). The legislative history also contains a report by the Northwest Women's Law Center, a major proponent of the act, which states, the purpose of the legislation is to apply the discovery rule "to civil suits alleging negligent and/or intentional torts...." *See* "Proposed Legislation Regarding the Statute of Limitations for Civil Suits Brought by Adult Survivors of Incest or Childhood Sexual Abuse," S.B. Rep. 6305, at 1 (1988). Finally, the "Summary of Legislation Regarding the Statute of Limitations in Civil Childhood Sexual Abuse Cases," S.B. Rep. 6305 (1988) (prepared by Jana Mohr, representing Patti Barton), states, the "proposed legislation will apply the discovery rule to civil actions based on intentional torts ... for injuries suffered as a result of that abuse." The language in these brief summaries is in sharp contrast to the adopted statutory language which allows "[a]ll claims or causes of action based on intentional conduct...." RCW 4.16.340(1).

We also reject defendants' argument regarding the effect of the words "or omission" stricken from § 1 of the original act (requiring the claim be brought within three years of "the act (or omission) alleged to have caused the injury," (now § (1)(a)). First, this section does not control the scope of the statute. It is, therefore, irrelevant to determining whether the statute encompasses negligence claims "based on" intentional conduct. Furthermore, the section ties the running of the limitations period exclusively to the actual commission of the intentional abuse, without reference to any omissions that may have facilitated such abuse. Thus, inclusion of the word "omission" was grammatically and logically incorrect. Accordingly, the deletion of these words has no impact on our analysis.

**270 [9] In giving effect to all the words used in the statute, and *714 from our determination of legislative intent, we conclude RCW 4.16.340 encompasses causes of action sounding in negligence against parties who did not themselves directly perpetrate acts of childhood sexual abuse, but who allegedly failed to protect child victims or to otherwise prevent the abuse.

The trial courts and Court of Appeals are reversed on this issue. *Jamerson v. Vandiver,* 85 Wash.App. 564, 934 P.2d 1199, is overruled.

Issues Specific to Each Case
C.J.C. v. Corporation of the Catholic Bishop

First, we must decide whether the alleged sexual misconduct of Fathers Scully and Calhoun (the Priests) constitutes "childhood sexual abuse" within the meaning of the statute. *See* RCW 4.16.340 (defining "childhood sexual abuse" as an act that would have been a violation of RCW 9A.44, RCW 9.68A.040, or prior laws of similar effect at the time the act was committed).

C.J.C. argues the Priests communicated with him for an immoral purpose as proscribed under former RCW 9A.44.110 (1981) ("Any person who communicates with a child under the age of seventeen years of age for immoral purposes shall be guilty of a gross misdemeanor...."). The Priests, who allegedly masturbated C.J.C., argue that RCW 4.16.340 does not apply to claims against them because their conduct was not proscribed under the then applicable criminal code.

At the time in question, 1980 through 1981, RCW 9A.44 was the applicable statute then in effect. Finding the alleged conduct did not fall under any of the definitional sections *715 of the statute, the trial court dismissed all claims against the Priests. *See* RCW 9A.44.010 (defining "sexual intercourse" as penetration or contact between sexual organs of one person and vagina, mouth, or anus of another).

Relying on *State v. McNallie,* 120 Wash.2d 925, 846 P.2d 1358 (1993), the Court of Appeals reversed and reinstated the claims. Under *McNallie,* the Court of Appeals reasoned a jury could find that an act not specifically proscribed by

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statute could nevertheless constitute communication with a child for immoral purposes, so long as the communication was "for the predatory purpose of promoting their exposure to and involvement in sexual misconduct." *C.J.C. v. Corporation of the Catholic Bishop,* 88 Wash.App. 70, 75, 943 P.2d 1150 (1997) (quoting *McNallie,* 120 Wash.2d at 933, 846 P.2d 1358).

[10] The Priests now argue that the Court of Appeals should not have applied the reasoning of *McNallie* because that case interpreted RCW 9.68A, a later enacted statute. In essence, the Priests would have this court ignore *McNallie* and reverse the Court of Appeals on the basis that their conduct was not then a crime and, therefore, they could not have engaged in communications for an immoral purpose. *See, e.g., State v. Luther,* 65 Wash.App. 424, 428, 830 P.2d 674 (1992) (no communication for immoral purpose if underlying sexual conduct not illegal).

The Priests' argument is not well taken. In 1979, we construed the very statute at issue here and concluded it applied to misconduct of a sexual nature whether or not precisely defined within the statute itself. *See State v. Schimmelpfennig,* 92 Wash.2d 95, 101-04, 594 P.2d 442 (1979) (construing RCW 9A.88.020). [FN7] We gave the phrase **271 "communication with a minor for immoral purposes" a "commonsense understanding," holding that "any spoken word *716 or *course of conduct with a minor for purpose of sexual misconduct* is prohibited." *Schimmelpfennig,* 92 Wash.2d at 103-04, 594 P.2d 442 (emphasis added). We upheld the conviction of a man who had merely attempted to entice young girls into the back of his van for sexual purposes. Here, defendants allegedly engaged in actual sexual misconduct.

> FN7. Former RCW 9A.44.110 (repealed by Laws of 1984, ch. 262 and recodified at RCW 9.68A.090), was formerly codified at RCW 9A.88.020. The language of the two statutes is identical; both statutes were enacted by the same source. Laws of 1975, 1st Ex.Sess., ch. 260. Thus, although later moved to a different part of the criminal code, the two statutes are one and the same. *Schimmelpfennig,* therefore, controls.

We find the Priests' conduct meets the definition of "childhood sexual abuse" as defined in RCW 4.16.340. We affirm the Court of Appeals on this issue.

Second, we must decide whether two communications sent from the Priests' mental health providers to the Diocese are privileged and undiscoverable.

C.J.C. moved the trial court to compel discovery of certain communications between mental health counselors and the Diocese regarding the treatment of Fathers Calhoun and Scully. The trial court denied the motion. The Court of Appeals affirmed in part and reversed in part. *C.J.C. v. Corporation of the Catholic Bishop,* No. 37632-2-I, slip op. at 20-22 (Wash.Ct.App. Sept. 22, 1997). In reversing in part, the court reasoned that two reports sent from the Priests' mental health counselors to the Diocese were discoverable because they were not confidential communications between patient and counselor. *See C.J.C.,* No. 37632-2-I, slip op. at 21.

The fact that the Priests participated in counseling at the insistence of the Diocese and consented to the Diocese receiving reports of their progress is undisputed. Nevertheless, they argue the client-psychologist privilege was not waived because of their unique relationship with their church. The Priests liken this relationship to a husband and wife attending joint counseling. Alternatively, they argue this court should fashion a rule similar to the "joint defense" or "common interest" rule under which communications exchanged between multiple parties engaged in a common defense remain privileged under the attorney-client privilege.

[11] Defendants' argument does not persuade us to amalgamate various evidentiary privileges in order to create *717 the protection they seek. Legislative grants of testimonial privilege conflict with the inherent power of the courts to compel the production of relevant evidence and are, therefore, strictly construed. *See, e.g., State v. Latta,* 92 Wash.2d 812, 819, 601 P.2d 520 (1979); *Phipps v. Sasser,* 74 Wash.2d 439, 444, 445 P.2d 624 (1968); *Cook v. King County,* 9 Wash.App. 50, 52, 510 P.2d 659 (1973).

[12] Even were we inclined to recognize a unity of

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interest between a cleric and his or her church and protect communications made in furtherance of that interest against compulsory disclosure, this is not the case in which to do so. Where childhood sexual abuse is at issue, even long established privileges do not apply. *See, e.g., State v. Fagalde,* 85 Wash.2d 730, 735- 37, 539 P.2d 86 (1975) (client-psychologist privilege does not apply to any judicial proceeding regarding a child's injury, neglect, or sexual abuse); *Dike v. Dike,* 75 Wash.2d 1, 11, 448 P.2d 490 (1968) (attorney-client privilege is not absolute and exceptions to the privilege may result from a balancing of the privilege against the public interest in full disclosure of all the facts). *See also State v. Waleczek,* 90 Wash.2d 746, 751, 585 P.2d 797 (1978) (husband-wife privilege may be "subordinated to the overriding and paramount legislative intent to protect children from physical and sexual abuse"). Accordingly, we limit our discussion to the specific parameters of the client-psychologist privilege. [FN8]

FN8. Notwithstanding *Fagalde,* the Court of Appeals determined that the privilege applied in part. *C.J.C.,* No. 37632-2-I, slip op. at 22. C.J.C. does not cross-appeal that holding. Accordingly, our discussion is limited to the scope of the privilege and not whether it should have been applied in the first place.

RCW 18.83.110 governs the client-psychologist privilege. [FN9] It prohibits compulsory disclosure **272 of *confidential* communications only. The privilege is strictly construed. *718*In re Welfare of Henderson,* 29 Wash.App. 748, 752, 630 P.2d 944 (1981).

FN9. Father Calhoun's mental health counselor held a masters of education and was not a licensed psychologist. The Court of Appeals applied RCW 18.19.180, the client-counselor statute, to find a privilege. *C.J.C.,* No. 37632-2-I, slip op. at 22. C.J.C. does not appeal this ruling. Thus, for purposes of this review we assume, without deciding, that RCW 18.19.180 provides a privilege coextensive with that of the client-psychologist privilege.

[13] A person "may not claim a privilege as to communications that do not originate in the confidence that they will not be disclosed." *State v. Post,* 118 Wash.2d 596, 612, 826 P.2d 172, 837 P.2d 599 (1992). A patient's intent that the communication be confidential must be reasonable in light of the circumstances surrounding the communication. *Post,* 118 Wash.2d at 612, 826 P.2d 172. The patient's subjective expectations of confidence, while relevant, should not be given more weight than the objective evidence of the situation and circumstances in which the communication was made. *Post,* 118 Wash.2d at 612, 826 P.2d 172.

[14] Here, the Court of Appeals limited discovery to only those reports actually communicated to the Diocese; it did not require disclosure of actual treatment records. While the Priests may have believed their communications would remain confidential, they clearly intended that a third party, the Diocese, would be kept informed. The courts of this state have long held that communications intended for the purpose of providing a third party with the results thereof are not confidential. *See, e.g., In re Henderson,* 29 Wash.App. at 752-53, 630 P.2d 944; *J.N. v. Bellingham Sch. Dist. No. 501,* 74 Wash.App. 49, 63, 871 P.2d 1106 (1994). As a result, we find the communications at issue are not protected under RCW 18.83.110.

We affirm the Court of Appeals and permit discovery of the two reports sent to the Diocese because they were not confidential patient-psychologist communications.

Third, C.J.C. appeals the dismissal of his respondeat superior and strict liability claims. Under the facts alleged here, these claims are governed by our recent decision in *Niece v. Elmview Group Home* 131 Wash.2d 39, 48, 52- 58, 929 P.2d 420 (1997).

[15] Following an extended discussion, we concluded in *Niece* that neither current Washington case law nor considerations of public policy favor the imposition of respondeat superior or strict liability for an employee's *719 intentional sexual misconduct. We specifically stated, "[v]icarious liability for intentional or criminal actions of

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employees would be incompatible with recent Washington cases rejecting vicarious liability for sexual assault, *even in cases involving recognized protective special relationships.*" *Niece,* 131 Wash.2d at 55, 929 P.2d 420 (emphasis added). C.J.C.'s argument that the Priests were, from his perspective, acting within the scope of their authority does not persuade us to establish a contrary rule. Our courts have never before adopted such an approach in the present context and we decline to do so now. *Compare, e.g., Thompson v. Everett Clinic,* 71 Wash.App. 548, 860 P.2d 1054 (1993) (doctor was not acting within scope of employment or apparent authority when he misled patient into believing sperm sample was required and normally obtained by manually stimulating the patient to ejaculation). *See also Taylor v. Smith,* 13 Wash.App. 171, 177, 534 P.2d 39 (1975) (apparent authority is determined by objective test and the authority of an agent is not " 'apparent' in contemplation of law, merely because it looks so to the person with whom [the agent] deals").

[16] For these same reasons we decline to impose strict liability on a theory of quid pro quo sexual harassment. *See Thompson v. Berta Enters., Inc.,* 72 Wash.App. 531, 538, 864 P.2d 983 (1994) (employer strictly liable for supervisor's quid pro quo sexual harassment because such harassment is impossible absent the actual or apparent authority to make employment decisions), *superseded by statute on other grounds by Schonauer v. DCR Entertainment, Inc.,* 79 Wash.App. 808, 905 P.2d 392 (1995). On this point, we simply disagree with C.J.C.'s contention that there is no basis for distinguishing "between supervising an employee who wants to keep her job and supervising an altar boy who wants to get into heaven." C.J.C. Answer to **273 Pet. for Review at 19. Unlike the former, the latter relationship is formed entirely by religious doctrine and, in this case, by C.J.C.'s personal religious beliefs. While C.J.C. may have sincerely believed Fathers Calhoun and Scully had the power to gain *720 him entry into heaven, and while he may have exchanged sexual favors believing it would help him get into heaven, the notion that legal liability may be premised on such beliefs is unprecedented.

We affirm the dismissal of C.J.C.'s respondeat superior and strict liability claims.

Funkhouser v. Wilson

We must first decide whether a church and its officials have a special relationship with either its workers or the children of its congregation which gives rise to a duty to take reasonable measures to prevent harm intentionally inflicted on the children by a church worker.

The alleged facts pertaining to this issue are as follows: In 1968, David Schulz, a church elder, received a telephone call while he was doing volunteer work at the Church. The exact content of the conversation is disputed. However, Schulz admits the caller identified herself, asked to speak with a person of authority within the Church, and asserted inappropriate sexual conduct by Orin Wilson (the alleged molester of the plaintiffs) toward a young girl. At the time of the call, plaintiffs were living out-of-state. By 1969, one year later, plaintiffs had moved to Washington, their father had begun his pastorship at the Church and Schulz had become the first chairman of the Church's deacon board. At the time, Schulz did nothing to warn plaintiffs or their father of the accusation, or to prevent or discourage Wilson from being involved with the youth of the church. Schulz was, however, concerned enough that he "watched, listened, and observed" Wilson. Nevertheless, Wilson was subsequently made a deacon and was entrusted with various leadership positions within the Church that allegedly provided extensive contact with and authority over children. [FN10]

FN10. The fact that both Schulz and Wilson were volunteers does not impact our analysis. A charitable entity may be held liable for the negligence of volunteers acting in an agency capacity. *Abel v. Firs Bible & Missionary Conf.,* 57 Wash.2d 853, 855, 360 P.2d 356 (1961). Furthermore, one who assumes to act, even though gratuitously, may be held liable for his or her negligence in carrying out the act. *See Roth v. Kay,* 35 Wash.App. 1, 4, 664 P.2d 1299 (1983). *See also Curran v. City of Marysville,* 53 Wash.App. 358, 365, 766 P.2d 1141 (1989) (one who voluntarily assumes responsibility for the care of a child has a duty to exercise reasonable care to protect that child).

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[17][18][19] *721 We begin with the now well established principle that where a "special relationship" exists, a duty to protect against the intentional or criminal acts of third parties may arise. *See, e.g., Nivens v. 7-11 Hoagy's Corner,* 133 Wash.2d 192, 200, 943 P.2d 286 (1997); *Niece,* 131 Wash.2d at 43, 929 P.2d 420. A special relationship between the defendant and the intentional tortfeasor may give rise to a duty to control the tortfeasor's conduct for the benefit of third persons. *See Niece,* 131 Wash.2d at 43, 929 P.2d 420. A special relationship between the defendant and the victim may give rise to a duty to protect the victim against foreseeable harms, including harms intentionally caused. "Many special relationships give rise to a duty to prevent harms caused by the intentional or criminal conduct of third parties." *Niece,* 131 Wash.2d at 44, 929 P.2d 420. Thus, for instance, a school has a duty to protect students within its custody from reasonably anticipated dangers, an innkeeper has a duty to protect its guests, and a hospital its patients. *See Niece,* 131 Wash.2d at 44-45, 929 P.2d 420 (citing cases). Similarly, even where an employee "is acting outside the scope of employment, the relationship between employer and employee gives rise to a limited duty, owed by an employer to foreseeable victims, to prevent the tasks, premises, or instrumentalities entrusted to an employee from endangering others." *Niece,* 131 Wash.2d at 48, 929 P.2d 420.

[20] Whether there is a special relationship between a church and the children of its congregation that gives rise to a duty to protect the children against foreseeable harms is an issue of first impression. In important aspects, however, the activities of a church generate the kind of relationships where we have, in other contexts, imposed a **274 duty of reasonable care. The children of a congregation may be delivered into the custody and care of a church and its workers, whether it be on the premises for services and Sunday school, or off the premises at church sponsored *722 activities or youth camps. As in other agency relationships, a church chooses its officials, directs their activities, and may restrict and control their conduct. In many respects, the activities of a church, and the corresponding duties legitimately imposed upon it, are similar to those of a school. As a matter of public policy, the protection of children is a high priority. In general, therefore, we find churches (and other religious organizations) subject to the same duties of reasonable care as would be imposed on any person or entity in selecting and supervising their workers, or protecting vulnerable persons within their custody, so as to prevent reasonably foreseeable harm.

Under the facts of this case, the more difficult question is whether the harm sought to be prevented fell within the scope of any duty. Here, plaintiffs do not allege the molestation perpetrated by Wilson occurred on Church premises or during Church activities. Nor do plaintiffs claim the victims were, at the time of the molestation, specifically within the protective custody of the Church. Nevertheless, plaintiffs assert the Church had a duty to protect the children of its congregation against foreseeable harms perpetrated by a Church official whom the Church "placed in authority and in close relationship to church children, knowing of the danger." Funkhouser Supp. Br. at 7.

On these facts, the trial court found no duty existed and dismissed the claims of Janelle Larson and Sheri Lewis (the Church had only moved for summary judgment on this issue against these two plaintiffs). The Court of Appeals reversed, reasoning "churches and the adult church workers who assume responsibility for the spiritual well-being of children of the congregation, whether as paid clergy or as volunteers, have a special relationship with those children that gives rise to a duty to protect them from reasonably foreseeable risk of harm from those members of the congregation whom the church places in positions of responsibility and authority over them." *Funkhouser v. Wilson,* 89 Wash.App. 644, 660, 950 P.2d 501 (1998). *723 We agree with the Court of Appeals that the Church and Schulz owed a duty of reasonable care, but do so on slightly different grounds.

Although we have not previously addressed the issue, we find the reasoning of the New Hampshire Supreme Court, in an analogous context, persuasive. In *Marquay v. Eno,* 139 N.H. 708, 662 A.2d 272 (1995), former school students who allegedly had been sexually abused by school employees filed suit against the school on theories of negligent supervision and failure to protect. None of the complaints alleged the abuse took place on school premises or during school hours. *Marquay,* 139 N.H. at 711, 662 A.2d 272.

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Nevertheless, the New Hampshire Supreme Court did not reject the existence of a duty as a matter of law. The court recognized that a principal's negligent failure to control an agent is not necessarily limited to conduct performed within the scope of employment or during work hours, so long as there is a causal connection between the plaintiff's injury and the fact of the agency relationship. *Marquay,* 139 N.H. at 719-21, 662 A.2d 272. The court reasoned that, under such circumstances, liability exists not because of when (or where) the injury occurs, but because "the actor has brought into contact or association with the [victim] a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct...." *Marquay,* 139 N.H. at 719, 662 A.2d 272 (quoting Restatement (Second) of Torts § 302B cmt. e(D)). [FN11] Accordingly, employers have been found liable for criminal conduct by off duty or former employees where such conduct was consistent with a propensity of which the employer knew or should have known, and the association between the victim and the employee was occasioned **275 by the employee's job. *Marquay,* 139 N.H. at 719-20, 662 A.2d 272 (citing cases).

> FN11. Restatement (Second) of Torts § 302B recognizes liability where a special protective relationship exists, *or* " [w]here the actor has brought into contact or association with the [victim] a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct, under circumstances which afford a peculiar opportunity or temptation for such misconduct." Restatement (Second) of Torts § 302B cmt. e(D) (1965).

[21] *724 We find the rationale adopted in *Marquay* persuasive when analogized to the circumstances presented here. In particular, we find the conjunction of four factors present in the case before us decisive to finding the existence of a duty is not foreclosed as a matter of law: (1) the special relationship between the Church and deacon Wilson; (2) the special relationship between the Church and the plaintiffs; (3) the alleged knowledge of the risk of harm possessed by the Church; and (4) the alleged causal connection between Wilson's position in the Church and the resulting harm. Under these circumstances, we simply do not agree with the Church that its duty to take protective action was arbitrarily relieved at the church door. Where a protective special relationship exists, a principal is not free to ignore the risk posed by its agents, place such agents into association with vulnerable persons it would otherwise be required to protect, and then escape liability simply because the harm was accomplished off premises or after-hours. Under these facts, the focus is not on where or when the harm occurred, but on whether the Church or its individual officials negligently caused the harm by placing its agent into association with the plaintiffs when the risk was, or should have been, known. [FN12]

> FN12. The concurrence/dissent accuses the majority of "toss[ing] into the mix" principal and agent language without discussing the legal principles involved. Concurrence/dissent at 279. First, the defendants do not argue an agency relationship did not exist, only that their duty of control did not extend into Wilson's private affairs. Furthermore, under the Restatement of Torts § 302B, an agency relationship is not required in order to establish a duty of care. Finally, under our own precedent, a duty of control or protection also does not depend on a showing of agency. *Taggart v. State,* 118 Wash.2d 195, 223-24, 822 P.2d 243 (1992) (duty to control does not require agency relationship but arises where ability to control is present); *Nivens,* 133 Wash.2d at 205, 943 P.2d 286 (duty to protect adult store patrons against reasonably foreseeable harm does not depend on agency relationship with tortfeasor). We use the words "principal" and "agent" in the present context both for simplicity and because we limit liability to harm proximately resulting from the fact of Wilson's position in the Church.

This approach is consistent with our cases recognizing a duty to prevent intentionally inflicted harm where the defendant is in a special relationship with either the tortfeasor or the victim, and where the defendant is or should be aware of the risk. *See, e.g., *725LaLone v. Smith,* 39 Wash.2d 167, 172, 234 P.2d 893 (1951) (employer

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liable for employee's criminal assault on third person "because the employer antecedently had reason to believe that an undue risk of harm would exist because of the employment"); *Taggart v. State,* 118 Wash.2d 195, 223-24, 822 P.2d 243 (1992) (special relationship giving rise to a duty to prevent intentional harm need not be "custodial or continuous," but arises where ability to supervise is present and necessity for such supervision is or should be known); *Petersen v. State,* 100 Wash.2d 421, 428-29, 671 P.2d 230 (1983) (psychiatrist-patient relationship gives rise to duty to take reasonable precautions to protect all persons foreseeably endangered by mental patient's release into community). *Compare Carlsen v. Wackenhut Corp.,* 73 Wash.App. 247, 256, 868 P.2d 882 (1994) (employer liable for security guard's attempted rape if employer knew of or should have known of guard's violent propensities and nevertheless conferred position of authority and responsibility), *with Peck v. Siau,* 65 Wash.App. 285, 289, 292-94, 827 P.2d 1108 (1992) (school not liable for teacher's off campus sexual assault of student where it did not know, nor reasonably should have known, of the risk posed by teacher). [FN13]

> FN13. *Hutchins v. 1001 Fourth Ave. Assocs.,* 116 Wash.2d 217, 802 P.2d 1360 (1991), upon which the concurrence/dissent relies, is simply not on point. In *Hutchins, no special relationship existed.* We stated, *in the absence of a special relationship,* a duty would nevertheless attach if the defendant had brought about an "especial temptation and opportunity for criminal misconduct." *Hutchins,* 116 Wash.2d at 230, 802 P.2d 1360. In short, *Hutchins* dealt with *landowner liability* where no special relationships existed. It is not at all relevant to this case.

Viewing the facts in the light most favorable to the plaintiffs, a jury could reasonably find Wilson's position in the Church was a causal factor in the resulting harm. Wilson was a prominent member of the Church, placed into positions of trust over children. **276 This position not only brought him into close connection with the children of the congregation, it allegedly inspired confidence to place the plaintiffs into his care. In addition, there is evidence that Wilson baby-sat the victims in order that their father could travel on Church business and that the Church was aware of this arrangement. Given the Church's specific and *726 superior knowledge of the facts, a jury could reasonably find the Church knew or should have known the children of its congregation, and specifically these particular plaintiffs, were exposed to an unreasonable risk of harm at the hands of Wilson. [FN14]

> FN14. The Church's argument that it could not, without written complaint, take disciplinary action against Wilson and, therefore, was under no duty to control him, is unpersuasive. The Court of Appeals reasoning is flawed, as well. *See Funkhouser,* 89 Wash.App. at 657, 950 P.2d 501 (declining to impose liability under a duty to control because the Church constitution and bylaws required complaints be in writing before disciplinary action could be taken). Importantly, the Church had prior warning of Wilson's alleged propensity to molest children. The Church, therefore, was in a position to refrain from developing a special relationship with Wilson and from placing him in positions of trust within the Church in the first place.

Our decision not to foreclose the imposition of a duty as a matter of law under these facts is supported by the strong public policy in favor of protecting children against acts of sexual abuse. Current law makes it a criminal offense for certain professionals to fail to notify the proper authorities when there is reason to suspect childhood sexual abuse. *See* RCW 26.44.030 (medical practitioners, law enforcement personnel, school personnel, nurses, social service workers, licensed child care providers and their employees, among others, are required to report suspected child sexual abuse to the proper authorities); *see also* RCW 26.44.080 (failure to report is a gross misdemeanor). We note that at the time of the alleged abuse in this case, certain church officials were also required by law to report suspected abuse. *See* former RCW 26.44.030 (1969) (requiring any "clergyman," as defined, to report suspected child sexual abuse). [FN15] While the reporting

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requirement is permissive as to "other persons" not specifically defined, *see* *727RCW 26.44.030(3), the Legislature has made clear that the prevention of child abuse is of "the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action...." Laws of 1985, ch. 259 (legislative findings appended to RCW 26.44.030). Any person who makes a good faith report of suspected abuse is absolutely immune from civil or criminal liability arising from the reporting. RCW 26.44.060(1)(a). [FN16]

FN15. In 1975, the requirement as to clergymen was repealed. Laws of 1975, 1st Ex.Sess., ch. 217, § 3. Nevertheless, the reporting requirement continues to apply to those church officials who are engaged in "encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, whether in an individual capacity, or as an employee or agent of any public or private organization or institution." *State v. Motherwell,* 114 Wash.2d 353, 357, 788 P.2d 1066 (1990) (citing former RCW 26.44.020(8)). Thus, the newly implied exemption is triggered only when the official is actually acting *in the capacity* of a regularly licensed or ordained minister, priest, or rabbi. *Motherwell,* 114 Wash.2d at 359, 788 P.2d 1066.

FN16. We need not determine whether the Church specifically violated the statute. We find merely that the statute reflects a strong public policy in favor of protecting children against reasonably suspected sexual abuse through report to the proper persons. *See, e.g., Bernethy v. Walt Failor's, Inc.,* 97 Wash.2d 929, 932-33, 653 P.2d 280 (1982) (where duty is based on common law principles, an analogous statute, even when not specifically violated, reflects strong public policy in favor of imposing a duty).

[22] We, therefore, conclude the Church and Schulz owed a duty of reasonable care to affirmatively act to prevent the harm, in view of their relationship to the plaintiffs, their relationship to Wilson, and given the knowledge they allegedly possessed. Whether there was a causal connection between the harm and the fact of Wilson's position in the Church, or whether the risk of harm was or should have been reasonably foreseen at the time the harm occurred, are questions of fact to be determined by the jury.

[23] We caution that our holding is limited. We do not suggest that a principal is an insurer against all harm occasioned by its agents simply because the work situation fortuitously provides an opportunity to **277 perpetrate the harm. Nor do we decide that knowledge of potential harm alone is sufficient to give rise to a duty to warn in all cases. We do hold that where a special protective relationship exists a principal may not turn a blind eye to a known or reasonably foreseeable risk of harm posed by its agents toward those it would otherwise be required to protect simply because the injury is arbitrarily perpetrated off premises or after-hours. [FN17]

FN17. Accordingly, we do not find the issue of duty in this case distinctly separable into either one of "control" or "protection," since elements of both are present. Nor need we adopt wholesale the duty described in § 302B of the Restatement (Second) of Torts (1965).

[24][25] Finally, we reject the Church's argument that the *728 First Amendment or article I, section 11 of the state constitution prevent this court from imposing a duty on the Church. [FN18] The First Amendment does not provide churches with absolute immunity to engage in tortious conduct. So long as liability is predicated on secular conduct and does not involve the interpretation of church doctrine or religious beliefs, it does not offend constitutional principles. *See, e.g., Sanders v. Casa View Baptist Church,* 134 F.3d 331, 336 (5th Cir.) ("the constitutional guarantee of *religious* freedom cannot be construed to protect *secular* beliefs and behavior, even when they comprise part of an otherwise religious relationship between a minister and a member of his or her congregation. To hold otherwise would impermissibly place a religious leader in a preferred position in our

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society.") (second emphasis added), *cert. denied,* 525 U.S. 868, 119 S.Ct. 161, 142 L.Ed.2d 132 (1998).

> FN18. Plaintiffs' (C.J.C.'s and Funkhouser's) motion to strike the supplemental brief of the Corporation of the Catholic Bishop of Yakima (Diocese) is granted. The Diocese is a defendant in the *C.J.C.* case. Its brief addresses the First Amendment rights of the defendants in the *Funkhouser* case. The Diocese admits it did not preserve these issues in its own case. RAP 10.1(g) is intended to facilitate shared briefing related to shared issues. The rule does not allow what essentially amounts to amicus argument relating to another party's case on an issue not shared in common.

Similarly, while art. I, § 11 of our state constitution protects "[a]bsolute freedom of conscience in all matters of religious sentiment," that protection "shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state." Thus, the specific language of art. I, § 11 defeats the Church's state constitutional claims.

We affirm the Court of Appeals in *Funkhouser* and reverse the trial court on the issue of duty.

E.R.B v. Church of God

We must decide whether the claims of E.R.B.'s parents are untimely. E.R.B.'s parents brought claims against Shaw ***729** the alleged abuser), the Local Church, and the New Life Church of God State Offices and Parsonages. The trial court dismissed. The Court of Appeals, Division II, affirmed. *E.R.B. v. Church of God,* 89 Wash.App. 670, 686, 950 P.2d 29 (1998).

[26] We reverse. We find the claims brought by E.R.B.'s parents fall within the ambit of RCW 4.16.340(1). The statute allows "any person" to bring a claim based on childhood sexual abuse. Commencement of the limitations period is not determined by reference to knowledge possessed by the parents. Rather, it is determined according to knowledge possessed by the child "victim." *See* RCW 4.16.340(1)(b)-(c). The fact that E.R.B.'s parents allegedly had prior knowledge of the abuse is, therefore, irrelevant to the timeliness of their claims. Under the statute, the claims of parents begin to run at the same time as the underlying claims of their child(ren).

Although this result may seem unusual, the plain language of the statute controls. Therefore, we reverse the trial court and the Court of Appeals on the timeliness of claims asserted by E.R.B.'s parents.

CONCLUSION

For the reasons stated above, the decisions of the Court of Appeals in *Funkhouser v. Wilson,* 89 Wash.App. 644, 950 P.2d 501, and *C.J.C. v. Corporation of the Catholic Bishop,* 88 Wash.App. 70, 943 P.2d 1150, are affirmed, ****278** partially on different grounds; the decision of the Court of Appeals in *E.R.B. v. Church of God,* 89 Wash.App. 670, 950 P.2d 29, is reversed. The cases are remanded for proceedings consistent with this opinion.

ALEXANDER, SMITH, and TALMADGE, JJ., concur.

MADSEN, J. (concurring/dissenting).

While I agree with the majority in most respects, I would hold as a matter of law that the defendants in *Funkhouser v. Wilson,* No. 66580-0, did not owe a duty to Sheri Lewis and Janelle ***730** Larson to control Orin Wilson, to protect Sheri and Janelle from his criminal acts, or to warn their parents that he was a child molester. I disagree with the majority's holding that defendants owed a duty of reasonable care to affirmatively act to prevent the harm that occurred as a result of a private, nonchurch-related child care arrangement between members of a church congregation. The majority fails to recognize the First Amendment implications of its decision, and it expands the special custodial relationship theory of liability past rational limits. I must respectfully dissent.

Facts

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The negligence claims at issue are those of Ms. Lewis and Ms. Larson against Cavalry Baptist Church of Twisp and David Schulz, arising out of Wilson's molestation of them when they were children. Wilson held unpaid positions of leadership in the church. The acts of molestation occurred at Wilson's home when he and his wife were taking care of plaintiffs at their parents' request. The molestation of these plaintiffs did not occur on church property nor during church sponsored activities. Defendants did not recommend Wilson as a babysitter.

Plaintiffs contend that Schulz, also a church leader, learned through a telephone call in 1968 that Wilson was a child molester, but failed to warn anyone of danger posed by Wilson to children or to prevent Wilson from being involved with children through church activities. They urge that defendants had a duty to control Wilson and to protect plaintiffs from him. Defendants moved for summary judgment on the ground that they owed no duty of care as a matter of law. The trial court granted summary judgment of dismissal, ruling that as a matter of law defendants owed no duty.

The Court of Appeals reversed. That court held that defendants did not have a special relationship with Wilson giving rise to a duty to control him so as to prevent him from harming plaintiffs, but did have a duty arising out of *731 a special relationship between defendants and Ms. Lewis and Ms. Larson. The court reasoned "that churches and the adult church workers who assume responsibility for the spiritual well-being of children of the congregation, whether as paid clergy or as volunteers, have a special relationship with those children that gives rise to a duty to protect them from reasonably foreseeable risk of harm from those members of the congregation whom the church places in positions of responsibility and authority over them." *Funkhouser v. Wilson,* 89 Wash.App. 644, 660, 950 P.2d 501, *review granted, E.R.B. v. Church of God,* 135 Wash.2d 1001, 959 P.2d 126 (1998). In light of this holding, the Court of Appeals did not reach plaintiffs' argument that a duty was owed pursuant to Restatement (Second) of Torts § 302B (1965).

The majority affirms, but does so on rather nebulous grounds. The majority does not address plaintiffs' independent theories of special relationships and § 302B, saying the issues are not distinctly severable. Majority at 277 n. 17. Instead, the majority says that the combination of four factors is decisive in finding duty is not foreclosed as a matter of law, i.e., a special relationship between the church and Wilson, a special relationship between the church and plaintiffs, alleged knowledge possessed by the church, and an alleged causal connection between Wilson's position in the church and resulting harm. Majority at 275. The first two of these factors are legal conclusions drawn without legal analysis. The majority also says it does not "adopt wholesale" the duty described in § 302B. Majority at 277 n. 17. Nevertheless, the majority uses some of the theory associated with that section, again without sufficient analysis. The majority also tosses into **279 the mix language of principal and agent, without discussing the legal principles involved and without explaining how liability in this case may be found premised upon a principal-agent (or master-servant) relationship. Majority at 275. In addition to these concerns, there are very significant First Amendment issues which must be addressed in light of plaintiffs' theories.

Unfortunately, in the end, the majority's analysis is so *732 vague that defining the limits of the duty announced is virtually impossible. The majority's lack of precision is particularly troubling given the settled common law rule that one is generally not liable for the criminal acts of third parties. Moreover, this court quite recently disapproved of this kind of intermingling of distinct theories. *Niece v. Elmview Group Home,* 131 Wash.2d 39, 48-49, 929 P.2d 420 (1997) (rejecting argument which combined theory of liability for negligent supervision based on special relationship between group home and resident and theory of liability for breach of duty arising out of special relationship between group home and resident; first theory does not serve to define the duty owed under second theory). Regrettably, as a result of its unclear analysis, the majority concludes that a church's duty extends to a private, nonchurch-related, off-church-premises child care arrangement between church members. The court should address the separate theories actually advanced by plaintiffs, and hold that as a matter of law no duty is owed as the trial court correctly ruled.

Analysis

When reviewing a grant of summary judgment, the

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appellate court makes the same inquiry as the trial court, i.e., summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Taggart v. State,* 118 Wash.2d 195, 199, 822 P.2d 243 (1992); CR 56(c). The facts, and reasonable inferences from the facts, are considered in the light most favorable to the nonmoving party. *Taggart,* 118 Wash.2d at 199, 822 P.2d 243. Questions of law are reviewed de novo. *Sherman v. State,* 128 Wash.2d 164, 183, 905 P.2d 355 (1995). Existence of a duty is a question of law. *Schooley v. Pinch's Deli Market, Inc.,* 134 Wash.2d 468, 474, 951 P.2d 749 (1998).

Plaintiffs contend the Court of Appeals erred in holding that there was no special relationship between defendants and Wilson giving rise to a duty to control Wilson, but that the Court of Appeals correctly held that a special protective relationship existed between defendants and children of *733 the church giving rise to a duty. Plaintiffs also maintain that a duty was also owed because defendants had knowledge that Wilson was an accused child molester and knowingly installed him in a position where he could gain the trust of parents. Thus, according to plaintiffs, defendants created the framework for abuse and it does not matter that the abuse of Ms. Lewis and Ms. Larson occurred at Wilson's home.

The Court of Appeals correctly held that no special relationship existed between defendants and Wilson giving rise to a duty on defendants' part to control Wilson. Generally there is no duty to protect another from the criminal acts of third persons. *Hutchins v. 1001 Fourth Ave. Assocs.,* 116 Wash.2d 217, 223, 802 P.2d 1360 (1991). A duty to control the conduct of a third party so as to prevent physical harm to another may arise; however, where a special relationship exists between the actor and the third person giving rise to such a duty, or where a special protective relationship exists between the actor and the other. *Hutchins,* 116 Wash.2d at 227, 802 P.2d 1360; Restatement (Second) of Torts § 315 (1965). Relations between the actor and the third party (who causes the harm) which give rise to a duty are described in Restatement (Second) of Torts §§ 316 through 319. Restatement (Second) of Torts § 315 cmt. *c.* Thus, under certain specified circumstances, a parent may have a duty to control the conduct of a minor child, *id.* § 316, a master may have a duty to control a servant acting outside the scope of employment, *id.* § 317, a possessor of property may have a duty to control a licensee, *id.* § 318, and an actor who has taken charge of a third party having dangerous propensities may have a duty to control the actions of that third party, *id.* § 319.

**280 As to § 319, this court has recognized that a special relationship giving rise to a duty to control a party with known dangerous propensities may exist where there is a " 'definite, established and continuing relationship between the defendant and the third party.' " *Taggart,* 118 Wash.2d at 219, 822 P.2d 243 (quoting *734*Honcoop v. State,* 111 Wash.2d 182, 193, 759 P.2d 1188 (1988)). Such a duty exists, however, only where the actor has authority to control the third party's conduct. The Court of Appeals recognized this principle. *Funkhouser,* 89 Wash.App. at 654, 950 P.2d 501 (though stating that the authority must be legal authority). Thus, in *Petersen v. State,* 100 Wash.2d 421, 671 P.2d 230 (1983), a state employed psychiatrist was found to have a duty to control the conduct of a recently released state hospital psychiatric patient where the psychiatrist had treated the patient while institutionalized, knew of the patient's dangerous propensities, and had authority to seek an additional civil commitment. In *Taggart v. State, supra,* parole officers were found to have a duty to control parolees where the officers had the obligation and authority to guide and supervise the parolees. A duty to control should only be imposed where the actor could conceivably satisfy that duty; in other words, the authority to actually control the third party's conduct must exist.

Plaintiffs urge that under the Church Constitution and Covenant, to which both Wilson and defendant Schulz submitted, Wilson was subject to the church's "comprehensive disciplinary authority in all areas of his public and private life including matters of conscience as well as behavior." Resp'ts' Supplemental Br. at 11. In their brief to the Court of Appeals they cited that church document for its standards applicable to church members and leaders, including obligations to nurture those in their care, to live exemplary lifestyles, and to be committed to defined spiritual standards, beliefs and standards of behavior. Appellants' Br. on Appeal at 24-25. According to plaintiffs, the Church Constitution and Covenant provided defendants the authority to control Wilson, at all times and in all

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circumstances.

The difficulty with plaintiffs' argument is twofold. First, as the Court of Appeals noted, the church document gives authority to discipline members only where there has been a written allegation of misconduct, which did not occur in this case.

*735 Second, plaintiffs' argument is that the religious standards held by the church and submitted to by its members give rise to authority to control Wilson, leading to a tort duty on defendants' part to control his conduct. First Amendment concerns are clearly at issue. In addressing these concerns, it is important to keep in mind that the issue addressed here is whether a special relationship existed between defendants and Wilson, for purposes of § 315(b) of the Restatement (Second) of Torts. Plaintiffs rely upon the religious obligations defined by the Constitution and Covenants for the proposition that a special relationship does exist.

In order to decide whether defendants had authority to control Wilson, not only on church premises and during church-related activities, but also in his private life during nonchurch activities, a court would necessarily have to interpret church doctrine and religious principles set forth in the church document in order to determine whether the expansive authority asserted by plaintiffs existed under church law. Such an inquiry is forbidden under the First Amendment. *See generally, e.g., Watson v. Jones,* 13 Wall. 679, 80 U.S. 679, 20 L.Ed. 666 (1871); *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); *Serbian E. Orthodox Diocese for U.S. & Canada v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). While there is no bar to examining a church constitution in purely secular terms, a civil court may not resolve ecclesiastical questions. *Jones v. Wolf,* 443 U.S. 595, 604, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). The provisions relied upon by plaintiffs clearly involve spiritual standards, which are not for a civil court to determine.

The majority mistakenly concludes, however, that constitutional inquiry is not required * *281 because religious organizations do not have immunity to engage in tortious conduct as determined under secular standards (which the majority apparently believes is the case here). Majority at *736 277. [FN1] However, to agree with plaintiffs' claim that the Church Constitution and Covenant defines the church's authority, and thus control, over Wilson during all facets and all times of his life would require a court to engage in constitutionally forbidden interpretation of church doctrine and religious principles. [FN2] Because the majority fails to identify the needed authority and control defendants could exert over Wilson, it misses the constitutional dilemma.

FN1. The issue is not one of immunity. It is a matter of the constitutional right to religious freedom.

FN2. This case is unlike some cases where claims of negligent hiring, retention and supervision of ministers, priests and the like have been allowed. First, the record does not indicate that an employment-like situation existed in this case at all. Second, while some courts hold that such claims may be allowed if questions of church law and policy need not be determined, *e.g., Isely v. Capuchin Province,* 880 F.Supp. 1138, 1151 (E.D.Mich.1995) (negligent supervision claim), here the church document must be interpreted in order to glean directives for personal conduct based upon religious principles and doctrine.

This court should decline to find a special relationship between defendants and Wilson giving rise to a duty on defendants' part to control Wilson during nonchurch-related activities and prevent the harm that occurred.

Plaintiffs next claim that a special protective relationship existed between defendants and the children of the congregation, giving rise to a duty to control Wilson and protect plaintiffs from him. *See* Restatement (Second) of Torts § 315(a)(1965). The majority analogizes to schoolchildren placed in the custody of school. Majority at 274. In the school situation, "the protective custody of teachers is ... substituted for that of the parent." *McLeod v. Grant*

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County School Dist. No. 128, 42 Wash.2d 316, 319, 255 P.2d 360 (1953). A school accordingly has a duty to protect pupils in its custody from reasonably anticipated dangers. *Id.* at 319-20, 255 P.2d 360. The duty of a school to protect children in its custody falls within the broader definition of duty set forth by Restatement (Second) of Torts § 320 (1965):

> One who is required by law to take or who voluntarily takes the custody of another under circumstances such as to deprive the other of his normal power of self-protection or to subject him to association with persons likely to harm him, is under a *737 duty of exercising reasonable care so as to control the conduct of third persons as to prevent them from intentionally harming the other or so conducting themselves as to create an unreasonable risk of harm to him, if the actor
> (a) knows or has reason to know that he has the ability to control the conduct of the third persons, and
> (b) knows or should know of the necessity and opportunity for exercising such control.

(*McLeod,* 42 Wash.2d at 320, 255 P.2d 360 (quoting Restatement (Second) of Torts § 320)). In the school situation, the child "is deprived of the protection of his parents or guardian. Therefore, the actor ... is properly required to give him the protection which the custody or the manner in which it is taken has deprived him." Restatement (Second) of Torts § 320 cmt. *b.*

A church which has custody of children during religious classes and services, for example, may have a special protective relationship with the child giving rise to a duty of protection during those times, as the majority indicates. However, as the majority acknowledges, this case does not involve children left in the protective custody of the church during the times when the acts of molestation occurred. Nor were any church-related activities involved. Instead, through a private arrangement between their parents and Wilson, plaintiffs were at Wilson's home when the acts occurred. Plaintiffs were not deprived of the protection of their parents; defendants were not substituted for plaintiffs' parents. To conclude under these circumstances, as the majority does, that a special custodial relationship existed between defendants and plaintiffs requiring them to protect plaintiffs from Wilson is to expand this theory of liability beyond recognition.

**282 Nor is the Court of Appeals view on this issue sound. That court reasoned, as noted earlier, "that churches and the adult church workers who assume responsibility for the spiritual well-being of children of the congregation ... have a special relationship with those children" giving rise to a duty to protect the children under facts like those in *738 this case. *Funkhouser v. Wilson,* 89 Wash.App. 644, 660, 950 P.2d 501, *review granted, E.R.B. v. Church of God,* 135 Wash.2d 1001, 959 P.2d 126 (1998). The problem with this reasoning is obvious. The Court of Appeals' determination is based upon interpretation of church doctrine and religious principles; duty is found because church members assumed spiritual responsibility for children of the congregation. Such a determination plainly runs afoul of the First Amendment. The majority correctly declines to rest its decision on this ground. Majority at 274.

Plaintiffs also argue that duty should be found based upon Restatement (Second) of Torts § 302B (1965). Section 302B provides that "[a]n act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal." Plaintiffs urge that defendants had knowledge that Wilson was an accused child molester and knowingly installed him in a position where he could gain the trust of parents.

Initially, plaintiffs argue that knowledge of the likelihood of a criminal act, alone, gives rise to a duty to safeguard others from the risk of harm. Appellants Br. on Appeal at 16-17. The legal duty to act for the protection of others requires more than knowledge of a risk of harm:

> The fact that the actor realizes or should realize that action on his part is necessary for another's aid or protection *does not of itself* impose upon him a duty to take such action.

Restatement (Second) of Torts § 314 (1965) (emphasis added). Section 302B does not state a rule to the contrary. That section defines what constitutes a negligent act or omission where third party conduct is concerned. As the comments to the section explain, generally the actor may proceed on the basis that third persons will not act to cause harm to others, particularly where intentional criminal conduct is involved. *Id.* § 302B, cmt. *d.*

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However, certain situations may give rise to a duty to guard against such *739 conduct: where a special responsibility toward the one suffering the harm gives rise to such a duty, or "where the actor's own affirmative act has created or exposed the other to a recognizable high degree of risk of harm through such misconduct, which a reasonable [person] would take into account." *Id.* cmt. *e.* Plaintiffs urge that the situation in this case is described in cmt. *e,* para. D which states that a duty may exist "[w]here the actor has brought into contact or association with the other a person whom the actor knows or should know to be peculiarly likely to commit intentional misconduct, under such circumstances which afford a peculiar opportunity or temptation for such misconduct." *Id.* cmt. *e,* para. D.

A duty as described in cmt. *e,* para. D might be found in this case if, for example, defendants knew Wilson was likely to molest children, yet allowed him association with children during church activities under circumstances where a peculiar temptation or opportunity for molestation existed. However, the duty claimed here is not for such periods. Plaintiffs were not molested during any church activities or on church premises. Defendants did not bring Wilson and plaintiffs into contact or association under the circumstances when the misconduct occurred - they did not bring Wilson and plaintiffs together at Wilson's home. There is no allegation or evidence in the record that defendants recommended Wilson or his wife as child care providers, or that they had anything to do with the child care arrangements. [FN3]

> FN3. This case is thus unlike *Golden Spread Council, Inc. v. Akins,* 926 S.W.2d 287 (Tex.1996), where the court held that under cmt. *e,* para. D, the Golden Spread Council of the Boy Scouts of America had a duty not to recommend an individual as a scoutmaster if the council knew or should have known that the individual was peculiarly likely to molest boys. Because defendants in this case made no comparable recommendation, reliance upon that case by plaintiffs and the Court of Appeals is misplaced.

**283 The majority holds, nevertheless, that a duty existed. The majority finds a New Hampshire case persuasive authority for the proposition that tort liability of a principal may be found for criminal conduct of an off-duty employee *740 where the employer knew of the dangerous propensities of the employee, and the association between the victim and the employee was occasioned by the employee's job. *Marquay v. Eno,* 139 N.H. 708, 662 A.2d 272 (1995). [FN4]

> FN4. The majority's reliance on *Marquay v. Eno,* 139 N.H. 708, 662 A.2d 272 (1995) is misplaced since liability there concerned an employer- employee relationship, while here the majority never adequately addresses the relationship between defendants and Wilson.

However, this court has held that "exceptional circumstances" are required before imposition of the duty described in cmt. *e,* para. D to protect others from third party criminal conduct. *Hutchins v. 1001 Fourth Ave. Assocs.,* 116 Wash.2d 217, 230, 802 P.2d 1360 (1991). Restatement (Second) of Torts, § 302B cmt. *e,* para. D refers to bringing about an association between the third party causing the harm and the victim under circumstances affording a "*peculiar opportunity or temptation* for ... misconduct." (Emphasis added). I simply cannot agree that the voluntary association of individuals in a religious organization gives rise to a duty on the part of the church concerning private nonchurch-related child care arrangements between members of the congregation. These are not the "exceptional circumstances" envisioned by our case law nor has the church or its leaders brought about an association *under the circumstances where the misconduct occurs,* as envisioned by the Restatement.

Rather than limiting application of § 302B cmt. *e,* para. D to "exceptional circumstances," the majority's analysis is far reaching, encompassing a variety of organizations where families associate, such as day care centers, youth groups, civic organizations, sports clubs and activities, music groups, parent-teacher associations and volunteer activities in public and private schools. Virtually any organization providing services or activities for children falls under the majority's analysis because in any such organization a parent might come to

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trust those involved in the activity, even those in voluntary capacities. I do not believe that an organization extending membership to families *741 with children should become the guarantor of the other members' private conduct. [FN5]

FN5. This is of particular concern in the case of religious organizations, many of which welcome all, even the flawed.

Sexual abuse of children is a tragedy. Hard questions are presented because the court is faced with strong public policy favoring the protection of children from sexual abuse. At the same time, payment for that harm is sought not from the tortfeasor, but from others. Ultimately, the court is determining potential liability of a third party for another person's intentional criminal conduct. As difficult as it may be to conclude that a cause of action should not exist, there is no principled basis for finding liability on the part of defendants in this case.

I agree with the trial court and would hold that as a matter of law defendants had no duty to control Wilson or to protect plaintiffs from his criminal conduct at his home under the facts asserted by plaintiffs.

Finally, although I otherwise generally agree with the majority, I think it places too much reliance on *DeYoung v. Providence Med. Ctr.*, 136 Wash.2d 136, 960 P.2d 919 (1998) in analyzing RCW 4.16.340. The meaning of the statute was not at issue in that case, as the majority itself acknowledges. Majority at 267.

DURHAM, J. (dissenting).

In a misguided attempt to afford relief to the injured Plaintiffs in this case, the majority misconstrues the childhood sexual abuse statute and eviscerates statute of repose protections for religious, community and other organizations. The majority's rule tolls the statute of limitation under RCW 4.16.340 not just for suits against the abuser, but for suits against an organization that negligently failed to prevent the abuse. It further tolls the statute of limitation for claims against a **284 church brought by the parents of a victim, even if the parents were aware of the abuse at the time it occurred. The majority's approach exposes organizations to a perpetual *742 threat of liability for negligent omissions that occurred ten, twenty or thirty years ago. Because this broad reading is contrary to the clear statutory language, I respectfully dissent.

I

Abusive relationships, by their very nature, often depend on concealment, emotional blackmail, threats, and an imbalance of power. *See* Note, *The Discovery Rule: Allowing Adult Survivors of Childhood Sexual Abuse the Opportunity for Redress,* 61 Brook. L.Rev. 199, 205-07 (1995). Even if victims recognize that they have been abused, the unique character of the relationship between the victim and the abuser may prevent victims from connecting the abuse to the resulting emotional harm within the statute of limitation. In enacting RCW 4.16.340, the Washington Legislature recognized that the abuser/victim relationship often prevents a victim from acknowledging the abuse or making a connection between the abuse and resulting injuries. *See* Laws of 1991, ch. 212 (finding that victims may be unable to understand or make the connection between the abuse and the emotional damage it causes).

RCW 4.16.340 extends the statute of limitation, thereby allowing victims of childhood sexual abuse to sue their abusers within three years of the discovery of an injury caused by the abuse, even if that discovery should occur decades later. It provides, in part:

(1) All claims or causes of action *based on intentional conduct* brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within the later of the following periods:
(a) Within three years of the act alleged to have caused the injury or condition;
(b) Within three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act; or
(c) Within three years of the time the victim discovered that the act caused the injury for which the claim is brought:
*743 ....

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(5) As used in this section, "childhood sexual abuse" means any act committed *by the defendant against a complainant* who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW or RCW 9.68A040 or prior laws of similar effect at the time the act was committed.

RCW 4.16.340 (emphasis added).

Recognizing both the unambiguous statutory language and the underlying rationale for the statute, the Courts of Appeals have repeatedly and consistently held that RCW 4.16.340 covers only those suits brought by the victim against an abuser. *See Jamerson v. Vandiver,* 85 Wash.App. 564, 934 P.2d 1199, *review denied,* 133 Wash.2d 1005, 943 P.2d 663 (1997); *Funkhouser v. Wilson,* 89 Wash.App. 644, 950 P.2d 501 (1998); *E.R.B. v. Church of God,* 89 Wash.App. 670, 950 P.2d 29 (1998); *C.J.C. v. Corporation of the Catholic Bishop,* 88 Wash.App. 70, 943 P.2d 1150 (1997).

Nonetheless, the majority overturns this precedent and applies the statute to a claim brought by the parents of a victim against a religious organization that employed the abuser. To support its position, the majority argues that the phrase "based on intentional conduct" in subsection (1) was inserted by the Legislature in order to extend the statute's coverage to claims sounding in negligence. According to the majority, "based on" means that the intentional conduct serves as a "foundation" for the lawsuit. Under the majority's interpretation, a negligence claim is based on intentional conduct where the intentional conduct serves as the "gravamen" of the complaint. Majority at 267.

After concluding that the statute applies to negligence claims, the majority uses this conclusion to extend the statute's application to suits against non- abusers. Although subsection (5) defines childhood sexual abuse as "any act committed by the defendant against a complainant," the majority overlooks this language in order to "harmonize" subsection **285 (5) with subsection (1). Majority at 269. The majority argues that because negligence claims are allowed under subsection (1), the statute must apply to suits against non- abusers who negligently failed to prevent the abuse. This is true because the claims against an abuser would necessarily be grounded only on the abuser's intentional conduct. The majority thus concludes that the limitations of *744 subsection (5) do not affect the scope of the statute. However, disregarding language in a section of a statute in order to reconcile it with the previous analysis of a different section does not "harmonize" the two sections.

In fact, it is only when all of the sections of the statute are read in conjunction that we gain a complete picture of RCW 4.16.340. When one replaces the term "childhood sexual abuse" in subsection (1) with its definition in subsection (5), the statute would read as follows: "All claims or causes of action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of" "any act committed by the defendant against a complainant who was less than eighteen years of age at the time of the act and which act would have been a violation of chapter 9A.44 RCW." RCW 4.16.340(1), RCW 4.16.340(5).

Applying the statutory definition of "childhood sexual abuse" unambiguously shows that the statute covers only suits based on unlawful abuse perpetrated *by the defendant.* The plain language of the statute states that it encompasses "claims ... brought ... for injury suffered as a result of ... [a sex offense] committed by the defendant against a complainant." RCW 4.16.340(1), (5). Nothing in the statute's language indicates that it extends to suits brought against a defendant whose agent committed the unlawful acts. Similarly, the plain language of the statute precludes the inference that the statute applies to suits brought by the parents of the victim. For a cause of action to be brought under RCW 4.16.340, the defendant of the lawsuit must have abused the complainant.

Contrary to the majority's strained interpretation, the purpose of the "based on" language is to ensure that the *745 statute of limitation will be tolled for *all* causes of action brought by the victim against the abuser for the abuser's intentional conduct. The Legislature recognized that a victim may bring several different types of claims against her abuser, i.e., assault, battery, intentional infliction of emotional distress). The statutory language operates to extend coverage to all of these varied claims.

Legislative history bolsters this reading. The Legislature repeatedly describes RCW 4.16.340 as tolling the statute of limitation for suits brought

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against the abuser. The Final Bill Report, which tallies votes and summarizes the Bill as enacted into law states that:

> The statute of limitations is changed to allow victims of childhood sexual abuse an additional three years from the date of discovery of the abuse to bring an action for civil damages *against the abuser* for intentional sexual abuse.

Final Legislative Report, 50th Legis., Reg. Sess. 146 (Wash.1988) (emphasis added). The exact same language is used in the Senate Bill Report 6305, which states that the act tolls the statute of limitation for suits "*against the abuser.*" Senate Comm. On Law and Justice, S.B. Rep. 6305, at 1 (emphasis added). Likewise, the House Bill Report states that:

> A cause of action for intentional childhood sexual abuse must be commenced within three years....

H.B. Rep. ESSB 6305, at 2 (1988). Where a cause of action is *for* intentional abuse as described in the House Bill Report, the intentional abuse must serve as an element of the claim. Finally, the "Fact Sheet on Legislation" that was circulated with the bill explains:

> No public benefit supports a rule that shields *childhood sexual abusers* from the consequences of their conduct.... The hope is that this legislation, along with providing victims of childhood sexual abuse with a remedy, will have a chilling effect on *potential abusers*.

"Fact Sheet on Legislation Applying the Discovery Rule to *746 Civil Suits Brought by Adult Survivors of Childhood Sexual Abuse," S.B. Rep. 6305 (1988) (emphasis added) (prepared **286 by Jana Mohr, representing Patti Barton).

This court looks to a bill's legislative reports to determine the legislative intent. *See Covell v. City of Seattle,* 127 Wash.2d 874, 887, 905 P.2d 324 (1995) ("This court has sanctioned recourse to final legislative reports as an aid in determining legislative intent."); *Biggs v. Vail,* 119 Wash.2d 129, 134, 830 P.2d 350 (1992) (if statute ambiguous, look to extrinsic aids such as final legislative reports); *Kadoranian v. Bellingham Police Dep't,* 119 Wash.2d 178, 185, 829 P.2d 1061 (1992) (referring to a quotation from the Final Legislative Report as "the express legislative intent" of the act). *See also Buchanan v. Simplot Feeders Ltd. Partnership,* 134 Wash.2d 673, 680, 952 P.2d 610 (1998); *Noble Manor Co. v. Pierce County,* 133 Wash.2d 269, 277-78, 943 P.2d 1378 (1997); *Brown v. City of Yakima,* 116 Wash.2d 556, 562, 807 P.2d 353 (1991).

The legislative intent is clear and comports with the explicit statutory language. RCW 4.16.340(5) defines childhood sexual abuse as an act "committed by the defendant against a complainant" because the Legislature intended to limit the act's scope to suits brought by a victim against the abuser.

Despite this clear statement of intent, the majority inexplicably finds this legislative history to be "inconclusive." Majority at 269 n. 6. As support for this assertion, it points to a report by the Northwest Women's Law Center recommending that the Act apply "to civil suits alleging negligent and/or intentional torts." *See* "Proposed Legislation Regarding the Statute of Limitations for Civil Suits Brought by Adult Survivors of Incest or Childhood Sexual Abuse," S.B. Rep. 6305 (1988). However, an interest group's recommendation regarding how the final bill should read does not render an uncontroverted statement of legislative intent inconclusive.

Other states have interpreted similarly worded statutes as allowing only claims against the abuser. Rhode Island's *747 statute is identical to ours in all relevant respects. It tolls the statute of limitation for "[a]ll claims or causes of action based on intentional conduct ..." and defines sexual abuse as any illegal sexual act "committed by the defendant against a complainant." R.I. Gen. Laws § 9-1-51(a),(e) (1997). In *Kelly v. Marcantonio,* 678 A.2d 873, 875-76 (R.I.1996), a woman who was abused by her father brought a negligence claim against her mother for failing to prevent the abuse. The Rhode Island Supreme Court dismissed the plaintiff's claim, limiting the application of the statute to causes of action against the perpetrator of the abuse. It held that the statute, by definition, applies only where the defendant of the tort suit committed the sex offense. *Kelly,* 678 A.2d at 877.

Likewise, California has held that an analogous law tolls the statute of limitation for only those claims brought against the abuser. In *Debbie Reynolds Prof'l Rehearsal Studios v. Superior Court,* 25 Cal.App.4th 222, 30 Cal.Rptr.2d 514, 30 Cal.Rptr.2d 514 (1994), the court held that the California Civil Proceeding Code's definition of

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childhood sexual abuse as "any act committed by a defendant against a plaintiff" clearly limits application of the statute to suits brought by the victim against her abuser. *Reynolds,* 25 Cal.App.4th at 231, 30 Cal.Rptr.2d 514.

The majority declines to adopt the reasoning of these courts and instead follows the analysis of the Montana Supreme Court. In *Werre v. David,* 275 Mont. 376, 913 P.2d 625 (1996), the Montana Supreme Court allowed a negligence claim against the employer of an abuser to be brought under Montana's statute tolling the limitation period for claims relating to childhood sexual abuse. However, Montana should not serve as a role model for this court's interpretation of RCW 4.16.340 because the Montana law defines childhood sexual abuse differently. Montana's statute defines childhood sexual abuse as "any act committed against a plaintiff." Mont.Code Ann. § 27-2- 216(3) (1997). In contrast, the Rhode Island and California cases are instructive because, like Washington, Rhode Island and ***748** California define childhood sexual abuse as any act committed *by the defendant* against the complainant. The very language that is dispositive in determining the scope of RCW 4.16.340 is missing from the Montana statute.

RCW 4.16.340 allows victims of abuse to sue their abusers within three years of the discovery of the injury, even if that discovery ****287** is made decades after the illegal acts occurred. The statute's tolling provision is expansive, but is warranted given the unique nature of the abuser/victim relationship, and the emotional trauma the abuse inflicts. However, the Legislature never intended to extend the statute to claims brought by the parents of the victim against an organization for its negligent failure to prevent the abuse. Incorporating the statutory definition of childhood sexual abuse into subsection (1) shows that the statute applies only to "claims ... brought ... for injury suffered as a result of ... [a sex offense] committed by the defendant against a complainant." RCW 4.16.340(1), (5). Legislative history supports this plain language by specifying that the act tolls the statute of limitation in suits "against the abuser." This reading is also consistent with other states' interpretation of analogous statutory language. The majority's decision to apply the tolling provisions of RCW 4.16.340 to suits against non-abusers cannot be reconciled with the Legislature's unequivocal mandate.

II

Given the fact that RCW 4.16.340 does not toll the statute of limitation, the court must determine whether the common law discovery rule applies to toll the statute of limitation and allow the Plaintiffs' claims. I believe that the discovery rule does not apply. Accordingly, the Plaintiffs' claims are time barred.

Generally, in suits for negligent injury, the cause of action accrues at the time the act or omission occurs. *In re Estates of Hibbard,* 118 Wash.2d 737, 744-45, 826 P.2d 690 (1992). This rule reflects a balancing of the remedial goals of the justice system with the "recognition that compelling ***749** one to answer a stale claim is in itself a substantial wrong." *Id.* at 745, 826 P.2d 690. However, where a plaintiff lacks the means or ability to ascertain that a wrong has been committed, Washington courts have created an exception known as the common law discovery rule. *Metropolitan Servs., Inc. v. City of Spokane,* 32 Wash.App. 714, 721, 649 P.2d 642, *review denied,* 98 Wash.2d 1008 (1982). The discovery rule tolls the statute of limitation until the time the plaintiff knew, or in the exercise of due diligence should have known, of the injury that the negligence has caused. *Hibbard,* 118 Wash.2d at 752, 826 P.2d 690. Because the rule compels a defendant to answer stale claims, this court has applied it only in limited circumstances in which the plaintiff lacked the means to ascertain that a wrong had been committed. This court has previously applied the rule in cases of professional malpractice, occupational diseases and fraudulent concealment. *Bowles v. Department of Retirement Sys.,* 121 Wash.2d 52, 80, 847 P.2d 440 (1993).

Whether or not to extend the discovery rule to the circumstances of any case is fundamentally a "judicial policy determination." *Gazija v. Nicholas Jerns Co.,* 86 Wash.2d 215, 221, 543 P.2d 338 (1975). This court decided in *Tyson v. Tyson,* 107 Wash.2d 72, 727 P.2d 226 (1986) that the injustice of forcing defendants to face stale claims outweighed the plaintiffs' right to have the statute of limitation tolled until discovery of the injury. *Tyson* rejected the application of the common law discovery rule in childhood sexual abuse cases, stating that:

> If we applied the discovery rule to such actions, the statute of limitations would be effectively

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> eliminated and its purpose ignored. A person would have an unlimited time to bring an action, while the facts became increasingly difficult to determine. The potential for spurious claims would be great and the probability of the court's determining the truth would be unreasonably low.

107 Wash.2d at 79, 727 P.2d 226. *Tyson* thus mandated that claims by victims of sexual assault must be brought within the applicable statute of limitation.

*750 RCW 4.16.340 specifically overruled *Tyson* regarding suits between a victim and an abuser by tolling the statute of limitation until the victim discovers an injury, regardless of when the abuse occurred. As explained above, RCW 4.16.340 does not encompass negligence claims brought by the parents of a victim against the abuser's employer. We must assume by this exclusion that the Legislature intended to change the statute of limitation only as it applies to **288 claims brought for intentional sexual abuse. *See, e.g., State ex rel. Port of Seattle v. Department of Pub. Serv.,* 1 Wash.2d 102, 112, 95 P.2d 1007 (1939) ("*expressio unius est esclusio alterius* "--the mention of one thing implies the exclusion of another thing). *See also State v. Williams,* 94 Wash.2d 531, 537, 617 P.2d 1012 (1980) (when a statute specifically designates the things or classes of things upon which it operates, it is inferred that the Legislature intended to exclude any omitted matters). Now the Plaintiffs ask this court, as a matter of judicial policy, to augment the scope of RCW 4.16.340 by extending the common law discovery rule to negligence suits against the abuser's employer.

Given the Legislature's decision not to extend the statute of limitation for negligence suits, there is no justification for this court to independently adopt what the Legislature has rejected. "[I]t is in areas of legislative inactivity that the judiciary may safely perform a creative role." *Burkhart v. Harrod,* 110 Wash.2d 381, 389, 755 P.2d 759 (1988) (quoting Cornelius J. Peck, *Comments on Judicial Creativity,* 69 Iowa L.Rev. 1, 9 (1983-84)). In *Burkhart,* the plaintiff asked this court to adopt a rule of social host liability. We declined to do so, explaining that the Legislature had already acted in the area by imposing penalties on those who *sell* alcohol to intoxicated persons. The Legislature did not impose similar penalties on those who *give* alcohol away, and this distinction implied that the Legislature intended to treat commercial hosts differently than social hosts. *Burkhart,* 110 Wash.2d at 388, 755 P.2d 759. Because the Legislature is in a superior position to weigh competing societal interests, we should defer when the Legislature *751 takes a constructive role in shaping tort law. *Burkhart,* 110 Wash.2d at 385, 755 P.2d 759.

In regard to the statute of limitation in childhood sexual abuse cases, the Legislature has evinced its commitment to shaping policy by enacting RCW 4.16.340 and repeatedly amending it to define its scope. *See* Laws of 1989, ch. 317 § 1 (clarifying the accrual provision for a person under the age of 18); Laws of 1991, ch. 212, § 1 (explaining that the discovery of less serious injuries does not commence the period of limitations). This court should not intrude on the Legislature's decision to extend the statute of limitation in suits against the abuser, but not in suits against negligent entities. To act where the Legislature has chosen not to act by applying the discovery rule to negligence suits would usurp legislative policy decisions through judicial activism.

Even without the Legislature's actions in this area, extending the common law discovery rule to the Plaintiffs' claims would be unwise. The harm caused by indefinitely extending the statute of limitation for suits against organizations that negligently fail to prevent abuse outweighs the harm to the individual plaintiff who may be precluded from bringing a claim. Without the discovery rule, a plaintiff must bring a negligence claim within three years of the sexual abuse, or within three years of the plaintiff's 18th birthday. If a plaintiff exceeds this time, a claim against the organization will be lost. However, a plaintiff will retain a cause of action against an abuser under RCW 4.16.340.

Any harm to a plaintiff who loses a cause of action by failing to bring it within the statute of limitation is outweighed by the harm to the defendants faced with stale claims. Defendants' ability to present a meaningful defense is compromised over time. Important evidence may be lost or forgotten. In intentional tort cases against an abuser, the issue at trial will be whether the abuse occurred. Testimony of the victim and family members regarding this traumatic event will play a crucial role in determining the facts. In contrast, negligence suits against an organization *752 rest

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on who in management knew about the abuser's propensity, when they knew it, and what they could reasonably have done to prevent the abuse from occurring. Evidence (testimonial or documentary) of the mental state of the managers of an organization is particularly susceptible to loss and mistake with the passage of time. Accordingly, requiring defendants to answer allegations of negligence so long after it occurred may limit their opportunity to produce exculpatory evidence. For example, just in the cases before us, at least **289 one witness has died, Diocese files are missing and several other witnesses' memories have faded.

Furthermore, allowing stale claims against religious and community groups would have serious social repercussions. Employers and other organizations will face a perpetual threat of liability for negligent omissions that occurred decades earlier. Churches, synagogues, boy and girl scouts, youth sports leagues, and other groups will all be hindered in their financial planning and insurance decisions for the future, because they will never be free from the threat of suit.

Extending the common law discovery rule to these cases would result in profound unfairness to the defendants. This court should be loathe to impinge on the legislative decision to extend the statute of limitation only in claims brought by a victim against her abuser. This is true especially in light of the negative societal impact of applying the common law discovery rule to negligence claims against organizations that fail to prevent abuse.

CONCLUSION

Contrary to the majority, the childhood sexual abuse statute does not provide the Plaintiffs in this case with a means to end run the statute of limitation. By its plain language, RCW 4.16.340 does not apply to claims brought against the employer of the abuser. Further, in light of both Washington case law and RCW 4.16.340, we should decline to extend the common law discovery rule to childhood sexual abuse *753 suits alleging negligence. The majority's holding not only undermines the Legislature's efforts to shape the law in this area, but also exposes religious and community groups to liability and accusations against which they will have no meaningful opportunity to defend. Because I believe the Plaintiffs' claims against the churches were time barred under the statute of limitation, I respectfully dissent. [FN1]

FN1. I dissent only as to the application of RCW 4.16.340 and the common law discovery rule to negligence claims against non-perpetrators. Although I would not reach the issue, I agree with the majority's analysis regarding the existence of a duty in *Funkhouser v. Wilson*.

GUY, C.J., and DOLLIVER, J.P.T., concur.

SANDERS, J. (concurring in dissents).

I concur in Justice Durham's dissent on the statute of limitation issue and concur in Justice Madsen's dissent on the merits.

985 P.2d 262, 138 Wash.2d 699

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EXHIBIT 10

60 S.Ct. 900
84 L.Ed. 1213, 128 A.L.R. 1352
(Cite as: 310 U.S. 296, 60 S.Ct. 900)

Briefs and Other Related Documents

Supreme Court of the United States.

CANTWELL et al.
v.
STATE OF CONNECTICUT.

No. 632.

Argued March 29, 1940.
Decided May 20, 1940.

On Appeal from and Certiorari to the Supreme Court of Errors of the State of Connecticut.

Newton, Jesse, and Russell Cantwell were convicted of violating Connecticut statute prohibiting the solicitation of money for alleged regligious, charitable, or philanthropic causes without approval of the Secretary of Public Welfare, and of inciting a breach of the peace. The conviction of all three for violating the statute, and conviction of Jesse Cantwell for inciting a breach of the peace, was affirmed by the Supreme Court of Errors of Connecticut, 126 Conn. 1, 8 A.2d 533, and defendants appeal and bring certiorari.

Judgment affirming the convictions reversed, and cause remanded.

West Headnotes

[1] Constitutional Law ⇦255(2)
92k255(2) Most Cited Cases
(Formerly 92k255)

The fundamental concept of "liberty" embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment, which declares that Congress shall enact no law respecting establishment of religion or prohibiting the free exercise thereof. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law ⇦254(2)
92k254(2) Most Cited Cases
(Formerly 92k254)

The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact laws which will deprive individuals of their liberty without due process. U.S.C.A.Const. Amend. 14.

[3] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[3] Constitutional Law ⇦274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. U.S.C.A.Const. Amends. 1, 14.

[4] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

The constitutional inhibition of legislation on subject of religion forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship, and safeguards the free exercise of the chosen form of religion. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

The right to free exercise of chosen form of religion is not absolute, in that conduct remains subject to regulation for protection of society. U.S.C.A.Const. Amend. 1.

[6] Constitutional Law ⇦255(2)
92k255(2) Most Cited Cases
(Formerly 92k255)

The power to regulate must be so exercised as not, in obtaining a permissible end, unduly to infringe the protected freedom. U.S.C.A.Const. Amend. 14.

[7] Constitutional Law ⇦84.5(1)
92k84.5(1) Most Cited Cases
(Formerly 92k84)

[7] Constitutional Law ⇦274(3.1)

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92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

A state may not by statute wholly deny right to preach or to disseminate religious views. U.S.C.A.Const. Amends. 1, 14.

[8] Constitutional Law ⇨274(2)
92k274(2) Most Cited Cases
(Formerly 92k274)

A state may, by general and nondiscriminatory legislation, regulate the times, the places, and the manner of soliciting upon its streets and of holding meetings thereon and may in other respects safeguard the peace, good order, and comfort of the community without invading liberties protected by the Fourteenth Amendment. U.S.C.A.Const. Amend. 14.

[9] Constitutional Law ⇨84.5(16)
92k84.5(16) Most Cited Cases
(Formerly 92k84)

[9] Constitutional Law ⇨274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

The general regulation, in the public interest, of solicitation which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to constitutional objection, though collection be for a religious purpose, and such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise. U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law ⇨84.5(16)
92k84.5(16) Most Cited Cases
(Formerly 92k84)

[10] Constitutional Law ⇨274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

The Connecticut statute prohibiting solicitation of money for religious, charitable, or philanthropic causes without approval of the secretary of the Public Welfare Council, and authorizing the secretary upon application of any person in behalf of such cause to determine whether such cause is a religious one, or a bona fide object of charity, or philanthropy, is violative of the First and Fourteenth Amendments, to the extent that it authorizes a censorship of religion by the secretary through the power conferred upon him to withhold his approval. Gen.St.1930, § 6294, as amended by Gen.St.Supp.1937, § 860d (Rev.1949, § 8606); U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law ⇨84.5(16)
92k84.5(16) Most Cited Cases
(Formerly 92k84)

[11] Constitutional Law ⇨274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

The validity of Connecticut statute which unconstitutionally purported to authorize Secretary of Public Welfare Council to pass on applications for permission to solicit money, services, subscriptions, or any valuable thing for an alleged religious, charitable, or philanthropic cause, could not be upheld on ground that if secretary acted arbitrarily, capriciously, or corruptly, his action was subject to judicial correction. Gen.St.1930, § 6294, as amended by Gen.St.Supp.1937, § 860d (Rev.1949, § 8606); U.S.C.A.Const. Amends. 1, 14.

[12] Constitutional Law ⇨255(2)
92k255(2) Most Cited Cases
(Formerly 92k255)

A statute authorizing previous restraint upon the exercise of guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action. U.S.C.A.Const. Amend. 14.

[13] Constitutional Law ⇨84.5(16)
92k84.5(16) Most Cited Cases
(Formerly 92k84)

[13] Constitutional Law ⇨274(2)
92k274(2) Most Cited Cases
(Formerly 92k274)

A state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which

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he purports to represent, and may regulate the time and manner of solicitation generally in interest of public safety, peace, comfort or convenience, but may not condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination by state authorities as to what is a religious cause. U.S.C.A.Const. Amends. 1, 14.

[14] Breach of the Peace ⇐1(1)
62k1(1) Most Cited Cases
(Formerly 62k1)

The offense known as "breach of the peace" embraces a great variety of conduct destroying or menacing public order and tranquility and includes not only violent acts but acts and words likely to produce violence in others.

[15] Breach of the Peace ⇐1(2)
62k1(2) Most Cited Cases
(Formerly 62k1)

[15] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases
(Formerly 92k84)

The state has power to prevent or punish when clear and present danger of riot, disorder, interference with traffic upon public streets, or other immediate threat to public safety, peace or order, appears, but state may not unduly suppress free communication of views, religious or other, under guise of conserving desirable conditions.

[16] Breach of the Peace ⇐1(3)
62k1(3) Most Cited Cases
(Formerly 62k1)

One may be guilty of "breach of the peace" if he commits acts, or makes statements likely to provoke violence and disturbance of good order though no such eventuality be intended.

[17] Breach of the Peace ⇐1(2)
62k1(2) Most Cited Cases
(Formerly 62k1)

[17] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

One who in soliciting contributions from two Catholics for publication of religious pamphlets, played a phonograph record which attacked the Catholic Church and religion, but who though he offended the listeners and aroused their animosity was guilty of no assault or threatening of bodily harm, or truculent bearing, or intentional discourtesy, or personal abuse, was not, considered in light of constitutional guaranties, liable to conviction of common law offense of "breach of the peace". U.S.C.A.Const. Amend. 14.

****901 *297** Mr. Hayden C. Covington, of New York City, for appellants and petitioners.

Messrs. Edwin S. Pickett, of New Haven, Conn., and Francis A. Pallotti, of Hartford, Conn, for appellee and respondent.

***300** Mr. Justice ROBERTS, delivered the opinion of the Court.

Newton Cantwell and his two sons, Jesse and Russell, members of a group known as Jehovah's witnesses, and claiming to be ordained ministers, were arrested in New Haven, Connecticut, and each was charged by information in five counts, with statutory and common law offenses. After trial in the Court of Common Pleas of New Haven County each of them was convicted on the third count, which charged a violation of s 6294 of the General Statutes of ****902** Connecticut, [FN1] and on the fifth count, which charged commission of the common law offense of inciting a breach of the peace. On appeal to the Supreme Court the conviction of all three on the third count was affirmed. The conviction of Jesse Cantwell, on the fifth count, was also affirmed, but the conviction of Newton and Russell on that count was reversed and a new trial ordered as to them. [FN2]

FN1 General Statutes s 6294 as amended by s 860d of the 1937 supplement.

FN2 126 Conn. 1, 8 A.2d 533.

By demurrers to the information, by requests for rulings of law at the trial, and by their assignments

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of error in the State Supreme Court, the appellants pressed the contention that the statute under which the third count was drawn was offensive to the due process clause of the Fourteenth Amendment because, on its face and as construed and applied, it denied them freedom of speech and prohibited their free exercise of religion. In like manner *301 they made the point that they could not be found guilty on the fifth count, without violation of the Amendment.

We have jurisdiction on appeal from the judgments on the third count, as there was drawn in question the validity of a state statute under the federal Constitution, and the decision was in favor of validity. Since the conviction on the fifth count was not based upon a statute, but presents a substantial question under the federal Constitution, we granted the writ of certiorari in respect of it.

The facts adduced to sustain the convictions on the third count follow. On the day of their arrest the appellants were engaged in going singly from house to house on Cassius Street in New Haven. They were individually equipped with a bag containing books and pamphlets on religious subjects, a portable phonograph and a set of records, each of which, when played, introduced, and was a description of, one of the books. Each appellant asked the person who responded to his call for permission to play one of the records. If permission was granted he asked the person to buy the book described and, upon refusal, he solicited such contribution towards the publication of the pamphlets as the listener was willing to make. If a contribution was received a pamphlet was delivered upon condition that it would be read.

Cassius Street is in a thickly populated neighborhood, where about ninety per cent of the residents are Roman Catholics. A phonograph record, describing a book entitled 'Enemies', included an attack on the Catholic religion. None of the persons interviewed were members of Jehovah's witnesses.

The statute under which the appellants were charged provides:

'No person shall solicit money, services, subscriptions or any valuable thing for any alleged religious, charitable *302 or philanthropic cause, from other than a member of the organization for whose benefit such person is soliciting or within the county in which such person or organization is located unless such cause shall have been approved by the secretary of the public welfare council. Upon application of any person in behalf of such cause, the secretary shall determine whether such cause is a religious one or is a bona fide object of charity or philanthropy and conforms to reasonable standards of efficiency and integrity, and, if he shall so find, shall approve the same and issue to the authority in charge a certificate to that effect. Such certificate may be revoked at any time. Any person violating any provision of this section shall be fined not more than one hundred dollars or imprisoned not more than thirty days or both.'

The appellants claimed that their activities were not within the statute but consisted only of distribution of books, pamphlets, and periodicals. The State Supreme Court construed the finding of the trial court to be that 'in addition to the sale of the books and the distribution of the pamphlets the defendants were also soliciting contributions or donations of money for an alleged religious cause, and thereby came within the purview of the statute.' (126 Conn. 1, 8 A.2d 535.) It overruled the contention that the Act, as applied to the appellants, offends the due process clause of the Fourteenth Amendment, because **903 it abridges or denies religious freedom and liberty of speech and press. The court stated that it was the solicitation that brought the appellants within the sweep of the Act and not their other activities in the dissemination of literature. It declared the legislation constitutional as an effort by the State to protect the public against fraud and imposition in the solicitation of funds for what purported to be religious, charitable, or philanthropic causes.

The facts which were held to support the conviction of Jesse Cantwell on the fifth count were that he stopped *303 two men in the street, asked, and received, permission to play a phonograph record, and played the record 'Enemies', which attacked the religion and church of the two men, who were Catholics. Both were incensed by the contents of the record and were tempted to strike Cantwell unless he went away. On being told to be on his way he left their presence. There was no evidence that he was personally offensive or entered into any argument with those he interviewed.

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The court held that the charge was not assault or breach of the peace or threats on Cantwell's part, but invoking or inciting others to breach of the peace, and that the facts supported the conviction of that offense.

[1][2][3][4][5][6][7][8] First. We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment. [FN3] The First Amendment declares that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws. The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the *304 second cannot be. Conduct remains subject to regulation for the protection of society. [FN4] The freedom to act must have appropriate definition to preserve the enforcement of that protection. In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom. No one would contest the proposition that a state may not, be statute, wholly deny the right to preach or to disseminate religious views. Plainly such a previous and absolute restraint would violate the terms of the guarantee. [FN5] It is equally clear that a state may by general and non- discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets, and of holding meetings thereon; and may in other respects safeguard the peace, good order and comfort of the community, without unconstitutionally invading the liberties protected by the Fourteenth Amendment. The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

FN3 Schneider v. State, 308 U.S. 147, 160, 60 S.Ct. 146, 150, 84 L.Ed. 155.

FN4 Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244; Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637.

FN5 Compare Near v. Minnesota, 283 U.S. 697, 713, 51 S.Ct. 625, 630, 75 L.Ed. 1357.

The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. The State insists that the Act, as construed by the Supreme Court of Connecticut, imposes no previous restraint upon the dissemination of religious views or teaching but merely safeguards against the perpetration of frauds under the cloak of **904 religion. Conceding that this is so, the question remains whether the method adopted by Connecticut to *305 that end transgresses the liberty safeguarded by the Constitution.

[9] The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise.

[10] It will be noted, However, that the Act requires an application to the secretary of the public welfare council of the State; that he is empowered to determine whether the cause is a religious one, and that the issue of a certificate depends upon his affirmative action. If he finds that the cause is not that of religion, to solicit for it becomes a crime. He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal

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of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth.

[11][12] The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that 'it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not *306 been performed.' [FN6] It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

FN6 Woodmont Ass'n v. Milford, 85 Conn. 517, 522, 84 A. 307, 310; see also Connecticut Co. v. Norwalk, 89 Conn. 528, 531, 94 A. 992.

To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action. [FN7]

FN7 Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357.

[13] Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. [FN8] The state is likewise free to regulate the time *307 and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience. But to condition the solicitation of aid for the perpetuation of religious views or systems upon a license, the grant of which rests in the exercise of a determination **905 by state authority as to what is a religious cause, is to lay a forbidden burden upon the exercise of liberty protected by the Constitution.

FN8 Compare Lewis Publishing Co. v. Morgan, 229 U.S. 288, 306-310, 33 S.Ct. 867, 871, 873, 57 L.Ed. 1190; People of State of New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 72, 49 S.Ct. 61, 64, 73 L.Ed. 184, 62 A.L.R. 785.

[14][15] Second. We hold that, in the circumstances disclosed, the conviction of Jesse Cantwell on the fifth count must be set aside. Decision as to the lawfulness of the conviction demands the weighing of two conflicting interests. The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged. The state of Connecticut has an obvious interest in the preservation and protection of peace and good order within her borders. We must determine whether the alleged protection of the State's interest, means to which end would, in the absence of limitation by the federal Constitution, lie wholly within the State's discretion, has been pressed, in this instance, to a point where it has come into fatal collision with the overriding interest protected by the federal compact.

Conviction on the fifth count was not pursuant to a

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statute evincing a legislative judgment that street discussion of religious affairs, because of its tendency to provoke disorder, should be regulated, or a judgment that the playing of a phonograph on the streets should in the interest of comfort or privacy be limited or prevented. Violation of an Act exhibiting such a legislative judgment and narrowly drawn to prevent the supposed evil, would pose a question differing from that we must here answer. [FN9] Such a declaration of the State's policy ***308** would weigh heavily in any challenge of the law as infringing constitutional limitations. Here, however, the judgment is based on a common law concept of the most general and undefined nature. The court below has held that the petitioner's conduct constituted the commission of an offense under the State law, and we accept its decision as binding upon us to that extent.

> FN9 Compare Gitlow v. New York, 268 U.S. 652, 670, 671, 45 S.Ct. 625, 631, 69 L.Ed. 1138; Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 742--746, 84 L.Ed. ---.

The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. It includes not only violent acts but acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application.

Having these considerations in mind, we note that Jesse Cantwell, on April 26, 1938, was upon a public street, where he had a right to be, and where he had a right peacefully to impart his views to others. There is no showing that his deportment was noisy, truculent, overbearing or offensive. He requested of two pedestrians permission to play to them a phonograph record. The permission was granted. It is not claimed that he ***309** intended to insult or affront the hearers by playing the record. It is plain that he wished only to interest them in his propaganda. The sound of the phonograph is not shown to have disturbed residents of the street, to have drawn a crowd, or to have impeded traffic. Thus far he had invaded no right or interest of the public or of the men accosted.

The record played by Cantwell embodies a general attack on all organized religious systems as instruments of Satan and injurious to man; it then singles out the Roman Catholic Church for strictures couched in terms which naturally would offend not only persons of that persuasion, ****906** but all others who respect the honestly held religious faith of their fellows. The hearers were in fact highly offended. One of them said he felt like hitting Cantwell and the other that he was tempted to throw Cantwell off the street. The one who testified he felt like hitting Cantwell said, in answer to the question 'Did you do anything else or have any other reaction?' 'No, sir, because he said he would take the victrola and he went.' The other witness testified that he told Cantwell he had better get off the street before something happened to him and that was the end of the matter as Cantwell picked up his books and walked up the street.

[16] Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or ***310** personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.

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[17] We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse. On the contrary, we find only an effort to persuade a willing listener to buy a book or to contribute money in the interest of what Cantwell, however misguided others may think him, conceived to be true religion.

In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of these liberties. The danger in these times from the coercive activities of those who in the delusion of racial or religious conceit would incite violence and breaches of the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish.

*311 Although the contents of the record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question. [FN10]

FN10 Compare Schenck v. United States, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470; Herndon v. Lowry, 301 U.S. 242, 256, 57 S.Ct. 732, 738, 81 L.Ed. 1066; Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093.

The judgment affirming the convictions on the third and fifth counts is reversed and the cause is remanded for further proceedings not inconsistent with this opinion. So ordered.

Reversed and remanded.

60 S.Ct. 900, 310 U.S. 296, 84 L.Ed. 1213, 128 A.L.R. 1352

Briefs and Other Related Documents (Back to top)

• 1940 WL 38022 (Appellate Brief) Appellants' and Petitioner's Brief (Mar. 18, 1940)

END OF DOCUMENT

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EXHIBIT 11

781 P.2d 383
(Cite as: 99 Or.App. 104, 781 P.2d 383)

Court of Appeals of Oregon.

Christine E. ERICKSON, Appellant,
v.
Bryan W. CHRISTENSON; Luther Memorial Church, Portland, Oregon; American Lutheran Church, North Pacific District, Respondents,
and
American Lutheran Church, Defendant.

A8710-06662; CA A49695.

Argued and Submitted April 14, 1989.
Decided Oct. 25, 1989.

Church parishioner sued pastor, her church, and the district office of the church's denomination, seeking recovery for intentional infliction of emotional harm allegedly caused by pastor's mentally manipulating her and seducing her through counseling relationship. The Circuit Court, Multnomah County, Lee Johnson, J., dismissed complaint for failure to state claims, and parishioner appealed. The Court of Appeals, Rossman, J., held that: (1) claim of intentional infliction of emotional harm was not invalid as being essentially restatement of abolished claim of seduction; (2) claim was not barred on First Amendment grounds, as being essentially claim of clerical malpractice which would require for proof impermissible government examination of validity of religious beliefs and interference with access to clerical counseling; (3) complaint stated claim against church for liability for torts of pastor under respondeat superior doctrine; (4) complaint stated cause of action against church for negligent supervision of pastor; and (5) complaint stated cause of action against district office of denomination for negligence in requiring parishioner to seek removal of pastor through confrontational process involving rest of church, causing her emotional harm.

Reversed and remanded.

West Headnotes

[1] Damages ⇐50.10
115k50.10 Most Cited Cases

Claim by church parishioner against her pastor for intentional infliction of emotional harm through pastor's alleged abuse of confidential relationship by mentally manipulating her to have close contact and sexual relations with him was not invalid by reason of being equivalent to abolished tort of seduction; parishioner had alleged that pastor's actions made her unable to trust other adults, to trust authority and deal with religion and her faith in God, and if claims were true resulting harm to parishioner stemmed from pastor's misconduct of his position of trust and not from seduction.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies ⇐30
332k30 Most Cited Cases

Claim by parishioner that pastor had inflicted intentional emotional harm upon her was not invalid under free exercise and establishment clauses of First Amendment because it was essentially claim of clerical malpractice which would require for proof development of community standards as to proper pastoral conduct which in return would involve permissible government inquiry into validity of religious beliefs and interference with clerical counseling; parishioner had claimed breach of confidential relationship rather than any elements of clerical malpractice. U.S.C.A. Const.Amend. 1.

[3] Religious Societies ⇐30
332k30 Most Cited Cases

Church would be liable to parishioner, on theory of respondeat superior, if parishioner established claim that pastor had abused confidential relationship between himself and parishioner by mentally manipulating her to become dependent upon him and coercing and manipulating her to have close contacts and sexual relations with him.

[4] Religious Societies ⇐30
332k30 Most Cited Cases

Parishioner accusing church of negligent supervision of pastor who allegedly abused confidential relationship with her and manipulated her into having close contact and sexual relations with him stated cause of action; parishioner alleged that church knew or should have known pastor was not adequately trained as counselor and that he had

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used and misused his position in past to take advantage of parishioners and people he counseled.

[5] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Dismissal of complaint in response to motion to dismiss for failure to state ultimate facts sufficient to state claims was not warranted in case where parishioner of church accused district office of church's denomination of negligent supervision of pastor who mentally manipulated her into having sexual contact with him; nothing in complaint supported contentions on which dismissal was granted, that district office was merely administrative department of denomination and lacked capacity to be sued, and that claim was barred by two-year statute of limitations. ORS 12.110(1).

[6] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Parishioner suing district office of her church's denomination stated claim for negligent supervision of church's pastor who allegedly manipulated her into having sexual relations with him; parishioner alleged that after she initiated church complaint against pastor district office undertook role of her advocate and then forced her to proceed through confrontational process involving congregation in order to have pastor removed from his position, causing her extreme emotional distress.
****384 *104** David R. Nepom, Portland, argued the cause and filed the briefs for appellant.

I. Franklin Hunsaker, Portland, argued the cause and filed the brief for respondent American Lutheran Church, North Pacific Dist. With him on the brief were Chrys A. Martin, Lisa E. Lear and Bullivant, Houser, Bailey, Pendergrass & Hoffman, Portland.

David J. Edstrom, Portland, argued the cause and filed the brief for respondent Bryan W. Christenson.

Ralph C. Spooner, Salem, argued the cause and filed the brief for respondent Luther Memorial Church. With him on the brief was Spooner & Much, Salem.

Before RICHARDSON, P.J., JOSEPH, C.J., and ROSSMAN, J.

***106** ROSSMAN, Judge.

Plaintiff brought this action against her pastor (Christenson), the church that employed him (Luther Memorial) and the American Lutheran Church, North Pacific District (ALC-NPD), [FN1] alleging four claims for injuries sustained after Christenson allegedly manipulated her and seduced her through a counseling relationship. The trial court granted defendants' motions under ORCP 21 A to dismiss for failure to state ultimate facts sufficient to state claims, ****385** and plaintiff appeals. We reverse and remand.

> FN1. Pursuant to the stipulation of plaintiff and A merican Lutheran Church (ALC), the trial court entered an order dismissing claims against ALC without prejudice. The court incorporated that order into its judgment dismissing plaintiff's claims against all defendants.

In reviewing a motion to dismiss for failure to state a claim, we are limited to the facts stated in the complaint. *Richards v. Dahl,* 289 Or. 747, 752, 618 P.2d 418 (1980). We accept as true the allegations and all reasonable inferences that may be drawn from them. *See Overbay v. Ledridge,* 97 Or.App. 292, 294, 776 P.2d 29, *on reconsideration* 98 Or.App. 148, 778 P.2d 981 (1989). A pleading that contains an allegation of material fact as to each element of the claim for relief, even if vague, is sufficient to survive a motion to dismiss. *Mazurek v. Rajnus,* 253 Or. 555, 557-58, 456 P.2d 83 (1969). We discuss plaintiff's claims against each defendant in turn.

Plaintiff's claims against Christenson are for "breach of fiduciary duty" (which we treat as a claim for breach of a confidential relationship) and intentional infliction of severe emotional distress. [FN2] Her allegations may be summarized: (1) In 1970, when plaintiff was age 13, Christenson established a confidential relationship with her, acting as her pastor, counselor, confessor, advisor, friend, teacher and surrogate father. (2) Christenson abused that relationship by "mentally

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manipulating" her to become dependent upon him and by "coercing and manipulating" her to have close contact and sexual relations with him for his own purposes; he continued to exercise dominion and control over plaintiff until the fall or winter of 1986, and attempted to manipulate the relationship until *107 May, 1987. (3) Defendants' failure to advise plaintiff of the improper relationship prevented her from obtaining professional help. (4) As a result of Christenson's misuse of his position, plaintiff suffered sexual abuse, extreme emotional distress, physical illness, loss of sleep and memory, clinical depression and loss in her "ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God."

> FN2. Although plaintiff has characterized her claim as one for "outrageous conduct," it is actually for intentional infliction of severe emotional distress. *Patton v. J.C. Penney Co.*, 301 Or. 117, 119 n. 1, 719 P.2d 854 (1986).

[1] Christenson argues that those allegations actually state a claim for seduction, a cause of action that was abolished in 1973. Or.Laws 1973, ch. 640. We disagree. In *Spiess v. Johnson,* 89 Or.App. 289, 748 P.2d 1020, *aff'd by equally divided court* 307 Or. 242, 765 P.2d 811 (1988), we considered the sufficiency of a complaint alleging that a psychiatrist from whom a couple had sought psychiatric counseling for the wife had become sexually intimate with her during the course of treatment. The defendant argued that the husband's claim for intentional infliction of severe emotional distress was actually for the abolished torts of criminal conversation and alienation of affections. We rejected that argument, noting that the different claims were distinguishable by the nature of the loss that they alleged. 89 Or.App. at 294, 748 P.2d 1020.

The tort of seduction provided recovery for damage to character and reputation, as well as for mental anguish and pecuniary losses. *See Breon v. Hinkle,* 14 Or. 494, 500, 13 P. 289 (1887). By contrast, plaintiff's claim alleges that Christenson misused his position as pastor and counselor to abuse her sexually, causing her not only emotional distress but also "loss of ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God." Accepting the allegations as true, the harm to plaintiff stemmed from Christenson's misuse of his position of trust, not from the seduction as such. Plaintiff has stated a claim.

In her second claim against Christenson, plaintiff has claimed losses due to intentionally inflicted severe emotional distress, as opposed to losses related to character or reputation. The mere fact that sexual intimacy was the means of inflicting that distress does not convert her claim into one for seduction. *See Spiess v. Johnson, supra,* 89 Or.App. at 294, 748 P.2d 1020. Moreover, the character of Christenson's relationship with plaintiff is relevant both to the degree of culpability required **108** to impose liability and to whether his conduct **386** was so offensive as to be outrageous. *Hall v. The May Dept. Stores,* 292 Or. 131, 137, 637 P.2d 126 (1981); *Torgeson v. Connor,* 86 Or.App. 179, 181, 738 P.2d 994 (1987). Because plaintiff has alleged a confidential relationship, proof of her other allegations would permit the jury to infer that Christenson's actions exceeded the limits of social toleration, that they were done with the knowledge that they would cause her grave distress and that they in fact caused her severe emotional distress. That is sufficient to state a claim for intentional infliction of emotional distress. *See Torgeson v. Connor, supra.*

[2] Christenson argues that plaintiff's claims are barred by the First Amendment. According to him, her claim for "breach of a fiduciary duty" actually is a claim for clerical malpractice, a cause of action that requires developing a community standard of care. Because imposing such a standard would involve examining the validity of religious beliefs and could interfere with access to clerical counseling, he argues, it violates both the Free Exercise and Establishment Clauses of the First Amendment. Similarly, he contends, because plaintiff's seduction could not be considered "outrageous" were it not for the fact that he is a pastor, plaintiff's claim of intentional infliction of emotional distress penalizes him for exercising his religion.

Christenson's arguments misconstrue the nature of plaintiff's claims. First, regardless of how plaintiff designated her claims, a claim for breach of a confidential relationship is different from a claim for clerical malpractice. Plaintiff's complaint

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alleged the existence and breach of a confidential relationship; it did not allege the elements of malpractice. Moreover, plaintiff's claim for outrageous conduct is not premised on the mere fact that Christenson is a pastor, but on the fact that, because he was *plaintiff's* pastor and counselor, a special relationship of trust and confidence developed.

[3] Plaintiff's claims against Luther Memorial are that it is vicariously liable for the torts allegedly committed by Christenson and that it was negligent in supervising him. "Under the doctrine of *respondeat superior,* an employer is liable for an employee's torts when the employee acts within the scope of employment." *Chesterman v. Barmon,* 305 Or. 439, 442, 753 P.2d 404 (1988). An employe's act is within the scope of the ***109** employment if it occurs substantially within the time and space limits authorized by the employment, the employe is at least partially motivated by a purpose to serve the employer and the act is of a kind which the employe was hired to perform. *Chesterman v. Barmon, supra,* 305 Or. at 442, 753 P.2d 404. Plaintiff has alleged that, in the exercise of his duties as a pastor, Christenson established a confidential relationship with her and caused her harm by abusing that relationship. Confining our analysis to the four corners of the complaint, we conclude that it alleges that she sustained harm from acts performed within Christenson's scope of employment. [FN3]

> FN3. Luther Memorial argues that it cannot be held liable under a theory of *respondeat superior,* because Christenson's seduction of plaintiff is neither the kind of act that he was hired to perform nor motivated by a desire to serve the employer. As previously noted, however, the gravamen of plaintiff's complaint is not simply that Christenson seduced her but that he abused his position as her pastor to do so. Because the alleged wrongful act was improper performance of pastoral counseling duties, whether it occurred within the scope of employment is a factual issue.

[4] With respect to her claim for negligence in supervision, Luther Memorial argues that plaintiff has failed to allege facts showing that its "conduct unreasonably created a foreseeable risk to a protected interest of the kind of harm that befell the plaintiff," as required by *Fazzolari v. Portland School Dist. No. 1J,* 303 Or. 1, 17, 734 P.2d 1326 (1987). However, in her amended complaint, plaintiff has alleged that Luther Memorial knew or should have known that Christenson was not adequately trained as a counselor and that it knew or should have known that he had misused his position in the past to take advantage of parishioners and counseled persons. These allegations, if proven, would make it ****387** reasonable for a trier of fact to infer that the risk of harm to plaintiff was reasonably foreseeable to Luther Memorial. Similarly, her allegations, if proven, that Luther Memorial employed and directed Christenson to counsel parishioners, failed to investigate claims of his sexual misconduct, failed to remove him or to warn parishioners of his misuse of his position and failed to supervise him adequately following his nervous breakdown or to direct him to seek expert advice to deal with his abusive behavior would make it reasonable for the jury to infer that it created the risk of harm to plaintiff. The complaint states a claim for negligent supervision. It follows that plaintiff's ***110** claims against Luther Memorial should not have been dismissed. [FN4]

> FN4. Relying on *Norwest v. Presbyterian Intercommunity Hosp.,* 293 Or. 543, 652 P.2d 318 (1982), Luther Memorial asserts that plaintiff has alleged only emotional injury, an insufficient basis for a claim for ordinary negligence. In alleging sexual abuse, physical illness, lost sleep and losses in memory and concentration, however, plaintiff has alleged more than emotional injury.

[5] Plaintiff repeated her claim of negligent supervision against ALC-NPD, alleging the same facts and adding that ALC-NPD supervised Luther Memorial and that the agents and employes of ALC-NPD supervised Christenson. ALC-NPD responds that, because it is merely an administrative department of ALC, it lacks the capacity to be sued, that plaintiff's claim is barred by the two-year Statute of Limitations in ORS 12.110(1) and that, because it was not Christenson's employer, but

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simply an unincorporated division of ALC with only a tenuous connection to Luther Memorial and Christenson, it could neither have created nor foreseen the risk of harm to plaintiff.

ALC-NPD's contentions are premature. Nothing on the face of the complaint permits a determination that ALC-NPD is not a proper party or that, as a matter of law, plaintiff's alleged injuries occurred more than two years before the commencement of her action. *See* ORCP 21 A(9). Plaintiff has alleged sufficient facts to withstand a motion to dismiss.

[6] Plaintiff's last claim is that ALC-NPD was negligent in its performance of pastoral duties. In essence, she alleges that, after she initiated a church complaint against Christenson, ALC-NPD undertook the role of her advocate and counselor; that, in that role, it required her to "proceed through a confrontational process * * * in order to have Bryan Christenson removed from his pastor position"; and that, despite Christenson's voluntary admission to a sexual dependency unit, it continued to require her to "confront and oppose the church congregation," causing her extreme emotional distress. Those allegations, taken as true, would permit a trier of fact to make the inference that ALC-NPD's conduct unreasonably created a foreseeable risk of harm to plaintiff. Under ***111** *Fazzolari v. Portland School Dist. No. 1J, supra,* plaintiff's allegations are sufficient to state a claim for negligence. [FN5]

FN5. Characterizing plaintiff's claim as one for "clerical malpractice," ALC-NPD argues that recognizing such a cause of action would require the court to develop a standard of care for pastoral counseling, an undertaking which inevitably would violate the First Amendment and Article I, sections 2, 3, and 5 of the Oregon Constitution. However, plaintiff's complaint alleges simple negligence. Although the First Amendment or Oregon Constitution may provide ALC-NPD with an affirmative defense at some later stage of the proceeding, which we need not and do not decide here, it does not provide a basis for dismissal at this stage.

Reversed and remanded.

781 P.2d 383, 99 Or.App. 104

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EXHIBIT 12

▷

United States Court of Appeals,
Seventh Circuit.

Linda E. DAUSCH, Plaintiff-Appellant,
v.
Reverend Greg RYKSE, Knox Presbyterian Church, Chicago Presbytery, also known as Presbytery of Chicago, et al., Defendants-Appellees.

No. 93-1459.

Argued Nov. 10, 1993.
Decided Dec. 16, 1994.

Church member brought action against church and pastor alleging that pastor had engaged in improper counseling conduct. Church and pastor moved to dismiss complaint, and the United States District Court for the Northern District of Illinois, Ann Claire Williams, J., granted motion. Church member appealed, and the Court of Appeals, in opinion by Coffey, Circuit Judge, held that: (1) complaint failed to state claim for negligence or negligent infliction of emotional distress against church; (2) dismissal of count of complaint alleging negligent infliction of emotional distress on part of pastor which was not assigned as error was not properly before court and would not be considered; and in opinions by Coffey, Circuit Judge, and Ripple, Circuit Judge, held that: (3) complaint stated claim for professional negligence against pastor; (4) claim for breach of fiduciary duty by pastor and church would not be recognized under Illinois law; and (5) complaint stated claim against pastor for violation of Illinois Sexual Exploitation in Psychotherapy Act.

Affirmed in part, reversed in part, and remanded.

Coffey, Circuit Judge, concurred and filed opinion. Ripple, Circuit Judge, concurred in part and dissented in part in judgment and filed opinion.

West Headnotes

[1] Federal Courts ⇐763.1
170Bk763.1 Most Cited Cases

[1] Federal Courts ⇐794
170Bk794 Most Cited Cases

On appeal from dismissal of complaint for failure to state claim, review is limited to sufficiency of complaint, and court must accept all well-pled facts as true and must draw all reasonable inferences in favor of appellant.

[2] Federal Civil Procedure ⇐1829
170Ak1829 Most Cited Cases

In determining whether complaint should be dismissed, district court considers allegations that are contained in complaint and all reasonable inferences drawn from it in favor of movant.

[3] Federal Civil Procedure ⇐1831
170Ak1831 Most Cited Cases

Facts asserted in memorandum in opposition to motion to dismiss complaint for failure to state claim, but not contained in complaint, are relevant to extent that they could be proved consistent with allegations.

[4] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Complaint by church member who asserted that pastor had engaged in dangerous and improper counseling relations with her by entering into sexual relationship with her after she had seen pastor for counseling failed to state claim against church under Illinois law for professional negligence or negligent infliction of emotional distress where complaint failed to allege that church should have known about pastor's improper counselling conduct, failed to allege any basis for claim under doctrine of respondeat superior, and failed to allege that church had any knowledge of improper sexual advances by pastor in past as would create any supervisory liability. (Per Circuit Judge Coffey with one Circuit Judge concurring.)

[5] Federal Courts ⇐714
170Bk714 Most Cited Cases

Dismissal of count of complaint which was not assigned as error was not properly before Court of Appeals on appeal from dismissal of entire complaint and would not be considered. (Per Circuit Judge Coffey with one Circuit Judge concurring.)

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[6] **Religious Societies** ⚿30
332k30 Most Cited Cases

Under Illinois law, cause of action for clergy malpractice is not recognized. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

[7] **Religious Societies** ⚿30
332k30 Most Cited Cases

Illinois legislature explicitly excluded liability for "counseling of the spiritual or religious nature" from Sexual Exploitation in Psychotherapy Act. (Per Circuit Judge Ripple with one Circuit Judge concurring.) S.H.A. 740 ILCS 140/1.

[8] **Religious Societies** ⚿14
332k14 Most Cited Cases

Under Illinois law, judicial refusal to examine pastoral activity of members of clergy when judicial inquiry would require examination and evaluation of clergy's adherence to tenets of his or her faith or of internal decisions and organization of church has not been extended to situations in which conduct in question does not bear such direct relationship to doctrinal or organization aspects of religious practice. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

[9] **Religious Societies** ⚿30
332k30 Most Cited Cases

Under Illinois law, complaint brought by person who has sought guidance from member of clergy alleging that psychological services provided by cleric were secular in nature or that provider held himself out to be providing services of psychological counselor cannot be characterized as one for clergy malpractice; under circumstances, claim is for professional malpractice by psychological counselor, not clergy malpractice. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

[10] **Religious Societies** ⚿30
332k30 Most Cited Cases

Under Illinois law, tort claims for behavior of cleric that does not require examination of religious doctrine are cognizable. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

[11] **Religious Societies** ⚿30
332k30 Most Cited Cases

Under Illinois law, complaint in which church member who sought guidance from pastor and who alleged that pastor held himself out to be qualified to provide psychological counseling and engaged in improper counseling relations with church member, including sexual contact, stated cause of action for professional negligence by psychotherapist. (Per Circuit Judge Coffey with one Circuit Judge concurring.)

[12] **Religious Societies** ⚿31(4)
332k31(4) Most Cited Cases

Complaint in which church member alleged that pastor who was providing psychological counseling to her engaged in improper sexual conduct with member stated claim under Illinois Sexual Exploitation in Psychotherapy Act; if pastor was acting in pastoral rather than secular capacity, as would bring him within exclusion from liability under statute, defense could be raised in due course. (Per Circuit Judge Ripple with one Circuit Judge concurring.) S.H.A. 740 ILCS 140/1(e).

[13] **Federal Courts** ⚿388.1
170Bk388.1 Most Cited Cases

Federal courts sitting in diversity ought to be circumspect in expanding law of state beyond boundaries established in jurisprudence of state. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

[14] **Religious Societies** ⚿30
332k30 Most Cited Cases

Under Illinois law, complaint brought by church member who alleged that pastor who she had seen for purpose of psychological counseling had engaged in improper counseling conduct with member, including sexual relationship, failed to state claim for breach of fiduciary obligation on part of pastor and church. (Per Circuit Judge Ripple with one Circuit Judge concurring.)

***1425** Concurring Opinion of Circuit Judge Coffey

***1426** Steven K. Jambois, Mary L. Chirillo (argued), Kralovec, Jambois & Schwartz, Chicago, IL, for Linda E. Dausch.

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Barry G. Bollinger, Craig G. Stifler, Kelly Ann Giampa (argued), Bollinger, Ruberry & Garvey, Chicago, IL, for Greg Rykse.

David G. Mountcastle, Mountcastle, Kelly & Dyer, Wheaton, IL, for Knox Presbyterian Church defendant-appellee.

Kathleen Mulligan (argued), James W. Teevans, Gardner, Carton & Douglas, Chicago, IL, for Chicago Presbytery.

1427 Before GIBSON [FN], COFFEY and RIPPLE, Circuit Judges.

FN* The Honorable Floyd R. Gibson, of the United States Court of Appeals for the Eighth Circuit, is sitting by designation.

PER CURIAM.

Linda E. Dausch, a member of the congregation of the Knox Presbyterian Church ("Knox Church"), sought counseling from her church's pastor, Reverend Greg Rykse. She alleged in her complaint that it was one of the duties of Rykse and of the Knox Church and the Chicago Presbytery ("the church defendants") to provide psychological counseling to members of the congregation. However, according to Mrs. Dausch's complaint, Rykse "engaged in dangerous and improper counseling relations with plaintiff," which included "engaging in sexual contact during the course of psychotherapy with the plaintiff, an emotionally dependent patient."

The case before us, brought under diversity jurisdiction [FN1] and controlled by Illinois law, is an appeal from the dismissal of Mrs. Dausch's first amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Against the individual defendant Rykse, the complaint sets forth claims for professional negligence (Count I), breach of fiduciary duty (Count III), negligent infliction of emotional distress (Count V), and violation of the Sexual Exploitation of Psychotherapy Act, 740 ILCS 140/1 *et seq.* (Count IX). Knox Church and Chicago Presbytery were also charged with professional negligence (Count II), breach of fiduciary duty (Count VI), and negligent infliction of emotional distress (Count VIII). [FN2]

FN1. The initial jurisdictional statement indicated that the requirement of complete diversity of citizenship may be lacking. *Strawbridge v. Curtiss,* 7 U.S. (3 Cranch) 267, 2 L.Ed. 435 (1806). However, pursuant to the order of this court, Mrs. Dausch filed an affidavit showing that complete diversity of citizenship exists. At the time the complaint was filed, Mrs. Dausch was a citizen of Pennsylvania; Rev. Ryske was a citizen of Illinois; the Knox Presbyterian Church and the Chicago Presbytery were citizens of Illinois with their principal places of business in Illinois. The Presbyterian Church (U.S.A.) is no longer a party to this action. On motion of the appellant Linda Dausch, the Presbyterian Church (U.S.A.) was dismissed from this appeal without prejudice by order of this court on August 13, 1993. Both complaints allege that the amount in controversy exceeds $50,000.

FN2. Mrs. Dausch's first amended complaint, filed August 6, 1992, is misnumbered and therefore does not include Counts IV or VII. All references to the "complaint" before this court are to this first amended version found at R.33.

1.

[1][2][3] Because our review of this case is limited to the sufficiency of Mrs. Dausch's complaint, we must accept all well-pled facts as true and must draw all reasonable inferences in favor of the appellant Mrs. Dausch. *Dowlatshahi v. Motorola, Inc.,* 970 F.2d 289, 290 (7th Cir.1992).

Applying this standard, the complaint presented these facts: [FN3] During the period between *1428 January 1988 and June 1990, Rykse held himself out, and was held out by the church defendants, to be a duly qualified person engaged in providing psychological counseling to members of his congregation. Complaint ¶ 12, R.33 at 5. Such counseling was "in furtherance of the business and purpose" of the church defendants, and was within

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the scope of his employment. *Id.* Linda Dausch sought psychological counseling from Rykse between January 1988 and June 1990 in order to assist her in coping with certain emotional conditions she was experiencing, particularly depression. ¶¶ 14-15, R.33 at 5-6. Rev. Rykse accepted her for professional psychological treatment. ¶ 16, R.33 at 6. Operating within the framework of this counseling relationship, Rykse "compelled, encouraged, fostered and engaged in dangerous and improper counseling relations with plaintiff." ¶ 17, R.33 at 6- 7. The relations included sexual contact during the course of the psychotherapy. ¶ 51, R.33 at 19. The church defendants knew or should have known of these improper counseling relations. ¶ 18, R.33 at 7.

FN3. In her memorandum in response to the motions to dismiss, Mrs. Dausch explained further the basis for the complaint. The district court referred to this document extensively in its memorandum order. As we have noted in the text, in determining whether a complaint ought to be dismissed, the district court considers the allegations that are contained in it and all reasonable inferences drawn from it in favor of the nonmovant. The facts asserted in the memorandum in opposition to the motion to dismiss, but not contained in the complaint, are relevant to the extent that they "could be proved consistent with the allegations." *Hishon v. King & Spalding,* 467 U.S. 69, 73, 104 S.Ct. 2229, 2232, 81 L.Ed.2d 59 (1984); *Hrubec v. National R.R. Passenger Corp.*, 981 F.2d 962, 964 (7th Cir.1992). Because a plaintiff may point to "facts consistent with the existing language of the complaint to establish entitlement to prevail," *American Inter-Fidelity Exch. v. American Re-Insurance Co.*, 17 F.3d 1018, 1022 (7th Cir.1994), we set forth, for the sake of completeness, the factual allegations made in the memorandum in opposition. According to the memorandum, a coordinator at Knox Presbyterian Church called Mrs. Dausch to inquire why she was not attending church, and recommended that she seek counseling from Rev. Greg Rykse, one of the pastors at the church. According to the complaint, Rykse contacted her soon thereafter and offered his services as a psychological counselor. Dausch stated that Rykse told her that she needed secular psychological, not religious, counseling, and that he was qualified to provide it. According to Dausch, Rykse stated that such treatment was included in his job description at Knox Presbyterian Church. Dausch attended counseling sessions with Rykse at his office in the church from January 1988 until May 1990. Over time Rykse increased the frequency and length of the sessions. Mrs. Dausch claimed that he told her that "religion does not apply here. Your problems are so deep you need more psychological treatment from me." She stated that she became very involved in the therapy and attached to Rykse. Rykse allegedly represented to her that he was a capable, trained professional on whom she could rely to assist her with her personal problems. However, on June 14, 1988, Rykse allegedly gave Mrs. Dausch an ultimatum: "I have been giving to you, and I need something back for my services. You must give back to me or I will not work with you anymore." From that date through May 1990 Mrs. Dausch's therapy sessions began with sexual relations with Rykse.

2.

On February 9, 1993, the district court granted the defendants' motion to dismiss the complaint for failure to state a claim upon which relief can be granted. *See* Fed.R.Civ.P. 12(b)(6). Mem.Op. at 17.

The court turned first to Mrs. Dausch's allegations of professional negligence against the church defendants. In the court's view, these allegations were most accurately characterized as a claim for clergy malpractice. The court held that such a cause of action was not recognized in Illinois and therefore could not be the basis for holding the church defendants vicariously liable. It also determined, in the alternative, that, even if such a cause of action existed, the church defendants could not be held vicariously liable for actions done by

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Rykse solely for his own benefit and not as part of his ministerial duties. Nor, according to the district court, could the church defendants be held liable for failing to exercise reasonable care over Rykse when acting outside the scope of his employment because there was no allegation that the church defendants knew or should have known of Rykse's improper relations or of the need to exercise control over him. Under such circumstances, the fact that Rykse was the church defendants' employee was not a sufficient basis for vicarious liability.

The district court next addressed the professional negligence allegation against Rykse. The court reiterated that Illinois does not recognize a cause of action for clergy malpractice. It noted that courts that have considered but rejected such a claim have recognized the free exercise implications of any such recognition. The district court also recognized, however, that such free exercise considerations would not be relevant if Rykse's conduct was not part of the belief and practices of his church. Repeating its earlier view with respect to the church defendants, the district court concluded that Mrs. Dausch had failed to allege adequately that Rykse's psychological counseling was not part of the church's religious beliefs and practices. As a result, concluded the court, the free exercise clause of the First Amendment was implicated and Mrs. Dausch failed to state a valid claim.

The district court next turned to the allegations that the defendants had breached a fiduciary duty to Mrs. Dausch. At the outset, the district court concluded that, even though the church defendants might be characterized as her "spiritual and religious advisors," Mem.Op. at 14, that relationship was not, under the law of Illinois, that of a fiduciary. With respect to Rykse, the court concluded that he did not have a fiduciary duty, *1429 but rather a general duty to refrain from violating the law. More fundamentally, the court determined that the allegation of a fiduciary duty was simply an elliptical way to state a clergy malpractice claim, a cause of action that it had already held to be not recognized in Illinois.

The district court dismissed, on the same rationale, Mrs. Dausch's allegations of negligent infliction of emotional distress. Because Illinois does not recognize clergy malpractice claims, it would also not recognize claims for negligent infliction of emotional distress in these circumstances. Finally, the court dismissed Mrs. Dausch's counts concerning the church defendants' negligent hiring, training, and supervision of Rykse because adjudication of such claims would foster excessive state entanglement with religion.

For the reasons that follow, we affirm the district court's dismissal of counts against the church defendants, Counts II, VI, and VIII. Concerning the counts against Rykse, we affirm the district court's dismissal of Count III, breach of fiduciary duty. We also affirm the dismissal of Count V, alleging negligent infliction of emotional distress against Rykse; because there was no assignment of error, this count is not properly before the court. We reverse the dismissal of the remaining counts, Counts I and IX, and remand for further proceedings consistent with this opinion.

AFFIRMED IN PART AND REVERSED AND REMANDED IN PART

COFFEY, Circuit Judge, concurring.

[4][5] I agree with Section A.1. (Professional Negligence and Negligent Infliction of Emotional Harm--Defendant Ryske) subsections a. and b. and Section B. (Sexual Exploitation in Psychotherapy Act) of Judge Ripple's opinion, but wish to make it clear that this is in no way to be interpreted as expanding the liability of the clergy and thus spiritual counseling, or some combination of spiritual and secular counseling, remains shielded by the First Amendment. Thus Dausch's claims for professional negligence (Count I) and violation of the Illinois psychotherapy statute (Count IX) are the only claims against Rev. Ryske that survive on remand. This position is also consistent with Section C. (Breach of Fiduciary Duty) of Judge Ripple's concurrence which affirms the dismissal of Dausch's breach of fiduciary duty claim against Rev. Ryske (Count III), but it is at odds with Section A.1. (Professional Negligence and Negligent Infliction of Emotional Harm--Defendant Ryske) subsection c. of Judge Ripple's analysis as it unfortunately combines the reversal of the trial judge's dismissal of Dausch's professional negligence claim with the reversal of the trial judge's dismissal of her claim for negligent infliction of emotional distress (Count V). I also

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wish to point out that Dausch's brief on appeal fails to assign error to the court's dismissal of that claim, thus it is not before the court. Further, Dausch's complaint in my opinion fails to allege facts sufficient to state a cause of action against the church defendants sounding in professional negligence (Count II), breach of fiduciary duty (Count VI), and negligent infliction of emotional distress (Count VIII). I agree with the trial court's action and Section C. (Breach of Fiduciary Duty) of Judge Ripple's analysis, affirming the dismissal of Dausch's breach of fiduciary duty claim. However, I disagree with Section A.2 (Professional Negligence and Negligent Infliction of Emotional Harm--Church defendants) of Judge Ripple's analysis for Dausch's complaint fails to adequately allege that the church defendants knew or should have known of the improper counselling conduct of Rev. Ryske. I further note that Dausch's complaint fails to allege any basis for a claim under the doctrine of *respondeat superior* because her complaint fails to state that the church defendants ever hired or authorized Rev. Ryske to engage in secular psychological counselling. Rev. Ryske's sexual contact with Dausch was obviously a deviation from the terms of the contract of his employment with the church and was certainly not in furtherance of the church defendants' business. Finally, Dausch's complaint fails to allege that the church defendants incurred any supervisory liability for it is devoid of any allegation that the church defendants were aware or had any knowledge that Rev. Ryske made improper sexual advances ***1430** either before or during the time in question.

RIPPLE, Circuit Judge, concurring in part and dissenting in part in the judgment.

This case was dismissed by the district court because, in its view, the complaint failed to state a claim upon which relief could be granted. This procedural posture is central to the adjudication of this present appeal. Accordingly, I set forth, at the beginning of the analysis, a discussion of the settled principles of law that must guide the inquiry when a case is presented in this procedural posture.

Review of the district court's grant of a motion to dismiss the amended complaint is de novo. *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 775 (7th Cir.1994); *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 920 (7th Cir.1992). All the facts alleged in the complaint, plus any reasonable inferences from those facts, are viewed in the light most favorable to the nonmovant Mrs. Dausch. *Vicom*, 20 F.3d at 775; *Dowlatshahi v. Motorola, Inc.*, 970 F.2d 289, 290 (7th Cir.1992). Complaints are to be read liberally, as required by the notice pleading theory underlying the Federal Rules of Civil Procedure. *Conley v. Gibson*, 355 U.S. 41, 47-48, 78 S.Ct. 99, 103, 2 L.Ed.2d 80 (1957). The district court, viewing all facts in a light most favorable to the non-moving party, may grant the motion only if "it is beyond doubt that the nonmovant can plead no facts that would support his claim for relief." *Id.* at 45-46, 78 S.Ct. at 102. Rule 8 of the Federal Rules of Civil Procedure requires clarity but not detail:

> Rule 8(a)(2) requires a "short and plain statement of the claim showing that the pleader is entitled to relief." In addition, Rule 8(e)(1) states that "[e]ach averment of a pleading be simple, concise and direct." The primary purpose of these provisions is rooted in fair notice: Under Rule 8, a complaint " 'must be presented with intelligibility sufficient for a court or opposing party to understand whether a valid claim is alleged and if so what it is.' "

Vicom, 20 F.3d at 775 (citations omitted). Thus, although the complainant must show that she is entitled to relief, she need not set out in detail the facts upon which her claim is based. *Redfield v. Continental Cas. Corp.*, 818 F.2d 596, 605 (7th Cir.1987). Nevertheless, despite Rule 8(a)'s allowance that the complaint's statement of the claim be "short and plain," a plaintiff may not "fumble around searching for a meritorious claim within the elastic boundaries of a barebones complaint." *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1430 (7th Cir.1993). With these principles in mind, I now examine the sufficiency of the complaint.

A. *Professional Negligence and Negligent Infliction of Emotional Harm*

1. Defendant Rykse

a.

Central to the district court's disposition of this case was its determination that, with respect to the individual defendant Rykse, the complaint alleged a

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claim for clergy malpractice rather than a claim for professional negligence on the part of a psychological counselor. [FN1] I therefore turn first to this allegation.

> FN1. Although the district court first addressed the claims against the church defendants, its disposition of those claims anticipated its decision that the claims against the individual defendant were claims for clergy malpractice and not for professionally negligent psychological counseling.

The first count of the complaint alleges that Rykse had a "duty to possess and apply the skill and knowledge of a reasonably well qualified person providing psychological counseling," and that he was professionally negligent in counseling plaintiff. [FN2] In the district *1431 court's view, Mrs. Dausch's allegations failed to raise a claim for malpractice by a psychological counselor because Mrs. Dausch did not allege specifically that Rykse was independently trained as a psychological counselor, that Rykse did not receive his counseling training through his church or affiliated institution, that the counseling was not conducted as part of Rykse's employment with the church, or that the sessions were not conducted at the church. In the district court's view, although allegations that Mrs. Dausch obtained counseling from Rykse independent of his role as her clergyman would have been consistent with a claim for malpractice of a psychological counselor, here she had alleged that "it was within the scope of the Rev. Greg Rykse's employment to offer psychological counseling to members of the Knox Church congregation." Complaint ¶ 12, R.33 at 5. Without adequate allegation that Rykse's counseling was purely secular, the district court concluded that Mrs. Dausch's claim was therefore for clergy malpractice, a cause of action not recognized in Illinois.

> FN2. Dausch's specific allegations of Rykse's professional negligence include the following: (1) he failed to establish and maintain an appropriate counseling milieu; (2) he engaged in improper relations with plaintiff under the auspices of the counselor-counselee relationship; (3) he failed to refer her to a separate counselor when he knew or should have known that his emotional involvement with plaintiff jeopardized and harmed her well-being; (4) he failed to seek the supervision of his superiors when he knew or should have known that his emotional involvement with plaintiff jeopardized and harmed her well-being; (5) he failed to terminate the counseling relationship with plaintiff when he knew or should have known that his emotional involvement with her jeopardized and harmed her well-being; (6) he failed to diagnose or properly control plaintiff's symptoms of transference; and (7) he failed to act in a manner appropriate within the ambit of his pastoral obligations. Complaint ¶ 21, R.33 at 7-8.

On appeal, Mrs. Dausch maintains that her claims are based on psychotherapy malpractice, which is recognized in Illinois, *see Corgan v. Muehling,* 143 Ill.2d 296, 158 Ill.Dec. 489, 574 N.E.2d 602 (1991), and not on clergy malpractice, which she never alleged. The defendant in *Corgan* was an unregistered psychologist who was held to the same standard of care as if he were a psychologist. Mrs. Dausch asserts that Rykse should also be held to that standard. According to Mrs. Dausch, Rykse held himself out as qualified to perform *secular* psychological counseling and the church supported his counseling endeavors. Therefore, she maintains, he should be required to exercise the skill normally possessed by members of that profession, regardless of his actual qualifications. She submits that she has offered sufficiently well-pleaded facts to establish a valid claim for psychotherapy malpractice. Her allegation that the service that Rykse offered to provide was secular psychological counseling must be taken as true at the pleading stage; only at a later stage of the proceeding will it be her obligation to substantiate the allegation by the sort of factual proof that the district court required in disposing of this motion for judgment on the pleading. She insists the court erred by characterizing her claim as one for clergy malpractice, thereby allowing the individual defendant and the church to escape liability for his wrongdoing.

In reply, Rykse argues that it is undisputed that at

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least part of Rykse's interaction with Mrs. Dausch consisted of religious counseling. Because the foundation of their relationship was as member and pastor of the church, the district court properly determined, in Rykse's view, that Mrs. Dausch "failed to adequately allege that Rykse's counseling was purely secular." Mem.Op. at 12. Rykse submits that Mrs. Dausch sought pastoral counseling for depression from Rykse, her pastor, rather than through the services of a psychotherapist, presumably because she expected counseling that would be spiritual in nature. Like the plaintiff in *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991), [FN3] states Rykse, Mrs. Dausch *1432 deliberately avoided asserting clergy malpractice but was in fact making such a claim. Rykse asserts that the alleged negligent actions arose within the confines of a clergyman/parishioner relationship.

> FN3. The district court in this case follows closely the analysis and decision in *Schmidt,* a New York case applying New York law. *Schmidt* analyzed a long-term relationship between a girl and a Presbyterian pastor, beginning when her parents brought the girl, at age twelve, to the minister for "emotional, *spiritual* and familial counseling." *Schmidt,* 779 F.Supp. at 324 (emphasis added). The court found that the action should have been a battery or intentional tort (but the statute of limitations had run). It rejected plaintiff's attempt to treat an intentional tort as a negligence claim, and found that the real issue was clergy malpractice. Once it stated that counseling was part of the religious duties of clergy, it then refused to attempt to establish a standard of reasonable care for pastoral counselors on the ground that the state must not "foster excessive government entanglement with religion." *Lemon v. Kurtzman,* 403 U.S. 602, 614-15, 91 S.Ct. 2105, 2112, 29 L.Ed.2d 745 (1971).
>
> It may be argued that it requires no excessive entanglement with religion to decide that reasonably prudent clergy of any sect do not molest children. The difficulty is that this Court, and the New York courts whose authority we exercise here, must consider not only this case, but the next case to follow, and the ones after that, before we embrace the newly invented tort of clergy malpractice. This places us clearly on the slippery slope and is an unnecessary venture, since existing laws against battery, and the criminal statute against sexual abuse if timely invoked, provide adequate protection for society's interests. Where could we stop? *Schmidt,* 779 F.Supp. at 328.

b.

[6][7] I begin my analysis of this issue by noting my complete agreement with our colleague in the district court with respect to the viability of a claim for clergy malpractice. This cause of action has been soundly rejected by the courts of Illinois. In *Baumgartner v. First Church of Christ, Scientist,* 141 Ill.App.3d 898, 96 Ill.Dec. 114, 490 N.E.2d 1319 *appeal denied,* (Ill.), *cert. denied,* 479 U.S. 915, 107 S.Ct. 317, 93 L.Ed.2d 290 (1986), the Illinois Appellate Court determined that an action for clergy malpractice could not be maintained because it was not a "justiciable controversy," *id.* 141 Ill.App.3d at 904, 96 Ill.Dec. at 120, 490 N.E.2d at 1325, and because the evaluation of such a complaint "would require the court to extensively investigate and evaluate religious tenets and doctrines," *id.* at 903, 96 Ill.Dec. at 119, 490 N.E.2d at 1324. Moreover, the Illinois legislature explicitly excluded liability for "counseling of the spiritual or religious nature" in the Sexual Exploitation in Psychotherapy Act, 740 ILCS 140/1.

Indeed, a cause of action for clergy malpractice has been rejected uniformly by the states that have considered it. [FN4] As the Illinois court pointed out in *Baumgartner,* this unanimity is based on the difficulty that would be encountered in evaluating such a claim without entangling the civil courts in extensive investigation and evaluation of religious tenets. *Cf. Thomas v. Review Bd.,* 450 U.S. 707, 716, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624 (1981) (noting that "it is not within the judicial function and judicial competence" to determine whether the adherent of a particular faith has properly interpreted the tenets of that faith); *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 724-25, 96 S.Ct. 2372, 2387-88, 49 L.Ed.2d 151 (1976) (holding that the court improperly inquired into the propriety of the removal of a bishop and the

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reorganization of the church).

FN4. The following state supreme courts have held that there is no cause of action for clergy malpractice: *Handley v. Richards,* 518 So.2d 682 (Ala.1987); *Moses v. Diocese,* 863 P.2d 310 (Colo.1993), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994); *Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988); *Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584 (1991); *Strock v. Pressnell,* 38 Ohio St.3d 207, 527 N.E.2d 1235 (1988); *Schieffer v. Catholic Archdiocese,* 244 Neb. 715, 508 N.W.2d 907 (1993). Two other state supreme courts have defeated clergy malpractice actions on other grounds without determining the propriety of causes of action for clergy malpractice: *Doe v. Roman Catholic Diocese,* 862 S.W.2d 338 (Mo.1993), and *Bladen v. First Presbyterian Church,* 857 P.2d 789 (Okla.1993). Other state courts refusing to recognize clergy malpractice claims include *Nally v. Grace Community Church of the Valley,* 240 Cal.Rptr. 215 (Cal.App.1987), *rev'd on other grounds,* 47 Cal.3d 278, 253 Cal.Rptr. 97, 763 P.2d 948 (1988), *cert. denied,* 490 U.S. 1007, 109 S.Ct. 1644, 104 L.Ed.2d 159 (1989); *Fontaine v. Roman Catholic Church,* 625 So.2d 548 (La.Ct.App.1993); *Jones by Jones v. Trane,* 153 Misc.2d 822, 591 N.Y.S.2d 927 (Sup.Ct.1992); and *E.J.M. v. Archdiocese,* 424 Pa.Super. 449, 622 A.2d 1388 (1993).

[8][9] This judicial refusal to examine the pastoral activity of members of the clergy, when such a judicial inquiry would require examination and evaluation of the clergy's adherence to the tenets of his or her faith or of internal decisions and organization of the church, has not been extended to situations in which the conduct in question does not bear such a direct relationship to the doctrinal or organizational aspects of religious practice. *Cf. Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972) ("A way of life, however virtuous and admirable, may not be interposed as a barrier to a reasonable state regulation ... if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief."). Such activity can be proscribed by a legitimate regulation of general applicability designed to protect the health, safety or good morals of the community. *See *1433Baumgartner,* 96 Ill.Dec. at 120, 490 N.E.2d at 1325; *cf. Employment Div., Dep't of Human Resources v. Smith,* 494 U.S. 872, 876-82, 110 S.Ct. 1595, 1598-1602, 108 L.Ed.2d 876 (1990) (reviewing Supreme Court precedent interpreting the Free Exercise Clause). As the Illinois court pointed out in *Baumgartner,* despite its nonrecognition of clergy malpractice claims, Illinois allows judicial scrutiny in this latter type of conduct because it does not implicate judicial assessment of the tenets of a particular religion or a determination of whether a particular litigant has adhered to those tenets. 96 Ill.Dec. at 120, 490 N.E.2d at 1325. Rather, the sole inquiry is whether the individual has engaged in conduct that the state has deemed harmful. Indeed, a great deal of the activity of religious institutions falls within this category. Although such activity is motivated by the tenets of the religion, evaluation of that activity does not require that those religious tenets be assessed by the civil courts. For instance, many religions maintain hospitals and schools. The motivation for maintaining those institutions is clearly rooted in the faith commitment of the sponsoring church. However, whether a school adheres to safety standards or a hospital to medically acceptable standards of care hardly requires that the court examine and adjudicate matters of religious doctrine. Indeed, today, religious groups offer their adherents, and sometimes the entire community, services that were not offered by ecclesiastical sources in the past. Few would doubt, however, that a lawyer practicing in a legal clinic operated by a church or a physician practicing in a clinic under church auspices would have to comply with the same standards of professional care and responsibility as any other law firm or medical facility.

[10] Characterizing psychological counseling services in terms of this distinction between pastoral work, which can be assessed only by reference to theological beliefs, and the provision of secular services, which can be assessed independently of such religious considerations, presents a particularly difficult issue. In most, if not all, religious

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traditions, pastoral counseling--advice on matters of spiritual growth or moral responsibility--requires a great deal of knowledge and skill with respect to human psychology. Yet, as Illinois and, indeed, every state that has confronted the issue have noted, such pastoral counseling is clearly and directly centered on matters of religion, and claims of negligence are not cognizable in the civil courts. Indeed, an intermediate appellate court in Illinois has rejected the argument that

> the duties of a priest to his parishioner or of a minister to his congregation should be equated with the duties of a psychologist to his patient. A priest or minister is not required to possess and apply the knowledge and use the skill and care ordinarily used by a reasonably well- qualified psychologist.

Hertel v. Sullivan, 261 Ill.App.3d 156, 198 Ill.Dec. 574, 577, 633 N.E.2d 36, 39 (1994). On the other hand, it is entirely possible that, in an age when many ecclesiastical organizations have assumed the task of providing a variety of medical and social services, a particular church might also offer purely secular counseling as a service to the members of its congregation or to a broader segment of the population in need of such services. If a church were to undertake such a project, *Baumgartner* suggests rather firmly that those who provided such professional services on behalf of the church would indeed be subject to the same legal strictures as those imposed upon individuals who undertake to provide such services in another setting. *Baumgartner,* 96 Ill.Dec. at 120, 490 N.E.2d at 1325. Therefore, if a complaint alleges that the psychological services that were provided were "secular" in nature, or that the provider held himself out to be providing the services of a psychological counselor, the negligence claim cannot be characterized as one for clergy malpractice. Tort claims for behavior by a cleric that does not require the examination of religious doctrine are cognizable. *See Schmidt,* 779 F.Supp. at 327 (offering negligent operation of church van as example of tort claim unrelated to religious effort of a cleric). *See generally Cantwell v. Connecticut,* 310 U.S. 296, 303-04, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940) (stating First Amendment's protection of freedom to act "remains subject to regulation for the protection ***1434** of society"). Under these circumstances, the claim is for professional malpractice by a psychological counselor, not clergy malpractice.

If the complaint can be appropriately characterized as stating a claim for professional malpractice as opposed to clergy malpractice, "professionals" may be held to "an elevated and objective standard of care." *Eaves v. Hyster Co.,* 244 Ill.App.3d 260, 185 Ill.Dec. 80, 84, 614 N.E.2d 214, 218 (1993). Illinois's Pattern Jury Instructions for use in "professional negligence" cases require professionals to apply the same degree of knowledge, skill, and ability as an ordinarily careful professional would exercise under similar circumstances. *Id.* 185 Ill.Dec. at 83, 614 N.E.2d at 217. "The elements of a malpractice action are the same elements required of any negligence action." *St. Paul Fire & Marine Ins. Co. v. Downs,* 247 Ill.App.3d 382, 187 Ill.Dec. 130, 137, 617 N.E.2d 338, 345 (1993).

In *Corgan v. Muehling,* 143 Ill.2d 296, 158 Ill.Dec. 489, 574 N.E.2d 602 (1991), the Supreme Court of Illinois reviewed a complaint very similar to the one before this court, and determined "that the plaintiff can allege a cause of action for negligent infliction of emotional distress as a direct victim of defendant's psychological malpractice." *Id.* 158 Ill.Dec. at 494, 574 N.E.2d at 607. The *Corgan* defendant had held himself out as a registered psychologist and had engaged in sexual relations with the plaintiff "under the guise of therapy." *Id.* 158 Ill.Dec. at 490, 574 N.E.2d at 603. Discussing the duty of a therapist, the state supreme court cited with approval the decisions of *Horak v. Biris,* 130 Ill.App.3d 140, 85 Ill.Dec. 599, 474 N.E.2d 13 (1985) (holding that allegations of a social worker's mishandling of the transference phenomenon [FN5] were sufficient to show a breach of a duty of care) and *Omer v. Edgren,* 38 Wash.App. 376, 685 P.2d 635 (1984) (holding that sexual involvement between a psychotherapist and patient raises a jury question concerning malpractice). *Id.* 685 P.2d at 636-37. The court also noted the legislature's recognition of such a duty in the Sexual Exploitation in Psychotherapy Act. It finally concluded that a plaintiff need not allege physical symptoms of emotional distress in the complaint. *Id.* 685 P.2d at 638.

> FN5. The Illinois appellate court explained transference thus:
> The "transference phenomenon" ... has been defined in psychiatric practice as "a phenomenon * * * by which the patient

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> transfers feelings towards everyone else to the doctor, who then must react with a proper response, the counter transference, in order to avoid emotional involvement and assist the patient in overcoming problems." The mishandling of this phenomenon, which generally results in sexual relations or involvement between the psychiatrist or therapist and the patient, has uniformly been considered as malpractice or gross negligence in other jurisdictions, whether the sexual relations were prescribed by the doctor as part of the therapy, or occurred outside the scope of treatment.
>
> *Horak,* 85 Ill.Dec. at 604, 474 N.E.2d at 18 (citations omitted); *see also Simmons v. United States,* 805 F.2d 1363, 1364-66 (9th Cir.1986).

c.

[11] Upon examining the complaint in the case before us, I conclude that some of Mrs. Dausch's allegations must be permitted to survive a motion for judgment on the pleading. The complaint sufficiently alleges a cause of action against Rykse as a counselor, not pastor, in Counts I (professional negligence) and V (negligent infliction of emotional distress). [FN6] In these counts, Mrs. Dausch maintains that the defendants rendered a psychological counseling service that was completely different from pastoral counseling. She submits that her complaint, fairly read, sets forth a claim that Rykse undertook to provide psychological counseling of a nature different from pastoral counseling and that, with respect to that undertaking, he can be held to the standards required by the civil *1435 law of all who undertake this delicate and sophisticated task.

> FN6. Even though in her appellate brief the plaintiff focuses on the professional malpractice claim when arguing that Ryske's actions ought not be characterized as clergy malpractice, it is clear that the same arguments apply to the negligent infliction of emotional distress claim. The district court treated the latter claim in this manner and, under these circumstances, it would exalt form over substance to expect the plaintiff to repeat the same argument twice here. While a reviewing court should not reach arguments that are not made in the appellate brief, it ought to use a rule of reason and not of hypertechnicality in applying the rule to the litigants before it.

The district court was of the view that the complaint did not adequately allege that the undertaking of Rykse was a purely secular one. As noted earlier, the district court placed great weight on the failure of Mrs. Dausch to allege that the counseling was not part of Rykse's employment with the church, that the sessions were not conducted off the premises of the church, and that Rykse did not receive training as a psychological counselor from a source other than the church. I agree with our colleague in the district court that these factors are indeed relevant to a determination of the nature of the counseling. I cannot accept, however, the proposition that the omission of these assertions from the complaint is fatal to the plaintiff's case. Indeed, the district court appears to have been of the view that, unless all of these factors were resolved in favor of the plaintiff, it would be necessary to characterize this action as one for clergy malpractice. Such a requirement is not realistic. A cleric does not immunize his or her actions simply because they are performed on the grounds of the church. A legal clinic on church grounds would, for instance, clearly be subject to state regulation. The source of the clergy's training is also not outcome- determinative. A church certainly can decide to maintain a fully accredited educational institution for the education of its clergy in secular pursuits.

Given the standards that govern the adequacy of a complaint, I believe it was sufficient for Mrs. Dausch to allege that Rykse held himself out as a trained psychological counselor and that he undertook, as a function apart from pastoral counseling, to provide such a professional service that did not implicate in its rendition the beliefs or practices of the Presbyterian faith. Mrs. Dausch wants the court to examine her allegation that Rykse held himself out as a trained and qualified psychological counselor and then used that representation to have sexual relations with her. Neither Illinois law nor the Free Exercise Clause relieves an individual of the obligation to comply

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with neutral laws of general applicability, *Employment Div., Dep't of Human Resources v. Smith,* 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990), and does not shield clergy from all liability for their wrongs. It is of course appropriate for a district court to be demanding of the plaintiff's efforts to establish the factual allegations of a complaint such as this one at a later stage of the litigation. However, I believe that it is premature to dismiss this case at the pleading stage on the ground that it fails to state a cause of action.

2. Church defendants

The district court dismissed the professional negligence claim against the churches primarily on the basis that neither the courts nor the legislature had recognized a cause of action for clergy malpractice. [FN7] It further held that, even if such a cause existed, Mrs. Dausch had failed to state a valid claim against the churches. The district court first pointed out that the church defendants could not be held vicariously liable for Rykse's actions because the alleged sexual acts had to be deemed done solely for his own benefit *1436 and not as part of his ministerial duties. Mem.Op. at 9. The district court was correct in its conclusion that sexual misconduct by a member of the clergy is, by the weight of authority, beyond the scope of employment of the cleric. Here, however, the complaint alleges that Rykse had held himself out as rendering not a pastoral service but a secular psychological counseling service. In this circumstance as well, Illinois generally has held that sexual activity of an employee is insufficient to state a cause of action under the law of respondeat superior. *See Hoover v. University of Chicago Hosps.,* 51 Ill.App.3d 263, 9 Ill.Dec. 414, 417-18, 366 N.E.2d 925, 928-29 (1977) (stating that an employee physician who sexually assaulted a patient could not be found to be acting within the scope of his employment). Nevertheless, the Illinois courts have recognized that the mishandling of the transference phenomenon in psychological counseling does give rise to an action in negligence. *Corgan,* 158 Ill.Dec. at 489, 574 N.E.2d at 602; *see also Horak v. Biris,* 130 Ill.App.3d 140, 85 Ill.Dec. 599, 603, 474 N.E.2d 13, 17 (1985). More recently, an Illinois court has suggested strongly that such negligence must be considered within the scope of employment. *St. Paul Fire & Marine Ins. Co. v. Downs,* 247 Ill.App.3d 382, 187 Ill.Dec. 130, 136, 617 N.E.2d 338, 344 (1993). Mrs. Dausch does allege, in paragraphs 21(f), 25(f), 32(f), 38(e), 42(f), and 46(e), that Rykse "failed to diagnose or properly control plaintiff's symptom's [sic] of transference."

> FN7. Mrs. Dausch alleged that the church defendants were professionally negligent because they: (1) failed to establish and maintain an appropriate counseling milieu; (2) engaged in improper relations with plaintiff under the auspices of the counselor-counselee relationship; (3) failed to refer plaintiff to a separate counselor when they knew or should have known that Rykse's emotional involvement with plaintiff jeopardized her well-being; (4) failed to terminate the counseling relationship with plaintiff when they knew or should have known that Rykse's emotional involvement with plaintiff jeopardized and harmed plaintiff's well-being; (5) failed to diagnose or properly control plaintiff's symptoms of transference; (6) failed to act in a manner appropriate within the ambit of pastoral obligations; (7) failed to adequately supervise its counseling personnel; (8) failed to employ personnel with the skill, knowledge, and expertise which would have been exercised by a reasonably well-qualified person providing counseling to members of a congregation; (9) failed to adequately train its personnel who engage in counseling; (10) failed to adequately monitor counseling techniques and counseling results of its personnel; and (11) failed to clearly and adequately communicate policies regarding emotional involvement between counselors and counselees to counselors, employees or agents. Complaint ¶ 25, at 9-10. Identical allegations were made in that count of the complaint that alleged that the church defendants had engaged in the negligent infliction of emotional harm.

The district court next held that the church defendants were not obligated to exercise reasonable care over Rykse when he was acting outside the scope of his employment. In this regard, the district court followed the general rules

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of master-servant tort liability found in the Restatement (Second) of Torts at § 317. It held that the complaint lacked the allegation that the church defendants knew or should have known that it should exercise control over Rykse. More precisely, continued the district court, the complaint failed to allege that: (1) the church defendants knew or should have known of the necessity and opportunity to exercise control over Rykse; (2) there were any indications that Mrs. Dausch and Rykse were having sexual relations during the counseling sessions; and (3) Rykse was encouraging improper relations with her or other parishioners. The district court determined that, at best, the complaint alleged that vicarious liability was established because Rykse was the church defendants' employee and such an allegation was not sufficient. Mem.Op. at 11.

[12] I respectfully disagree with the conclusion of the district court that the complaint fails to allege adequately that the church defendants knew or should have known of the allegedly improper counseling conduct of Rykse. In paragraph 18 of the complaint, Mrs. Dausch alleged that "[d]uring and prior to the period between January, 1988 and June 1990, the [church defendants] *knew or should have known that Rev. GREG RYKSE was compelling, encouraging, fostering and engaging in dangerous and improper counseling relations with Plaintiff.* " (emphasis added). Again, in paragraph 46, there are allegations that the defendant churches knew or should have known of the improper acts allegedly committed by Rykse during the counseling sessions. These allegations are sufficient to state that, with respect to the claimed secular activities of Rykse, the church defendants were negligent in permitting Rykse to engage in such activities. It is, of course, well established that a civil court cannot inquire into "matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law," without offending the Free Exercise Clause of the First Amendment. *Serbian E. Orthodox Diocese,* 426 U.S. at 713, 96 S.Ct. at 2382. As Judge Selya wrote for the First Circuit, this "principle is an important one, steeped in our tradition as well as in our jurisprudence." *Natal v. Christian & Missionary Alliance,* 878 F.2d 1575, 1577 (1st Cir.1989). As our colleagues in the Fifth Circuit have stated:

> The relationship between an organized church and its ministers is its lifeblood. The minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.

*1437 *McClure v. Salvation Army,* 460 F.2d 553, 558-59 (5th Cir.), *cert. denied,* 409 U.S. 896, 93 S.Ct. 132, 34 L.Ed.2d 153 (1972). [FN8] These values are not implicated, however, when the inquiry is limited, as it is here, to an examination of the church's decision to employ Rykse in a purely secular capacity and of its alleged failure to supervise his purely secular activities undertaken under its auspices. The necessary inquiry would be limited to an examination of the church defendants' employment of Rykse to perform the purely secular service of psychological counseling. It would not entail--nor could it entail--an inquiry into the decision of the church defendants to retain Rykse to perform services in any way religious in nature.

> FN8. *See also Hutchison v. Thomas,* 789 F.2d 392, 396 (6th Cir.), *cert. denied,* 479 U.S. 885, 107 S.Ct. 277, 93 L.Ed.2d 253 (1986); *Kaufmann v. Sheehan,* 707 F.2d 355, 358-59 (8th Cir.1983); *Simpson v. Wells Lamont Corp.,* 494 F.2d 490, 493 (5th Cir.1974); *Minker v. Baltimore Annual Conf. of United Methodist Church,* 699 F.Supp. 954, 955 (D.D.C.1988), *aff'd in part, remanded,* 894 F.2d 1354 (D.C.Cir.1990); *cf. Dowd v. Society of St. Columbans,* 861 F.2d 761, 764 (1st Cir.1988) (per curiam) (involving priest's "membership rights" claim against missionary society).

Indeed, this case, as it comes to us on the pleading, [FN9] presents a stark contrast to the situation before the Illinois court in *Baumgartner.* There, the court was asked to determine whether a Christian Science practitioner had rendered Christian Science healing. The Illinois court held that it could not measure the standard of care of that treatment under medical malpractice criteria. Nor would it interpret the religious doctrine of the Christian Science faith to decide whether defendants deviated from the standard of care of an ordinary Christian Science practitioner and nurse. *Baumgartner,* 96 Ill.Dec. at 118, 490 N.E.2d at 1323. By contrast, the case before us would not necessitate such an intrusive

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inquiry into religious matters. The wrongful conduct alleged can be analyzed without evaluating the tenets of the Presbyterian religion. It would not be necessary to inquire whether Rykse or the church defendants deviated from the standard of care of an ordinary Presbyterian.

> FN9. It is important to remember that this claim is not here on summary judgment. We must adjudicate the matter before us in the procedural posture in which it is presented and express no view on the appropriate disposition at some other stage of the litigation. As Chief Judge Posner has written in a similar context:
> This suit may in the end fail, but we think the district judge jumped the gun in dismissing it on the pleadings. The federal rules do not require a plaintiff to allege sufficient facts to establish his right to a judgment. All it requires, with certain exceptions enumerated in Rule 9, none of which is applicable to this case, is a "short and plain"--which is to say, nonlegalistic, nonjargonistic--statement of what his claim is.
> *Trevino v. Union Pac. R.R.,* 916 F.2d 1230, 1234 (7th Cir.1990).
> My brothers justify their votes to affirm the district court's dismissal of the counts against the church defendants on the ground that the pleadings do not allege with sufficient specificity that the church had permitted the individual defendant to engage in a secular pursuit under their aegis. My colleagues avoid mention of the fact that the allegations of the complaint with respect to the church defendants are no more vague than the allegations against the individual defendant that they permit to stand. Indeed, the district court did not determine that the complaint suffered from such an infirmity and, if the usual rules that govern our modern notice pleading are applied, such a result would not be permissible.
> My colleagues' position can survive only if there are special rules of pleading for cases that involve ecclesiastical entities. In my view, such a rule cannot be justified on several grounds. First, although the Federal Rules of Civil Procedure do make exceptions to the usual pleading rules in the case of fraud, they make no such exceptions for cases dealing with church-related matters. As the Supreme Court's recent decision in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), has made clear, we are not free to develop exceptions to what the Supreme Court and the Congress, acting under the Rules Enabling Act, have chosen to make. Second, absent a sufficiently important reason to do so, such a rule, if it did exist, would tread on thin ice with respect to the Establishment Clause of the First Amendment. It is basic Establishment Clause jurisprudence that the law cannot treat a church-related entity more favorably than it treats non-church-related entities that are similarly situated.

B. *Sexual Exploitation in Psychotherapy Act*

The same considerations that require the reinstatement of the counts alleging professional negligence and the negligent infliction of emotional harm require the reinstatement of Count IX alleging a violation of the Sexual *1438 Exploitation in Psychotherapy Act. Section (e) excludes "counseling of a spiritual or religious nature." 740 ILCS 140/1(e). [FN10] However, Mrs. Dausch's complaint on its face alleges that she was subjected to the abuse proscribed by the Act. At this stage of the litigation, it must be assumed that Rykse's counseling was secular. If the defendant was acting in a pastoral rather than a secular capacity, that defense can be raised by him and evaluated in due course. [FN11]

> FN10. Although the statute does not encompass religious counseling in "psychotherapy," the definition of "psychotherapist" in the statute is very broad:
> "Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, or other person, whether or not licensed by the State, who performs or purports to perform psychotherapy.

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740 ILCS 140/1(d).

FN11. This statute applies only to "causes of action arising on, or after, its Jan. 1, 1989, effective date." *See Corgan,* 158 Ill.Dec. at 489, 574 N.E.2d at 602. It therefore cannot apply to Mrs. Dausch's allegations prior to January 1, 1989.

C. *Breach of Fiduciary Duty*

I turn now to Mrs. Dausch's allegations that Rykse and the defendant churches breached a fiduciary obligation to her. At the outset, I note that, by contrast to the other counts of the complaint that I have already reviewed, these counts allege that the breach of fiduciary duty occurred in the context of a pastor-parishioner relationship. Mrs. Dausch claimed a special relationship existed between herself, as a member of the congregation of Knox church seeking counseling, and Rykse as its pastor and counselor; it also existed between herself and the church defendants, who were guiding and controlling Rykse.

The district court rejected plaintiff's claim that the defendants breached a fiduciary duty to her. Under Illinois law, for a fiduciary duty to exist, there must be "a special confidence reposed in one who, by reason of such confidence, must act in good faith and with due regard to the interests of the person reposing such confidence." *Estate of Osborn,* 128 Ill.App.3d 453, 83 Ill.Dec. 694, 697, 470 N.E.2d 1114, 1117 (1984). Relying upon *Osborn,* the district court found no such fiduciary relationship as a matter of law. Nor, in the view of the district court, did the allegations of the complaint set forth sufficient facts to allege the existence of such a relationship. The district court also was of the view that alleging a breach of fiduciary obligation under these circumstances was simply an elliptical way of alleging clergy malpractice. Indeed, the court pointed out, because it would require the court to define the scope of a fiduciary duty owed persons by their clergy, a matter clearly rooted in the tenets and internal organization of a religion, it raises the same constitutional difficulties encountered when defining the standard of care under negligence.

[13][14] I believe that the decision of the district court is correct. At the outset, I note that Mrs. Dausch cited no Illinois authority establishing that Illinois recognizes such a fiduciary duty. As we have said on other occasions, federal courts sitting in diversity ought to be circumspect in expanding the law of a state beyond the boundaries established in the jurisprudence of the state. *See Affiliated FM Ins. Co. v. Trane Co.,* 831 F.2d 153, 155 (7th Cir.1987); *Twin Disc, Inc. v. Big Bud Tractor, Inc.,* 772 F.2d 1329, 1333 (7th Cir.1985). Moreover, given the constitutional difficulties that would be encountered if a cause of action for breach of fiduciary duty were permitted under these circumstances, we ought to be particularly cautious in assuming that Illinois has taken such a step. *Cf. NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 507, 99 S.Ct. 1313, 1322, 59 L.Ed.2d 533 (1979) (stating that, as a prudential matter, a law ought to be construed to avoid results of doubtful constitutionality). If the court were to recognize such a breach of fiduciary duty, it would be required to define a reasonable duty standard and to evaluate Rykse's conduct against that standard, an inquiry identical to that which Illinois has declined to undertake in the context of a clergy malpractice claim and one that is of doubtful validity under the Free Exercise Clause. It is clear that Illinois would not ***1439** entertain a claim for breach of fiduciary obligation under the circumstances alleged here.

I believe that the counts of the complaint, with the exception of those that allege a breach of fiduciary duty, state a cause of action and must be reinstated by the district court. As I did at the beginning of the analysis, however, I stress that this case comes to us on the pleading. My assessment of the case must be circumscribed by that procedural posture. I intimate no opinion with respect to the merits of the case.

52 F.3d 1425

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EXHIBIT 13

10 S.Ct. 299
33 L.Ed. 637
(Cite as: 133 U.S. 333, 10 S.Ct. 299)

Supreme Court of the United States

DAVIS
v.
BEASON, Sheriff.

February 3, 1890.

Appeal from the third judicial district of the territory of Idaho.

In April, 1889, the appellant, Samuel D. Davis, was indicted in the district court of the third judicial district of the territory of Idaho, in the county of Oneida, in connection with divers persons named, and divers other persons whose names were unknown to the grand jury, for a conspiracy to unlawfully pervert and obstruct the due administration of the laws of the territory, in this: That they would unlawfully procure themselves to be admitted to registration as electors of said county of Oneida, for the general election then next to occurin that county, when they were not entitled to be admitted to such registration, by appearing before the respective registrars of the election precincts in which they resided, and taking the oath prescribed by the statute of the state, in substance as follows: 'I do swear (or affirm) that I am a male citizen of the United States, of the age of twenty-one years, (or will be on the 6th day of November, 1888;) that I have (or will have) actually resided in this territory four months, and in this county for thirty days, next preceding the day of the next ensuing election; that I have never been convicted of treason, felony, or bribery; that I am not registered or entitled to vote at any other place in this territory; and I do further swear that I am not a bigamist or polygamist; that I am not a member of any order, organization, or association which teaches, advises, counsels, or encourages its members, devotees, or any other person, to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting from membership in such order, organization, or association, or which practices bigamy, polygamy, or plural or celestial marriage as a doctrinal rite of such organization; that I do not and will not, publicly or privately, or in any manner whatever, teach, advise, counsel, or encourage any person to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a religious duty or otherwise; that I do regard the constitution of the United States, and the laws thereof, and the laws of this territory, as interpreted by the courts, as the supreme laws of the land, the teachings of any order, organization, or association to the contrary notwithstanding, so help me God,'--when, in truth, each of the defendants was a member of an order, organization, and association, namely, the Church of Jesus Christ of Latter-Day Saints, commonly known as the 'Mormon Church,' which they knew taught, advised, counseled, and encouraged its members and devotees to commit the crimes of bigamy and polygamy as duties arising and resulting from membership in said order, organization, and association, and which order, organization, and association, as they all knew, practiced bigamy and polygamy, and plural and celestial marriage as doctrinal rites of said organization; and that, in pursuance of said conspiracy, the said defendants went before the registrars of different precincts of the county, (which are designated,) and took and had administered to them respectively the oath aforesaid. The defendants demurred to the indictment, and, the demurrer being overruled, they pleaded separately not guilty. On the trial which followed, on the 12th of September, 1889, the jury found the defendant Samuel D. Davis guilty, as charged in the indictment. The defendant was thereupon sentenced to pay a fine of $500, and, in default of its payment, to be confined in the county jail of Oneida county for a term not exceeding 250 days, and was remanded to the custody of the sheriff untill the judgment should be satisfied. Soon afterwards, on the same day, the defendant applied to the court before which the trial was had, and obtained a writ of *habeas corpus*, alleging that he was imprisoned and restrained of his liberty by the sheriff of the county; that his imprisonment was by virtue of his conviction, and the judgment mentioned, and the warrant issued thereon; that such imprisonment was illegal; and that such illegality consisted in this: (1) That the facts in the indictment and record did not constitute a public offense, and the acts charged were not criminal or punishable under any statute or law of the territory; and (2) that so much of the statute of the territory which provides that no person is entitled to register or vote at any election who is 'a member of any order, organization, or association which teaches,

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advises, counsels, or encourages its members, devotees, or any other person, to commit the crime of bigamy or polygamy, or any other crime defined by law, as a duty arising or resulting from membership in such order, organization, or association, or which practices bigamy or polygamy, or plural or celestial marriage as a doctrinal rite of such organization,' is a 'law respecting an establishment of religion,' in violation of the first amendment of the constitution, and void. The court ordered the writ to issue, directed to the sheriff, returnable before it at 3 o'clock in the afternoon of that day, commanding the sheriff to have the body of the defendant before the court at the hour designated, with the time and cause of his imprisonment, and to do and receive what should then be considered concerning him. On the return of the writ, the sheriff produced the body of the defendant, and also the warrant of commitment under which he was held, and the record of the case showing his conviction for the conspiracy mentioned and the judgment thereon. To this return, the defendant, admitting the facts stated therein, excepted to their sufficiency to justify his detention. The court, holding that sufficient cause was not shown for the discharge of the defendant, ordered him to be remanded to the custody of the sheriff. From this judgment the defendant appealed to this court. Rev. St. § 1909.

West Headnotes

Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases
(Formerly 92k84)

Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases
(Formerly 92k84)

Rev.St.Idaho, §§ 501, 504, which provide that no person "who is a bigamist or polygamist, or who teaches, advises, counsels, or encourages any person or persons to become bigamists or polygamists, *** or to enter into what is known as plural or celestial marriage, or who is a member of any order *** which teaches, advises, counsels, or encourages its members or devotees, or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order *** or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this territory," and require every person desiring to register as a voter to take an oath that he does not belong to such an order, are valid, and not unconstitutional as being a "law respecting an establishment of religion."

Elections ⇐60
144k60 Most Cited Cases

Rev.St. Idaho §§ 501, 504, disqualifying from voting or holding office any bigamists or polygamists, or persons who teach, or belong to any order which teaches or advises, the practice of polygamy, and requiring every person desiring to register as a voter to take an oath that he does not belong to such an order, is not nullified by Act Cong. March 22, 1882, disqualifying polygamists from voting or holding office in the territories generally.
***300 *337** *F. S. Richards, S. Shellabarger,* and *J. M. Wilson,* for appellant.

*341 *H. W. Smith,* for appellee.

Mr. Justice FIELD, after stating the facts as above, delivered the opinion of the court.

On this appeal our only inquiry is whether the district court of the territory had jurisdiction of the offense charged in the indictment, of which the defendant was found guilty. If it had jurisdiction, we can go no further. We cannot look into any alleged errors in its rulings, on the trial of the defendant. The writ of *habeas corpus* cannot be turned into a writ of error to review the action of that court. Nor can we inquire whether the evidence established the fact alleged, that the defendant was a member of an order or organization known as the 'Mormon Church,' called the 'Church of Jesus Christ of Latter-Day Saints,' or the fact that the order of organization taught and counseled its members and devotees to commit the crimes of bigamy and polygamy, as duties arising from membership therein. On this hearing we can only consider whether, these allegations being taken as true, an offense was committed of which the territorial court had jurisdiction to try the defendant. And on this point there can be no serious discussion or

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difference of opinion. Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States, and they are crimes by the laws of Idaho. They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their *342 advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise, and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal, and proper subjects of punishment, as aiding and abetting crime are in all other cases. The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the *cultus* or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the constitution, in declaring that congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted, by the governments of Europe for many ages, to compel parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in question. It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the **301 exercise of religion may *343 be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislantion. There have been sects which denied as a part of their religious tenets that there should be any marriage tie, and advocated promiscuous intercourse of the sexes, as prompted by the passions of its members. And history discloses the fact that the necessity of human sacrifices, on special occasions, has been a tenet of many sects. Should a sect of either of these kinds ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretense that, as religious beliefs, their supporters could be protected in their exercise by the constitution of the United States. Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government for acts, recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance.

On this subject the observations of this court through the late Chief Justice WAITE, in Reynolds v. U. S., are pertinent. 98 U. S. 145, 165, 166. In that case the defendant was indicted and convicted under section 5352 of the Revised Statutes, which declared that 'every person having a husband or wife living, who marries another whether married or single, in a territory or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term not more than five years.' The case being brought here, the court, after referring to a law passed in December, 1788, by the state of Virginia, punishing bigamy and polygamy with death, said that from that day there never had been a time in any state of the Union when polygamy had not been an offense against society, cognizable by the civil courts, and punished with more or less severity; and added: 'Marriage, while

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from its very nature a sacred obligation, is, nevertheless, in most civilized nations a *344 civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests.' And, referring to the statute cited, he said: 'It is constitutional and valid, as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be deyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary, because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.' And in Murphy v. Ramsey, 114 U. S. 15, 45, 5 Sup. Ct. Rep. 747, referring to the act of congress excluding polygamists and bigamists from voting or holding office, the court, speaking by Mr. Justice MATTHEWS, said: 'Certainly no legislation can be supposed more wholesome and necessary in the founding of a *345 free, self-governing commonwealth, fit to take rank as one of the co-ordinate states of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostile to its attainment.' It is assumed by counsel of the petitioner that, because no mode of worship can be established, or religious tenets enforced, in this country, therefore any form of worship may be followed, and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. While legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not the less odious because sanctioned by what any particular sect may designate as 'religion.'

It only remains to refer to the laws which authorized the legislature of the territory of Idaho to prescribe the qualifiations of voters, and the oath they were required to take. The Revised Statutes provide that 'the legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution **302 and laws of the United States. But no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents.' Rev. St. § 1851. Under this general authority it would seem that the territorial legislature was authorized to prescribe any qualifications for voters, calculated to secure obedience to its laws. But, in addition to the above law, section 1859 of the Revised Statutes *346 provides that 'every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations

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specified in the next section,' namely, that at all elections in any territory subsequently organized by congress, as well as at all elections in territories already organized, the qualifications of voters and for holding office shall be such as may be prescribed by the legislative assembly of each territory, subject, nevertheless, to the following restrictions: *First*, that the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21, or persons above that age who have declared their intention to become such citizens; *second*, that the elective franchise or the right of holding office shall not be denied to any citizen on account of race, color, or previous condition of servitude; *third*, that no soldier or sailor, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote unless he has made his permanent domicile in the territory for six months; and, *fourth*, that no person belonging to the army or navy shall be elected to or hold a civil office or appointment in the territory. These limitations are the only ones placed upon the authority of territorial legislatures against granting the right of suffrage or of holding office. They have the power, therefore, to prescribe any reasonable qualifications of voters and for holding office, not inconsistent with the above limitations. In our judgment, section 501 of the Revised Statutes of Idaho territory, which provides that 'no person under guardianship, *non compos mentis*, or insane, nor any person convicted of treason, felony, or bribery in this territory, or in any other state or territory in the Union, unless restored to civil rights; nor any person who is a bigamist or polygamist, or who teaches, advises, *347 counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, or association which teaches, advises, counsels, or encourages its members or devotees, or any other persons, to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this territory,'--is not open to any constitutional or legal objection. With the exception of persons under guardianship or of unsound mind, it simply excludes from the privilege of voting, or of holding any office of honor, trust, or profit, those who have been convicted of certain offenses, and those who advocate a practical resistance to the laws of the territory, and justify and approve the commission of crimes forbidden by it. The second subdivision of section 504 of the Revised Statutes of Idaho, requiring every person desiring to have his name registered as a voter to take an oath that he does not belong to an order that advises a disregard of the criminal law of the territory, is not open to any valid legal objection to which out attention has been called.

The position that congress has, by its statute, covered the whole subject of punitive legislation against bigamy and polygamy, leaving nothing for territorial action on the subject, does not impress us as entitled to much weight. The statute of congress of March 22, 1882, amending a previous section of the Revised Statutes in reference to bigamy, declares 'that no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such territory or other place, or be eligible for election or appointment to, or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such territory or place, or under the United States.' 22 St. 31. *348 This is a general law applicable to all territories and other places under the exclusive jurisdiction of the United States. It does not purport to restrict the legislation of the territories over kindred offenses, or over the means for their ascertainment and prevention. The cases in which the legislation of congress will supersede the legislation of a state or territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. There the action of congress may well be considered as covering the entire ground. But here there is nothing of this kind. The act of congress does not touch upon teaching, advising, and counseling the practice of bigamy and polygamy, that is, upon aiding and abetting in the commission of those crimes, nor upon the mode adopted, by means of the oath required for registration, to prevent persons from being enabled by their votes to defeat the criminal laws of the country. The judgment of the court below is therefore affirmed.

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NOTE.--The constitutions of several states, in providing for religious freedom, have declared expressly that such freedom shall not be construed to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state Thus, the constitution of New York of 1777 provided as follows: 'The free exercise and enjoyment of religious profession and worship, without ****303** discrimination or preference, shall forever hereafter be allowed, within this state, to all mankind: provided, that the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.' Article 38. The same declaration is repeated in the constitution of 1821, (article 7, § 3,) and in that of 1846, (article 1, § 3,) except that for the words 'hereby granted,' the words 'hereby secured' are substituted. The constitutions of California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Minnesota, Mississippi, Missouri, Nevada, and South Carolina contain a similar declaration.

10 S.Ct. 299, 133 U.S. 333, 33 L.Ed. 637

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EXHIBIT 14

763 P.2d 275
57 USLW 2291
(Cite as: 763 P.2d 275)

Supreme Court of Colorado,
En Banc.

Robert DESTEFANO and Edna Destefano,
Petitioners,
v.
Dennis GRABRIAN and Diocese of Colorado Springs, Respondents.

No. 86SC336.

Oct. 17, 1988.
Rehearing Denied Nov. 7, 1988.

Divorced husband brought action against priest and diocese, alleging that priest engaged in actions during marriage counseling which he knew or should have known would lead to additional marital problems. Divorced wife, originally defendant in action, but against whom husband dismissed claims, filed cross claims against priest and diocese. The District Court of El Paso County, Joe A. Cannon, J., dismissed claims, and husband and wife appealed. The Court of Appeals, Van Cise, J., 729 P.2d 1018, affirmed. On certiorari, the Supreme Court, Erickson, J., held that: (1) wife's claims against Catholic clergyman with whom she and husband consulted for marriage counseling, for his alleged fiduciary breach and extreme and outrageous conduct in inducing wife to engage in sexual relations with him, were not barred by heart balm statute; (2) clergyman was not insulated from liability by First Amendment; (3) clergyman was under fiduciary obligation not to do anything that might harm plaintiffs' marital relationship, such as engaging in sexual relationship with wife; (4) no claim for clergy malpractice would lie based on clergyman's conduct; (5) allegations in wife's complaint were sufficient to state claim for outrageous conduct causing severe emotional distress; (6) archdiocese was not vicariously liable for clergyman's conduct; (7) allegations in wife's complaint were sufficient to state cause of action against archdiocese for negligent supervision; and (8) husband's claim for breach of fiduciary duty was not barred by heart balm statute.

Affirmed in part, reversed in part and remanded.

Quinn, C.J., specially concurred and filed opinion in which Mullarkey, J., joined.

Mullarkey, J., specially concurred and filed opinion in which Quinn, C.J., and Lohr and Kirshbaum, JJ., joined.

West Headnotes

[1] Husband and Wife ⚖**323.1**
205k323.1 Most Cited Cases
(Formerly 205k323)

[1] Husband and Wife ⚖**341**
205k341 Most Cited Cases

[1] **Seduction** ⚖**4**
350k4 Most Cited Cases

Heart balm statute precludes only those causes of action, such as claims for criminal conversation, alienation of affections or seduction, that are specifically listed therein. (Per Erickson, with two Justices concurring, and four Justices specially concurring.) C.R.S. 13-20-201.

[2] Husband and Wife ⚖**323.1**
205k323.1 Most Cited Cases
(Formerly 205k323)

[2] Husband and Wife ⚖**341**
205k341 Most Cited Cases

Claim for third-party's interference with marital relationship is barred by heart balm statute only if essence of claim is directed to cause of action abolished by statute. (Per Erickson, with two Justices concurring, and four Justices specially concurring.) C.R.S. 13-20-201.

[3] Damages ⚖**50.10**
115k50.10 Most Cited Cases

[3] Religious Societies ⚖**30**
332k30 Most Cited Cases

Wife's claim against Catholic clergyman with whom she and husband had met for marriage counseling, for his alleged fiduciary breach and extreme and outrageous conduct in inducing wife to engage in sexual relationship with him, was not barred by heart balm statute. (Per Erickson, with two Justices

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concurring, and four Justices specially concurring.) C.R.S. 13-20-201.

[4] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[4] Religious Societies ⇐30
332k30 Most Cited Cases

Catholic clergyman who held himself out as being trained and capable of conducting marital counseling was not insulated by First Amendment from any liability to couple who consulted him in professional capacity for engaging in sexual relationship with wife. (Per Erickson, with two Justices concurring, and four Justices specially concurring.) U.S.C.A. Const.Amend. 1.

[5] Religious Societies ⇐30
332k30 Most Cited Cases

Catholic clergyman who held himself out as being trained and capable of conducting marital counseling, and whom husband and wife consulted in professional capacity, was under fiduciary obligation to both husband and wife not to do anything that might harm marital relationship, such as engaging in sexual relationship with wife. (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

[6] Fraud ⇐7
184k7 Most Cited Cases

"Fiduciary" is person having duty, created by his undertaking, to act principally for benefit of another in matters connected with undertaking.

[7] Fraud ⇐7
184k7 Most Cited Cases

Fiduciary's obligations to beneficiary include, among other things, a duty of loyalty, a duty to exercise reasonable care and skill, and a duty to deal impartially with beneficiary.

[8] Fraud ⇐7
184k7 Most Cited Cases

Person standing in fiduciary relationship with another is subject to liability to other for harm resulting from breach of duty imposed by relationship.

[9] Religious Societies ⇐30
332k30 Most Cited Cases

No claim for clergy malpractice will lie based on clergyman's conduct in engaging in sexual relations with woman who has consulted him in professional capacity as marriage counselor. (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

[10] Damages ⇐149
115k149 Most Cited Cases

Allegations in wife's complaint, that clergyman whom she had consulted for marriage counseling took advantage of her vulnerable emotional state to induce her to engage in sexual relationship, were sufficient to state claim for outrageous conduct causing severe emotional distress. (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

[11] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

Employee is acting "within scope of employment," for respondeat superior purposes, if he is engaged in work which has been assigned to him by employer or if he is doing what is necessarily incidental to work which has been assigned to him or which is customary within business in which employee is engaged.

[12] Religious Societies ⇐30
332k30 Most Cited Cases

Archdiocese was not vicariously liable for conduct of Catholic clergyman in engaging in sexual relationship with women who had consulted him in professional capacity as marriage counselor; clergyman was clearly acting outside "scope of employment." (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

[13] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Allegations in wife's complaint, that Catholic clergyman whom she had consulted for marriage counseling took advantage of vulnerable emotional

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state to induce her to engage in sexual relations, and that archdiocese knew or should have known of clergyman's misconduct based on alleged similar occurrences in past, were sufficient to state cause of action against archdiocese for negligent supervision. (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

[14] **Master and Servant** ⇦303
255k303 Most Cited Cases

Employer who knows or should have known that employee's conduct would subject third parties to unreasonable risk of harm may be directly liable to third parties for harm proximately caused by conduct.

[15] **Husband and Wife** ⇦324
205k324 Most Cited Cases

Husband's cause of action against Catholic clergyman whom he and his wife had consulted for marriage counseling, for clergyman's alleged interference with marital relationship by engaging in sexual relations with wife, was barred by heart balm statute. (Per Erickson, with two Justices concurring, and four Justices specially concurring.) C.R.S. 13-20-201.

[16] **Religious Societies** ⇦30
332k30 Most Cited Cases

Husband's cause of action against Catholic clergyman whom he and his wife had consulted for marriage counseling, for clergyman's alleged breach of fidicuary obligations in engaging in sexual relations with wife, was not barred by heart balm statute. (Per Erickson, with two Justices concurring, and four Justices specially concurring.) C.R.S. 13-20-201.

[17] **Religious Societies** ⇦30
332k30 Most Cited Cases

Allegations in husband's complaint, that clergyman whom he and his wife had consulted in professional capacity as marriage counselor had taken advantage of wife's vulnerable emotional state to induce her to engage in sexual relationship, were sufficient to state cause of action against clergyman for breach of fiduciary duty. (Per Erickson, with two Justices concurring, and four Justices specially concurring.)

*277 Peter A. Goldstein, P.C., Colorado Springs, for petitioner Robert destefano.

Ranson, Thomas & Yukawa, P.C., Richard Ranson, Colorado Springs, for petitioner Edna Destefano.

Kane and Donley, Thomas K. Kane, Colorado Springs, for respondent Dennis Grabrian.

Sparks, Dix, Enoch, Suthers & Winslow, P.C., John W. Suthers, L. Martin Nussbaum, Colorado Springs, for respondent Diocese of Colorado Springs.

ERICKSON, Justice.

Plaintiff-petitioner Robert Destefano (Robert) and crossclaimant- petitioner Edna Destefano (Edna) sought review of the court of appeals decision which affirmed the dismissal of their claims against respondents Dennis Grabrian (Grabrian), a Catholic priest, and the Diocese of Colorado Springs (diocese), and granted summary judgment. *Destefano v. Grabrian,* 729 P.2d 1018 (Colo.App.1986) (Sternberg, J., dissenting). We granted certiorari on two issues: (1) whether section 13-20-202, 6A C.R.S. (1987) (heart balm statute), bars an action against a person who assumes the role of marriage counselor when the counseling relationship results in consensual sexual relations between a counselor and a counselee; and (2) whether the free exercise clause of the first amendment to the United States Constitution prohibits tort liability for conduct which arose in the context of a counseling relationship between a clergyman and members of his congregation. The court of appeals reached the right result in affirming the dismissal of Edna's fifth crossclaim and Robert's first and second claims for relief. Based upon the record, the defendants' motions should not have been considered to be motions for summary judgment. Accordingly, we affirm the result in part, reverse in part, and return the case to the court of appeals with directions to remand to the trial court for further proceedings consistent with this opinion.

I.

Robert filed a complaint naming as defendants his wife Edna; Grabrian; a Catholic priest for the

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diocese; and the diocese. Robert later filed an amended complaint which named only Grabrian and the diocese as defendants and sought no relief against Edna. Subsequently, Edna filed an answer and crossclaim [FN1] which was directed to the original complaint.

FN1. As the pleadings are now structured, Robert is not asserting a claim against Edna. Robert did not file a motion pursuant to C.R.C.P. 21 to drop Edna as a defendant. Consequently, no court order was entered to drop Edna as a defendant, and she remains a party. *See United States v. Wyoming Nat. Bank,* 505 F.2d 1064 (10th Cir.1974); *Zarate v. State Dep't of Health & Rehabilitation Servs.,* 347 F.Supp. 1004 (S.D.Fla.1971); *Kennan v. Warren,* 328 F.Supp. 525 (W.D.Wis.1971). Edna's answer and crossclaim respond to the allegations in the original complaint. We have grave concerns about the procedural irregularities that appear in the skeletal record in this case but we consider Edna's crossclaims on certiorari since the issue was addressed by both the district court and the court of appeals.

***278** Grabrian and the diocese filed motions to dismiss for failure to state a claim upon which relief can be granted. C.R.C.P. 12(b)(5). [FN2] In considering such a motion, we are required to construe the allegations of the pleadings in the light most favorable to the plaintiff, and we must assume that the allegations contained in Robert's complaint and in Edna's cross-complaint are true. *See Abts v. Board of Educ.,* 622 P.2d 518, 521 (Colo.1980); *Bell v. Arnold,* 175 Colo. 277, 281, 487 P.2d 545, 547 (1971). Whether any of Robert's and Edna's claims are true can only be resolved by a trial on the merits. Accordingly, we agree with the dissent in the court of appeals and hold that summary judgment should not have been granted. *Destefano v. Grabrian,* 729 P.2d 1018. The issue is whether the district court erred in dismissing Robert's claims and Edna's crossclaims for failure to state a claim upon which relief may be granted.

FN2. The court of appeals treated Grabrian's and the diocese's C.R.C.P. 12(b) motion to dismiss as a motion for summary judgment under C.R.C.P. 56. The trial court dismissed the claims of Robert and Edna under C.R.C.P. 12(b). No affidavits or other materials were submitted to support Grabrian's and the diocese's motion and the factual issues are not undisputed. A motion to dismiss can only be considered as a motion for summary judgment when affidavits or other matters apart from the pleadings are presented and not excluded by the court. *Travelers Ins. Co. v. Savio,* 706 P.2d 1258, 1276 (Colo.1985); *Enger v. Walker Field, Colo. Pub. Airport Auth.,* 181 Colo. 253, 256-57, 508 P.2d 1245, 1247 (1973).
Here, the trial court admitted the truth of the factual allegations and determined that the claims asserted by both Robert and Edna did not state a legally cognizable claim upon which relief can be granted. *See Churchey v. Adolph Coors Co.,* 759 P.2d 1336 (Colo.1988), for an analysis of summary judgment and the disputed fact issue.

The complaint alleges that in 1979, Robert and Edna were having marital problems which led them to seek marriage counseling from Grabrian. The Destefanos were both Catholics who had "faith and confidence in their parish priest." Grabrian's supervisors knew or should have known that he was unsuited for marriage counseling and "would cause harm to a jeopardized marital relationship." To comply with church doctrine regarding marriage and divorce, the diocese encouraged its parishioners to participate in marriage counseling.

During the course of the counseling relationship, Grabrian developed a relationship with Edna, which "Grabrian knew or should have known would lead to additional marital problems between [Robert] and Edna." Grabrian knew that his intimate relationship with Edna probably would cause the dissolution of the Destefano marriage. Robert and Edna were told by Grabrian that he would act as their marriage counselor and that they could trust him. Grabrian's continued involvement in this relationship was occasioned by a reckless disregard

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for Robert's rights and feelings. The diocese owed a continuing duty to Robert and others similarly situated to reasonably train, interview, and supervise priests engaged in counseling married couples. With actual or constructive knowledge of Grabrian's prior indiscretions, the diocese willfully and recklessly breached its duty. Grabrian's conduct resulted in an intimate relationship between Grabrian and Edna that contributed to the dissolution of the Destefano marriage.

Based upon these allegations, Robert sought compensatory and exemplary damages for: (1) negligence against Grabrian for the manner in which he conducted the counseling and against the diocese on the theory of respondeat superior for failing to train, monitor, and supervise Grabrian adequately; (2) intentional infliction of emotional distress and outrageous conduct of both Grabrian and the diocese; and (3) Grabrian's breach of fiduciary duty. Due to the alleged willful and reckless nature of Grabrian's and the diocese's actions, Robert requested exemplary damages under each claim for relief.

In her crossclaim, Edna alleged the following facts that we will assume to be true in considering the motions to dismiss. *Abts v. Board of Educ.*, 622 P.2d 518. Marital difficulties prompted the Destefanos to seek the assistance of a professional marriage counselor through St. Mary's ***279** Catholic Church, which was under the jurisdiction of the diocese. The Destefanos met on two occasions with Grabrian, who represented himself to be a professional with the necessary skills to assist people in need of professional marriage counseling. Grabrian agreed to assist them as a couple. Thereafter, Grabrian informed Robert that he should seek his own counselor. Grabrian represented to Edna that he was a capable, trained professional who could be relied upon to assist her with the serious marital and personal problems she was experiencing, and that she could trust him to act in her best interests. She in fact trusted him and followed his advice. Grabrian knew that his conduct with Edna would result in the collapse and dissolution of her marriage, and would cause the Destefanos extreme and permanent emotional suffering.

Knowing that Edna was "extremely vulnerable emotionally," Grabrian began a relationship with Edna which turned adulterous due to the actions of Grabrian. Grabrian had repeatedly engaged in sexual relations with other women similarly situated. Grabrian's past conduct was known or should have been known to the diocese. The actions of Grabrian and the diocese entitled Edna to compensatory and exemplary damages for their breach of fiduciary duty, negligence, and outrageous conduct.

The trial court granted the motions of Grabrian and the diocese to dismiss, finding that the issues raised by the Destefanos "are inextricably linked to questions of doctrine, theology, the usage and customs of the [Catholic] Church, written laws, and the fundamental organization of the Church." The trial court concluded that no compelling state interest warranted intrusion by the courts into the internal standards of the church. The trial court also stated that the Destefanos' claims are prohibited by section 13-20-201, 6 C.R.S. (1987). A divided panel of the court of appeals affirmed the trial court and concluded that both Robert's and Edna's claims were barred by the heart balm statute.

II.

[1][2] Robert and Edna contend that their claims are not barred by section 13-20-202, 6 C.R.S. (1987) (heart balm statute), which provides: "All civil causes of action for breach of promise to marry, alienation of affections, criminal conversation, and seduction are hereby abolished." [FN3] In *Goldberg v. Musim*, 162 Colo. 461, 427 P.2d 698 (1967), we addressed the issue of whether a complaint framed as an impairment of contract action was in fact a claim for alienation of affections prohibited by the predecessor to section 13-20-202, section 41-3-1, C.R.S. (1963). We said:

> FN3. Professor Prosser has noted that:
> Criminal conversation, enticement, and alienation of affections still are often treated as separate torts, but there is no good reason for distinguishing them. They represent three forms of interference with aspects of the same relational interest, and of course all three may be present in the same case. When the action is for criminal conversation, proof of enticement or alienation will go to increase the

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> damages, and the converse is likewise true.
>
> There is now a decided tendency to confuse the three, or to lump them together, usually under the name "alienation of affections," without any attempt to distinguish the possible elements of the tort.
>
> W. Prosser, *Handbook of the Law of Torts* § 124, at 876-77 (4th ed. 1971).
>
> While we agree that there may well be no good reason to distinguish alienation of affections, criminal conversation, and seduction from each other, we think it necessary to do so here because the heart balm statute enumerates each separately.

We agree with the trial court when it concluded that this complaint sets forth what in law is a claim for alienation of affections. The injury in such an action is one of loss of affection and consortium, including loss of society, companionship and aid. The action required on the part of a defendant in such a case is simply inducing the spouse of the plaintiff to leave, or, once having left, to remain separated from the plaintiff. The action necessarily involves intent to induce the spouse to separate.... [T]he facts alleged in ... the complaint place them squarely within the abolished action, for all that is alleged rises out of a relationship, i.e. an inducement to separate ***280** and resulting loss of society, loss of services, pain, suffering and humiliation.

Id. at 467, 427 P.2d at 701 (citations omitted). *Goldberg,* however, did not state that all cases that include elements of the abolished actions must be dismissed. In *Goldberg* we noted that the plaintiff's claim for fraudulent transfer of her husband's property was more appropriately heard in plaintiff's parallel action for separate maintenance. We did not state that the property claim fell within the statutory ban.

Here, the court of appeals relied upon *Nicholson v. Han,* 12 Mich.App. 35, 162 N.W.2d 313 (1968), a case in which a husband sued the family doctor who had been functioning as a marriage counselor and who had warranted an improvement in marital relations. After the plaintiff and his wife were divorced, the plaintiff learned that his wife and the defendant had commenced a sexual relationship during the course of counseling. Although the complaint was drafted in the language of fraud and breach of contract, the case was dismissed as falling within the prohibited actions of seduction, alienation of affections, and criminal conversation.

The Michigan Court of Appeals later held, in *Cotton v. Kambly,* 101 Mich.App. 537, 300 N.W.2d 627 (1980), that the abolition of claims for seduction did not bar plaintiff's malpractice claim against her psychiatrist who had induced her to engage in sexual activities under the guise of therapy. The court distinguished *Nicholson,* stating that the issue of malpractice was never raised in that case since the appeal from the trial court was dismissed on the breach of contract and fraud counts only. *Id.* at 539, 300 N.W.2d at 628. The court held that although the elements of seduction were present, the essence of the action was not for seduction but rather for breach of professional standards of care. In so holding, the court stated:

> Part of plaintiff's claim is for medical malpractice, which has been defined as the failure of a member of the medical profession, employed to treat a case professionally, to fulfill the duty to exercise that degree of skill, care and diligence exercised by members of the same profession, practicing in the same or similar locality, in light of the present state of medical science. Plaintiff alleges that defendant induced her to engage in sexual relations with him as part of her prescribed therapy. We see no reason for distinguishing between this type of malpractice and others, such as improper administration of a drug or a defective operation. In each situation, the essence of the claim is the doctor's departure from proper standards of medical practice.

Id. at 540-41, 300 N.W.2d at 628-29.

Other courts have also focused on the critical elements of the complaint and have permitted recovery despite the presence of claims which have been abolished. In *Gasper v. Lighthouse, Inc.,* 73 Md.App. 367, 533 A.2d 1358 (1987), *cert. denied,* 311 Md. 718, 537 A.2d 272 (1988), a husband sued a marriage counselor and the counselor's employer, asserting breach of contract and tort claims as a result of the sexual relationship between his wife and the counselor that occurred while he and his wife were undergoing counseling. The court stated that the:

> [A]bolition of the actions for alienation of affections and criminal conversation does not preclude a person from maintaining a traditional

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> breach of contract action or a recognized tort action merely because the breach arose from an improper liaison with the plaintiff's spouse or because one effect of the alleged breach or tortious conduct was a disruption or breakup of his or her marriage. What *is* precluded, however, is the refitting of the abolished actions into other forms. One cannot sue to recover for injuries arising from "defilement of the marriage bed" or from an interference with the marriage by simply casting the defendant's conduct as a breach of contract, or negligence, or some other intentional tort. It is *that* kind of sham that the case law prevents.

Id. at 372, 533 A.2d at 1360 (citations omitted). The court concluded that all counts were essentially claims for alienation of ***281** affections and criminal conversation, and upheld the dismissal of the complaint. [FN4]

> FN4. *See also Richard H. v. Larry D.,* 198 Cal.App.3d 591, 596, 243 Cal.Rptr. 807, 810 (1988) ("We do not think the [heart balm] statute was intended to lower the standard of care which psychiatrists owe their patients, nor to permit them to avoid liability for breach of their professional and fiduciary responsibilities or commit fraud."); *Barbara A. v. John G.,* 145 Cal.App.3d 369, 193 Cal.Rptr. 422 (1983) (abolition of seduction did not bar action against attorney for sexual intercourse with client where action was based on battery and misrepresentation); *Van Meter v. Van Meter,* 328 N.W.2d 497 (Iowa 1983) (elements and policy considerations of intentional infliction of emotional distress were different from alienation of affections claim so that claim was not subject to dismissal merely because it arose from a failed marital relationship); *Roy v. Hartogs,* 85 Misc.2d 891, 381 N.Y.S.2d 587 (1976) (abolition of seduction as a cause of action does not preclude recovery for harm caused by a psychiatrist who had sexual intercourse with a patient as part of therapy).

In *Lund v. Caple,* 100 Wash.2d 739, 675 P.2d 226 (1984), the Washington Supreme Court rejected a husband's claim for loss of consortium and outrageous conduct resulting from the defendant clergyman's sexual misconduct with the plaintiff's wife, who had consulted the defendant for marital and personal counseling. [FN5] The court affirmed the trial court's entry of summary judgment based on the holding in *Wyman v. Wallace,* 94 Wash.2d 99, 615 P.2d 452 (1980), reasoning that the wife's refusal to join in the lawsuit indicated the possibility of a vengeful motive on the part of the husband and that the policy considerations of abolishing actions for alienation of affection applied. The outrageous conduct claim was also dismissed, not on the basis of the "heart balm" rationale, but because the plaintiff, who was not present when the alleged conduct occurred, did not establish the necessary elements of the tort of outrageous conduct. The *Lund* opinion, however, did not preclude:

> FN5. Washington does not have a heart balm statute. The Washington Supreme Court, however, abolished alienation of affections as a viable claim in *Wyman v. Wallace,* 94 Wash.2d 99, 615 P.2d 452 (1980).

> [A]n action against a counselor, pastoral or otherwise, in which a counselor is negligent in treating either a husband or wife. It is conceivable that a malpractice action would be appropriate where a counselor fails to conform to an appropriate standard of care, injures the patient/spouse which in turn results in loss of consortium to the other spouse.

Lund, 675 P.2d at 231. The court then stated that the action was essentially a suit for alienation of affections because although the underlying tort was based on the "impaired" spouse's extramarital relationship, the "impaired" spouse did not assert a claim. "Absent the 'impaired' spouse's claims, remaining allegations amount to an alienation of affections actions [sic]...." *Id.*

In determining the scope of Colorado's heart balm statute, we are guided by section 13-20-201, 6A C.R.S. (1987), which provides:

> **Legislative declaration.** The remedies provided by law on or before April 27, 1937, for the enforcement of actions based upon alleged alienation of affections, criminal conversation, seduction, and breach of contract to marry have

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> been subjected to grave abuses, caused extreme annoyance, embarrassment, humiliation, and pecuniary damage to many persons wholly innocent and free of any wrongdoing who were merely the victims of circumstances, and have been exercised by unscrupulous persons for their unjust enrichment, and have furnished vehicles for the commission or attempted commission of crime and in many cases have resulted in the perpetration of frauds, it is hereby declared as the public policy of the state that the best interests of the people of the state will be served by the abolition thereof. Consequently, in the public interest, the necessity for the enactment of this part 2 is hereby declared as a matter of legislative determination.

In interpreting section 13-20-202, we must give effect to the policy considerations enumerated in section 13-20-201, but should not read the statute so broadly as to preclude any cause of action involving extramarital affairs, regardless of whether a ***282** claim for relief which is not included in section 13-20-202 is enumerated. In our view, the heart balm statute only precludes those causes of action specifically listed in the statute. As we held in *Goldberg,* a plaintiff will not be able to mask one of the abolished actions behind a common law label. However, if the essence of the complaint is directed to a cause of action other than one which has been abolished, that claim is legally cognizable. Accordingly, we must review the legal sufficiency of the claims made by both Robert and Edna to determine whether any claim, admitting the truth of the factual allegations states, as a matter of law, a claim upon which relief may be granted. Because Edna has asserted claims that are more inclusive than those asserted by Robert, we will address the sufficiency of her claims first.

III.
Edna's Claims

[3] Grabrian and the diocese assert that the court of appeals properly upheld the trial court's dismissal of Edna's crossclaims because her claims were for seduction which were abolished by section 13-20-202. We disagree.

Seduction is "the act of a man in enticing a woman to have unlawful intercourse with him by means of persuasion, solicitation, promise, bribes, or other means without the employment of force." *Weinlich v. Coffee,* 67 Colo. 382, 176 P. 210 (1919) (citation omitted). In *Weinlich,* the court concluded that because the plaintiff was married at the time of the seduction and no statute permitted a seduction action by a married woman, she could not sue her seducer. *Id.* at 385, 176 P. 211. The court stated:

> At common law a seduced female has no cause of action against her seducer, not only because she is a party to the wrongful act, but also because loss of service is indispensable to a right of recovery, and no one except those entitled to the services of the female can maintain an action for the seduction, the right of action being based solely upon the relation of master and servant. In many states, however, a right of action has been expressly given by statute to the female seduced.
> * * *
> The statutes require that the female must be unmarried at the time of her seduction, in order to maintain an action therefor.

Id. at 384-85, 176 P. at 211 (citation omitted). The statute relating to the crime of seduction that was in effect when the General Assembly enacted the heart balm statute in 1937 was also limited to unmarried females. [FN6] Because Edna was married, we conclude that her crossclaim did not set forth a claim based on seduction.

> FN6. Section 207, C.S.A. ch. 48 (1935) states:
> Any man who shall, under promise of marriage, seduce, and have illicit connection with any unmarried female, of previous chaste character, or who shall, without such promise of marriage, seduce and have illicit connection with any unmarried female, of previous chaste character, under the age of sixteen years, shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary, not exceeding ten years; provided, that no conviction shall be had under this section on the testimony of the female seduced, unsupported by other evidence, nor unless the indictment shall be found, or the information laid, within two years after the commission of the offense; and, provided, further, that the subsequent marriage of the parties, prior to judgment upon the

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> indictment, or information, shall be a bar to the further prosecution of the offense.

Edna's allegations also do not set forth a claim for alienation of affections. As we previously stated, an element of a claim for alienation of affections is that the defendant must intend to induce the plaintiff's spouse to separate. For purposes of Edna's crossclaims, Edna is the plaintiff. Edna did not allege that Grabrian's acts were intended to cause Robert to separate from her. Nor, in our view, do the allegations, in essence, support such an interpretation. The crossclaim does not include a claim for alienation of affections.

Edna's crossclaim also fails to set forth a claim for criminal conversation. "A recovery for criminal conversation requires proof that there was a valid marriage and that the defendant had adulterous relations *283 with the plaintiff's spouse." 1 H. Clark, *The Law of Domestic Relations in the United States,* § 12.3, at 662 (2d ed. 1987). [FN7] Since Edna does not allege that Grabrian's adulterous conduct involved her husband, her crossclaim is not an action for criminal conversation.

> FN7. Colorado criminal conversation cases, while not specifically defining the elements of the claim, appear to agree with this definition. *See, e.g., Bradbury v. Brooks,* 82 Colo. 133, 257 P. 359 (1927); *Sullivan v. Valiquette,* 66 Colo. 170, 180 P. 91 (1919); *Stark v. Johnson,* 43 Colo. 243, 95 P. 930 (1908).

Accordingly, we hold that Edna's crossclaim is not barred by section 13-20- 202.

Edna set forth five claims for relief in her crossclaim: (1) Grabrian breached his fiduciary duty to Edna; (2) Grabrian negligently performed his duty as a marital counselor; (3) Grabrian engaged in outrageous conduct with regard to Edna; (4) the diocese knew or should have known of Grabrian's negligence, breach of fiduciary duty, and outrageous conduct, and as such breached its duty to supervise Grabrian; (5) because the diocese had jurisdiction over and control of Grabrian, the acts and negligence of Grabrian are imputed to the diocese. We examine each of these claims in turn to determine whether they were properly dismissed by the trial court.

A.

[4] The threshold issue that we must first resolve is whether a member of the clergy, who holds himself out as being trained and capable of conducting marital counseling, [FN8] is immune from any liability for harm caused by his counseling by virtue of the first amendment.

> FN8. Grabrian and the diocese take issue with characterizing Grabrian as a "person who had assumed the role of marriage counselor." In her crossclaim, Edna alleged that "the Defendant represented himself to be a professional with the necessary skills to assist people in need of counseling" and that "the Defendant represented to Edna Destefano that he was a capable, trained professional who could be relied upon to assist her with the serious marital and personal problems she was having." For purposes of this appeal, we must assume the truth of these allegations, and therefore conclude that the characterization of Grabrian is proper. The nature of the counseling relationship between Grabrian and Edna, beyond what is alleged in the pleadings, is an issue of fact to be determined at trial.

Grabrian and the diocese assert that Robert's and Edna's claims are "violative of the First Amendment to the United States Constitution in that the performance of pastoral duties by a Catholic priest, including sacramental counseling of parishioners, is a matter of ecclesiastical cognizance and policy with which a civil court cannot interfere." The first amendment to the United States Constitution prohibits any "law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. 1. Marital counseling by a cleric presents difficult questions because it often incorporates both religious counseling and secular counseling. While we agree that spiritual counseling, including marital counseling by a priest, may implicate first amendment rights, we are not

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convinced that the allegations in Edna's crossclaim permit Grabrian to assert a free exercise clause defense.

The United States Supreme Court has distinguished the absolute freedom of religious belief from the limited freedom to act upon those beliefs. *Cantwell v. Connecticut,* 310 U.S. 296, 303-04, 60 S.Ct. 900, 903-04, 84 L.Ed. 1213 (1940). In *Abington School District v. Schempp,* 374 U.S. 203, 223, 83 S.Ct. 1560, 1572, 10 L.Ed.2d 844 (1963), the Court stated that a party challenging governmental action as an infringement of his free exercise rights must show that there is a coercive effect against his practice of religion. When the free exercise clause is raised as a defense, the threshold question is whether the conduct of the defendant is religious. *Wisconsin v. Yoder,* 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533-34, 32 L.Ed.2d 15 (1972) ("to have the protection of the [r]eligious [c]lauses the claims must be rooted in religious belief"); *see* Note, *Intentional Infliction of Emotional Distress by Spiritual Counselors: Can Outrageous Conduct be "Free Exercise"?,* 84 Mich.L.Rev. 1269, 1302 (1986). "In the spiritual counseling context, the free exercise clause is relevant only if the ***284** defendant can show that the conduct that allegedly caused plaintiff's distress was in fact 'part of the belief and practices' of the religious group." *Id.* (citing *Christofferson v. Church of Scientology,* 57 Or.App. 203, 245, 644 P.2d 577, 604 (1982). The alleged misconduct of Grabrian that is at the very heart of Edna's crossclaim is that he induced Edna to engage in a sexual relationship during the course, and as a result, of marital counseling. Edna alleged that her damages were a direct result of the sexual relationship. If the alleged conduct of Grabrian was dictated by his sincerely held religious beliefs or was consistent with the practice of his religion, we would have to resolve a difficult first amendment issue. This, however, is not the case. It has not been asserted that Grabrian's conduct falls within the practices or beliefs of the Catholic church. Grabrian's and the diocese's brief states that "every Catholic is well aware of the vow of celibacy required of a priest at the time of his ordination." The brief also points out that "sexual involvement by a priest has been held to be per se outside the scope of his employment." The brief recognizes and admits that sexual activity by a priest is fundamentally antithetical to Catholic doctrine. As such, the conduct upon which Edna's crossclaim is premised is, by definition, not an expression of a sincerely held religious belief.

Members of the clergy cannot, in all circumstances, use the shield of the first amendment as protection and as a basis for immunity from civil suit. [FN9] When the alleged wrongdoing of a cleric clearly falls outside the beliefs and doctrine of his religion, he cannot avail himself of the protection afforded by the first amendment.

> FN9. It is well-established that religious institutions are not immune from tort liability. *See, e.g., Heath v. First Baptist Church,* 341 So.2d 265 (Fla.App.) (church may be held liable for slip and fall on the premises under negligence claim), *cert. denied,* 348 So.2d 946 (Fla.1977); *Fintak v. Catholic Bishop of Chicago,* 51 Ill.App.3d 391, 9 Ill.Dec. 223, 366 N.E.2d 480 (1977) (same); *Bass v. Aetna Ins. Co.,* 370 So.2d 511 (La.1979) (church responsible for negligence of pastor who created an unreasonable risk of injury by not clearing aisles to make way for the "running in the spirit," a common form of religious expression at that church).

B.

[5][6][7] Edna's first claim for relief alleges that Grabrian, in his position as a priest and as one who holds himself out to the community as a professional or trained marriage counselor, breached his fiduciary duty to her. A fiduciary is a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with the undertaking. A fiduciary has a duty to deal "with utmost good faith and solely for the benefit" of the beneficiary. *See* CJI-Civ. 31:16 (1980). A fiduciary's obligations to the beneficiary include, among other things, a duty of loyalty, *see* Restatement (Second) of Trusts § 170 (1959), a duty to exercise reasonable care and skill, *see* Restatement (Second) of Trusts § 174 (1959), and a duty to deal impartially with beneficiaries, *see* Restatement (Second) of Trusts § 183 (1959).

[8] A person standing in a fiduciary relationship with another is subject to liability to the other for

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harm resulting from a breach of the duty imposed by the relationship. Restatement (Second) of Torts § 874 (1979). We have no difficulty in finding that Grabrian, as a marriage counselor to Robert and Edna, owed a fiduciary duty to Edna. His duty to Edna was "created by his undertaking" to counsel her. Grabrian had a duty, given the nature of the counseling relationship, to engage in conduct designed to improve the Destefanos' marital relationship. As a fiduciary, he was obligated not to engage in conduct which might harm the Destefanos' relationship. If the allegations are true, it is clear to us that Grabrian breached his duty and obligation when he had sexual intercourse with Edna. *See Horak v. Biris,* 130 Ill.App.3d 140, 85 Ill.Dec. 599, 474 N.E.2d 13 (1985); *see also Watts v. Cumberland County Hosp. Sys., Inc.,* 75 N.C.App. 1, 330 S.E.2d 242 (1985), *rev'd on other grounds,* 317 N.C. 321, 345 S.E.2d 201 (1986).

***285** C.

[9] Edna's second claim for relief alleges that Grabrian "negligently performed his duty as a marital counselor" and that a member of the clergy who represents himself as a competent marital counselor, has a duty to employ the degree of knowledge, skill, and judgment ordinarily possessed by members of that profession in the community. This claim of professional negligence is a claim for malpractice. *See Artist v. Butterweck,* 162 Colo. 365, 426 P.2d 559 (1967); *Dixon v. Norberg,* 113 Colo. 352, 157 P.2d 131 (1945). Malpractice consists of any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. *See Black's Law Dictionary* 864 (5th ed. 1979). Since Grabrian is a Catholic priest, the malpractice claim alleged by Edna falls within the realm of "clergy malpractice." [FN10] To date, no court has acknowledged the existence of such a tort. [FN11] Since the claim for clergy malpractice is not supported by precedent and raises serious first amendment issues, we have concluded that Edna's second claim for relief was properly dismissed. We do not recognize the claim of "clergy malpractice."

FN10. Grabrian and the diocese agree with this conclusion. In their brief they assert: "If this Court chooses to identify the claims of the petitioners as anything other than alienation of affections, seduction and adultery, it must, on the basis of self-description in the pleadings, recognize them as claims of 'clergy malpractice' against a Catholic priest and the Catholic Church."

At least one commentator has argued that the cause of action should be labeled "spiritual counseling malpractice." The dispute, in such an action, "focuses on counseling rendered by a member of the clergy in meeting the spiritual, emotional, and religious needs of the counselee." Ericsson, *Clergymen Malpractice: Ramifications of a New Theory,* 16 Val.U.L.Rev. 163, 166 (1981). We decline to use this terminology because counseling by members of the clergy is frequently directed to matters that are essentially secular in nature. "Family counseling and psychological counseling are two notable areas in which there is substantial overlap between the secular and religious aspects of a spiritual counselor's activities." Note, *Clergy Malpractice: Taking Spiritual Counseling Conflicts Beyond Intentional Tort Analysis,* 19 Rutgers L.J. 419, 437 (1988). *But see* Comment, *Made Out of Whole Cloth? A Constitutional Analysis of the Clergy Malpractice Concept,* 19 Cal.W.L.Rev. 507, 516 (1983) (pastoral counseling is a religious, not secular, activity in which "[i]t is impossible to separate the 'cure of the minds' from the 'cure of the souls' "); Comment, *Clergy Malpractice: Making Clergy Accountable to a Lower Power,* 14 Pepperdine L.Rev. 137, 139 (1986) ("While some degree of overlap and similarity may exist, the religious counselor remains distinct and unique from his secular counterpart, approaching therapy from an entirely different perspective.").

FN11. The only case, to date, that has involved the viability of a clergy malpractice claim is *Nally v. Grace Community Church of the Valley,* 157 Cal.App.3d 912, 204 Cal.Rptr. 302, (1984)

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. In *Nally,* the parents of a young man who committed suicide brought a wrongful death action against the pastors who had been counseling him. In their claim entitled "Clergymen Malpractice," the parents alleged that the pastor had failed to exercise "the standard of care that a clergyman of his sect and training in the community" would exercise because he did not tell the young man to seek the counseling of a trained psychiatrist for his mental and emotional problems. The trial court granted summary judgment in favor of the defendant but the court of appeals reversed. The court of appeals, however, did not address the viability of the clergy malpractice claim, but focused on the claim of intentional infliction of emotional distress. *Id.* 204 Cal.Rptr. at 308-09. The California Supreme Court refused to hear the appeal and ordered that the case be decertified on August 30, 1984, eliminating its precedential effect.

The issue of clergy malpractice also arose in *Hester v. Barnett,* 723 S.W.2d 544 (Mo.App.1987), but that court did not address the viability of such a tort. *See also Handley v. Richards,* 518 So.2d 682 (Ala.1987) (Maddox, J., concurring) (quoting extensively from *Hester* and concluding that plaintiff failed to state a claim for clergy malpractice or "outrageous conduct.").

Courts have generally recognized that when a professional counselor engages in sexual relations with a patient, client, or counselee, he may be held liable for damages. *See Roy v. Hartogs,* 85 Misc.2d 891, 381 N.Y.S.2d 587 (1976); *Cotton v. Kambly,* 101 Mich.App. 537, 300 N.W.2d 627 (1980). The General Assembly has enacted legislation which imposes penalties against psychologists who are engaged in sexual intimacies with their patients or clients. Section 12-43-111(1)(*l*), 5 C.R.S. (1985), provides:

> ***286** The [Colorado state board of psychologist examiners] has the power to deny, revoke, suspend, or refuse to renew any license, or to place on probation a licensee, upon proof that such person ... (*l*) Has maintained relationships with clients that are likely to impair his professional judgment or increase the risk of client exploitation, such as treating employees, supervisees, close colleagues, or relatives, or having sexual intimacies with clients....

However, the legislature has expressly evinced an intent to exclude religious ministers, priests, and rabbis from the statutory scheme which imposes liability upon psychologists for malpractice. Section 12-43-114(10), 5 C.R.S. (1985), states that:

> Nothing in this article shall restrict a duly ordained minister, priest, or rabbi from carrying out his ministerial responsibilities while functioning in his ministerial capacity within a recognized religious organization and serving the spiritual needs of its constituency, provided he does not hold himself out to the public by any title or description incorporating the words "psychologist," "psychological," "psychology," or other term implying training, experience, or expertise in psychology.

The legislative intent of the General Assembly is even more pronounced in the 1988 enactment relating to penalties against mental health professionals and marriage and family therapists who engage in sexual intimacies with their clients or patients. The 1988 statute states that: "[a]ny person engaged in the practice of religious ministry shall not be required to comply with the provisions of this article," so long as such person does not hold himself out to the public by such titles as "psychologist," "licensed marriage and family therapist," or "licensed professional counselor," unless the person has been licensed pursuant to the state regulatory scheme. Chapter 88, section 1, § 12-43-215(1), 1988 Colo.Sess.Laws 535, 543-44.

Since the General Assembly has shown an intent to exclude religious counselors from the liability provisions of the statute creating liability for mental health professionals, we conclude that Edna's second claim for relief was properly dismissed.

D.

[10] The crossclaim of Edna also asserts that Grabrian engaged in outrageous conduct. The test for outrageous conduct in Colorado is:

> Outrageous Conduct Causing Severe Emotional Distress
>
> (1) One who by extreme and outrageous conduct

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> intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress to another, and if bodily harm to the other results from it, for such bodily harm.

Churchey v. Adolph Coors Co., 759 P.2d 1336, 1350 (Colo.1988) (quoting *Rugg v. McCarty*, 173 Colo. 170, 177, 476 P.2d 753, 756 (1970) (quoting Restatement (Second) of Torts, § 46 comment d (1965))). Outrageous conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id.* (citations omitted). Viewing the crossclaim in the light most favorable to Edna, as we must, we conclude that the allegations in the complaint are sufficient to withstand a motion to dismiss. We note that on remand it is for the trial court, in the first instance, to determine whether the conduct at issue is "outrageous." *Id.*

E.

[11][12] Edna, in her fourth and fifth claims for relief, alleges that the diocese breached its duty to supervise Grabrian, and that the actions of Grabrian should be imputed to the diocese. An employer may be held responsible for tortious conduct by an employee only if the tort is committed within the course and scope of employment. *McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437 (1969); *see also National Cash Register Co. v. Lightner*, 154 Colo. 98, 111, 388 P.2d 781, 788 (1964) (The principal is ordinarily not ***287** liable for the independent acts of the agent done in his own name outside the scope of his employment.). An employee is acting within the scope of his employment if he is engaged in the work which has been assigned to him by his employer or he is doing what is necessarily incidental to the work which has been assigned to him or which is customary within the business in which the employee is engaged. *Russell v. First Am. Mortgage Co.*, 39 Colo.App. 360, 565 P.2d 972 (1977). A priest's violation of his vow of celibacy is contrary to the instructions and doctrines of the Catholic church. When a priest has sexual intercourse with a parishioner it is not part of the priest's duties nor customary within the business of the church. Such conduct is contrary to the principles of Catholicism and is not incidental to the tasks assigned a priest by the diocese. Under the facts of this case there is no basis for imputing vicarious liability to the diocese for the alleged conduct of Grabrian.

[13][14] Even though Grabrian's acts do not create a basis for holding the diocese vicariously liable, the diocese may be directly liable for negligently supervising Grabrian. The Restatement (Second) of Agency § 213 (1958) states:

> A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:
>
> ....
>
> (c) in the supervision of the activity....

Comment d states:

> The principal may be negligent because he has reason to know that the servant or other agent, because of his qualities, is likely to harm others in view of the work or instrumentalities entrusted to him. If the dangerous quality of the agent causes harm, the principal may be liable under the rule that one initiating conduct having an undue tendency to cause harm is liable therefor. [*See* Restatement (Second) of Torts § 317 (1965)].
>
> ....
>
> One who employs another to act for him is not liable under the rule stated in this Section merely because the one employed is incompetent, vicious, or careless. If liability results it is because, under the circumstances, the employer has not taken the care which a prudent man would take in selecting the person for the business in hand. What precautions must be taken depend upon the situation. One can normally assume that another who offers to perform simple work is competent. If, however, the work is likely to subject third persons to serious risk of great harm, there is a special duty of investigation.
>
> Liability results under the rule stated in this Section, not because of the relation of the parties, but because the employer antecedently had reason to believe that an undue risk of harm would exist because of the employment. The employer is subject to liability only for such harm as is within the risk. If, therefore, the risk exists because of the quality of the employee, there is liability only to the extent that the harm is caused by the quality of the employee which the employer had reason to suppose would be likely to cause harm.

See also Martinelli v. District Court, 199 Colo. 163, 169, 612 P.2d 1083, 1087 (1980) (police

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department may be directly liable for negligence in selection, supervision or retention of police officers); *Rosane v. Senger,* 112 Colo. 363, 366, 149 P.2d 372, 374 (1944) (hospital may be directly liable for negligent acts of doctors); *Western Ins. Co. v. Brochner,* 682 P.2d 1213 (Colo.App.1983) (hospital may be directly liable for needless surgery of staff doctors), *rev'd on other grounds,* 724 P.2d 1293 (Colo.1986); [FN12] Restatement (Second) of Torts § 317 comment c (1965) ("[T]he master *288 may subject himself to liability ... by retaining in his employment servants who, to his knowledge, are in the habit of misconducting themselves in a manner dangerous to others."). Accordingly, we hold that a person who knows or should have known that an employee's conduct would subject third parties to an unreasonable risk of harm may be directly liable to third parties for harm proximately caused by his conduct. [FN13]

FN12. Other jurisdictions have recognized the tort of negligent supervision. *See International Distrib. Corp. v. American Dist. Tel. Co.,* 569 F.2d 136 (D.C.Cir.1977); *Murphy v. Army Distaff Found., Inc.,* 458 A.2d 61 (D.C.App.1983); *F & T Co. v. Woods,* 92 N.M. 697, 594 P.2d 745 (1979); *Dempsey v. Walso Bureau, Inc.,* 431 Pa. 562, 246 A.2d 418 (1968); *Welsh Mfg. Div. of Textron v. Pinkerton's,* 474 A.2d 436 (R.I.1984).

FN13. If, on remand, Edna asserts that the diocese should have known of Grabrian's propensity to commit negligent or intentional acts, then she must show the diocese "antecedently had reason to believe that an undue risk of harm would exist because of the employment." Restatement (Second) of Agency § 213 comment d (1965).

Edna's fourth claim for relief states:

> Defendant Diocese of Colorado Springs knew or should have known that Defendant Grabrian was engaging in conduct which was outrageous, negligent, and a breach of his fiduciary duty, and Defendant Diocese owed a duty of supervision of said Defendant Grabrian to the public and breached said duty, causing the injuries and damages set forth above.

Accepting these allegations as true, Edna has stated a viable claim for relief against the diocese for negligent supervision.

We conclude that the trial court erred in dismissing Edna's fourth claim, but properly dismissed her fifth claim for relief.

IV.
Robert's Claims

[15] The court of appeals determined that Robert's claims, however denominated, "are based on alienation of affections and criminal conversation, both of which are barred by the 'heart balm statute.' " To determine the nature of the action, an examination of the substance of the complaint is required. *Erickson v. Publix Cab Co.,* 134 Colo. 203, 206, 301 P.2d 349, 351 (1956); *see Great Western Sugar Co. v. Jackson Lake Reservoir & Irrigation Co.,* 681 P.2d 484, 494 (Colo.1984). In *Goldberg v. Musim,* 162 Colo. 461, 467, 427 P.2d 698, 701 (1967), we stated that an action for alienation of affections requires the following: (1) the defendant must intend to induce the spouse to separate; (2) the defendant must induce the spouse of the plaintiff to leave or to remain separated from the plaintiff; and (3) such an action must result in loss of affection and consortium, including loss of society, companionship, and aid. Criminal conversation is essentially adultery and the action may be brought by the "innocent" spouse. *See* W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on the Law of Torts* § 124, at 917 (5th ed. 1984). Robert alleged that while counseling Edna, Grabrian engaged in conduct he "knew or should have known would lead to additional marital problems between the plaintiff and Edna and would cause the probable dissolution of their marriage." Robert further alleged that Grabrian and Edna "entered into an intimate relationship which contributed to the ultimate dissolution of the marriage between the plaintiff and Edna." The complaint asserts that the conduct of Grabrian affected the plaintiff and his marriage in the following manner:

> There are minor children of that former marriage, and upon learning of the relationship between the Defendant Grabrian and Edna, the Plaintiff's

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ability to maintain a working parental relationship with Edna has been rendered impossible, any chance of salvaging the marriage was rendered impossible, and the Plaintiff has suffered and endured excruciating mental pain and suffering.

The substance of the first two claims in the complaint relates to the adulterous conduct of Grabrian that resulted in the destruction of the marriage and the injuries allegedly arising from that conduct. *See Gasper v. Lighthouse, Inc.*, 73 Md.App. 367, 373, 533 A.2d 1358, 1361 (1987). In our view, these allegations plainly set forth claims for alienation of affections and criminal conversation. We choose not to recognize any of Robert's common law claims apart from the third claim for relief because they are plainly claims for alienation of affections and criminal conversation. Accordingly, ***289** we hold that the trial court properly dismissed Robert's first and second claims in the complaint under section 13-20-202, 6A C.R.S. (1987).

[16][17] Robert's third claim is one for breach of fiduciary duty. One standing in a position of trust is liable for harm resulting from a breach of the duty imposed by that position. Restatement (Second) of Torts § 874 (1979). The third claim alleges that the fiduciary duty breached by Grabrian and the diocese arose as a result of the counseling relationship entered into by Robert and Edna with Grabrian. As we concluded in reviewing Edna's first claim for relief, we believe that the nature of the counseling relationship alleged here gives rise to a clear duty on Grabrian's part to engage only in activity or conduct calculated to improve the Destefanos' marriage. This duty to refrain from any conduct which carries with it a risk of harm to the marital couple extends to both Robert and Edna. *See Horak v. Biris*, 130 Ill.App.3d 140, 85 Ill.Dec. 599, 474 N.E.2d 13 (1985). We have no difficulty in finding that Grabrian's intimacies with Edna falls within "conduct which carries with it a risk of harm" to Edna and Robert. As such, Robert's third claim for relief is sufficient to withstand the C.R.C.P. 12(b) motion to dismiss.

Accordingly, we reverse the summary judgment granted by the court of appeals, but affirm the resulting dismissal of Edna's second and fifth claims for relief and Robert's first and second claims for relief. We return the case to the court of appeals with directions to remand to the trial court for further proceedings consistent with this opinion.

QUINN, C.J., specially concurs, and MULLARKEY, J., joins in the special concurrence.

MULLARKEY, J., specially concurs, and QUINN, C.J., and LOHR and KIRSHBAUM, JJ., join in the special concurrence.

QUINN, Chief Justice, specially concurring:

I join Justice Mullarkey's special concurrence and specially concur in the result reached by the majority. I write separately to state my view that recognizing the so-called tort of "clergy malpractice" would not only contravene the legislative decision to exempt religious ministers from compliance with the provisions of the statutory scheme dealing with psychologists and other mental health practitioners, § 12-43-114(10), 5 C.R.S. (1985); *see also* ch. 88, sec. 1, § 12-43-215(1), 1988 Colo.Sess.Laws 535, 543-44, but also would derogate the constitutionally protected interest of ministers, priests, and rabbis to conduct bona fide marriage counseling as guaranteed by the Free Exercise Clause of the First Amendment. U.S. Const. amend. I.

I agree with the majority that Edna and Robert Destefano have stated cognizable claims for breach of fiduciary duty, and that Edna also has stated a claim for outrageous conduct. A fiduciary relation "exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." *Restatement (Second) of Torts* § 874 comment a (1977). Liability for breach of fiduciary duty is not dependent solely upon agreement or contract between the fiduciary and the beneficiary but results from the relation itself. *Id.* No one can reasonably dispute the fact that the relation between a Catholic priest and a person of the same faith who is receiving marriage counseling from the priest is a fiduciary relation founded on utmost trust and confidence. When, as here alleged, the priest abuses his position of trust by engaging in sexual relations with the counselee, the torts of breach of fiduciary duty and outrageous

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conduct are adequate to the task of providing the counselee with an effective remedy for this type of egregious misconduct.

I also agree that the obvious legislative intent behind the statutory scheme regulating psychologists and other mental health practitioners is to exempt duly ordained ***290** ministers, priests, and rabbis from the licensing and regulatory scheme when they pursue their ministerial responsibilities in serving the spiritual needs of their constituencies. *See* § 12-43-114(10), 5 C.R.S. (1985); *see also* ch. 88, sec. 1, § 12-43-215(1), 1988 Colo.Sess.Laws 535, 543-44. This exemption proceeds from an obvious recognition of the fact that married persons experiencing marital difficulties frequently choose to obtain marriage counseling from their minister, priest, or rabbi precisely because they desire to resolve their difficulties in accordance with their religious beliefs. A rule that would subject the religious minister to the standard of practice applicable to licensed psychologists or marriage counselors in the community would endanger the very distinctions which make religious counseling desirable and which the General Assembly intended to protect against state regulation.

Moreover, the Free Exercise Clause of the First Amendment protects not only against the governmental prohibition of bona fide religious practices but also against the governmental secularization of such practices. *See, e.g., Hobbie v. Unemployment Appeals Commission,* 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987); *Thomas v. Review Board,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). Legislative or judicial recognition of the so-called tort of "clergy malpractice" would be fundamentally flawed on two counts. First, it would result in secularizing various forms of sectarian religious counseling that are entitled to constitutional protection. Second, it would undoubtedly result in deterring some ministers, priests, and rabbis from engaging in marriage counseling in order to avoid any potential liability for not conforming to standards applicable to licensed psychologists or licensed marriage therapists, or, at the very least, incline them to adjust their counseling method to standards applicable to secular licensed counselors. The resulting effect on the religious counselor's right to engage in bona fide religious marriage counseling, independently of secular standards applicable to licensed professionals, would be all too clear. Such a formidable obstacle to bona fide religious marriage counseling would fly directly in the face of the Free Exercise Clause of the First Amendment.

I am authorized to say that Justice MULLARKEY joins me in this special concurrence.

MULLARKEY, Justice, specially concurring:

I agree with Justice Erickson's opinion that both Destefanos should be permitted to try their claims for breach of fiduciary duty and that Edna should be permitted to try her claim for outrageous conduct. I write separately to express my views on the construction of the heart balm statute, now codified at sections 13-20-201 to -208, 6A C.R.S. (1987).

We construed the heart balm statute in two relatively recent cases: *In re Marriage of Heinzman,* 198 Colo. 36, 596 P.2d 61 (1979) and *Goldberg v. Musim,* 162 Colo. 461, 427 P.2d 698 (1967). In both cases, we emphasized the purposes of the heart balm statute and avoided the temptation to rely on a technical analysis of the elements of the abolished causes of action. The principal purpose of the heart balm statute, as expressed in section 13-20- 201, is to eliminate meritless lawsuits brought by "unscrupulous persons for their unjust enrichment" after a failed romance or marriage. *See also* Note, *Heartbalm Statutes and Deceit Actions,* 83 Mich.L.Rev. 1770, 1776 n. 27 (1985). An equally important reason supporting the heart balm statute is "the increasing recognition that each spouse is an autonomous human being, that neither is the property of the other, and that a home so easily broken is not worth maintaining." W. Keeton, D. Dobbs, R. Keeton, and D. Owen, *Prosser and Keeton on the Law of Torts* § 124, at 930 (5th ed. 1984).

In *Heinzman,* we held that the heart balm statute does not bar a suit for return of an engagement gift after the engagement is broken. In the context of a broken engagement, we emphasized that the statute ***291** only barred "actions for damages suffered from the breach of promise to marry and other direct consequences of the breach, such as

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humiliation." 198 Colo. at 40, 596 P.2d at 64.

In *Goldberg,* we held that the heart balm statute barred a lawsuit brought by a woman who claimed that her marriage had been destroyed by a woman whom she named as the defendant. We noted that the plaintiff's claim in *Goldberg* was not a claim for alienation of affections within the common law definition as used in Colorado because "a wife had no right of action for alienation of the affections of her husband." 162 Colo. at 471, 427 P.2d at 703. Nevertheless, we held that the allegations of the complaint fell "squarely within the abolished action [alienation of affections], for all that is alleged arises out of a relationship, i.e., an inducement to separate and resulting loss of society, loss of services, pain, suffering and humiliation." *Id.* at 467, 427 P.2d at 701.

That is the approach we should apply to the case now before us. Attempting to establish the elements of the abolished causes of action can only lead to absurd results which have no application to contemporary society. Justice Erickson's approach would require us to take a snapshot in time as of 1937 when the heart balm statute was enacted and define the elements of the torts abolished by that act. This is an impossible analytical task because, as Prosser states, "there is no good reason" for distinguishing among the four torts and the torts usually are lumped together "under the general name of 'alienation of affections,' without any attempt to distinguish the possible elements of the tort." W. Prosser, *Handbook of the Law of Torts* § 124, at 876-77 (4th ed. 1971).

Justice Erickson at footnote 3, at 279, acknowledges the difficulty caused by attempting to analyze the elements of each tort, but states that we are compelled to do so because the heart balm statute lists four separate torts. In my opinion, the legislature listed the four torts (criminal conversation, alienation of affections, seduction, and breach of promise to marry) to make plain the sweeping nature of the law it passed because those four constituted all of the recognized heart balm actions. *See* Note, *Cannon v. Miller: The Brief Death of Alienation of Affections and Criminal Conversation in North Carolina,* 63 N.C.L.Rev. 1317, 1318 (1985). I would be more persuaded of the appropriateness of an element-by-element analysis if the Colorado legislature, like some of its contemporaries in other states, had selected only certain heart balm actions to abolish. *See* Note, *Heartbalm Statutes and Deceit Actions,* 83 Mich.L.Rev. at 1770-71. Since that is not the case, I would not adopt the form of analysis used by Justice Erickson.

Here, Justice Erickson concludes that Edna Destefano's claim is not barred by the heart balm statute because she was married and a married woman could not bring a claim for seduction. At 282-283. To support that conclusion, he must reach back to a 1918 case, *Weinlich v. Coffee,* 67 Colo. 382, 176 P. 210 (1918). The language of that case, embodying outmoded property and master/servant concepts in the context of marriage, has no relevance today. *Weinlich* should be allowed to rest in obscurity, not resurrected and given new currency in a modern opinion. The logical corollary of Justice Erickson's approach is that if Edna Destefano had consulted a priest for premarital counseling and the same course of events had occurred, her claim against the priest would be barred because she was an unmarried woman who could have brought a seduction claim at common law. Such a distinction could not be upheld under the married women's property act, section 14-2-202, 6B C.R.S. (1987), the equal protection guarantees of the state and federal constitutions, and the equal rights amendment of our state constitution. [FN1]

> FN1. On a similar basis, states which have retained the claims abolished by our heart balm law permit both men and women to bring the claims. Identical rules apply to both. W. Prosser, *Handbook of the Law of Torts* § 124 at 882. *See also* 1 H. Clark, *The Law of Domestic Relations in the United States* § 12.2, at 653 (alienation of affections), § 12.3, at 662 (criminal conversation) (2d ed. 1987).

***292** If we look to the purposes of the heart balm statute, it is clear that the statute was not intended to bar claims based on breach of fiduciary duty and outrageous conduct against a priest who counseled both parties to the marriage. When such a special relationship is present, I would hold that the heart balm statute does not apply. *See Prosser and Keeton on the Law of Torts* § 124, at 930

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(suggesting that heart balm statute should not bar relief "when the interference with family relations is accomplished by means of some independent tort"). *See also O'Neil v. Schuckardt,* 112 Idaho 472, 733 P.2d 693 (1986) (court judicially abolished cause of action for alienation of affections but held that plaintiff could bring invasion of privacy causes of action against church officials for allegedly inducing plaintiff's wife and children to join religious cult).

I am authorized to state that Chief Justice QUINN, Justice LOHR and Justice KIRSHBAUM join in this special concurrence.

763 P.2d 275, 57 USLW 2291

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EXHIBIT 15

683 So.2d 614
21 Fla. L. Weekly D2497, 22 Fla. L. Weekly D188
(Cite as: 683 So.2d 614)

District Court of Appeal of Florida,
Fifth District.

John DOE, Appellant,
v.
Norbert DORSEY, as Bishop of the Diocese of Orlando, etc., et al., Appellees.

No. 95-2601.

Nov. 22, 1996.

Former altar boy sued church and its bishop based on alleged negligent hiring or retention of priest who committed sexual misconduct with altar boy both before and after boy reached age of majority. The Circuit Court, Orange County, Rom W. Powell, J., 1995 WL 608281, dismissed complaint. Altar boy appealed. The District Court of Appeal, Harris, J., held that: (1) four-year negligence statute of limitations applicable to negligent hiring claim began to run when altar boy turned 18, and (2) sexual acts between altar boy and priest after altar boy reached majority did not constitute sexual battery.

Affirmed.

Griffin, J., concurred specially in result only.

West Headnotes

[1] Limitation of Actions ⇐31
241k31 Most Cited Cases

Four-year negligence statute of limitations was applicable to former altar boy's action against church and its bishop alleging negligent hiring or retention of priest who committed sexual misconduct with altar boy when he was minor; seven-year limitations period applicable for intentional torts based on abuse did not apply since action was based on alleged negligence, rather than active abuse, by church and bishop. West's F.S.A. § 95.11(3)(a), (7).

[2] Limitation of Actions ⇐72(1)
241k72(1) Most Cited Cases

[2] Limitation of Actions ⇐95(4.1)
241k95(4.1) Most Cited Cases

Negligence statute of limitations applicable to former altar boy's action against church and its bishop based on alleged negligent hiring or retention of priest who sexually abused altar boy when he was minor began to run when boy reached age of majority, notwithstanding fact that alleged improper conduct of priest continued until altar boy was 26 years old and that boy did not become aware of his injuries and their probable connection to improper acts of priest until after reaching age of majority. West's F.S.A. § 95.11(3)(a).

[3] Religious Societies ⇐30
332k30 Most Cited Cases

State may protect its children against injuries caused by pedophiles by authorizing civil damages against church that knowingly creates situation in which injuries from criminal acts against children are likely to occur.

[4] Assault and Battery ⇐11
37k11 Most Cited Cases

Sexual acts between priest and altar boy which occurred after altar boy reached age of majority did not constitute "sexual battery," notwithstanding fact that priest committed improper sexual acts with altar boy before he reached majority, where altar boy consented to continued relationship once he became adult.

*615 Sheldon D. Stevens of Stevens & Menyhart, P.A., Merritt Island, and Sharon Lee Stedman, of Sharon Lee Stedman, P.A., Orlando, for Appellant.

Philip M. Burlington, of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, for Academy of Florida Trial Lawyers, Amicus Curiae for Appellant.

Robert J. Pleus, Jr. and Kevin W. Shaughnessy of Akerman, Senterfitt & Eidson, P.A., Orlando, for Appellees.

Robert S. Glazier, Miami, for First Baptist Church of Hialeah and Temple Shir Ami, Amicus Curiae, for Appellees.

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683 So.2d 614
21 Fla. L. Weekly D2497, 22 Fla. L. Weekly D188
(Cite as: 683 So.2d 614)

HARRIS, Judge.

The issue in this case is whether the statute of limitations and/or the First Amendment provision requiring separation of church and state bars this action against the church and its bishop based on the alleged negligent "hiring" or retention of a priest who commits sexual misconduct. We affirm.

For the purpose of this appeal, it is admitted that the parish priest committed improper acts with an altar boy starting when the boy was thirteen and continuing long after he reached majority. As a matter of fact, this "relationship" continued for over seven years *after* the young man reached majority. At some point, for some reason, the young man finally realized that the priest had indeed committed horrible wrongs against him and that the church, either directly or through the appropriate bishop, might be civilly responsible for these wrongs.

Therefore, plaintiff sued the priest (who is not a party to this appeal) alleging the intentional tort of sexual abuse of a minor; he also sued the church and the bishop alleging the tort of negligence based on the improper hiring or retention of one they knew or ***616** should have known was unsuitable to have contact with children. Even though the trial court held that the allegations of acts relating to a minor were time barred, it nevertheless sustained the allegations of sexual battery after plaintiff became an adult as against a claim of the statute of limitations but held that an action on even these allegations was barred by the provisions of the First Amendment. That issue will be discussed later.

[1][2] There are two possible hurdles in the path of this action. First, plaintiff waited until he was twenty-seven years old to bring the action founded upon the abuse inflicted on him when he was a minor. The trial court, based on the statute of limitations, dismissed these allegations. Second, since the action against the church and the bishop is based on allegations of negligence of the church, appellees strongly urge that the First Amendment of the United States Constitution prevents the court from intruding into the church's selection, training, supervision, and assignment of priests. [FN1] We agree with the trial court that plaintiff's action resulting from injuries caused by abuse inflicted on him while he was a minor and based on the negligent retention policies of the church is barred by the statute of limitations. Section 95.11(3)(a), Florida Statutes, limits an action for negligence to four years. This period is tolled until a minor plaintiff reaches majority. Section 95.051(1)(h). Although plaintiff urges that section 95.11(7) is the appropriate statute of limitations to apply in this case, we find that such section applies only to causes of action for "intentional torts based on abuse." Even though the priest's abusive conduct prompted this action against the church and the bishop, the alleged cause of action against them is a negligence action based on the alleged improper selection or retention policies and practices of the church in relation to its priests, not any active abuse by the appellees. We, therefore, find that section 95.11(3)(a), and not 95.11(7), is the applicable statute of limitations in this case, and that it started running when plaintiff turned eighteen.

> FN1. On this issue, the First Baptist Church of Hialeah and the Temple Shir Ami appeared as amicus on behalf of appellees; the Academy of Florida Trial Lawyers appeared as amicus on behalf of appellant.

Even if section 95.11(3)(a) is the applicable statute, urges appellant, since the improper conduct of the priest continued until plaintiff was twenty-six, the statute should not start running until that time. The problem with this argument is that appellant ceased being a minor subject to child abuse when he became "of age". Would the State be able to prosecute a Lothario who seduced a maiden below the age of consent but was able to continue the relationship with the young woman after she became an adult *solely for the acts which occurred after she became an adult* on the basis that her consent was obtained only because she remained "under his spell?" We think not. Further, we do not believe that the fact that religion is implicated in "the spell," has any significance at law.

Appellant also urges that the statute does not begin to run until the young man is aware of his injuries, and since this young man did not become aware of his injuries and their probable connection to the improper acts of the priest until 1992, the statute did not start running until that time. We simply cannot accept this argument. This young man

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knew the identity of the tortfeasor (the priest) and the improper conduct engaged in by the tortfeasor (child abuse) long before he reached the age of majority. This was sufficient knowledge to file an action against the priest for the wrongful sexual battery committed against him and, again assuming such cause of action is available, against the church and bishop for making such conduct possible because of the negligent retention of the priest.

The court was involved in a similar action, albeit involving a young girl instead of a young boy, in *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 785 (1995), and held that plaintiff's action was barred by the statute of limitations:

> It is well settled that a cause of action accrues when there exists a claim capable of enforcement, a suitable party against ***617** whom it may be entered, and a party with a present right to enforce it. (Citations omitted). A party has a present right to enforce a claim when the plaintiff has suffered actual damage, defined as harm that has already occurred or is reasonably certain to occur in the future. (Citation omitted).

In the case at bar, the negligent retention of a priest who would commit child abuse, at least insofar as this young man is concerned, must have occurred while he was still a child. Therefore, when Plaintiff turned eighteen, he was aware that a priest had sexually abused him and that the church had permitted the priest to serve in the parish which made the abuse possible. Sexual abuse of a child in and of itself causes sufficient actual damages, as a matter of law, to support both the intentional tort action against the priest and the negligence action, if one exists, against the church and the bishop. *See Harris v. B & M Groceries,* 1983 WL 5611 (Ohio App.1983): "In awards based on assault and battery, damages are 'presumed' or the wrong is said to be damages in and of itself." *See also, Walje v. the City of Winchester, Kentucky,* 773 F.2d 729, 731 (6th Cir.1985): "We joined two other circuits in finding such an unreasonable seizure to be closely analogous to the common law tort of assault and battery, for which general damages were presumed from the violation of the victim's right to bodily integrity."

The fact that Plaintiff in this case was not immediately aware of all of his resulting emotional problems might create uncertainty as to the *amount* of his damages but it does not toll the period of limitations. To hold that such tolling occurred would be the same as saying that one injured in an automobile accident who has a broken leg but elects not to sue within the statute of limitations may nevertheless later bring an action when, because of the injury, the leg has to be amputated. *See Cristiani v. City of Sarasota,* 65 So.2d 878, 879 (Fla.1953): "The general rule seems to be that actions for personal injury based on the wrongful or negligent act of another accrue at the time of the injury and that the statute of limitations begins to run at the same time. The running of the statute is not postponed even though the injury may not materialize or be discovered till later." *See also Seaboard Air Line Railroad Company v. Ford,* 92 So.2d 160, 164 (Fla.1955): "Generally, in actions for personal injuries resulting from the wrongful act or negligence of another, the cause of action accrues and the statute begins to run from the time when the injury was first inflicted, and not from the time when the full extent of the damages sustained has been ascertained." While there are exceptions to this general rule--for example, occupational diseases--these exceptions do not apply when an injury is apparent or presumed.

[3] Although the Academy of Florida Trial Lawyers makes a convincing case that the First Amendment does not protect the church when the acts of the clergy involve children and are criminal in nature, because we hold that the action against the church and the bishop in this case for the negligent retention of the priest, insofar as the abuse of plaintiff which occurred while he was a minor is concerned, is time-barred, the issue of whether the First Amendment protects the church when its clergy commits criminal acts is not before us. In any event, we are persuaded that just as the State may prevent a church from offering human sacrifices, it may protect its children against injuries caused by pedophiles by authorizing civil damages against a church that knowingly (including should know) creates a situation in which such injuries are likely to occur. We recognize that the State's interest must be compelling indeed in order to interfere in the church's selection, training and assignment of its clerics. We would draw the line at criminal conduct.

But because of the application of the statute of

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limitations in this case and because of the facts alleged, we are not here faced with criminal conduct. The surviving allegations do not involve pedophilia nor illegal adult sexual behavior.

[4] Insofar as the adult acts are concerned, we conclude that the sexual acts between the adult participants herein were not criminal. Plaintiff does not contend that he did not consent to the continued relationship. It is his position that his consent should be ***618** considered invalid because the priest "deliberately and calculatingly caused a relationship whereby [he] was able to exert undue influence, dominion and control over the Plaintiff." We do not believe that a sexual battery has been committed when a person of normal intelligence submits to a sexual relationship due to the "emotional attachment" to another person.

Although consent is not absolute, section 794.011 makes it clear that the legislature intended that if it is present, consent will bar criminal prosecution. In that regard, the legislature determined that consent is invalid if it is coerced. But the legislature tells us what it means by coercion: threat of force or violence or threat of retaliation against the victim or others. This type coercion is not alleged in this case. Consent is invalid if the victim is under the influence of any "narcotic, anesthetic, or other intoxicating substance" but only if such intoxicating substance is administered without the knowledge or consent of the victim. This is not alleged in this case. Consent is invalid if the victim is "mentally defective" or "mentally incapacitated." But mental defectiveness requires that the victim be suffering from some mental disease or defect. And mental incapacitation, as indicated above, means involuntarily being under the influence of some intoxicating substance or that the mental incapacitation is due to some "other act committed upon that person without his or her consent." We do not believe that the allegations of this complaint meet that standard.

AFFIRMED.

DAUKSCH, J., concurs.

GRIFFIN, J., concurs specially in result only.

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EXHIBIT 14

United States District Court,
N.D. Iowa,
Western Division.

Jane DOE, Plaintiff,
v.
Father Gerald HARTZ, Bishop Lawrence Soens, St. Lawrence Church, and Roman Catholic Diocese of Sioux City, Iowa, Defendants.

No. C 96-4091-MWB.

June 23, 1997.

Parishioner brought action against priest, bishop, diocese, and church for violation of Violence Against Women Act (VAWA) and related state law claims. Defendants moved to dismiss, abstain, or certify questions. The District Court, Bennett, J., held that: (1) parishioner stated claim under VAWA; (2) civil remedies provision of VAWA was a valid exercise of congressional authority under Commerce Clause; (3) dismissal of supplemental state law claims was not warranted; (4) dismissal of negligent supervision claim against bishop, diocese, and church was not warranted on First Amendment grounds; and (5) certification for interlocutory appeal was warranted.

Motion to dismiss, abstain, or certify questions denied in part and granted in part; certified for interlocutory appeal.

West Headnotes

[1] Federal Civil Procedure ⚖2533.1
170Ak2533.1 Most Cited Cases

Even where matters outside of pleadings are presented to court, motion to dismiss is not converted into motion for summary judgment where district court's order makes clear that judge ruled only on motion to dismiss. Fed.Rules Civ.Proc.Rules 12(b)(6), 56, 28 U.S.C.A.

[2] Federal Civil Procedure ⚖1773
170Ak1773 Most Cited Cases

Motion to dismiss complaint for failure to state claim should be granted as a practical matter only in unusual case in which plaintiff includes allegations that show on face of complaint that there is some insuperable bar to relief. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

[3] Federal Civil Procedure ⚖1742(1)
170Ak1742(1) Most Cited Cases

For court to dismiss for lack of subject matter jurisdiction, complaint must be successfully challenged on its face or on factual truthfulness of its averments. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[4] Federal Courts ⚖33
170Bk33 Most Cited Cases

District court has authority to consider matters outside pleadings on motion challenging subject matter jurisdiction. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[5] Federal Courts ⚖870.1
170Bk870.1 Most Cited Cases

If material facts are adjudicated by district court in determining its subject matter jurisdiction, appellate court will review findings of fact for clear error. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[6] Federal Courts ⚖776
170Bk776 Most Cited Cases

Where material facts are not in dispute, appellate court will review district court's determination that it lacks subject matter jurisdiction de novo. Fed.Rules Civ.Proc.Rule 12(b)(1), 28 U.S.C.A.

[7] Federal Civil Procedure ⚖2533.1
170Ak2533.1 Most Cited Cases

If court considers matters outside of pleadings it may not, without notice to parties, convert motion to dismiss for lack of subject matter jurisdiction into motion to dismiss for failure to state claim. Fed.Rules Civ.Proc.Rule 12(b)(1, 6), 28 U.S.C.A.

[8] Constitutional Law ⚖46(1)
92k46(1) Most Cited Cases

Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision.

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[9] Statutes ⚿188
361k188 Most Cited Cases

Task of resolving dispute over meaning of statute begins with language of statute itself.

[10] Statutes ⚿188
361k188 Most Cited Cases

[10] Statutes ⚿189
361k189 Most Cited Cases

Plain meaning of statute is decisive except in rare cases in which literal application of statute will produce result demonstrably at odds with intentions of its drafters.

[11] Statutes ⚿188
361k188 Most Cited Cases

[11] Statutes ⚿212.6
361k212.6 Most Cited Cases

Court must assume that words of statute, construed in their ordinary meaning, accurately express legislative purpose, and court should decline to frustrate plain meaning of words chosen by legislature.

[12] Civil Rights ⚿1035
78k1035 Most Cited Cases
(Formerly 78k113)

Deprivation of right to be free from crimes of violence motivated by gender is sufficient injury to sustain the cause of action under Violence Against Women Act (VAWA); no further physical, emotional, economic, or non-economic injury is required. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[13] Civil Rights ⚿1461
78k1461 Most Cited Cases
(Formerly 78k270)

[13] Civil Rights ⚿1465(1)
78k1465(1) Most Cited Cases
(Formerly 78k275(1))

In civil action under Violence Against Women Act (VAWA), if plaintiff shows violation of right established by statute, but has no damages of any monetary value, it would follow that plaintiff is entitled to nominal damages, which can support punitive damages award. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[14] Civil Rights ⚿1035
78k1035 Most Cited Cases
(Formerly 78k113)

Civil cause of action under Violence Against Women Act (VAWA) is aimed at conduct motivated by victim's gender, not merely crimes in which victim is a woman. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[15] Civil Rights ⚿1035
78k1035 Most Cited Cases
(Formerly 78k113)

Civil remedy under Violence Against Women Act (VAWA) stands alone, without necessity of prior criminal complaint, prosecution, or conviction to address or establish predicate offense. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[16] Civil Rights ⚿1035
78k1035 Most Cited Cases
(Formerly 78k113)

As used in Violence Against Women Act (VAWA), term "crime of violence" means an act or series of acts (1)(a) that would constitute a felony against the person or (b) that would constitute a felony against property if conduct presents serious risk of physical injury to another, and (2) that would come within general statutory definition of "crime of violence." 18 U.S.C.A. § 16; Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(2)(A), 42 U.S.C.A. § 13981(d)(2)(A).

[17] Civil Rights ⚿1035
78k1035 Most Cited Cases
(Formerly 78k113)

Elements of civil cause of action under Violence Against Women Act (VAWA) are that defendant committed "crime of violence" within meaning of VAWA and that defendant's offense was motivated by gender. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. §

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13981.

[18] Civil Rights ⇐1035
78k1035 Most Cited Cases
(Formerly 78k113)

Offense is "motivated by gender" within meaning of Violence Against Women Act (VAWA) if it is both committed because of or on basis of victim's gender, and due, at least in part, to animus based on victim's gender. Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(1), 42 U.S.C.A. § 13981(d)(1).

[19] Civil Rights ⇐1035
78k1035 Most Cited Cases
(Formerly 78k113)

For act to be a "felony" for purposes of Violence Against Women Act (VAWA), act or acts must constitute a felony under either state or federal law. Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[20] Statutes ⇐181(1)
361k181(1) Most Cited Cases

Under Iowa law, touchstone of statutory interpretation is legislative intent.

[21] Statutes ⇐188
361k188 Most Cited Cases

[21] Statutes ⇐190
361k190 Most Cited Cases

Under Iowa law, when language of a statute is plain and its meaning is clear, court should not reach for meaning beyond statute's express terms, nor should it resort to statutory rules of construction to determine legislative intent.

[22] Civil Rights ⇐1429
78k1429 Most Cited Cases
(Formerly 78k244)

Court must decide as a matter of law whether asserted predicate offense is a "crime of violence" within meaning of Violence Against Women Act (VAWA). Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(2), 42 U.S.C.A. § 13981(d)(2).

[23] Civil Rights ⇐1035
78k1035 Most Cited Cases
(Formerly 78k113)

Determination of whether offense is a "crime of violence" under Violence Against Women Act (VAWA) must be made on basis of how offense is defined by applicable law and not on basis of how offense was allegedly committed. Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(2), 42 U.S.C.A. § 13981(d)(2).

[24] Civil Rights ⇐1035
78k1035 Most Cited Cases
(Formerly 78k113)

Iowa statute defining sexual offenses on basis that victim cannot give proper consent defines "crime of violence" within meaning of Violence Against Women Act (VAWA). Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981; I.C.A. § 709.15.

[25] Civil Rights ⇐1395(1)
78k1395(1) Most Cited Cases
(Formerly 78k235(1))

Parishioner adequately pleaded sexual exploitation under Iowa law as a "crime of violence" under Violence Against Women Act (VAWA) by alleging that priest served as a counselor to parishioner, that priest kissed parishioner's neck and rubbed her back, and that parishioner was emotionally dependent upon priest. Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(2), 42 U.S.C.A. § 13981(d)(2); I.C.A. § 709.15.

[26] Civil Rights ⇐1035
78k1035 Most Cited Cases
(Formerly 78k113)

Allegations of unwanted or unwelcome sexual advances are sufficient to meet requirement of Violence Against Women Act (VAWA) of allegation that defendant targeted victim on basis of his or her gender and had specific intent or purpose, based on victim's gender, to injure victim. Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(1), 42 U.S.C.A. § 13981(d)(1).

[27] Civil Rights ⇐1395(1)
78k1395(1) Most Cited Cases
(Formerly 78k235(1))

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Parishioner adequately pleaded that priest acted with animus based on parishioner's gender, for purposes of Violence Against Women Act (VAWA), by alleging that priest kissed parishioner's neck and rubbed her back. Violent Crime Control and Law Enforcement Act of 1994, § 40302(d)(1), 42 U.S.C.A. § 13981(d)(1).

[28] Civil Rights ⇐1005
78k1005 Most Cited Cases
(Formerly 78k103, 37k2)

[28] Commerce ⇐80
83k80 Most Cited Cases

Civil remedies provision of Violence Against Women Act (VAWA) is a valid exercise of congressional authority under Commerce Clause. U.S.C.A. Const. Art. 1, § 8, cl. 3; Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[29] Commerce ⇐7(2)
83k7(2) Most Cited Cases

In determining whether statute is a proper exercise of Commerce Clause power on basis that activity substantially affects interstate commerce, court's task is to decide whether rational basis existed for concluding that regulated activity sufficiently affected interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

[30] Commerce ⇐7(2)
83k7(2) Most Cited Cases

Once court decides that rational basis existed for concluding that regulated activity sufficiently affected interstate commerce, only remaining question for court in determining whether legislation is valid under Commerce Clause is whether means chosen by Congress are reasonably adapted to asserted goals of legislation. U.S.C.A. Const. Art. 1, § 8, cl. 3.

[31] Commerce ⇐7(2)
83k7(2) Most Cited Cases

For statute to be valid under Commerce Clause as regulating an activity that substantially affects interstate commerce, statute need not contain jurisdictional element ensuring that activity in question affects interstate commerce; rather, statute must contain such a jurisdictional element, or Congress must have made legislative findings that activity so affects interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

[32] Federal Courts ⇐14.1
170Bk14.1 Most Cited Cases

In absence of one of the statutorily enumerated factors, district court must accept supplemental jurisdiction over state-law claims plaintiff has raised in case. 28 U.S.C.A. § 1367.

[33] Federal Courts ⇐15
170Bk15 Most Cited Cases

In civil action for violation of Violence Against Women Act (VAWA), dismissal of related state law claims was not warranted prior to discovery; values of economy, convenience, and fairness would be advanced by district court's retention of jurisdiction, and state claims did not predominate over federal claims. 28 U.S.C.A. § 1367; Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.

[34] Religious Societies ⇐30
332k30 Most Cited Cases

Parishioner stated claim against church, bishop, and diocese under Iowa law for negligent supervision by alleging that defendants failed to provide professional help to priest, an agent or employee, known or suspected to have tendencies toward sexual abuse and exploitation, and also failed to prevent, reprimand, punish, supervise, or control priest's sexually abusive behavior or to respond to previous allegations of inappropriate behavior by priest.

[35] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Dismissal of parishioner's claim against bishop, diocese, and church for negligent supervision of priest under Iowa law was not warranted at pleading stage, notwithstanding defendants' arguments that religion clauses of First Amendment barred claim; court was unable to predict that evidence offered at trial would definitely involve court in impermissible inquiry into church's religious beliefs. U.S.C.A. Const.Amend. 1.

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[36] **Federal Courts** ⇐753
170Bk753 Most Cited Cases

[36] **Federal Courts** ⇐776
170Bk776 Most Cited Cases

On interlocutory appeal, appellate court reviews *de novo* the questions of law certified by district court; however, appellate court remains free to consider such questions as are basic to and underlie questions certified by district court. 28 U.S.C.A. § 1292(b).

[37] **Federal Courts** ⇐576.1
170Bk576.1 Most Cited Cases

Interlocutory appeal was warranted in case in which district court ruled that civil remedy provisions of Violence Against Women Act (VAWA) did not violate Commerce Clause; ruling that VAWA was unconstitutional would deprive district court of jurisdiction, other courts to consider issue of constitutionality had split, and there was an absence of precedent. U.S.C.A. Const. Art. 1, § 8, cl. 3; 28 U.S.C.A. § 1292(b); Violent Crime Control and Law Enforcement Act of 1994, § 40302, 42 U.S.C.A. § 13981.
*1379 Roxanne Barton Conlin, Roxanne Conlin and Associates, P.C., Des Moines, IA, for Jane Doe.

Joseph L. Fitzgibbons, Fitzgibbons Brothers Attorneys at Law, Estherville, IA, for Father Hartz.

James W. Radig, Shull, Cosgrove, Hellige & Lundberg, Sioux City, IA, for Bishop Soens, St. Lawrence Church, and the Roman Catholic Diocese of Sioux City, Iowa.

Anjali A. Ashley, Department of Justice, Civil Division, Federal Programs Branch, Washington, DC, Willis A. Buell, Asst. U.S. Atty., Northern District of Iowa, Sioux City, IA, for U.S.

Andrea Williams, NOW Legal Defense and Education Fund, New York City, for amicus curiae NOW Legal Defense and Education Fund.

Victoria L. Herring, Des Moines, IA (Cleary, Gottlieb, Steen & Hamilton, New York City, Judith Resnik, Orrin B. Evans, University of Southern California Law School, New York University School of Law, and Frank Michelman, Robert Walmsley, Harvard University Law School, of counsel); Reva Siegel, Yale Law School (on the brief), for amici curiae Law Professors.

MEMORANDUM OPINION AND ORDER REGARDING MOTION TO DISMISS, ABSTAIN, OR CERTIFY QUESTIONS

BENNETT, District Judge.

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***1380** Violence against women prompted Congress to pass the civil remedies provision of the Violence Against Women Act (VAWA), 42 U.S.C. § 13981, on September 13, 1994, as a new, federal weapon to combat gender-based violence. Yet, whatever the need for or merits of the VAWA, was its passage a constitutional exercise of congressional power? The only two courts to consider the question have split on the answer. [FN1] The defendants here, a parish priest accused by a parishioner of sexually exploiting her, as well as the church, bishop, and diocese also called to account for the priest's allegedly wrongful conduct, assert that the VAWA cannot be sustained on the basis of either the Congress' Commerce Clause or Fourteenth Amendment enforcement powers. The plaintiff, the United States as a plaintiff/intervenor, and various *amici curiae* have rallied to defend the constitutionality of the VAWA.

FN1. The court finds that only two decisions have considered the constitutionality of the civil remedies provision of the VAWA. They are *Brzonkala v. Virginia Polytechnic & State Univ.*, 935 F.Supp. 779 (W.D.Va.1996), which found the statute unconstitutional, and *Doe v. Doe*, 929 F.Supp. 608 (D.Conn.1996), which upheld it. Very recently, the Fourth Circuit Court of Appeals considered the constitutionality of the *criminal* provisions of the VAWA prohibiting interstate domestic violence, 18 U.S.C. § 2261, in *United States v. Bailey*, 112 F.3d 758 (4th Cir.1997), and upheld the statute as within the Congress's Commerce Clause powers. Similarly, the United States District Court for the Southern District of New York has upheld the portion of the VAWA prohibiting interstate domestic violence as a valid exercise of Commerce Clause power. *United States v. Gluzman*, 953 F.Supp. 84 (S.D.N.Y.1997).

However much the parties and interested persons press their arguments concerning the constitutionality of the enactment of the VAWA, the court must heed the directive of the Supreme Court, and first consider nonconstitutional challenges to the plaintiff's VAWA claim, and must only reach the constitutional issue if it is "unavoidable." [FN2] A nonconstitutional challenge is not lacking here, because the defendants also contend that the plaintiff's VAWA claim, the only federal claim in the complaint, is inadequately pleaded. Furthermore, if the VAWA claim is dismissed, on constitutional or nonconstitutional grounds, the court may be deprived of subject matter jurisdiction over any of the plaintiff's thirteen state-law claims, and the ***1381** defendants contend that the court should decline to exercise supplemental jurisdiction over those claims in any event. Finally, the defendants also challenge the plaintiff's many state-law claims, again on constitutional grounds--this time, pursuant to the religion clauses of the First Amendment--as well as a plethora of nonconstitutional grounds.

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FN2. *See Jean v. Nelson,* 472 U.S. 846, 854, 105 S.Ct. 2992, 2996-97, 86 L.Ed.2d 664 (1985).

This tangle of constitutional and nonconstitutional issues, federal and state claims, a federal claim dependent upon a predicate offense defined by state law, and supplemental jurisdiction questions, creates a veritable Gordian Knot. [FN3] Alexander the Great could only loosen the Gordian Knot by slicing through it with his sword, an approach that is appealing, but unavailable here. [FN4] This court's resolution of defendants' motion must be more patient and reasoned.

FN3. Gordius, King of Phrygia, tied his chariot to a hitching post before the temple of an oracle with an intricate knot, which, it was prophesied, none but the future ruler of all Asia could untie. *See, e.g., Funk and Wagnalls Standard Dictionary of Folklore, Mythology, and Legend* 460 (Maria Leach, ed., Funk & Wagnalls, 1972); *Bulfinch's Mythology* 44 (Richard P. Martin, ed. 1991).

FN4. In the course of his conquests, Alexander the Great came to Phrygia, and, frustrated with his inability to untangle the "Gordian Knot," simply sliced through it with his sword. His subsequent success in his Asian campaign has been taken to mean that his solution to the "Gordian knot" fulfilled the prophesy. *See, e.g., Funk and Wagnalls Standard Dictionary of Folklore, Mythology, and Legend* 460 (Maria Leach, ed., Funk & Wagnalls, 1972); *Bulfinch's Mythology* 44 (Richard P. Martin, ed. 1991).

I. INTRODUCTION AND BACKGROUND

A. The Parties And The Central Incidents

Plaintiff Jane Doe [FN5] filed her complaint in this action on August 29, 1996, naming as defendants Father Gerald A. Hartz, who is a priest at St. Lawrence Church, in Carroll, Iowa, St. Lawrence Church itself, the Roman Catholic Diocese of Sioux City, Iowa, and Bishop Lawrence Soens, the bishop of the defendant Diocese. The gravamen of Doe's complaint is that, on December 3, 1994, when she arrived at the Church to sing during evening mass, Father Hartz "came up behind her, grabbed her with both of his hands and pulled her back into his body, held her tightly and kissed her neck." Complaint, ¶ 11. Later that same evening, after mass, "Defendant Hartz rubbed Plaintiff's back up and down with his hand." *Id.* at ¶ 14. Plaintiff alleges thirteen claims, based on state and federal law, as a result of these incidents or related events.

FN5. This court considered extensively the standards for prosecution of a claim under a pseudonym in *Heather K. v. City of Mallard, IA,* 887 F.Supp. 1249, 1255-56 (N.D.Iowa 1995). Although plaintiff Jane Doe has not specifically moved for leave to prosecute this action under a pseudonym, no other party has challenged that procedure. Furthermore, Doe appears to meet the requirements for prosecution of a lawsuit under a pseudonym. *See id.* (citing *Doe v. Frank,* 951 F.2d 320, 323 (11th Cir.1992), and *Doe v. Stegall,* 653 F.2d 180, 186 (5th Cir.1981), as recognizing that a substantial privacy right may outweigh the customary and constitutionally-embedded presumption of openness in judicial proceedings where the plaintiff may be required to disclose information of the utmost intimacy, thus making prosecution under a pseudonym appropriate).

B. The Complaint

Count 1 of Doe's complaint is the only one stating a federal claim, and thus is the count upon which federal jurisdiction depends. [FN6] In Count 1, Doe asserts a civil claim against Father Hartz for violation of the civil remedies provision of the VAWA, 42 U.S.C. § 13981. Doe alleges that Father Hartz's conduct constituted sexual exploitation by a counselor or therapist within the meaning of Iowa Code § 709.15, establishing a predicate felony crime of violence under the federal statute. As relief, she seeks a declaration that Father Hartz's conduct violated the VAWA; an injunction, apparently against all defendants,

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enjoining any conduct violating the rights of the plaintiff and others secured by the VAWA; [FN7] an order that Father Hartz *1382 receive psychological evaluation and treatment; an injunction against Father Hartz from performing his duties and responsibilities until such time as a neutral professional certifies that he can do so without sexually exploiting females; compensatory and punitive damages; attorneys fees; costs; and such other relief as the court deems just and proper.

FN6. Doe asserts jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights), on the basis of a claim arising under the civil remedies provision of the federal Violence Against Women Act, 42 U.S.C. § 13981. Doe invokes the court's supplemental jurisdiction over her state-law claims pursuant to 28 U.S.C. § 1367(a).

FN7. Indeed, in almost the entirety of Count 1, the allegations stated and relief sought are against only Father Hartz. *See, e.g.,* Complaint, ¶ 37 (detailing claimed injuries as the result of Father Hartz's conduct); Complaint ¶ 38 (asserting that Father Hartz "acted willfully and recklessly and with intentional and willful disregard for the rights of Plaintiff," thus entitling Doe to punitive damages). However, in subsection (b) of the prayer for relief on this claim, Doe asks that the court "permanently enjoin *Defendants* from any conduct violating Plaintiff's rights or the rights of other women and girls as secured by the [VAWA]." Complaint, Prayer of Count 1, subsection (b) (emphasis added). Although this claim is not a model of "short and plain" pleading, *Fed.R.Civ.P.* 8(a), it appears to the court that the claim, or at least the relief sought, is against *all* defendants, not just Father Hartz. The uncertainty about the proper defendant or defendants on this claim has serious repercussions: It raises questions about whether a civil claim under the VAWA can be asserted against anyone but the individual actor, whether *respondeat superior* liability attaches to an employer for an employee's violation of the VAWA, and whether the defendants other than Father Hartz have standing to challenge the constitutionality of the VAWA if no claim under that Act is or can be asserted against them. The court assumes that the VAWA claim has been asserted against all of the defendants. However, because Father Hartz has joined in the motion to dismiss this claim, at least one of the movants has standing to challenge the constitutionality of the VAWA.

The remaining counts assert state-law claims against the various defendants. Count 2 alleges sexual abuse by Father Hartz. As relief on this count, Doe seeks an order requiring Father Hartz to receive professional counseling within the meaning of Iowa Code § 611.23, and compensatory and punitive damages. Count 3 alleges fraud by Father Hartz arising from a special relationship of trust, and confidence between the plaintiff and Father Hartz and Father Hartz's misrepresentation, based on his holding himself out as celibate and as a personal fiduciary, that he could be trusted not to fondle or kiss the plaintiff in a sexual manner. This fraud count is apparently also directed at the other defendants as well, because Doe asserts that the other defendants had knowledge of the falsity of Father Hartz's representations and that they intended to deceive the plaintiff to "save themselves, the church, and the congregation the embarrassment of admitting there was a priest in St. Lawrence Church that had a problem with sexual abuse." Complaint, ¶¶ 50-51. This count also asserts that the fraudulent acts of the defendants constituted part of the pattern, practice, or scheme of conduct by a counselor or therapist within the meaning of Iowa Code § 709.15(1)(f)(1), which appears to be intended to bolster the VAWA claim as well. As relief on the fraud count, Doe seeks compensatory and punitive damages, interest, and costs.

Count 4 alleges breach of fiduciary duty by the defendant Diocese and Bishop Soens. Specifically, it alleges a fiduciary duty on the part of these defendants to Doe, and breach of that duty by failure to notify Doe that she was in danger of being a victim of sexual abuse at Father Hartz's hands and by failure to provide Father Hartz with professional counseling services to protect Doe from being

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sexually abused by Father Hartz. On this count, Doe seeks compensatory and punitive damages, as well as interest, and costs. Count 5 is a companion claim of breach of fiduciary duty against Father Hartz. It alleges Father Hartz had a fiduciary duty to Doe and breached it by fondling and kissing her for the purposes of arousing and/or satisfying his sexual desires. On this count, Doe seeks compensatory and punitive damages against Father Hartz, as well as interest and costs.

Counts 6, 7, 8, and 9 are against only Father Hartz. Count 6 alleges assault by Father Hartz by placing Doe in fear of offensive physical contact after the incident in which Father Hartz is alleged to have actually engaged in such conduct. The relief sought on this count is, again, compensatory and punitive damages, interest, and costs. [FN8] Count 7 is a claim of tortious infliction of emotional distress based on the alleged outrageousness*1383 of Father Hartz's conduct on December 3, 1994. The relief sought on this count is also compensatory and punitive damages, interest, and costs. Counts 8 and 9 are negligence claims as alternatives to the intentional torts alleged in the prior counts. Count 8 alleges that Father Hartz suffers from a mental disease or defect that renders him unable to control his conduct in connection with sexual behavior toward females and that Father Hartz's conduct as a result of his disease or defect, although not intentional, was negligent. Count 9 alleges that Father Hartz negligently breached his duty to restrain himself from sexually abusing the plaintiff as a result of his mental disease or defect and also breached his duty to obtain professional help to treat his mental disease or defect so that he could refrain from sexually abusing the plaintiff. Doe seeks compensatory and punitive damages, interest, and costs as relief on both of her negligence claims against Father Hartz.

> FN8. Although the relief sought on this count was against "Defendants, and all of them," Complaint, prayer to Count 6, in her response to the defendants' motion to dismiss, Doe agrees to dismiss Count 6 as to Bishop Soens, the Church, and the Diocese. Therefore, this count is now asserted against only defendant Hartz.

Counts 10, 11, 12, and 13 seek to hold the other defendants liable for Father Hartz's conduct on various theories. Count 10 is denominated a negligent hiring, training, and supervision claim and is directed against defendants Church, Diocese, and Bishop. [FN9] The specific failings alleged are failure to provide professional help to an agent or employee known or suspected to have tendencies toward sexual abuse and exploitation; failure to prevent Father Hartz from engaging in sexual abuse; failure to reprimand or take punitive action against Father Hartz; failure to supervise and/or control Father Hartz to ensure that sexual abuse did not occur; and failure to respond to previous allegations of inappropriate behavior by Father Hartz. On this claim, Doe seeks from the Church, Diocese, and Bishop compensatory and punitive damages, interest, and costs. Count 11 is a negligence claim directed at defendants Church and Diocese. It alleges breach of a duty on the part of these defendants to protect the plaintiff from abuse imposed on her by Father Hartz. As relief on this claim, Doe seeks only compensatory damages, interest, and costs. Count 12 alleges a claim of premises liability against only the defendant Church, based on the Church's knowledge that Father Hartz was present on the premises and posed an unreasonable risk of injury to a person in Doe's position against which Doe would be unable to protect herself. Doe alleges that the Church failed to protect Doe from her abuser, with consequent injuries to Doe. Doe seeks against the Church compensatory damages, interest, and costs. Finally, in Count 13, Doe asserts a claim of *respondeat superior* liability of the defendant Church for Father Hartz's conduct while acting within the scope of his employment. Furthermore, the count alleges that the Church [FN10] requires Father Hartz to dispose of all worldly goods, thereby rendering him judgment proof and unable personally to respond in damages for his intentional and negligent conduct. Doe therefore seeks compensatory damages, interest, and costs against the Church for Father Hartz's conduct.

> FN9. Incidentally, this count alleges that defendants caused the alleged injuries to "the Decedent" by failing properly to hire, retain, and supervise Father Hartz. Complaint, ¶ 84. Nowhere else in the complaint is it suggested that plaintiff Doe has died.

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FN10. The complaint actually makes this specific allegation against "Defendants," but the relief sought on this count is "against Defendant St. Lawrence Church." Complaint, ¶ 100. Therefore, the court construes this claim to have been brought only against the Church.

Doe has demanded a jury trial on all of the counts of her complaint.

C. The Response

Defendants Church, Diocese, and Bishop waived service of the complaint on September 13, 1996, and, on September 30, 1996, moved to dismiss the complaint in whole or in part, or, in the alternative, for an order of abstention and certification of issues to the Iowa Supreme Court. After various extensions, these defendants filed a brief in support of their motion to dismiss, abstain, or certify questions on October 22, 1996. Doe resisted the motion, also after various extensions, on February 21, 1997. [FN11] Father Hartz answered the complaint on January 21, 1997, also demanded a jury trial, and, on February ***1384** 3, 1997, joined in the motion to dismiss, abstain, or certify questions filed by the other defendants. [FN12] Defendants filed a reply to Doe's resistance on March 14, 1997.

FN11. In the interim between the filing of the motion to dismiss, abstain, or certify questions, a magistrate judge of this district suspended discovery in this action.

FN12. Because Father Hartz has only joined in the motion to dismiss filed by the other defendants, but has not filed his own motion to dismiss nor an independent brief, there is no motion before the court to dismiss the counts pleaded only against Father Hartz.

On February 24, 1997, the court certified the fact of the defendants' challenge to the constitutionality of 42 U.S.C. § 13981 to the attorney general of the United States and granted the United States forty-five days from the date of the order to intervene pursuant to 28 U.S.C. § 2403 and *Fed.R.Civ.P.* 24(c). On February 28, 1997, the court also directed that *amici curiae* interested in participating in the proceedings seek leave to present briefs and arguments by April 11, 1997, and directed that any *amicus curiae* brief be filed by April 25, 1997. On April 10, 1997, the United States sought leave to intervene as a party plaintiff to defend the constitutionality of the VAWA, which leave was granted on April 14, 1997. On April 11, 1997, the NOW Legal Defense and Education Fund sought leave to file an *amicus curiae* brief and, on April 23, 1997, that organization also sought leave to participate in oral arguments. [FN13] Also on April 11, 1997, a group consisting of more than sixty eminent law professors in the fields of constitutional law and civil rights, known herein as the "Law Professors," sought leave to file a brief as *amici curiae.* [FN14] On April 24, 1997, the court granted the requests of *amici* to file briefs and present arguments, extended their deadline to file briefs to April 30, 1997, and gave defendants permission to file a brief in reply to arguments of *amici* and the intervenor post-hearing. However, because the hearing was subsequently rescheduled, the court then set a deadline of May 14, 1997, for the briefs of intervenor and *amici,* and a deadline of May 28, 1997, for defendants to reply. *Amici* Law Professors filed their brief on April 28, 1997. The plaintiff/intervenor United States filed its brief on May 13, 1997, and *amicus* NOW filed its brief on May 14, 1997. Defendants filed a reply to *amici curiae* on May 29, 1997.

FN13. NOW Legal Defense and Education Fund is actually appearing on behalf of several organizations, but, for the sake of simplicity, this group of interested persons or organizations will be treated as singular and identified as "*amicus* NOW." The organizations on whose behalf NOW Legal Defense and Education Fund is appearing are listed in the appendix to this opinion.

FN14. The members of the "Law Professors" group are listed in the appendix to this opinion.

The court has found the briefing of all of the parties and *amici* to be of remarkable thoroughness and informativeness, and, consequently, to be of

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unusual assistance to the court in addressing the serious and complicated issues presented. The court believes that the advocacy demonstrated has served the interests of justice well and the court will strive to meet the high standards of the interested parties with comparably cogent and conscientious consideration of all essential issues.

The court heard oral arguments on June 9, 1997. As the court expected from the briefing, the arguments were spirited and informative, but also conducted with the highest degree of professionalism. Plaintiff Jane Doe was represented at oral arguments by counsel Roxanne Barton Conlin of Roxanne Conlin and Associates, P.C., in Des Moines, Iowa. Defendant Father Hartz was represented by counsel Joseph L. Fitzgibbons of Fitzgibbons Brothers Attorneys at Law in Estherville, Iowa. Defendants Bishop Soens, St. Lawrence Church, and the Roman Catholic Diocese of Sioux City, Iowa, were represented by counsel James W. Radig of Shull, Cosgrove, Hellige & Lundberg in Sioux City, Iowa. Plaintiff/intervenor United States of America was represented by counsel Anjali A. Ashley of the Department of Justice, Civil Division, Federal Programs Branch in Washington, D.C., and Willis A. Buell, Assistant United States Attorney for the Northern District of Iowa. *Amicus curiae* NOW Legal Defense and Education Fund was represented by counsel Andrea Williams of the NOW Legal Defense and Education Fund in New York, New York. [FN15]

FN15. *Amici curiae* Law Professors, who did not participate in oral arguments, were represented by counsel Victoria L. Herring of Des Moines, Iowa. The firm of Cleary, Gottlieb, Steen & Hamilton in New York, New York, is "of counsel" for the *amici* Law Professors, as are Professor Judith Resnik, Orrin B. Evans Professor of Law, University of Southern California Law School, Visiting Professor of Law, New York University School of Law, and Professor Frank Michelman, Robert Walmsley University Professor of Law, Harvard University Law School. Assistance in the preparation of the brief of *amici* Law Professors was also provided by Professor Reva Siegel, Yale Law School, and New York University School of Law students Alys Behio (1998), Chris Gottlieb (1997), Valerie Leipheimer (1998), and Jennifer Rakstad (1998).

***1385** After the oral arguments, the government was granted leave to supplement the record with the briefs from the appeal of the *Brzonkala* decision to the Fourth Circuit Court of Appeals. Those briefs were received by the court on June 13, 1997. Also, prior to and during oral arguments, the parties supplemented the citations of authority found in their briefs, particularly with reference to the First Amendment barriers to a negligent hiring or supervision claim against a religious institution.

The court will detail the pertinent arguments of the interested parties as it considers each of the essential issues the court finds must (or can) be resolved in disposition of defendants' motion.

II. LEGAL ANALYSIS

The defendants assert that various portions of Doe's complaint must be dismissed, because she fails to state claims upon which relief can be granted. They contend further that the complaint must be dismissed in its entirety, because the court lacks subject matter jurisdiction over Doe's federal claim, and hence lacks supplemental jurisdiction over her state-law claims. The standards for dismissal on each of these grounds are similar, to some extent interrelated, but not identical.

A. Standards For Defendants' Motion To Dismiss

1. Failure to state a claim

[1] A motion to dismiss may be made, *inter alia,* for "failure to state a claim upon which relief can be granted." *Fed.R.Civ.P.* 12(b)(6). A motion to dismiss pursuant to *Fed.R.Civ.P.* 12(b)(6) requires the court to review only the pleadings to determine whether the pleadings state a claim upon which relief can be granted. *Fed.R.Civ.P.* 12(b). [FN16] Such motions "can serve a useful purpose in disposing of legal issues with the minimum of time and expense to the interested parties." *Hiland Dairy, Inc. v. Kroger Co.,* 402 F.2d 968, 973 (8th Cir.1968), *cert. denied,* 395 U.S. 961, 89 S.Ct. 2096, 23 L.Ed.2d 748 (1969). The issue is not whether a plaintiff will ultimately prevail, but rather whether the plaintiff is entitled to offer evidence in support of the plaintiff's claims. *Scheuer v. Rhodes,* 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d

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90 (1974); *United States v. Aceto Agric. Chem. Corp.*, 872 F.2d 1373, 1376 (8th Cir.1989).

> FN16. However, where on a Rule 12(b)(6) motion to dismiss "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." *Fed.R.Civ.P.* 12(b)(6); *see also Buck v. FDIC*, 75 F.3d 1285, 1288 & n. 3 (8th Cir.1996) (because the district court relied on matters outside the complaint in ruling on a Rule 12(b)(6) motion, "the district court had to treat the [defendant's] motion to dismiss as a motion for summary judgment and apply the relevant standards for summary judgment," and further noting that "[t]he standards for dismissing a complaint under Rule 12(b)(6) are substantially different" from those applicable to a Rule 56 summary judgment motion; therefore it was inappropriate for the district court to fail to specify whether it was disposing of an issue according to summary judgment or Rule 12(b)(6) standards). Even where matters outside of the pleadings are presented to the court, however, a motion to dismiss is not converted into a motion for summary judgment "where the district court's order makes clear that the judge ruled only on the motion to dismiss." *Skyberg v. United Food and Commercial Workers Int'l Union, AFL-CIO*, 5 F.3d 297, 302 n. 2 (8th Cir.1993). Where the district court has made the posture of its disposition clear, the appellate court will "treat the case as being in that posture." *Id.* The only materials outside of the pleadings offered here in support of or resistance to the motion to dismiss are documentation of hearings and reports before Congress on the VAWA and authorities not readily available to the court, rather than documentary or other evidence. Therefore, the motion to dismiss will not be disposed of as provided in Rule 56, but only according to the standards stated herein.

In considering a motion to dismiss under Rule 12(b)(6), the court must assume that all ***1386** facts alleged in the plaintiff's complaint are true, and must liberally construe those allegations. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80 (1957); *Doe v. Norwest Bank Minn., N.A.*, 107 F.3d 1297, 1303-04 (8th Cir.1997) ("In considering a motion to dismiss, we assume all facts in the complaint are true, construe the complaint in the light most favorable to the plaintiff, and affirm the dismissal only if 'it appears beyond a doubt that the plaintiff can prove no set of facts which would entitle the plaintiff to relief,' " quoting *Coleman v. Watt*, 40 F.3d 255, 258 (8th Cir.1994)); *WMX Techs., Inc. v. Gasconade County, Mo.*, 105 F.3d 1195, 1198 (8th Cir.1997) ("In considering a motion to dismiss, the court must construe the complaint liberally and assume all factual allegations to be true."); *First Commercial Trust v. Colt's Mfg. Co.*, 77 F.3d 1081, 1083 (8th Cir.1996) (same).

The court is mindful that in treating the factual allegations of a complaint as true pursuant to Rule 12(b)(6), the court must "reject conclusory allegations of law and unwarranted inferences." *Silver v. H & R Block, Inc.*, 105 F.3d 394, 397 (8th Cir.1997) (citing *In re Syntex Corp. Securities Lit.*, 95 F.3d 922, 926 (9th Cir.1996)); *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir.1990) (the court "do[es] not, however, blindly accept the legal conclusions drawn by the pleader from the facts," citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir.1987), and 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1357, at 595-97 (1969)); *see also LRL Properties v. Portage Metro Hous. Auth.*, 55 F.3d 1097, 1103 (6th Cir.1995) (the court "need not accept as true legal conclusions or unwarranted factual inferences," quoting *Morgan*, 829 F.2d at 12). Conclusory allegations need not and will not be taken as true; rather, the court will consider whether the *facts* alleged in the complaint, accepted as true, are sufficient to state a claim upon which relief can be granted. *Silver*, 105 F.3d at 397; *Westcott*, 901 F.2d at 1488.

[2] The United States Supreme Court and the Eighth Circuit Court of Appeals have both observed that "a court should grant the motion and dismiss the action 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.' " *Handeen v. Lemaire*, 112 F.3d 1339, 1347-48 (8th Cir.1997) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33, 81 L.Ed.2d 59 (1984)

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); *accord Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02 ("A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief."); *Doe,* 107 F.3d at 1304 (dismissal is appropriate only if " 'it appears beyond doubt that the plaintiff can prove no set of facts which would entitle the plaintiff to relief,' " quoting *Coleman,* 40 F.3d at 258); *WMX Techs., Inc.,* 105 F.3d at 1198 ("Dismissal should not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts that would entitle relief," citing *Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02). The Rule does not countenance dismissals based on a judge's disbelief of a complaint's factual allegations. *Neitzke v. Williams,* 490 U.S. 319, 327, 109 S.Ct. 1827, 1832- 33, 104 L.Ed.2d 338 (1989). Thus, "[a] motion to dismiss should be granted as a practical matter only in the unusual case in which a plaintiff includes allegations that show on the face of the complaint that there is some insuperable bar to relief." *Frey v. City of Herculaneum,* 44 F.3d 667, 671 (8th Cir.1995) (internal quotation marks and ellipses omitted).

2. Lack of subject matter jurisdiction

Interwoven with defendants' challenge to Doe's complaint on the ground that it fails to state claims upon which relief can be granted pursuant to Rule 12(b)(6) is defendants' challenge, on another Rule 12 ground, this time Rule 12(b)(1), to the subject matter jurisdiction of the court. Defendants contend that Doe cannot state a federal claim upon which to assert federal jurisdiction, first, because Doe's federal claim under the VAWA is based on an unconstitutional statute, and, second, because Doe has not alleged a predicate offense upon which a VAWA claim would depend on either the face of the complaint or as a matter of fact.

***1387** The federal district courts have always been courts of limited jurisdiction. *See* U.S. Const., Art. III, § 1. [FN17] Because jurisdiction is a threshold issue for the court, the district court has "broader power to decide its own right to hear the case than it has when the merits of the case are reached." *Bellecourt v. United States,* 994 F.2d 427, 430 (8th Cir.1993) (quoting *Osborn v. United States,* 918 F.2d 724, 729 (8th Cir.1990), which in turn quotes *Williamson v. Tucker,* 645 F.2d 404, 413 (5th Cir.), *cert. denied,* 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981)), *cert. denied,* 510 U.S. 1109, 114 S.Ct. 1049, 127 L.Ed.2d 371 (1994).

FN17. The Eighth Circuit Court of Appeals has explained further: "Federal courts are not courts of general jurisdiction and have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Marine Equip. Management Co. v. United States,* 4 F.3d 643, 646 (8th Cir.1993) (citing *Bender v. Williamsport Area Sch. Dist.,* 475 U.S. 534, 541, 106 S.Ct. 1326, 1331, 89 L.Ed.2d 501, *reh'g denied,* 476 U.S. 1132, 106 S.Ct. 2003, 90 L.Ed.2d 682 (1986), citing in turn *Marbury v. Madison,* 1 Cranch (5 U.S.) 137, 2 L.Ed. 60 (1803)); *see also Neighborhood Transp. Network, Inc. v. Pena,* 42 F.3d 1169, 1171 (8th Cir.1994) (federal court jurisdiction is limited by Article III of the Constitution). A federal court therefore has a duty to assure itself that the threshold requirement of subject matter jurisdiction has been met in every case. *Bradley v. American Postal Workers Union, AFL-CIO,* 962 F.2d 800, 802 n. 3 (8th Cir.1992) (citing *Sanders, infra*); *Thomas v. Basham,* 931 F.2d 521, 523 (8th Cir.1991); *Jader v. Principal Mut. Life Ins. Co.,* 925 F.2d 1075, 1077 (8th Cir.1991); *Barclay Square Properties v. Midwest Fed. Sav. & Loan Ass'n,* 893 F.2d 968, 969 (8th Cir.1990); *Sanders v. Clemco Indus.,* 823 F.2d 214, 216 (8th Cir.1987).

"The parties ... may not confer subject matter jurisdiction upon the federal courts by stipulation, and lack of subject matter jurisdiction cannot be waived by the parties or ignored by the court." *Pacific Nat'l Ins. Co. v. Transport Ins. Co.,* 341 F.2d 514, 516 (8th Cir.), *cert. denied,* 381 U.S. 912, 85 S.Ct. 1536, 14 L.Ed.2d 434 (1965); *see also Pennsylvania v. Union Gas Co.,* 491 U.S. 1, 25, 109 S.Ct. 2273, 2287, 105 L.Ed.2d 1 (1989) (Stevens, J., concurring) ("[T]he cases are legion holding that a party may not waive a defect in subject-matter jurisdiction or invoke federal jurisdiction simply by consent,"

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> citing *Owen Equip. & Erection Co. v. Kroger,* 437 U.S. 365, 377 n. 21, 98 S.Ct. 2396, 2404 n. 21, 57 L.Ed.2d 274 (1978); *Sosna v. Iowa,* 419 U.S. 393, 398, 95 S.Ct. 553, 556-57, 42 L.Ed.2d 532 (1975); *California v. LaRue,* 409 U.S. 109, 112 n. 3, 93 S.Ct. 390, 394 n. 3, 34 L.Ed.2d 342 (1972); *American Fire & Cas. Co. v. Finn,* 341 U.S. 6, 17-18 & n. 17, 71 S.Ct. 534, 542 & n. 17, 95 L.Ed. 702 (1951); *Mitchell v. Maurer,* 293 U.S. 237, 244, 55 S.Ct. 162, 165, 79 L.Ed. 338 (1934); *Jackson v. Ashton,* 8 Pet. (33 U.S.) 148, 149, 8 L.Ed. 898 (1834)); *Lawrence County v. South Dakota,* 668 F.2d 27, 29 (8th Cir.1982) ("[F]ederal courts operate within jurisdictional constraints and ... parties by their consent cannot confer subject matter Jurisdiction upon the federal courts."). Even where " 'the parties did not raise any jurisdictional issues[, t]his court is obligated to raise such jurisdictional issues if it perceives any.' " *White v. Nix,* 43 F.3d 374, 376 (8th Cir.1994) (quoting *Lewis v. United States Farmers Home Admin.,* 992 F.2d 767, 771 (8th Cir.1993)). The federal courts have a duty to examine the substantiality of the federal claim throughout the litigation, and must dismiss all claims if the federal claim proves patently meritless even after the trial begins. *Pioneer Hi-Bred Int'l v. Holden Found. Seeds, Inc.,* 35 F.3d 1226, 1242 (8th Cir.1994); *Sanders,* 823 F.2d at 216. However, the Eighth Circuit Court of Appeals has cautioned that "subject matter jurisdiction should not be used to dismiss a case containing even a remotely plausible federal claim if the parties and the courts have already made [a] vast expenditure of resources." *Id.*

[3][4][5][6][7] For the court to dismiss for lack of subject matter jurisdiction under *Fed. R. Civ. P.* 12(b)(1), the complaint must be successfully challenged on its face or on the factual truthfulness of its averments. *Titus v. Sullivan,* 4 F.3d 590, 593 (8th Cir.1993). The court in *Titus* distinguished between the two kinds of challenges:

> In a facial challenge to jurisdiction, all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction. *Eaton v. Dorchester Dev., Inc.,* 692 F.2d 727, 731-32 (11th Cir.1982)....
>
> If the [defendant] wants to make a *factual* attack on the jurisdictional allegations of the complaint, the court may receive competent evidence such as affidavits, deposition testimony, and the like in order to determine the factual dispute. *Land v. Dollar,* 330 U.S. 731, 735 n. 4, 67 S.Ct. 1009, 1011 n. 4, 91 L.Ed. 1209 (1947) [footnote omitted]. The proper course is for the defendant to request an evidentiary hearing on the issue. *Osborn [v. United States],* 918 F.2d [724,] 730 (citing *1388*Crawford v. United States,* 796 F.2d 924, 928 (7th Cir.1986)).

Id. [FN18]

> FN18. The district court has the authority to consider matters outside the pleadings on a motion challenging subject matter jurisdiction under *Fed.R.Civ.P.* 12(b)(1). *Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468, 470 (8th Cir.1993). If material facts are adjudicated by the court in determining its jurisdiction, the appellate court will review the findings of fact for clear error. *Id.* Where the material facts are not in dispute, the appellate court will review the court's determination that it lacks jurisdiction de novo. *Id.; see also Southern Council of Indus. Workers v. Ford,* 83 F.3d 966, 968 (8th Cir.1996) (citing *Osborn v. United States,* 918 F.2d 724, 730 (8th Cir.1990)); *Thompson v. Covington,* 47 F.3d 974, 975 (8th Cir.1995) (citing *Drevlow,* 991 F.2d at 470); *Christopher Lake Dev. Co. v. St. Louis County,* 35 F.3d 1269, 1273 (8th Cir.1994) (citing *Osborn,* 918 F.2d at 730). If the court considers matters outside of the pleadings, however, it may not, without notice to the parties, convert a motion to dismiss for lack of subject matter jurisdiction under *Fed.R.Civ.P.* 12(b)(1) into a motion to dismiss for failure to state a claim under *Fed.R.Civ.P.* 12(b)(6), which is subject to summary judgment disposition, because to do so would not allow the parties to respond to the issue the court is weighing for summary judgment. *Layton v. United States,* 919 F.2d 1333,

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1334-35 (8th Cir.1990).

In *Layton,* the court noted that a Rule 12(b)(1) motion is distinguishable from a 12(b)(6) motion on the ground that the Rules expressly provide that the latter is subject to conversion into a summary judgment motion, while no such provision exists for a Rule 12(b)(1) motion. *Layton,* 919 F.2d at 1335. However, courts have approved such a conversion of a Rule 12(b)(1) motion when appropriate. *Id.* (citing *Less v. Lurie,* 789 F.2d 624, 625 n. 1 (8th Cir.1986)). There is, however, an exception to the notice requirement before the court makes a conversion into a summary judgment motion articulated in *Van Leeuwen v. United States Postal Serv.,* 628 F.2d 1093, 1095 (8th Cir.1980), which requires that if both parties have submitted affidavits and exhibits outside the pleadings which they understand the district court has accepted for consideration, then the non-moving party has notice of the court's intention to treat the motion to dismiss as one for summary judgment. *Id.* (concluding that the court could not invoke the *Van Leeuwen* exception on the basis of a unilateral submission of exhibits by the moving party). The court will explain in the body of this ruling which standards are applicable to the motion to dismiss pursuant to Rule 12(b)(1) in this case.

In *Osborn v. United States,* 918 F.2d 724 (8th Cir.1990), the Eighth Circuit Court of Appeals presented its most exhaustive discussion of the procedures and requirements for determination of a 12(b)(1) motion to dismiss.

The district court was correct in recognizing the critical differences between Rule 12(b)(1), which governs challenges to subject matter jurisdiction, and Rule 56, which governs summary judgment. Rule 12 requires that Rule 56 standards be applied to motions to dismiss for failure to state a claim under Rule 12(b)(6) when the court considers matters outside the pleadings. [Citations omitted.] Rule 12 does not prescribe, however, summary judgment treatment for challenges under 12(b)(1) to subject matter jurisdiction where a factual record is developed. Nonetheless, some courts have held that Rule 56 governs a 12(b)(1) motion when the court looks beyond the complaint. We agree, however, with the majority of circuits that have held to the contrary.... [Citations omitted.]

The reason for treating a 12(b)(1) motion differently than a 12(b)(6) motion, which is governed by Rule 56 when matters outside the pleadings are considered, "is rooted in the unique nature of the jurisdictional question." *Williamson [v. Tucker],* 645 F.2d [404,] 413 [(5th Cir.), *cert. denied,* 454 U.S. 897, 102 S.Ct. 396, 70 L.Ed.2d 212 (1981)]. It is "elementary," the Fourth [sic] Circuit stated, that a district court has "broader power to decide its own right to hear the case than it has when the merits of the case are reached." *Id.* Jurisdictional issues, whether they involve questions of law or of fact, are for the court to decide. *Id.* Moreover, because jurisdiction is a threshold question, judicial economy demands that the issue be decided at the outset rather than deferring it until trial, as would occur with denial of a summary judgment motion.

Osborn, 918 F.2d at 729.

The *Osborn* court found the distinction between facial and factual attacks on the complaint under 12(b)(1) to be critical. *Id.* (citing *Menchaca v. Chrysler Credit Corp.,* 613 F.2d 507, 511 (5th Cir.) , *cert. denied,* *1389449 U.S. 953, 101 S.Ct. 358, 66 L.Ed.2d 217 (1980), and *Mortensen v. First Fed. Sav. & Loan Ass'n,* 549 F.2d 884, 891 (3d Cir.1977)). The court stated that

[i]n the first instance, the court restricts itself to the face of the pleadings, and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6). The general rule is that a complaint should not be dismissed " 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' " In a factual attack, the court considers matters outside the pleadings, and the nonmoving party does not have the benefit of 12(b)(6) safeguards.

Id. at 729 n. 6 (citations omitted). [FN19] A factual challenge to jurisdiction under 12(b)(1) is unique:

FN19. The standards for dismissal under Rule 12(b)(6) are, of course, described in some detail in the preceding section.

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> [H]ere the trial court may proceed as it never could under 12(b)(6) or Fed.R.Civ.P. 56. Because at issue in a factual motion is the trial court's jurisdiction--its very power to hear the case--there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to the plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.

Id. at 730 (quoting *Mortensen,* 549 F.2d at 891). The *Osborn* court stated that the proper course is for the defendant to request an evidentiary hearing on the issue, and, since no statute or rule prescribes the format of such a hearing, "any rational mode of inquiry will do." *Id.* (quoting *Crawford,* 796 F.2d at 929).

> Once the evidence is submitted, the district court must decide the jurisdictional issue, not simply rule that there is or is not enough evidence to have a trial on the issue. *[Crawford,* 796 F.2d at 929.] The only exception is in instances when the jurisdictional issue is "so bound up with the merits that a full trial on the merits may be necessary to resolve the issue." *Id.*

Id.

Defendants here originally asserted only a facial challenge to subject matter jurisdiction, contending that Doe had failed to allege essential elements of the predicate offense, an alleged violation of Iowa Code § 709.15. However, while their motion to dismiss was pending, the defendants apparently recognized that their challenge to subject matter jurisdiction was or could also be factual. They sought and initially obtained from plaintiff a factual stipulation concerning whether Doe received mental health services from Father Hartz, but plaintiff has now withdrawn her consent to that stipulation. The defendants then, belatedly, requested an evidentiary hearing on June 4, 1997, just days before the oral arguments, in support of a factual challenge to subject matter jurisdiction. [FN20] By order dated June 5, 1997, the court denied defendants' request for an evidentiary hearing as both untimely and impractical under the circumstances. *See Titus,* 4 F.3d at 593.

> FN20. The oral arguments had been scheduled for months and for this specific date for several weeks.

Thus, the challenge to subject matter jurisdiction mounted here is construed to be only a *facial* one, subject to the same protections afforded the non-moving party as that party would have in defending against a motion brought under Rule 12(b)(6). *Osborn,* 918 F.2d at 729 n. 6; *see also Titus,* 4 F.3d at 593 ("In a facial challenge to jurisdiction, all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction."). To the extent that the defendants assert a factual challenge to subject matter jurisdiction, the court finds that their factual issue--whether or not Doe received mental health services from Father Hartz as required by one element of the predicate offense Doe has alleged in her VAWA claim--*1390 is inextricably "bound up with the merits" of the VAWA claim, such that a full trial, or at least a complete summary judgment record, on the merits of the claim is necessary to resolve the issue. *Osborn,* 918 F.2d at 730. For now, therefore, in resolving defendants' motion to dismiss for lack of subject matter jurisdiction, the court will assess the adequacy of Doe's facial pleading *or prima facie* factual showing of elements necessary to sustain her federal claim, but will not "decide the jurisdictional issue." *Id.* Instead, the court will rule only on whether there is or is not enough evidence for the question of subject matter jurisdiction to await resolution at a later stage in these proceedings. *Id.*

With these standards in mind, the court turns to the defendants' specific challenges to the adequacy of Doe's claims as alleged.

B. The Challenges To The VAWA Claim

Defendants assert that there are two insuperable bars to Doe's claim under the civil remedies provision of the VAWA, 42 U.S.C. § 13981. First, they contend that the civil remedies provision of the VAWA is unconstitutional, because it is not a proper exercise of congressional power under either the Commerce Clause or section five of the Fourteenth Amendment. Second, they contend that Doe has failed to state a claim that comes within the scope of the Act, because Doe has failed to allege

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satisfactorily each element of such a claim. Furthermore, defendants argue that the court lacks subject matter jurisdiction over the complaint, because this sole federal claim is based on an unconstitutional statute, and/or Doe has failed to allege an element necessary for subject matter jurisdiction. [FN21]

> FN21. Again, the court will not reach the question pertinent to a factual challenge to subject matter jurisdiction, which is whether all essential elements necessary for subject matter jurisdiction can be proved.

[8] The court will consider these questions in reverse order, however, only reaching the argument that the statute is unconstitutional if that part of defendants' motion to dismiss based on failure to allege the necessary elements of the claim is defeated. Such a procedure is mandated by the United States Supreme Court:

> "Prior to reaching any constitutional questions, federal courts must consider nonconstitutional grounds for decision." *Gulf Oil Co. v. Bernard,* 452 U.S. 89, 99, 101 S.Ct. 2193, 2199, 68 L.Ed.2d 693 (1981); *Mobile v. Bolden,* 446 U.S. 55, 60, 100 S.Ct. 1490, 1495-96, 64 L.Ed.2d 47 (1980); *Kolender v. Lawson,* 461 U.S. 352, 361, n. 10, 103 S.Ct. 1855, 1860, n. 10, 75 L.Ed.2d 903 (1983), citing *Ashwander v. TVA,* 297 U.S. 288, 347, 56 S.Ct. 466, 483, 80 L.Ed. 688 (1936) (Brandeis, J., concurring). This is a "fundamental rule of judicial restraint." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering,* 467 U.S. 138, 104 S.Ct. 2267, 81 L.Ed.2d 113 (1984). Of course, the fact that courts should not decide constitutional issues unnecessarily does not permit a court to press statutory construction "to the point of disingenuous evasion" to avoid a constitutional question. *United States v. Locke,* 471 U.S. 84, 96, 105 S.Ct. 1785, 1793, 85 L.Ed.2d 64 (1985). As the Court stressed in *Spector Motor Service v. McLaughlin,* 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101 (1944), "[i]f there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable." *See also United States v. Gerlach Live Stock Co.,* 339 U.S. 725, 737, 70 S.Ct. 955, 961-62, 94 L.Ed. 1231 (1950); *Larson v. Valente,* 456 U.S. 228, 257, 102 S.Ct. 1673, 1690, 72 L.Ed.2d 33 (1982) (Stevens, J., concurring).

Jean v. Nelson, 472 U.S. 846, 854, 105 S.Ct. 2992, 2997, 86 L.Ed.2d 664 (1985). The Court in *Jean* found that the Eleventh Circuit Court of Appeals, *en banc,* had failed to follow this rule, because that court first examined the constitutionality of parole considerations employed by the INS that were established in former statutes and regulations instead of examining whether current statutes provided nondiscriminatory considerations. *Id.* Because current statutes and regulations provided the petitioners with nondiscriminatory parole considerations, ***1391** which was all petitioners sought to obtain by virtue of their constitutional arguments, "there was no need to address the constitutional issue" as to the former statutes and regulations. *Id.* at 854-55, 105 S.Ct. at 2997.

Here, the situation is somewhat different, but this "fundamental rule of judicial restraint" is nonetheless applicable: If Doe has not stated a claim under the VAWA, a nonconstitutional ground for dismissal of the claim, [FN22] this court certainly need not consider whether the VAWA is constitutional. *Id.* at 854, 105 S.Ct. at 2997. If the court can render defendants all they seek, dismissal of the VAWA claim, because the allegations are simply insufficient, without addressing the constitutionality of the VAWA, it must consider that assertion first, before considering constitutionality of the statute. *Id.* at 854-55, 105 S.Ct. at 2996-97; *see also Schanou v. Lancaster County Sch. Dist. No. 160,* 62 F.3d 1040, 1046 n. 4 (8th Cir.1995) (noting that the court would express no opinion on the constitutionality of a policy of a school district, because the court had disposed of the case without reaching the merits of the constitutional challenge). To put it another way, only if Doe has adequately pleaded a claim within the scope of the VAWA will adjudication of the constitutionality of the Act be "unavoidable." *Id.* at 854, 105 S.Ct. at 2997.

> FN22. Such a conclusion might also require dismissal of the entire complaint, which depends upon a viable federal question for this court to exercise jurisdiction, because the challenge to the

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only federal claim comes so early in the proceedings. *See* 28 U.S.C. § 1367(c)(3).

1. Has Doe stated a claim under the VAWA? [FN23]

FN23. Plaintiff/intervenor the United States and *amici* necessarily took no part in the arguments concerning this part of defendants' motion to dismiss, being concerned solely with the constitutionality of the VAWA.

The defendants contend that Count 1 of Doe's complaint simply does not allege, or does not allege adequately, each essential element of a § 13981 claim. After setting forth the language of § 13981 and the Iowa statute establishing the predicate offense Doe asserts Father Hartz committed, Iowa Code § 709.15, the defendants contend that the essential elements of Doe's VAWA claim are the following:

(1) Father Hartz provided or purported to provide "mental health services";
(2) at the time of the events in question, Doe had a relationship with Father Hartz in which she was receiving from him "mental health services," or she had terminated such a relationship within the previous year;
(3) Father Hartz's acts constituted
(a) a pattern or practice or scheme of conduct
(b) to engage in sexual conduct of the kind prohibited by § 709.15(1)(f)(2) or (3), and
(c) that conduct was for the purpose of arousing or satisfying his sexual desires;
(4) Father Hartz's conduct constituted a "crime of violence" within the meaning of 18 U.S.C. § 16;
(5) the acts were committed because of Doe's gender;
(6) Father Hartz committed the acts because of an animus on his part against women; and
(7) Doe suffered damage.

The defendants assert that Doe's § 13981 claim is deficiently pleaded as to each of these elements. Although Doe does not appear to challenge the defendants' statement of the elements of her VAWA claim, she resists this part of the defendants' motion to dismiss on the ground that she has adequately alleged every essential element of that claim. In their reply brief, the defendants focus on the adequacy of the pleading that Doe received "mental health services" from Father Hartz.

The court's task, therefore, is to determine, in the first instance, the elements of Doe's VAWA claim, and then to assess whether she has pleaded, in more than conclusory fashion, *facts* that, accepted as true, are sufficient to state a claim under the VAWA upon which relief can be granted. *Silver,* 105 F.3d at 397; *Westcott,* 901 F.2d at 1488. "[O]nly if it is clear that no relief could ***1392** be granted under any set of facts that could be proved consistent with the allegations" will the court grant the defendants' motion to dismiss the VAWA claim on this nonconstitutional ground. *Handeen,* 112 F.3d at 1347-48 (internal quotation marks omitted).

a. Elements of Doe's § 13981 claim

[9] *i. Rules of statutory interpretation.* Identifying or determining the elements of a statutory cause of action is essentially a matter of statutory interpretation. "The task of resolving the dispute over the meaning of [a statute] begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters., Inc.,* 489 U.S. 235, 241, 109 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989); *Chevron U.S.A. v. Natural Res. Defense Council, Inc.,* 467 U.S. 837, 842-43, 104 S.Ct. 2778, 2781-82, 81 L.Ed.2d 694 (1984); *United States v. Union Elec. Co.,* 64 F.3d 1152, 1165 (8th Cir.1995) (citing *Ron Pair); United States ex rel. Harlan v. Bacon,* 21 F.3d 209, 210 (8th Cir.1994) ("When construing a statute, we are obliged to look first to the plain meaning of the words employed by the legislature ...," citing *Chevron,* 467 U.S. at 842-43, 104 S.Ct. at 2781-82); *United States v. Manthei,* 979 F.2d 124, 126 (8th Cir.1992) ("When interpreting statutory language, the court must first look to the plain meaning of the language," citing *North Dakota v. United States,* 460 U.S. 300, 312- 13, 103 S.Ct. 1095, 1102-03, 75 L.Ed.2d 77 (1983)). The Supreme Court describes this rule as the "one, cardinal canon before all others." *Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 253, 112 S.Ct. 1146, 1149, 117 L.Ed.2d 391 (1992). Thus, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Id.* (citing *Ron Pair,* 489 U.S. at 241-42, 109 S.Ct. at 1030-31; *United States v. Goldenberg,* 168 U.S. 95, 102-03, 18 S.Ct. 3, 4, 42 L.Ed. 394 (1897); *Oneale v. Thornton,* 6 Cranch

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53, 68, 3 L.Ed. 150 (1810)).

[10] When the language of the statute is plain, the inquiry also ends with the language of the statute, for in such instances "the sole function of the courts is to enforce [the statute] according to its terms." *Ron Pair,* 489 U.S. at 241, 109 S.Ct. at 1030 (quoting *Caminetti v. United States,* 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442 (1917)); *Union Elec.,* 64 F.3d at 1165 (quoting *Ron Pair*); *Melahn v. Pennock Ins., Inc.,* 965 F.2d 1497, 1502 (8th Cir.1992) (plain meaning of a statute governs over ambiguous legislative history, citing *Ron Pair Enterprises*). The plain meaning of a statute is decisive, "except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Ron Pair,* 489 U.S. at 242, 109 S.Ct. at 1031 (quoting *Griffin v. Oceanic Contractors, Inc.,* 458 U.S. 564, 571, 102 S.Ct. 3245, 3250, 73 L.Ed.2d 973 (1982)); *INS v. Cardoza-Fonseca,* 480 U.S. 421, 452, 107 S.Ct. 1207, 1223-24, 94 L.Ed.2d 434 (1987) (Scalia, J., concurring in judgment) (ordinary meaning governs unless implementing it would be "patent absurdity"); *Waugh v. Internal Revenue Serv.,* 109 F.3d 489, 493 (8th Cir.1997) (quoting *Ron Pair*); *Missouri v. L.J. O'Neill Shoe Co.,* 64 F.3d 1146, 1150 (8th Cir.1995); *Union Elec.,* 64 F.3d at 1165.

[11] However, "[p]lain meaning, like beauty, is sometimes in the eye of the beholder," *Florida Power & Light Co. v. Lorion,* 470 U.S. 729, 737, 105 S.Ct. 1598, 1603-04, 84 L.Ed.2d 643 (1985). Thus, the court must not reach its decision about the meaning of a statute

> by a strict construction of the words of the Act, nor by application of artificial canons of construction. On the contrary, we are to read the statutory language in its ordinary and natural sense, and if doubts remain, resolve them in the light, not only of the policy intended to be served by the enactment, but, as well, by all other available aids to construction. But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made.

Bacon, 21 F.3d at 210-11 (quoting *United States v. Cooper Corp.,* 312 U.S. 600, 605, 61 S.Ct. 742, 743-44, 85 L.Ed. 1071 (1941)). Thus, the court must assume that the words of a statute, construed in their ordinary meaning, accurately express the legislative purpose, and the court should decline to frustrate the plain meaning of the words chosen ***1393** by the legislature. *United States v. Talley,* 16 F.3d 972, 976 (8th Cir.1994).

ii. The plain meaning of the VAWA civil remedies statute. The civil remedies provision of the VAWA is codified at 42 U.S.C. § 13981. Subsection (b) of § 13981 establishes the right upon which a civil claim can be founded:

> All persons within the United States shall have the right to be free from crimes of violence motivated by gender (as defined in subsection (d) of this section).

42 U.S.C. § 13981(b). Subsection (c) authorizes a cause of action for violation of this right as follows:

> A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

42 U.S.C. § 13981(c). The essential elements of a VAWA claim are readily apparent from the subsection authorizing the cause of action. Those elements are as follows: (1) the defendant committed a "crime of violence"; (2) that crime of violence was "motivated by gender"; and (3) commission of the crime deprived the victim of the right to be free from crimes of violence motivated by gender. *Id.* Although these elements may be readily apparent, determining the constituent prongs of these elements requires further analysis.

[12][13] The court finds that it must consider first the meaning of the third element extracted from the language of subsection (c). At first reading, this element appears tautologous: If one commits a crime of violence, element one, that is motivated by gender, the second element, one has necessarily deprived another of the right to be free of crimes of violence motivated by gender, the third element. However, it is precisely this statement that rebuts defendants' argument that an essential element of Doe's case is that she prove she suffered damage. Instead, the statute plainly states that deprivation of the right *is sufficient injury to sustain the cause of action;* no further physical, emotional, economic, or non-economic injury is required. [FN24]

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FN24. Consequently, as in actions pursuant to 42 U.S.C. § 1983 for violations of constitutional rights, if the plaintiff shows a violation of the right established by the statute, but has no damages of any monetary value, it would follow that the plaintiff is entitled to nominal damages, which can support a punitive damages award. *See Muhammad v. Lockhart,* 104 F.3d 1069, 1070 (8th Cir.1997) (an award of nominal damages to a person deprived of the right recognizes the importance of the civil right in an organized society); *Williams v. Soligo,* 104 F.3d 1060, 1062 (8th Cir.1997) (a plaintiff deprived of a civil right, such as procedural due process, is entitled to nominal damages); *Pulla v. Amoco Oil Co.,* 72 F.3d 648, 658-61 (8th Cir.1995) (holding that punitive damages were available where the plaintiff was awarded only nominal damages on his claim of invasion of privacy, but that the amount of punitive damages awarded violated due process); *Cowans v. Wyrick,* 862 F.2d 697 (8th Cir.1988) (nominal damages were appropriate in a § 1983 civil rights action where the jury was unable to place a monetary value on the plaintiff's harm from deprivation of civil rights); *Goodwin v. Circuit Court of St. Louis County,* 729 F.2d 541, 548 (8th Cir.1984) (holding that an award of nominal damages in a § 1983 action will support an award of punitive damages).

One practical effect of this interpretation is that the trier of fact is not required to make any additional finding to satisfy the third element drawn from the statute. Proof of the first two elements necessarily establishes the third element, and the plaintiff's entitlement to the relief stated in the statute, which is "compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate." 42 U.S.C. § 13981(c) . Another practical effect of this interpretation is that the court need not consider further here the third statutory element identified above in its efforts to determine what elements must be adequately alleged to establish Doe's right to pursue a VAWA claim. [FN25]

FN25. Doe has specifically alleged that she has the right established by § 13981(b), and that Father Hartz's conduct deprived her of that right and caused various specific kinds of emotional and other injuries. Complaint, Count 1, ¶¶ 35, 37.

***1394** [14] Subsection (d) of the statute, to which the court will return below, contains essential definitions, but for now, the court will focus on some limitations or clarifications of the elements of a civil claim under the VAWA found in subsection (e). Subdivisions (e)(1) and (e)(2) clarify the reach of the civil cause of action. Subdivision (e)(1) clarifies or narrows the second element of the offense by excluding from the definition of "crimes of violence motivated by gender" those crimes that are merely "random acts of violence unrelated to gender or ... acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender." 42 U.S.C. § 13981(e)(1). The civil cause of action under the VAWA is therefore plainly aimed at conduct motivated by the victim's gender, not merely crimes in which the victim is a woman. *See* S.Rep. No. 103-195, at 49-50 (1993) ("The committee is not asserting that all crimes against women are gender- motivated. As discussed below, title III requires subjective proof on a case-by-case basis that the criminal conduct was motivated by a bias against the victim's gender."); S.Rep. No. 103-138, at 49-50 (1993) (same). Furthermore, although the Act was entitled the Violence Against Women Act, the statute is cast in gender-neutral terms, and thus would also be applicable to a crime against a man that was gender motivated.

[15] While subdivision (e)(1) narrows the scope of the civil remedy, subdivision (e)(2) explains the breadth of the civil cause of action. It specifies that "[n]othing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section." 42 U.S.C. § 13981(e)(2). Thus, although there must be a predicate "crime of violence," the first element of the civil cause of action under the VAWA, the civil remedy stands alone, without the necessity of a prior criminal complaint, prosecution, or conviction to address or establish the predicate offense. *Id.; see also Doe v. Doe,* 929 F.Supp. 608, 611-12 (D.Conn.1996) (also observing that "[t]he statute does not require a

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prior criminal complaint, prosecution, or conviction to establish the elements of the cause of action," citing § 13981(e)(2)). Thus far, the statute is clear enough.

But what kinds of crimes of violence motivated by gender can constitute the necessary predicate offenses? To answer this question, the court turns to the definitions found in subsection (d) of the statute. The meaning of this subsection, the court finds, is not immediately apparent. Subsection (d) provides as follows:

For purposes of this section--
(1) the term "crime of violence motivated by gender" means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender; and
(2) the term "crime of violence" means--
(A) an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of Title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and
(B) includes an act or series of acts that would constitute a felony described in subparagraphs (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

42 U.S.C. § 13981(d). Subdivision (d)(1) explains that, to satisfy the second element of the claim, which requires that the predicate crime be one "motivated by gender," a two-prong test must be satisfied: First, the predicate crime must be "because of" or "on the basis of" the victim's gender, *and*, second, the predicate crime must be "due, at least in part, to an *animus* based on the victim's gender." 42 U.S.C. § 13981(d)(1) (emphasis added). The court will return to the meaning of "animus" in this context below.

*1395 Subdivision (d)(2) in turn explains the specific requirements of, or prongs of inquiry under, the first element of the civil claim, the requirement of a predicate "crime of violence." 42 U.S.C. § 13981(d)(2). Subdivision (d)(2) states the intention of Congress, subsequently reiterated in subdivision (e)(2), that the predicate offense need not have resulted in criminal charges, prosecution, or conviction, and further eliminates certain territorial limitations. 42 U.S.C. § 13981(d)(2)(A). However, it is other portions of subdivision (d)(2) that the court finds establish the significant prongs of inquiry. Unfortunately, the court finds the drafting of those particular portions somewhat opaque.

Paragraph (A) of subdivision (d)(2) appears to establish requirements for a predicate "crime of violence," although the relationship among those requirements is, at first blush, rather obscure. 42 U.S.C. § 13981(d)(2)(A). What the court finds to be uncertain is the relationship among the phrases "an act or series of acts," "that would constitute a felony against the person," "that would constitute a felony against property," "if the conduct presents a serious risk of physical injury to another," and "that would come within the meaning of State or Federal offenses described in section 16 of Title 18," coupled with the placement of the conjunctions "and" and "or," as well as the presence or absence of commas. [FN26]

FN26. Perhaps the simplest way to explain the court's quandary in deciphering the meaning of this subdivision is to list some alternative readings. For example, the paragraph can be read to create, first, two alternative requirements, then another, mandatory requirement, as follows:
The term "crime of violence" means an act or series of acts (1)(a) that would constitute a felony against the person *or* (b) that would constitute a felony against property *if* the conduct presents a serious risk of physical injury to another, *and* (2) that would come within the meaning of State or Federal Offenses described in section 16 of Title 18....
However, it might seem just as reasonable to read the statute as follows:
[T]he term "crime of violence" means an act or series of acts (1)(a) that would constitute a felony against the person *if* the conduct presents a serious risk of physical injury to another *or* (b) that would constitute a felony against property *if* the conduct presents a serious risk of physical

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> injury to another, *and* (2) that would come within the meaning of State or Federal Offenses described in section 16 of Title 18 .... This reading relates the condition that the conduct present a serious risk of physical injury to another to both the felony against the person and the felony against property. A third alternative, dramatically changing the relationship among the phrases, and hence the requirements of the statute, without doing violence to the original word order would be the following:
>
> [T]he term "crime of violence" means an act or series of acts (1) that would constitute a felony against the person *or* (2) that would constitute a felony against property *if* the conduct presents a serious risk of physical injury to another, *and* that would come within the meaning of State or Federal Offenses described in section 16 of Title 18....
>
> This reading creates two alternative requirements, rather than two alternatives for a first requirement coupled with a second, mandatory requirement. Furthermore, it couples the requirement that the crime come within the meaning of 18 U.S.C. § 16 only to the alternative of a felony against property. In short, under this reading, *any* felony against the person (that also satisfies the gender motivation tests of subdivision (d)(1)) would constitute a predicate offense for a VAWA civil action, but only a felony against property (again, that satisfies the gender motivation tests of subdivision (d)(1)) that both presents a serious risk of physical injury to another *and* that comes within the meaning of 18 U.S.C. § 16 would constitute the necessary predicate offense.

Nonetheless, to clarify the meaning of the statute, the court need only resort to ordinary meanings. *Bacon,* 21 F.3d at 210; *Talley,* 16 F.3d at 976. Attachment of the condition that "the conduct presents a serious risk of physical injury to another" to a felony against the person is largely superfluous, whereas attachment of that condition to crimes against property significantly narrows the range of property crimes that would come within the scope of the statute. Furthermore, the phrases pertaining to "felony against the person" and "felony against property" each begin with "that would constitute," and they are separated by the word "or." This construction of the paragraph plainly suggests that the phrase before the "or," that is, "that would constitute a felony against the person," is one alternative for a predicate crime of violence, while the phrase after the "or," that is, "that would constitute a felony against property if the conduct presents a serious risk of physical injury to another," is a second alternative for this prong of the inquiry.

***1396** [16] Resort to ordinary meanings also establishes that the requirement that the predicate felony come within the meaning of 18 U.S.C. § 16 is a mandatory requirement conjoined to either alternative, a felony against the person or a felony against property. This requirement is set off from the phrase pertaining to a felony against property by a comma, whereas no such comma would be required if this requirement were conjoined only to a felony against property, but not against the person. Furthermore, this requirement also shares with the first two alternatives the restrictive phrase "that would," suggesting it is a further, mandatory requirement for the predicate crime of violence consisting of an act or series of acts meeting certain requirements. Thus, the court concludes that the plain meaning of paragraph (A) of subdivision (d)(2) is that the predicate offense must meet the following requirements:

> The term "crime of violence" means an act or series of acts
>
> (1)(a) that would constitute a felony against the person
>
> *or*
>
> (b) that would constitute a felony against property *if* the conduct presents a serious risk of physical injury to another, *and*
>
> (2) that would come within the meaning of State or Federal Offenses described in section 16 of Title 18....

This reading conforms most nearly to the word order and punctuation of the paragraph, and hence to the ordinary and natural sense of the paragraph. *Bacon,* 21 F.3d at 210; *Talley,* 16 F.3d at 976. [FN27]

> FN27. The court notes that the second alternative for the first prong requires a felony against property to "present[ ] a

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serious risk of physical *injury*," while 18 U.S.C. § 16 defines a crime of violence as either involving the "use, attempted use, or threatened use of physical force against the person or property of another" or "a *substantial* risk that physical *force*" may be used. *See, e.g., United States v. Shannon,* 110 F.3d 382, 384-85 (7th Cir.1997) (*en banc*) (distinguishing between a risk of injury and a risk of use of physical force). However, the court need not be concerned here with this difference, because the court is not presented in this case with any allegation of a predicate offense that is a felony against property.

The plain meaning of paragraph (B) of subdivision (d)(2) is that it adds to the available predicate offenses those acts fitting the requirements of paragraph (A), but which are not defined as felonies under applicable state or federal law only because of the relationship between the actor and the victim. 42 U.S.C. § 13981(d)(2)(B). The effect of this section is that it prevents certain crimes from falling outside the scope of the VAWA simply because the crime is not defined as a felony under state or federal law, because, for example, the crime is committed by one domestic partner against another.

[17][18] The court concluded above that the elements of a civil VAWA claim requiring proof to the satisfaction of a trier of fact are as follows: (1) the defendant committed a "crime of violence"; and (2) that crime of violence was "motivated by gender." Engrafting the requirements from definitional portions of § 13981 into the elements of a civil VAWA cause of action stated in subsection (b) of the statute, the court finds that the elements of such a claim are as follows:

(1) The defendant committed a "crime of violence" within the meaning of the VAWA.
An offense is a "crime of violence" within the meaning of the VAWA if it is, or would be but for the relationship between the defendant and the victim,
(a) either--
(i) a felony against the person of the victim, or
(ii) a felony against property that presents a serious risk of physical injury to another; and
(b) comes within the meaning of 18 U.S.C. § 16.
(2) The defendant's offense was "motivated by gender."
An offense is "motivated by gender" within the meaning of the VAWA if it is *both*
(a) committed "because of" or "on the basis of" the victim's gender, *and*
*1397 (b) due, at least in part, to an animus based on the victim's gender.

See 42 U.S.C. § 13981(c), (d), and (e).

[19] Before moving on to the elements of the predicate offense, however, the court must also consider what is meant by a "felony" within the meaning of § 13981. The civil action portion of the VAWA does not identify the applicable definition of "felony" as a felony under state law, federal law, or either state or federal law. 42 U.S.C. § 13981(d). Instead, it merely defines a predicate offense, in pertinent part, as "an act or series of acts that would constitute a felony." *Id.* Hence, the court concludes that the act or acts must constitute a felony under *either* state or federal law. Furthermore, a crime classified only as some degree of misdemeanor under state law is nonetheless a felony under federal law if it is punishable by a term of imprisonment exceeding one year. *See, e.g., United States v. Haggerty,* 85 F.3d 403, 406 (8th Cir.1996) ("Under federal law, an offense is a felony if the maximum term authorized for the offense is 'more than one year,' " citing 18 U.S.C. § 3559(a)). Under Iowa law, an aggravated misdemeanor is punishable by "imprisonment not to exceed two years." Iowa Code § 903.1(2). Thus, aggravated misdemeanors under Iowa law would qualify as felonies under federal law. *See* 18 U.S.C. § 3559(a); *Haggerty,* 85 F.3d at 406.

b. Elements of the predicate offense

Because a civil claim under the VAWA is dependent upon a predicate offense, the court's task of determining the elements of Doe's VAWA claim is not yet finished. The court must still determine the elements of the predicate offense Doe alleges Father Hartz has committed, a violation of Iowa Code § 709.15, then determine whether the predicate offense alleged is a qualifying predicate offense under the VAWA. Only then, and only if the offense alleged qualifies as a predicate offense under the VAWA, can the court turn to the question of whether Doe has adequately alleged the elements of that predicate offense, as well as the other essential elements of a VAWA claim.

[20][21] ***i. The statute defining the predicate***

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offense. The predicate felony offense that Doe alleges Father Hartz committed is defined by Iowa Code § 709.15. [FN28] That statute states, in pertinent part, as follows:

> FN28. Although neither the parties nor the court has found any decision of Iowa state courts interpreting Iowa Code § 709.15, the rules of statutory interpretation employed by the Iowa Supreme Court are not significantly different from those employed by the federal courts in interpreting federal statutes. In *Olympus Aluminum Prods., Inc. v. Kehm Enters., Ltd.*, 930 F.Supp. 1295 (N.D.Iowa 1996), this court reviewed extensively the rules of statutory interpretation applied by the Iowa Supreme Court. Suffice it to say here that the touchstone of statutory interpretation under Iowa law, as under federal law, is legislative intent. *City of West Branch v. Miller,* 546 N.W.2d 598, 602 (Iowa 1996) ("In interpreting statutes, our ultimate goal is to determine legislative intent," citing *Peffers v. City of Des Moines,* 299 N.W.2d 675, 678 (Iowa 1980)). When the language of a statute is plain and its meaning is clear, Iowa courts "should not reach for meaning beyond [the statute's] express terms.... Nor should we resort to statutory rules of construction to determine legislative intent." *Id.* (internal citation omitted). Where reasonable minds differ as to the meaning of a statute,
>
> [o]ne ... rule [of construction] provides that we are bound by what the legislature said, rather than what it should or might have said. *State v. Jones,* 464 N.W.2d 241, 242 (Iowa 1990); Iowa R.App. P. 14(f)(13). We may not, under the guise of statutory construction, enlarge or otherwise change the terms of a statute. *Jones,* 464 N.W.2d at 242. Finally, "[w]e may consider the language used in the statute, the objects sought to be accomplished, the evils and mischiefs sought to be remedied and place a reasonable construction on the statute which will best effect its purpose rather than one which will defeat it." *Peffers,* 299 N.W.2d at 678.
>
> *Miller,* 546 N.W.2d at 602. Legislative intent is " 'expressed by omission as well as by inclusion.' " *Wiebenga v. Iowa Dep't of Transp.,* 530 N.W.2d 732, 735 (Iowa 1995) (quoting *Barnes v. Iowa Dept. of Transp.,* 385 N.W.2d 260, 263 (Iowa 1986)). Thus, if the legislature had intended a statute to include a prohibition on certain conduct, the Iowa Supreme Court believes the legislature would have specifically mentioned that conduct, but where it did not, the statutory provision is deemed not to apply to that conduct. *Id.* The court finds that the meaning of the Iowa statute Doe asserts defines a predicate offense is plain and unambiguous. Therefore, the court need look no further than the plain meaning of the statute. *Miller,* 546 N.W.2d at 602.

*1398 709.15. Sexual exploitation by a counselor or therapist

1. As used in this section:

* * * * * *

f. "Sexual exploitation by a counselor or therapist" occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3).

(2) Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

(3) Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.

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"Sexual exploitation by a counselor or therapist" does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

2. A counselor or therapist who commits sexual exploitation in violation of subsection 1, paragraph "f", subparagraph (1), commits a class "D" felony.

3. A counselor or therapist who commits sexual exploitation in violation of subsection 1, paragraph "f", subparagraph (2) commits an aggravated misdemeanor.

Iowa Code § 709.15(1)(f). [FN29]

FN29. The reference to Iowa Code § 702.17 incorporates into the definition of prohibited sexual conduct by a counselor or therapist with a patient or client the following acts: "sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to [specified chapters of the Iowa Code]; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus." Iowa Code § 702.17.

The differences between the offenses described in subdivisions (f)(2) and (f)(3) of § 709.15(1) involve the status of the victim and the time within which sexual conduct between the defendant and the victim is defined as an offense. Subdivision (f)(2) defines an offense with an "emotionally dependent" patient or client or "emotionally dependent" former patient or client, Iowa Code § 709.15(1)(f)(2), while subdivision (f)(3) refers only to a "patient or client or former patient or client." Iowa Code § 709.15(1)(f)(3). Under subdivision (f)(2), there is no time limit placed on when the offense occurs, except that, by implication, the victim must have been emotionally dependent at the time of the offense. Iowa Code § 709.15(1)(f)(2). Under subdivision (f)(3), however, when emotional dependency is not involved, the offense must occur either during or within one year after the conclusion of the provision of mental health services. Iowa Code § 709.15(1)(f)(3). "Emotionally dependent" is thus a critical term, because it distinguishes between kinds of offenses. That term is defined in § 709.15(1)(b) as follows:

b. "Emotionally dependent" means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold *1399 consent to sexual conduct, as described in paragraph "f", by the counselor or therapist.

For the purposes of paragraph "f", a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

Iowa Code § 709.15(1)(b). Although, under this definition, any patient or client who has received mental health services is presumed to be emotionally dependent for one year after the termination of services, the plain meaning of the statute is that, if the victim is proved to be emotionally dependent outside of the time period specified, the defendant could be charged under § 709.15(1)(f)(2), whereas if the victim is proved never to have been emotionally dependent, the defendant could still be charged under § 709.15(1)(f)(3) for sexual conduct that occurred up to one year after the termination of mental health services to the victim.

Other provisions of subsection (1) of § 709.15 provide definitions of other essential terms. Thus, subdivision (1)(a) defines "counselor or therapist" as "a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state who provides or purports to provide mental health services." Iowa Code § 709.15(1)(a). "Mental health services" are defined as "the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction." Iowa Code § 709.15(1)(d). "Patient or client" and "former patient or client" are defined as a person

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who receives or received mental health services from the counselor or therapist. Iowa Code § 709.15(1)(c) & (e).

ii. Predicate "felonies". Forms of the offense not involving the pattern, practice, or scheme identified in subdivision (f)(1) are classified as misdemeanors under Iowa law. Iowa Code § 709.15(3) & (4). The offense defined in § 709.15(1)(f)(2) is classified in § 709.15(4) as only a serious misdemeanor, punishable by imprisonment of less than one year, and hence cannot stand as predicate offense for a VAWA civil action. 42 U.S.C. § 13981(d)(2) (defining predicate offenses as including only felonies or offenses that would be felonies but for the relationship of the parties). However, the offense defined in § 709.15(1)(f)(2) is classified in § 709.15(3) as an aggravated misdemeanor, which is punishable by imprisonment of up to two years, and consequently is a "felony" under federal law. 18 U.S.C. § 3559; *Haggerty,* 85 F.3d at 406. [FN30]

> FN30. The court has perused other provisions of the Iowa Code defining sexual offenses, Iowa Code Ch. 709, and does not find that the conduct defined as a misdemeanor, when between a counselor or therapist and a patient, client, former patient, or former client, would be a felony (or aggravated misdemeanor under Iowa law) but for the relationship between the parties. *See* 42 U.S.C. § 13981(d)(2)(B).

From the statutory definitions of offenses and key terms, the court finds that the statute describes two distinct offenses, with slightly different elements, that are classified as felonies by the statute itself. The offense described in § 709.15(1)(f)(1) and (2), an offense classified as a felony in § 709.15(2), has the following elements: (1) the defendant provides or purports to provide mental health services, § 709.15(1)(a), as "mental health service" is defined in § 709.15(1)(d); (2) the victim receives or received mental health services from the defendant, as "mental health service" is defined in § 709.15(1)(d); (3) the victim was emotionally dependent, as "emotionally dependent" is defined in § 709.15(1)(b); and (4) the defendant engaged in a pattern, practice, or scheme of conduct to engage in sexual conduct with the victim, as sexual conduct is defined in § 709.15(1)(f)(2), or a sex act as defined in Iowa Code § 702.17.

The offense described in subdivisions § 709.15(1)(f)(1) and (3), and offense classified as a felony in § 709.15(2), has the following elements: (1) the defendant provides or purports to provide mental health services, § 709.15(1)(a), as "mental health service" is defined in § 709.15(1)(d); (2) the victim receives or received mental health services from the defendant, as "mental health service" *1400 is defined in § 709.15(1)(d); and (3) within one year of the termination of the provision of mental health services by the defendant, the defendant engaged in a pattern, practice, or scheme of conduct to engage in sexual conduct with the victim, as sexual conduct is defined in § 709.15(1)(f)(2), or a sex act as defined in Iowa Code § 702.17. This offense has no emotional dependence element, but does require that the offense have been committed within one year of the termination of the provision of mental health services.

The offense defined in § 709.15(1)(f)(2), which is classified in § 709.15(3) as an aggravated misdemeanor, but which is a felony under federal law, 18 U.S.C. § 3559, has the following elements: (1) the defendant provides or purports to provide mental health services, § 709.15(1)(a), as "mental health service" is defined in § 709.15(1)(d); (2) the victim receives or received mental health services from the defendant, as "mental health service" is defined in § 709.15(1)(d); (3) the victim was emotionally dependent, as "emotionally dependent" is defined in § 709.15(1)(b); and (4) the defendant engaged in sexual conduct with the victim, as sexual conduct is defined in § 709.15(1)(f)(2), or a sex act as defined in Iowa Code § 702.17. This predicate offense has no "pattern or practice or scheme" element.

c. Predicate "crime of violence" under the VAWA

The next question before the court is whether the predicate offense Doe has alleged is a qualifying "crime of violence" under the VAWA. Putting aside for a moment the question of which of the three forms of the offense defined by Iowa Code § 709.15 described above Doe has actually alleged as her predicate offense, the court notes that all three constitute "felonies" under federal law. However, whether an offense is a "felony," the court finds, is

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only one part of one prong of the inquiry into what is a "crime of violence" under the VAWA.

[22][23] ***i. "Categorical" determination.*** Although the court lacks the guidance of other interpretations of the VAWA, by analogy with other situations in which a predicate offense is required to establish a claim or offense, the court concludes that it must decide *as a matter of law* whether the asserted predicate offense is a crime of violence within the meaning of the VAWA. Furthermore, that determination, the court finds, must be made on the basis of how the offense is defined by applicable law and not on the basis of how the offense was allegedly committed, thus taking a so-called "categorical approach" to the definition of the crime. The jury, on the other hand, will decide *as a matter of fact* whether the offense has been committed, and whether it was motivated by gender as required by the VAWA.

For example, the Eighth Circuit Court of Appeals, applying a definition of "crime of violence" under 18 U.S.C. § 924(c) that is nearly identical to the definition in 18 U.S.C. § 16, observed that "the question is not whether the particular facts constitute a crime of violence, but whether the crime ... as defined by [state law] is a crime of violence." *United States v. Moore,* 38 F.3d 977, 980 (8th Cir.1994). Quoting from a prior decision specifically considering § 16, the court reiterated the "categorical approach" the court is to take to determine whether a crime is a "crime of violence" within the meaning of § 16:

> "All crimes which by their nature involve a substantial risk of physical force share the *risk* of harm. It matters not one whit whether the risk ultimately causes actual harm. Our scrutiny ends upon a finding that the risk of violence is present." *[United States v.] Rodriguez,* 979 F.2d [138,] 141 [(8th Cir.1992)]; *accord United States v. Reyes-Castro,* 13 F.3d 377, 379 (10th Cir.1993); *see United States v. Bauer,* 990 F.2d 373 (8th Cir.1993) (per curiam) (holding that statutory rape is a crime of violence for sentence enhancement purposes).

Moore, 38 F.3d at 980-81 (emphasis in the original). In the earlier decision from which the court in *Moore* drew this quotation, the Eighth Circuit Court of Appeals addressed the determination of whether an offense was a "crime of violence" within the meaning of 18 U.S.C. § 16, for purposes of U.S.S.G. § 2L1.2(b)(2). *Rodriguez,* 979 F.2d at 140. The application notes to that sentencing ***1401** guideline define an "aggravated felony" as any "crime of violence" as defined in 18 U.S.C. § 16. *Id.* The court observed that "[a] sentencing court is not required to consider the underlying circumstances at the time of the crime in determining that a defendant has been convicted of a 'crime of violence.' ... Indeed, the term 'by its nature' would be rendered superfluous if the sentencing courts were saddled with the task of examining each individual offense committed to determine whether it actually involved substantial risk of physical force." *Id.* at 140-41 (citation omitted). The court went one step further, holding that, whatever the requirements of 18 U.S.C. § 16(a),

> the elements of the underlying offense need not include use, attempted use, or threatened use of force to be considered a "crime of violence" for purposes of 18 U.S.C. § 16(b). Again, it is the *nature* of the crime upon which we must focus our attention.... [T]he statutory language "may" and "substantial risk" must not be ignored.

Rodriguez, 979 F.2d at 141 (citation omitted).

Similarly, in *United States v. Aragon,* 983 F.2d 1306 (4th Cir.1993), the Fourth Circuit Court of Appeals rejected a defendant's argument that the jury, rather than the court, should decide whether an offense is a "crime of violence" under 18 U.S.C. § 1952(a)(2) and 18 U.S.C. § 16. *Aragon,* 983 F.2d at 1311-12. Instead, the court held that whether an offense is a "crime of violence" "is a question of law for the court to decide." *Id.* at 1311. The court noted that the definition in § 16 frames the question in terms of whether the crime "by its nature" presents a substantial risk of use of physical force, not in terms of the "facts," "circumstances," or "conduct." *Id.* at 1312-13. The court in *Aragon* determined whether the crime of attempting to instigate or assist in the escape or rescue of a federal prisoner was a crime of violence in terms of whether the offense "intrinsically" involved the risk identified in § 16, not whether the facts of the case before it indicated such a risk had actually existed. *Aragon,* 983 F.2d at 1313. Such a risk, the court found, would intrinsically arise, even if the particular escape was intended to be effected by stealth, because of the risk of physical force being used if the crime was discovered in progress. *Id.* Although the court noted that it had "cautioned against looking to the facts of a case in determining whether a crime qualifies as a 'crime of violence,' "

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the court found that the case before it demonstrated the potential for an escalation into violence of a crime of the kind in question, even though the defendants had planned to effect the escape by stealth, because of the weapons the defendants had brought along. *Id.* at 1313 & n. 5.

Another analogy is the determination under deportation statutes of whether a predicate crime, as defined, is a crime involving "moral turpitude" or an "aggravated felony" under 8 U.S.C. § 1251(a)(2)(A)(i) or (iii), thus justifying deportation. In such a case, the Eighth Circuit Court of Appeals observed that "we look to state law to determine the elements of the crime ... [, but] we do not examine the factual circumstances surrounding [the defendant's] crime." *Franklin v. INS,* 72 F.3d 571, 572 (8th Cir.1995) (citing *Cabral v. INS,* 15 F.3d 193, 196 n. 5 (1st Cir.1994), and *Castle v. INS,* 541 F.2d 1064, 1066 (4th Cir.1976) (per curiam)), *cert. denied,* 519 U.S. 834, 117 S.Ct. 105, 136 L.Ed.2d 59 (1996); *see also Ramsey v. INS,* 55 F.3d 580, 583 (11th Cir.1995) (under 8 U.S.C. § 1251(a)(2)(A)(iii), to determine if a crime is an "aggravated felony," the court looks only at the definition of the crime under state law, and not at the underlying facts and circumstances of the alien's particular offense); *Rodriguez-Herrera v. INS,* 52 F.3d 238, 239-40 (9th Cir.1995) (interpreting "moral turpitude"); *Gonzalez-Alvarado v. INS,* 39 F.3d 245, 246 (9th Cir.1994) (interpreting "moral turpitude"); *United States v. Lomas,* 30 F.3d 1191, 1193 (9th Cir.1994) ("To determine whether [the defendant's] 1990 conviction for the sale or transportation of cocaine constitutes an aggravated felony, we look only at the statutory definition of section 11352(a) of the California Health and Safety Code, not the underlying factual circumstances of his crime."), *cert. denied,* 513 U.S. 1176, 115 S.Ct. 1158, 130 L.Ed.2d 1114 (1995); *United States v. Reyes-Castro,* 13 F.3d 377, 379 (10th Cir.1993) (interpreting "aggravated felony"); *1402*Goldeshtein v. INS,* 8 F.3d 645, 647 (9th Cir.1993) (interpreting "moral turpitude"). In such cases, courts look only at the record of conviction, which includes the crime as described in the indictment or information, the plea, the verdict or judgment, and the sentence, but not any evidence offered in the case or other facts or circumstances involved. *Cabral,* 15 F.3d at 196 & n. 6.

The VAWA definition of a "crime of violence," as construed above, incorporates as one prong of the definition found in 18 U.S.C. § 16. *See* 42 U.S.C. § 13981(c)(2)(A). Therefore, that element must certainly be determined as a matter of law. *Aragon,* 983 F.2d at 1311. Nor does the other element of the VAWA definition of a "crime of violence" make the question one for a jury or one that turns on the particular facts of the case. That element states that the offense must be "an act or series of acts that would constitute a felony against the person." 42 U.S.C. § 13981(d)(2)(A). [FN31] A factual element is the usual distinction between a felony and a misdemeanor offense--the amount of cocaine, the age of the victim of sexual abuse, for example. However, the question of whether a crime is a "crime of violence" under the VAWA turns on whether a felony, defined in terms of certain elements, the first prong of the inquiry, by its nature possesses the requisite *risk* of use of physical force under 18 U.S.C. § 16, the second prong of the inquiry. *Id.* If the court finds as a matter of law that the crime thus defined constitutes a "crime of violence" within the meaning of the VAWA, then the jury will decide as a matter of *fact* whether the elements constituting a felony have in fact been proved in the particular case. [FN32]

FN31. The court may safely disregard the alternative of a felony against property that presents a serious risk of physical injury to another, first, because no such felony is alleged here as the predicate offense, and second, because the incorporation of the language "*risk* of physical injury" suggests, as does 18 U.S.C. § 16, that the question is whether the crime intrinsically, and not as actually alleged to have been committed, involves physical injury. *Cf. Rodriguez,* 979 F.2d at 141; *Aragon,* 983 F.2d at 1312.

FN32. By way of contrast, the Eighth Circuit Court of Appeals has held that, in determining whether a prior conviction is either a violent felony or serious drug offense for purposes of sentence enhancement under 18 U.S.C. § 924(e), "the sentencing court is not restricted to looking solely at the fact of conviction and the statutory definition of the offense but may also consider the charging paper and jury instructions." *United States v. Maddix,* 96 F.3d 311, 314 (8th Cir.1996) (citing

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> *Taylor v. United States,* 495 U.S. 575, 602, 110 S.Ct. 2143, 2160, 109 L.Ed.2d 607 (1990)). The court also examined the actual conduct of the defendant to determine whether the offenses in question were "crimes of violence" for sentencing purposes under U.S.S.G. § 4B1.2(1)(i). *Id.* at 315.

ii. "Crime of violence" test. Thus, the questions for the court to decide as a matter of law in this case are whether the offenses defined by Iowa Code § 709.15(1)(f) are felonies against the person (or against property that present a serious risk of physical injury to another), as required by the first prong of the VAWA "crime of violence" element, 42 U.S.C. § 13981(d)(2)(A), and whether they are also "crimes of violence" within the meaning of 18 U.S.C. § 16, as required by the second prong of the VAWA "crime of violence" element. *Id.* The crimes defined by Iowa Code § 709.15(1)(f)(1) and (2), § 709.15(1)(f)(1) and (3), and § 709.15(1)(f)(2), respectively, are all indisputably "felon[ies] against the person" of the victim. *Id.* Therefore, the first prong of the VAWA "crimes of violence" element is satisfied. The more difficult question is whether these felonies are "crimes of violence" within the meaning of 18 U.S.C. § 16.

Section 16 of Title 18 provides as follows:

> The term "crime of violence" means--
> (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
> (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing an offense.

18 U.S.C. § 16.

As to the alternative stated in § 16(b), this court must respectfully point out that, while part of the *Rodriguez* decision speaks in terms of a "risk of harm," finding that all crimes that "by their nature involve a substantial ***1403** risk of physical force share the *risk* of harm," *Rodriguez,* 979 F.2d at 141 (emphasis in the original), the statute does not speak in terms of a "risk of harm," but in terms of a "risk that *physical force* " may be used. 18 U.S.C. § 16 (emphasis added). While the court accepts that any use of physical force necessarily involves a risk of harm, as the *Rodriguez* court stated, the converse is not correct: a risk of harm does not necessarily involve a risk of use of physical force, because a risk of harm can arise from many sources unrelated to use of physical force.

For example, the Seventh Circuit Court of Appeals, in an *en banc* decision, recently considered extensively the risk of *harm* or *injury* to a victim of a statutory rape, even if no physical force was involved. *See United States v. Shannon,* 110 F.3d 382 (7th Cir.1997) (*en banc*). The court was considering the meaning of "crime of violence" under U.S.S.G. § 4B1.2(1), which, in one alternative defines "crime of violence" as an offense that "has as an element the use, attempted use, or threatened use of *physical force* against the person of another," while in another alternative, refers to an offense that "is burglary of a dwelling, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious risk of *physical injury* to another." U.S.S.G. § 4B1.2(1) (emphasis added); *see also Shannon,* 110 F.3d at 384. The court found that statutory rape, as defined by Wisconsin law, was not a forcible felony. *Shannon,* 110 F.3d at 384. The court also rejected the argument that any unconsented-to touching involved force or a risk of injury:

> An inference of violence from mere unconsented-to physical contact, the government's first reason for arguing that every felonious sexual act with a minor is per se a crime of violence, would not wash in this circuit. It would transform any unconsented-to touching that the law made a felony into a crime of violence, including picking a person's pocket, a crime that we have held is not a crime of violence.

Shannon, 110 F.3d at 385. Although the court found that an argument that any felonious sexual act with a minor creates a "serious potential risk of physical injury," that suggestion was undermined by the government's concession that statutory rape laws were not necessarily passed to protect minors from a serious risk of physical injury. *Id.* at 386. The court agreed that a risk of injury could not be "read off" or automatically inferred from the statute. *Id.* However, the court then made an extensive analysis of the risks to the victim of statutory rape of physical injury arising from sexually transmitted disease or pregnancy. *Id.* at 387-89. Consequently, the court concluded that statutory rape, as defamed by Wisconsin law, was a "crime of

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violence" where the definition of "crime of violence" depended not upon use of physical force, but upon a risk of physical injury. *Id.* at 389.

The predicate offense alleged in this case may be another example. All of the risks of physical *injury*, described by the Seventh Circuit Court of Appeals in the context of statutory rape, such as injuries from sexually transmitted disease or pregnancy to a person presumed to be incapable of giving proper consent to sexual contact, apply with equal vigor to the offenses defined by Iowa Code § 709.15(1)(f). Yet, that does not suggest that use of physical force was necessarily part of the offense. *Cf. Shannon,* 110 F.3d at 383 (finding that the risk of use of physical force did not necessarily arise with the crime of statutory rape, although a risk of physical injury did).

iii. Application of the test. Again, the crimes defined by Iowa Code § 709.15(1)(f)(1) and (2), § 709.15(1)(f)(1) and (3), and § 709.15(1)(f)(2), respectively, are all indisputably "felon[ies] against the person" of the victim. *Id.* They therefore satisfy the first prong of the "crime of violence" inquiry under the VAWA. 42 U.S.C. § 13981(d)(2).

Turning to the second prong of the inquiry, whether the predicate offenses are "crimes of violence" under either alternative defined by 18 U.S.C. § 16, however, the court concludes none of the § 709.15 offenses has *as an element* the use, attempted use, or threatened use of physical force against the person or property of another. 18 U.S.C. § 16(a). Thus, none is a "crime of violence" under the alternative stated in § 16(a).

***1404** [24] In determining whether the offenses defined in Iowa Code § 709.15 necessarily involve *a substantial risk* of the use of physical force, as required to fit the alternative definition of "crime of violence" under § 16(b), the court finds that two decisions of the Eighth Circuit Court of Appeals guide, or perhaps even dictate, the court's conclusion. The earlier of these decisions is the *Rodriguez* decision already mentioned. In *Rodriguez,* the defendant was convicted of lascivious acts with a child, which was defined as committing certain acts "with or without the child's consent." *Rodriguez,* 979 F.2d at 140. The court held that "[t]here is no question that the crime to which Rodriguez admitted, lascivious acts with children of the tender age of ten, is by its nature a crime of violence" within the meaning of § 16(b) and U.S.S.G. § 2L1.2(b)(2). *Id.* at 141. In the second decision, *United States v. Bauer,* 990 F.2d 373 (8th Cir.1993) (per curiam), the court rejected the defendant's argument that his conviction for statutory rape under Iowa law could not be a crime of violence on the basis that it involved a substantial risk of use of physical force, because the sexual intercourse had been consensual. *Bauer,* 990 F.2d at 374. Looking at the nature of the offense, the court concluded that the defendant had been convicted of a crime of violence, because the conviction was one "that presented a serious potential risk of physical force," regardless of the victim's consent. *Id.* at 375. By analogy, Iowa Code § 709.15, which defines sexual offenses on the basis that the victim cannot give proper consent, also defines "crimes of violence" involving a substantial risk of the use of physical force within the meaning of 18 U.S.C. § 16(b), and hence within the meaning of the VAWA.

d. Adequate pleading of a predicate offense

Next, the court turns to whether one of the predicate offenses under § 709.15 has been adequately pleaded. The court recalls that, to defeat a motion to dismiss pursuant to Rule 12(b)(6) , factual elements and legal conclusions must be pleaded in more than a conclusory manner, *Silver,* 105 F.3d at 397; *Westcott,* 901 F.2d at 1488, but that the court must assume that all facts alleged in the plaintiff's complaint are true, and must liberally construe those allegations. *Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; *Doe,* 107 F.3d at 1303-04; *WMX Techs., Inc.,* 105 F.3d at 1198; *First Commercial Trust,* 77 F.3d at 1083. Similarly, because the defendants' subject matter jurisdiction challenge pursuant to Rule 12(b)(1) must be treated here as only a facial challenge, Doe is entitled to these Rule 12(b)(6) protections even against the subject matter jurisdiction challenge. *Titus,* 4 F.3d at 593; *Osborn,* 918 F.2d at 729 n. 6.

[25] The first element of each of the possible predicate offenses defined by Iowa Code § 709.15, as identified by the court above, is that the defendant provides or purports to provide mental health services, § 709.15(1)(a), as "mental health service" is defined in § 709.15(1)(d), and the second element of each of these offenses is that the victim receives or received mental health services from the defendant. The complaint also alleges, at

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least in conclusory fashion, that Father Hartz "served as a counselor to Plaintiff [and] as a member of the clergy ... is a 'counselor or therapist' within the meaning of Iowa Code § 709.15(1)(a)." Complaint, Count 1, ¶ 30. Father Hartz is plainly a member of the class of possible "counselors or therapists" to which this element refers, because he is a "member of the clergy." Iowa Code § 709.15(1)(a). However, more is required: Father Hartz must also be alleged to be a member of the clergy who "provides or purports to provide mental health services." *Id.* Doe does allege that Father Hartz "served as a counselor to Plaintiff," although she does not allege any specific meetings for such counseling or that the counseling involved the "treatment, assessment, or counseling ... for a cognitive, behavioral, emotional, mental, or social dysfunction, [either] intrapersonal or interpersonal." Iowa Code § 709.15(1)(d) (defining "mental health service"). Although the pleading is sketchy at best on this element, the court cannot say that "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Handeen,* 112 F.3d at 1347-48; *accord Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; ***1405***Doe,* 107 F.3d at 1304; *WMX Techs., Inc.,* 105 F.3d at 1198. The provision of mental health services by Father Hartz, and Doe's receipt of those services from Father Hartz, is instead consistent with Doe's allegations that Father Hartz was a member of the clergy and he counseled her.

Another element of each of the possible predicate offenses is that Father Hartz engaged in or engaged in a pattern, practice, or scheme of incidents to engage in sexual conduct as defined in the statute. Iowa Code § 709.15(1)(f)(2) and (3). "Kissing" is specified as one of the prohibited kinds of sexual conduct, and "kissing" is the central incident in Doe's complaint. However, the court is much less sanguine that Doe has alleged a "pattern, practice, or scheme" to engage in sexual conduct as required by either of the offenses classified as felonies under Iowa Code § 709.15. *See* Iowa Code § 709.15(2) (classifying as felonies only sexual exploitation as defined in paragraph (1)(f)(1), which involves "a pattern practice or scheme of conduct to engage in any of the conduct described in paragraph (2) or (3)"). Doe alleges that the back-rubbing incident after mass on December 3, 1994, and the alleged fraudulent misrepresentations that Father Hartz would not engage in sexually exploitative conduct establish the requisite "pattern or practice or scheme" for the offenses classified as felonies under the Iowa statute. She also argues that Father Hartz's improper conduct towards other women is part of such a "pattern or practice or scheme." The court believes that it is only conduct toward this victim that can constitute part of the predicate offense, but considering only the incidents allegedly directed at Doe herself, and mindful of the liberality with which the court is to construe the allegations, the court finds that this element has also been adequately alleged, if just barely. However, even failing adequate allegations of a "pattern or practice or scheme," the court has found that a single incident of sexual conduct as defined in Iowa Code § 709.15(1)(f)(2), an aggravated misdemeanor under Iowa law, Iowa Code § 709.15(3), would still constitute a predicate felony under federal law. Thus the "conduct" element of at least one predicate offense has been adequately alleged.

This leaves only the question of whether Doe has adequately alleged that she was an "emotionally dependent patient or client" for either the predicate offense defined by Iowa Code § 709.15(1)(f)(2), standing alone, or the predicate offense defined by Iowa Code § 709.15(1)(f)(1) and (2). Doe has alleged, again in merely conclusory fashion, that she "was emotionally dependent upon Defendant Hartz as her counselor and priest." Complaint, Count 1, ¶ 31. Although the allegation is again conclusory, the court cannot say that "no relief could be granted under any set of facts that could be proved consistent with the allegations." *Handeen,* 112 F.3d at 1347-48; *accord Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; *Doe,* 107 F.3d at 1304; *WMX Techs., Inc.,* 105 F.3d at 1198. Doe's emotional dependence is consistent with the allegations that she needed and received counseling from Father Hartz.

e. Remaining elements of the VAWA claim

Finally, the court must consider whether Doe has adequately pleaded that Father Hartz's conduct toward her was "motivated by gender" as required for a civil claim under the VAWA. 42 U.S.C. § 13981(c). Again, subdivision (e)(1) of § 13981 clarifies or narrows this element of the VAWA claim by excluding from the definition of "crimes of violence motivated by gender" those crimes that are merely "random acts of violence unrelated to gender or ... acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by

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gender." 42 U.S.C. § 13981(e)(1). The civil cause of action under the VAWA is therefore plainly aimed at conduct motivated by the victim's gender, not merely crimes in which the victim is a woman. *See also* S.Rep. No. 103-195, at 49-50 (1993) ("The committee is not asserting that all crimes against women are gender-motivated. As discussed below, title III requires subjective proof on a case-by-case basis that the criminal conduct was motivated by a bias against the victim's gender."); S.Rep. No. 103-138, at 49-50 (1993) (same). As construed above, to allege that a crime was "motivated by gender" within the meaning of the VAWA, it must be alleged to be *both* (1) committed "because of" or "on the ***1406** basis of" the victim's gender, and (2) due, at least in part, to an animus based on the victim's gender. *See* 42 U.S.C. § 13981(d)(1).

Although there might be some difficulty in determining whether other crimes, even crimes against the person, were "because of" or "on the basis of" the victim's gender, the court has little doubt that allegations of sexual assault or sexual exploitation crimes are allegations of crimes committed "because of" or "on the basis of" the victim's gender. Defendants concede as much. *See* Brief In Support Of Motion To Dismiss, Motion For Abstention, And Motion For Certification Of Issues By Defendants Soens, St. Lawrence Church, And Diocese Of Sioux City ("Defendants' Brief In Support Of Motion To Dismiss"), p. 20. Furthermore, there are adequate factual allegations of sexual conduct to support a claim of sexual exploitation. Thus, the first prong of the "motivated by gender" element is adequately alleged here. However, a sexual assault alone is not enough to establish that the crime was gender-motivated within the meaning of the VAWA. *See* 42 U.S.C. § 13981(d). As legislative history clarifies,

> Discriminatory motivation is clearly required by title III of the Violence Against Women Act, and the plaintiff bears the burden of proving that motivation. For a cause of action to arise under title III, a plaintiff must prove that the crime of violence--whether an assault, a kidnapping, or a rape-- was motivated by gender.

S.Rep. No. 103-138, at 51 (1993).

Defendants contend that there are inadequate allegations pertaining to the second prong of the inquiry, that is, allegations that Father Hartz committed an offense due, at least in part, to his *animus* based on Doe's gender. They contend that there are no allegations of "animus," because the complaint reflects that Father Hartz and Doe were on friendly terms and that "[a] kiss is typically viewed as a signal of affection." Defendants' Brief In Support Of Motion To Dismiss, p. 20. [FN33] Defendants construe "animus" to mean "dislike." *Id.* Plaintiff vehemently disagrees with the assertion that an unwanted kiss on the neck is a "signal of affection," arguing strenuously that such conduct is instead illustrative of an on-going gender-motivated animus toward women, because forcing physical intimacy on a woman, whether it be a kiss or rape, is illustrative of a lack of respect for women.

> FN33. This argument is consistent with Father Hartz's defense that his actions were simply misunderstood by Doe.

As Justice Stevens has observed, "The term[ ] 'animus' ... [is] susceptible to different interpretations." *Bray v. Alexandria Women's Health Clinic,* 506 U.S. 263, 320, 113 S.Ct. 753, 785, 122 L.Ed.2d 34 (1993) (Stevens, J., dissenting). The court finds that "animus" is certainly ambiguous in the context of the VAWA. The court may therefore resort to the legislative history of the VAWA to find an explanation of the meaning of "due, at least in part, to an animus based on the victim's gender" under 42 U.S.C. § 13981(d). *See Barnhill v. Johnson,* 503 U.S. 393, 401, 112 S.Ct. 1386, 1391, 118 L.Ed.2d 39 (1992) (noting that "appeals to legislative history are well taken only to resolve 'statutory ambiguity' "). Fortunately, there are portions of the legislative history that are instructive on this issue.

A report to the Senate Judiciary Committee on the civil remedies provision of the VAWA states that "[t]he committee is not asserting that all crimes against women are gender-motivated." S.Rep. No. 103-138, at 49 (1993). Rather, the civil remedies provision of the VAWA "requires subjective proof on a case- by-case basis that the criminal was motivated by a bias against the victim's gender," which is a question of fact. *Id.* at 50. After identifying the elements of the statutory definition of crimes "motivated by gender," the report explains that "[a] cause of action cannot be established by saying, 'I am a woman; I have an injury; ergo, I have a civil rights claim.' " *Id.*

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> To satisfy the burden of establishing a civil rights cause of action, the plaintiff must prove that the defendant's act was motivated by gender bias. *This civil rights cause of action is no different than the cause of action an African-American *1407 might use.* For example, an African-American man or woman who is the victim of an assault, cannot under our present laws say, "My civil rights were violated because I am an African-American and someone that wasn't African-American did me harm." *He or she must prove racial animus.*
>
> Similarly, *a woman who is attacked and seeks relief under title III must demonstrate that the defendant attacked her because she is a woman and that the attacker was motivated, at least in part, by her gender.* For example, she might offer proof that a defendant entered a department store carrying a gun, picked out women in the store and shot her while screaming anti-women epithets, and leaving the many nearby men unharmed. *The fact that the attacker in this example verbally expressed his bias against women is helpful, but not mandatory.* The fact that the attacker segregated the men from the women and then shot only the women might be evidence enough of his gender-based motivation.

Id. at 50-51 (emphasis added). Turning to the mechanics of proof, the committee report states that "motivation" will be proved from "the totality of the circumstances" surrounding the event. *Id.* at 52. The report explains further:

> Gender-motivated crimes should be viewed in precisely the same way [as race- motivated crimes]. Consider the case of a serial rapist who shouts misogynist slurs as he attacks his victims. A victim's lawyer would prove exactly the same type of evidence that the lawyer in the "race" case proved: that the victim was of a particular sex; that the attacker had a long history of attacking persons of that sex, but not those of the opposite sex; and that the attacker shouted antiwoman (or man) epithets during the assault. Bias, in short, can be proven by circumstantial as well as indirect evidence. Again, the jury might not be convinced by any one of these circumstances individually--but could conclude that, taken together, they show gender bias.

Id. The committee pointed out that the definition of gender-motivated crimes under the VAWA is based on Title VII. *Id.*

> Hence, title III defines crimes motivated by gender to be crimes committed "because * * * of gender." The phraseology "motivated by," "because of," "on the basis of," or "based on" sex or gender is used interchangeably in case law discussion of title VII. This body of case law will provide substantial guidance to the trier of fact in assessing whether the requisite discrimination was present.

Id. at 52-53. [FN34] Finally, in a section-by-section analysis, the committee explained that ***1408** the amendment adding the language that the predicate offense must be "due, at least in part, to an animus based on the victim's gender" was added to "elucidate[ ] the committee's intent that a victim alleging a violation under this section must have been targeted on the basis of his or her gender. The defendant must have had a specific intent or purpose, based on the victim's gender, to injure the victim." *Id.* at 64.

> FN34. This portion of legislative history is in accord with an explanation of "actions motivated by a gender-based animus" in a case, pursuant to 42 U.S.C. § 1985(3), concerning actions of abortion protesters. *See Lucero v. Operation Rescue of Birmingham,* 954 F.2d 624 (11th Cir.1992)
>
> [W]e find that the record in the present case does not support a finding that defendants' actions were motivated by a gender-based animus. Instead, the record amply supports a finding that defendants' actions were motivated by a disapproval of a certain activity, namely the abortion of a fetus, and therefore were designed to prevent individuals, women and men alike, from engaging in that activity. Nothing in the record suggests that defendants' efforts to "depriv[e], directly or indirectly, a class of women who seek abortions of the constitutional right that they have to secure abortions," [*Lucero v. Operation Rescue of Birmingham,*] 772 F.Supp. [1193,] 1198 [(N.D.Ala.1991)] (footnote omitted), sprang from an animus directed at women *qua* members of the female gender.
>
> Even assuming *arguendo* that Congress intended section 1985(3) to cover activities motivated by a gender-based animus, the record in this case does not support a finding of this kind of animus. As the district court found, defendants' animus

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> targeted the "practice of abortion," 772 F.Supp. at 1205 n. 37, and therefore motivated actions designed to prevent others from engaging in that practice. While the participation of women in the practice of abortion hardly is incidental, the record in this case supports the finding that defendants' actions nevertheless were motivated by an animus not primarily directed at members of the female gender, but at a practice. On the record of this case, it further would not have been clearly erroneous to find that the make-up of, and particularly the participation of women in, the group of persons engaging in that practice did not arouse the animus motivating defendants to stage their so-called rescues. *Lucero,* 954 F.2d at 628-29. The court remarked further that the presence of men in the targeted group did not necessarily remove the activities from the class of actions motivated by a gender-based animus, because gender-based animus extends to those who champion the cause of the group toward which such an animus would be directed. *Id.* at 629 n. 7 (citing *United Bhd. of Carpenters & Joiners of Am., Local 610 v. Scott,* 463 U.S. 825, 836, 103 S.Ct. 3352, 3360, 77 L.Ed.2d 1049 (1983)). However, "[w]hat is missing is any indication that the gender of the pregnant women represents the source of defendants' animus." *Id.*

[26] Allegations of unwanted or unwelcome sexual advances, the court finds, are sufficient to meet the requirement to allege that the defendant "targeted [the victim] on the basis of his or her gender" and "had a specific intent or purpose, based on the victim's gender, to injure the victim." *Id.* Casting an unwanted kiss as merely a "signal of affection" is suggestive of the sort of "romantic paternalism" the Supreme Court has described as "put[ting] women, not on a pedestal, but in a cage," something the Equal Protection clause did not condone, *Frontiero v. Richardson,* 411 U.S. 677, 684, 93 S.Ct. 1764, 1769, 36 L.Ed.2d 583 (1973), while such unwanted conduct gives rise to an inference that the actor relegates women as a group to an inferior status without regard to their individual qualities. *Id.* at 687, 93 S.Ct. at 1770- 71. As the Ninth Circuit Court of Appeals explained in a Title VII case,

> Individuals who engage in sexual harassment may have different motives. Sometimes, an employer or supervisor may use his power within the company's hierarchy in order to gratify his sexual desires. When an employee becomes the victim of her boss' unwanted sexual attention, she may be forced to tolerate his sexually harassing conduct for fear that her job or her advancement in the company are at risk. A woman in this circumstance may reasonably feel subordinated and belittled even though the harasser's primary purpose is to seduce her rather than to demean her or cause her anguish and distress.... In other circumstances, however, sexual harassment may be symptomatic of gender-based hostility, the employer or supervisor using sexual harassment primarily to subordinate women, to remind them of their lower status in the workplace, and to demean them. In this latter circumstance, the "sexual" element of the harassment is only secondary.

EEOC v. Farmer Bros. Co., 31 F.3d 891, 897-98 (9th Cir.1994) (citations omitted). Also, with Title VII cases for guidance, *see* S.Rep. No. 103-138, at 52-53 (1993), it is readily apparent that allegations of unwanted or unwelcome sexual advances are sufficient to support a claim that requires a showing of gender-motivated animus. *See, e.g., Kinman v. Omaha Pub. Sch. Dist.,* 94 F.3d 463, 467 (8th Cir.1996) ("Hostile environment sexual harassment occurs when unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct have the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive environment."); *Quick v. Donaldson Co., Inc.,* 90 F.3d 1372, 1377 (8th Cir.1996) (one element of a sexual harassment claim is that the plaintiff is subjected to unwelcome sexual conduct). To meet the requirements of the VAWA, the conduct need be due only *in part* to gender animus. 42 U.S.C. § 13981(d). Again, because unwanted or unwelcome sexual advances may be demeaning and belittling, and may reasonably be inferred to be intended to have that purpose or to relegate another to an inferior status, even if the advances were also intended to satisfy the actor's sexual desires, the allegations of the "animus" element here are sufficient.

[27] There are, therefore, reasonable inferences from the allegations that Father Hartz's conduct was due, at least in part, to an animus based on Doe's

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gender, as required by § 13981. *Handeen,* 112 F.3d at 1347-48; *accord Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; *Doe,* 107 F.3d at 1304; *WMX Techs., Inc.,* 105 F.3d at 1198. Defendants'***1409** motion to dismiss is denied as to failure to state the "animus" element of a VAWA claim. This conclusion pursuant to Rule 12(b)(1) also suffices to defeat defendants' facial challenge to the court's subject matter jurisdiction over the VAWA claim, and hence over the entire complaint, on the ground that Doe has failed to allege an essential element of her claim. *Titus,* 4 F.3d at 593; *Osborn,* 918 F.2d at 729 n. 6.

2. Is the VAWA constitutional?

The court may now turn to what was really the focus of the briefing and oral arguments, the question of the constitutionality of the VAWA as an exercise of congressional power under either the Commerce Clause or section five of the Fourteenth Amendment. The civil remedies provision of the VAWA itself explicitly states that these are the sources of congressional power for enactment of the provision:

> (a) Purpose
> Pursuant to the affirmative power of Congress to enact this part under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution [the Commerce Clause], it is the purpose of this part to protect the civil rights of victims of gender motivated violence and to promote public safety, health, and activities affecting interstate commerce by establishing a Federal civil rights cause of action for victims of crimes of violence motivated by gender.

42 U.S.C. § 13981(a). However, the two courts to consider the question have split on the constitutionality of the statute under either the Commerce Clause of the Fourteenth Amendment.

a. The split in authority

On one side of the split in authority is the decision of the United States District Court for the District of Connecticut in *Doe v. Doe,* 929 F.Supp. 608 (D.Conn.1996). In *Doe,* the court upheld the civil remedies provision of the VAWA as a valid exercise of Commerce Clause power, and therefore did not reach the question of constitutionality under section five of the Fourteenth Amendment. *Doe,* 929 F.Supp. at 612 n. 5. Defendants in that case, as here, argued that this portion of the VAWA exceeds Commerce Clause power, because it creates a "plenary federal police power" beyond the enumerated powers of the federal government, trespassing on the states' Tenth Amendment powers, including the states' traditional police powers. *Id.* at 612.

The court in *Doe* was unpersuaded. The court found that the question of the validity of the VAWA must be determined under the third category of Commerce Clause powers identified in *United States v. Lopez,* 514 U.S. 549, 558-59, 115 S.Ct. 1624, 1629-30, 131 L.Ed.2d 626 (1995), *i.e.,* "those activities that substantially affect interstate commerce." *Doe,* 929 F.Supp. at 612. The test of validity in this category, the court found, remained "whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce," and, if it did, "whether the means chosen by Congress are ' "reasonably adapted to the end permitted by the Constitution." ' " *Id.* (citing *Hodel v. Virginia Surface Mining & Reclamation Ass'n, Inc.,* 452 U.S. 264, 276, 101 S.Ct. 2352, 2360, 69 L.Ed.2d 1 (1981), in turn quoting *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 262, 85 S.Ct. 348, 360, 13 L.Ed.2d 258 (1964)). The court rejected the defendants' arguments, also similar to ones asserted here, that *Lopez* had somehow overruled this "rationality test." *Id.* at 613, 115 S.Ct. at 1656-57. The court observed,

> *Lopez* does warn that the Commerce Clause has limits, and that "the scope of the interstate commerce power 'must be considered in light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote....' " *Lopez,* [514] U.S. at [557], 115 S.Ct. at 1628 (quoting *N.L.R.B. v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 37, 57 S.Ct. 615, 624, 81 L.Ed. 893 (1937)). Along with this warning, however, *Lopez* reaffirmed the rationality test of *Hodel:*
> Since that time, the Court has heeded that warning and undertaken to decide whether a rational basis existed for concluding ***1410** that a regulated activity sufficiently affected interstate commerce.
> *Id.* [514] U.S. at [557], 115 S.Ct. at 1629 (citing *Hodel,* 452 U.S. at 276-80, 101 S.Ct. at 2360-2362); *See Perez v. United States,* 402 U.S. 146, 155-56, 91 S.Ct. 1357, 1362, 28 L.Ed.2d 686 (1971); *Katzenbach v. McClung,* 379 U.S. 294, 299-301, 85 S.Ct. 377, 381-82, 13 L.Ed.2d

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290 (1964); *Heart of Atlanta Motel, Inc.*, 379 U.S. at 252-253, 85 S.Ct. at 354-55.
Doe, 929 F.Supp. at 613.

The court in *Doe* rejected as relying on *dicta* in *Lopez* arguments that "cost of crime" and "national productivity" arguments were insufficient to establish a nexus to interstate commerce. *Id.* Instead, the court noted that "[t]he Congressional findings and reports qualitatively and quantitatively demonstrate the substantial effect on interstate commerce of gender-based violence," which the court found was "in marked distinction" to the Gun Free School Zone Act struck down in *Lopez*. *Id.* After reviewing some of the congressional findings based on four years of hearings, the court found that "because of the extensive compilation of data, testimony, and reports on which Congress based its findings, this Court is not left to speculate or ' "pile inference upon inference" to perceive an explicit connection between the regulated activity and interstate commerce.' " *Id.* at 614, 115 S.Ct. at 1656-57 (quoting *United States v. Sage*, 906 F.Supp. 84, 92 (D.Conn.1995), *aff'd*, 92 F.3d 101 (2d Cir.1996), *cert. denied*, 519 U.S. 1099, 117 S.Ct. 784, 136 L.Ed.2d 727 (1997), which upheld the constitutionality of the Child Support Recovery Act under the Commerce Clause).

Applying standards established in *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), the court examined the "outer limits" of Commerce Clause authority to regulate private intrastate conduct, and found the interstate impact of violence against women to be comparable to that of the wheat grower growing wheat for home consumption in *Wickard*. *Id.* at 614, 115 S.Ct. at 1656-57. Noting further the numerous instances in which courts throughout the country after *Lopez* had upheld federal criminal and civil rights statutes under the Commerce Clause, the court "conclude[d] that the statistical, medical, and economic data before the Congress adequately demonstrated the rational basis for Congress' findings that gender-based violence has a substantial effect on interstate commerce," despite the fact that states retain the primary authority to define and enforce criminal law. *Id.* at 615, 115 S.Ct. at 1657. The court found no impermissible federal encroachment upon traditional state powers over criminal law, family law, and state tort law, largely because of the care with which Congress crafted the civil remedies of the VAWA to complement rather than supplant state laws. *Id.* at 615-16, 115 S.Ct. at 1657-58. Furthermore, the court found that the Act was based upon the federal government's traditional power to recognize civil rights and provide for their enforcement. *Id.* at 616, 115 S.Ct. at 1657-58.

The court in *Doe* much more briefly disposed of the second prong of the analysis, the question of whether the civil remedies portions of the VAWA were reasonably adapted to the intended end of the Act. *Id.* The court wrote,

> Given the important nature of the conduct sought to be prevented and the previously-approved private attorney general method of remedy, this court concludes that the statutory scheme which creates a federal civil rights remedy for gender-motivated violence is reasonably adapted to an end permitted by the Constitution. This conclusion is consistent with prior precedent related to other federal civil rights remedies enacted by Congress and upheld by courts as constitutional under the Commerce Clause.

Doe, 929 F.Supp. at 617. Thus, the *Doe* decision upheld that civil remedies portion of the VAWA as a valid exercise of Commerce Clause power.

On the other side of the split in authority is the decision of the United States District Court for the Western District of Virginia in *Brzonkala v. Virginia Polytechnic & State Univ.*, 935 F.Supp. 779 (W.D.Va.1996). In *Brzonkala*, the court found that the civil remedies provision of the VAWA could not be upheld under either the Commerce Clause ***1411** or the enforcement provisions of the Fourteenth Amendment. In *Brzonkala*, the court began its analysis of the Commerce Clause basis for the civil remedies portion of VAWA in much the same way as did the court in *Doe*, by looking to the Supreme Court's decision in *Lopez*. *Brzonkala*, 935 F.Supp. at 786. However, the *Brzonkala* court took as its theme this warning from *Lopez*:

> [T]he Court considered important that "the scope of the interstate commerce power 'must be considered in light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.' " [*Lopez*, 514 U.S.] at [557], 115 S.Ct. at 1628-1629 (*NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37, 57 S.Ct.

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615, 626, 81 L.Ed. 893 (1937)). The Court has "heeded that warning" and has "undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce." *Id.* at [557], 115 S.Ct. at 1629 (citing among other cases *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 276-280, 101 S.Ct. 2352, 2360-2362, 69 L.Ed.2d 1 (1981)). The Supreme Court has not " 'declared that Congress may use a relatively trivial impact on commerce as an excuse for broad general regulation of state or private activities.' " *Id.* [at 558, 115 S.Ct. at 1629] (quoting *Maryland v. Wirtz*, 392 U.S. 183, 197 n. 27, 88 S.Ct. 2017, 2024 n. 27, 20 L.Ed.2d 1020 (1968)). "Rather, '[t]he Court has said only that where a general regulatory statute bears a substantial relation to commerce, the de minimis character of individual instances arising under that statute is of no consequence.' " *Id.* (quoting *Wirtz*, 392 U.S. at 197 n. 27, 88 S.Ct. at 2024 n. 27).

Brzonkala, 935 F.Supp. at 786. Like the court in *Doe*, the court in *Brzonkala* concluded that the VAWA could only fall within the third category of activity the *Lopez* decision identified as reached by the Commerce Clause, activity that "substantially affect[s]" interstate commerce. *Id.* However, the court concluded that there was no substantial effect on interstate commerce at which the VAWA was targeted.

The court in *Brzonkala* drew from *Lopez* a four-part analysis of effects on interstate commerce:

> The effects-analysis of the majority decision in *Lopez* can be broken down into four parts. First, the Court noted the relevance of the nature of the regulated activity; the Court distinguished that case, dealing with the regulation of intrastate possession of guns, from cases dealing with the regulation of an intrastate activity which is economic in nature. Second, the Court considered whether [18 U.S.C.] § 922(q) had any jurisdictional element to ensure in individual cases that the firearm possession would affect interstate commerce. Third, the Court considered the importance of legislative history. And finally, the Court considered the practical implications of accepting the Government's argument that the economic impact of the regulated activity had sufficient effects on interstate commerce to sustain the regulation.

Brzonkala, 935 F.Supp. at 786-87. In applying this four-part analysis to the VAWA, the court took passing notice of Congress's conclusion that gender-based violent crimes meet the " 'modest threshold required by the Commerce Clause.' " *Id.* at 788 (quoting S.Rep. 103-138, at 54 (1993)). However, the court in *Brzonkala* found that, after Congress had made its findings, the "modest threshold required by the Commerce Clause" had "become less modest." *Id.* at 789. The court's view that the Commerce Clause threshold was no longer so modest was based on its reading of *Lopez:*

> Notably, the *Lopez* Court stated, " '[S]imply because Congress may conclude that a particular activity affects interstate commerce does not necessarily make it so.' " *Lopez*, [514] U.S. at [557] n. 2, 115 S.Ct. at 1629 n. 2 (quoting *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 311, 101 S.Ct. 2389, 2391, 69 L.Ed.2d 1 (1981) (Rehnquist, J., concurring)). " 'Whether particular operations ***1412** affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.' " *Id.* (quoting *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 273, 85 S.Ct. 348, 366, 13 L.Ed.2d 258 (1964) [(Black, J., concurring)]).

Brzonkala, 935 F.Supp. at 788-89. The court then summarized its own analysis of the VAWA in light of *Lopez:*

> The differences between *Lopez* and the case at hand are insignificant, and the similarities are significant. Arguably the following three differences between the case at hand and *Lopez* render *Lopez*'s logic inapplicable to the case at hand: (1) that VAWA is civil, and the *Lopez* statute was criminal, (2) that there are legislative findings here but not in *Lopez*, and (3) that fewer steps of causation exist between the VAWA regulated activity and commerce than § 922(q)'s regulated activity and commerce. The similarities include (1) the criminal nature of both statutes, (2) the non- commercial nature of both statutes, (3) the lack of a jurisdictional requirement that some effect on interstate commerce is involved in each case, (4) the remoteness of any effect on commerce, and (5) the excessive congressional power that would logically follow from permitting both statutes based on the Commerce Clause.

Brzonkala, 935 F.Supp. at 789.

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Looking at differences, the court in *Brzonkala* discounted the importance of congressional findings regarding the VAWA versus the lack of such findings in support of the Gun Free School Zone Act before the Court in *Lopez*. *Id.* at 789-90. The court found that the presence or lack of such findings concerning effects on interstate commerce was of little significance, because the Court "had a reasonable appreciation of the effects via reasonable inferences." *Id.* at 790. In short, the court concluded that, "[w]hile findings will often be helpful, findings are not necessary for a determination of whether a rational relation to interstate commerce exists." *Id.* Next, the court acknowledged that is was "technically correct" that the VAWA was civil in nature, while the Gun Free School Zone Act was criminal. *Id.* However, the court rejected the significance of this distinction, asserting that "[o]ther than the economic nature of the activity to be regulated, the focus is not on the nature of the activity but on the related issue of the effects of the regulated activity on interstate commerce." *Id.* Finally, the court rejected as of any real significance the fact that the "chain of inferences" from the targeted activity under the VAWA to the effect on interstate commerce was one step shorter than in the *Lopez* case, because "[i]t is far from clear that the distance from the first to the last step is greater in the *Lopez* chain of causation than in the case at hand's chain." *Id.* at 790-91. "The bottom line," the court wrote, "is that both *Lopez* and the case at hand involve regulated activity that is too remote from interstate commerce." *Id.* at 791.

Unlike the differences between the VAWA and the act at issue in *Lopez*, the court found that the similarities were "real and significant." *Id.* First, the court found that both acts regulated activity that was "not commercial or even economic in nature." *Id.* Second, the court wrote,

> [S]imilar to § 922(q), VAWA does not have a jurisdictional requirement limiting each individual case under VAWA to situations involving interstate commerce. Although it is unclear whether such a jurisdictional requirement is needed, indications exist that such a requirement may be necessary.

Id. at 792.

Third, the court found that, like the statute at issue in *Lopez*, the VAWA would have the practical result of excessively extending Congress's power and inappropriately tipping the balance away from the states. *Id.* Although the court acknowledged that a reasonable inference from the findings of Congress was that violence against women has a major effect on the national economy, the court concluded that it was wrong to use "effects on the national economy" interchangeably with "effects on interstate commerce." *Id.* The court concluded that accepting the chain of causation between an effect on the national economy and an effect on interstate commerce as sufficient would *1413 extend the Commerce Clause power to an "unbounded extreme." *Id.* at 793. The court pointed out that the yearly costs of insomnia are much higher than the yearly costs of domestic abuse, but to allow the Commerce Clause to reach insomnia, even though insomniacs engage in interstate travel, would unreasonably tip the balance away from the states. *Id.* Continuing this line of reasoning, the court concluded that the limitations in the VAWA on federal jurisdiction over state law matters such as divorce, alimony, division of marital property, and child custody, "is utterly insignificant to the practical implications of accepting the regulated activity as having a substantial effect on interstate commerce." *Id.* The court continued,

> If the justification for VAWA under the Commerce Clause is constitutionally acceptable, then certainly Congress would have power to regulate much activity which should be left to state control. Similar to the situation in *Lopez*, if I accepted plaintiff's argument, I would be "hard pressed to posit any activity by an individual that Congress is without power to regulate." *Lopez*, [514] U.S. at [564], 115 S. Ct. at 1632. In essence, if VAWA is a permissible use of the commerce power because of the regulated activity's effect on the national economy, which in turn affects interstate commerce, then it would be inconsistent to deny the commerce power's extension into family law, most criminal laws, and even insomnia.

Brzonkala, 935 F.Supp. at 793. The court therefore rejected the VAWA as a valid exercise of Commerce Clause power, remarking that "[a]ny other conclusion would strain reason." *Id.* The court also rejected the VAWA as a valid exercise in Fourteenth Amendment power, but this court will survey the discussion concerning Fourteenth Amendment power in *Brzonkala* only if this court also reaches that issue.

Defendants, as the challengers to the

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constitutionality of the VAWA here, generally echo the analysis used in the *Brzonkala* decision, asserting that when non-economic activity is the target of legislation ostensibly based on the Commerce Clause, and when there is no jurisdictional element required for each regulated incident, a higher standard than mere rationality is required under *Lopez*. The supporters of the constitutionality of the VAWA here-- plaintiff, plaintiff/intervenor, and *amici* --on the other hand, criticize the *Brzonkala* decision as improperly disregarding Congress's findings of an interstate nexus with the targeted activity, distinguishing, without authority, between effects on the national economy and effects on interstate commerce, and failing to recognize that the VAWA is a civil rights statute, not a criminal statute, and thus falls well within a sphere traditionally subject to federal regulation.

b. Commerce Clause analysis

[28] The provision of the United States Constitution that is generally known as the Commerce Clause grants to Congress the power "[t]o regulate Commerce ... among the several states...." U.S. CONST., Art. I, § 8, cl. 3; *United States v. Crawford,* 115 F.3d 1397, 1399 (8th Cir.1997); *United States v. Dinwiddie,* 76 F.3d 913, 919 (8th Cir.), *cert. denied,* 519 U.S. 1043, 117 S.Ct. 613, 136 L.Ed.2d 538 (1996). As the courts in both *Doe* and *Brzonkala* noted, the Supreme Court in *Lopez* recognized three categories of activity that come within the reach of the Commerce Clause: (1) regulation of the use of the channels of interstate commerce; (2) regulation and protection of the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though a threat may come only from intrastate activities; and (3) regulation of activities that substantially affect interstate commerce. *Lopez,* 514 U.S. at 558-59, 115 S.Ct. at 1629-30; *see also Crawford,* 115 F.3d at 1399-1400 (identifying these three categories of activity subject to Commerce Clause power from *Lopez*); *United States v. McMasters,* 90 F.3d 1394, 1397 (8th Cir.1996) (identifying the same three categories); *United States v. Bates,* 77 F.3d 1101, 1104 (8th Cir.1996) (also citing *Lopez* for these three categories of situations in which the exercise of Commerce Clause power is permissible), *cert. denied,* *1414 519 U.S. 884, 117 S.Ct. 215, 136 L.Ed.2d 149 (1996); *Dinwiddie,* 76 F.3d at 919 (same). [FN35]

FN35. The decision in *Lopez* thus synthesizes over two centuries of Commerce Clause theory and practice. As Justice Stevens explained in a very recent decision, the need to repose authority over commerce in the central government was a major impetus to the drafting of the Constitution:

During the first years of our history as an independent confederation, the National Government lacked the power to regulate commerce among the States. Because each State was free to adopt measures fostering its own local interests without regard to possible prejudice to nonresidents, what Justice Johnson characterized as a "conflict of commercial regulations, destructive to the harmony of the States" ensued. *See Gibbons v. Ogden,* 9 Wheat. 1, 224, 6 L.Ed. 23 (1824) (opinion concurring in judgment). In his view, this "was the immediate cause that led to the forming of a [constitutional] convention." *Ibid.*

Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine, 520 U.S. 564, ---- - ----, 117 S.Ct. 1590, 1595-96, 137 L.Ed.2d 852 (1997). Justice Stevens also noted that the "negative" or "dormant" aspect of the Commerce Clause, which prohibits regulation that invidiously discriminates against interstate commerce, was at least as important to the framers as the affirmative exercise of congressional authority over commerce. *Id.* (citing *Gibbons,* 9 Wheat. at 231; *West Lynn Creamery, Inc. v. Healy,* 512 U.S. 186, 193 n. 9, 114 S.Ct. 2205, 2211 n. 9, 129 L.Ed.2d 157 (1994); *Hughes v. Oklahoma,* 441 U.S. 322, 325-26, 99 S.Ct. 1727, 1730- 31, 60 L.Ed.2d 250 (1979); *Hughes v. Alexandria Scrap Corp.,* 426 U.S. 794, 807 n. 16, 96 S.Ct. 2488, 2496-97 n. 16, 49 L.Ed.2d 220 (1976)).

In *New York v. United States,* 505 U.S. 144, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), the Supreme Court traced briefly the expansion of Congress's Commerce Clause power:

Interstate commerce was an established feature of life in the late 18th century. *See, e.g.,* The Federalist No. 42, p. 267 (C. Rossiter ed. 1961) ("The defect of power

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in the existing Confederacy to regulate the commerce between its several members [has] been clearly pointed out by experience"). The volume of interstate commerce and the range of commonly accepted objects of government regulation have, however, expanded considerably in the last 200 years, and the regulatory authority of Congress has expanded along with them. As interstate commerce has become ubiquitous, activities once considered purely local have come to have effects on the national economy, and have accordingly come within the scope of Congress' commerce power. *See, e.g., Katzenbach v. McClung,* 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964); *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942).

New York, 505 U.S. at 158, 112 S.Ct. at 2418-19. In *Gibbons,* the Court recognized the limits of Commerce Clause power to reach "completely internal" or intrastate activity. *Gibbons,* 9 Wheat. at 194-95, 6 L.Ed. 23. For nearly a century after *Gibbons,* therefore, the focus of Commerce Clause decisions was the "dormant" or "negative" aspect of the clause, and the Court "dealt but rarely with the extent of the Congress' power." *Lopez,* 514 U.S. at 553, 115 S.Ct. at 1627.

The second century of the nation's existence saw expansion of Congress's Commerce Clause power to include "production," "manufacturing," and "mining," matters originally considered as entirely within the province of the states, where such activities were so mingled together with interstate matters that full regulation of interstate commerce required incidental regulation of intrastate commerce. *Id.* at 554, 115 S.Ct. at 1627 (citing *Shreveport R. Co., v. U.S.,* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914)).

The next watershed was a departure from distinctions between "direct" and "indirect" effects on interstate commerce, formulated, for example, in *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 (1935), with the recognition that Congress's Commerce Clause power extends to matters that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions." *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 37, 57 S.Ct. 615, 624, 81 L.Ed. 893 (1937). In *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942), the Court held that Congress's Commerce Clause power extended to the regulation of intrastate activity that, in aggregate, has a substantial effect on interstate commerce. *Wickard,* 317 U.S. at 127-28, 63 S.Ct. at 90-91. As Chief Justice Rehnquist explained,

> *Jones & Laughlin Steel, Darby,* and *Wickard* ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate matters.

Lopez, 514 U.S. at 556, 115 S.Ct. at 1628.

In *Lopez,* however, the Supreme Court made a renewed search for the "outer limits" of Commerce Clause power. *Id.* at 557, 115 S.Ct. at 1628- 29. Chief Justice Rehnquist reiterated that those limits " 'must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.' " *Id.* at 557, 115 S.Ct. at 1628-29 (quoting *Jones & Laughlin Steel,* 301 U.S. at 37, 57 S.Ct. at 624).

*1415 [29][30] As to the third category, the category into which this court agrees the VAWA must fall, "[t]he Commerce Clause ... gives Congress the authority to regulate 'those activities that substantially affect interstate commerce.' "

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Dinwiddie, 76 F.3d at 920 (quoting *Lopez,* 514 U.S. at 559, 115 S.Ct. at 1629-30). The Eighth Circuit Court of Appeals has explained that, "[u]nder this power, Congress may regulate a class of purely intrastate activity if, in the aggregate, the activity has a substantial effect on interstate commerce." *Id.* Furthermore, the court observed, " '[w]here the class of activities is regulated and that class is within the reach of federal power, the courts have no power "to excise, as trivial, individual instances" of the class.' " *Id.* (quoting *Perez v. United States,* 402 U.S. 146, 154, 91 S.Ct. 1357, 1361-62, 28 L.Ed.2d 686 (1971), in turn quoting *Maryland v. Wirtz,* 392 U.S. 183, 193, 88 S.Ct. 2017, 2022, 20 L.Ed.2d 1020 (1968)). In determining whether a statute is a proper exercise of this category of Commerce Clause power, the court's task is to decide " 'whether a rational basis existed for concluding that [the] regulated activity sufficiently affected interstate commerce.' " *Id.* (quoting *Lopez,* 514 U.S. at 557, 115 S.Ct. at 1628-29). Where this requirement is satisfied, the only remaining question for the court is whether the means chosen by Congress are "reasonably adapted" to the asserted goals of the legislation. *Hodel,* 452 U.S. at 276, 101 S.Ct. at 2360; *Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 258, 85 S.Ct. 348, 358, 13 L.Ed.2d 258 (1964).

i. Substantial effect on interstate commerce. The Eighth Circuit Court of Appeals recently discussed the analysis in *Lopez* of the Gun Free School Zone Act as an exercise of the third kind of Commerce Clause power:

> The *Lopez* Court concluded that the statute could not "be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce." [*Lopez,* 514 U.S.] at [561], 115 S.Ct. at 1631. The Court noted that the statute contained "no jurisdictional element which would ensure, through case-by-case inquiry, that the [activity] in question affects interstate commerce," *id.* at [561], 115 S.Ct. at 1631, and that Congress had made no legislative findings that the activity so affected interstate commerce. *See id.* at [562-63], 115 S.Ct. at 1631-32. Without a more definite connection to interstate commerce, upholding the statute would allow Congress to "regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce," *id.* at [564], 115 S.Ct. at 1632, which exceeded the proper limits of the federal government's power.

McMasters, 90 F.3d at 1398. The court in *McMasters* found that there was a jurisdictional requirement in the statute in question, a requirement that the property be "used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce." *Id.* The court also looked to legislative history demonstrating Congress's concern that it not exceed its Commerce Clause authority further coupled with a determination that the statute was necessary to protect interstate commerce. *Id.*

[31] To answer one concern raised by the *Brzonkala* court, *Brzonkala,* 935 F.Supp. at 792, it appears from *McMasters* that the Eighth Circuit Court of Appeals reads *Lopez* not as *requiring* that the statute contain a jurisdictional element ensuring that the activity in question affects interstate commerce, but as considering whether the statute contains such a jurisdictional element, or whether, in the alternative, "Congress had made ... legislative findings that the activity so affected interstate commerce." *Id.* (citing *Lopez,* 514 U.S. at 562-63, 115 S.Ct. at 1631-32). This point was made more explicitly by the Eighth Circuit Court of Appeals in another decision in which the court observed that, both before and after *Lopez,* courts had consistently determined that 21 U.S.C. § 841(a)(1) is a valid exercise of Commerce Clause power even though it does not require an interstate nexus as an element of conviction. *United States v. Bell,* 90 F.3d 318, 321 (8th Cir.1996) (citing as so holding ***1416***United States v. Weinrich,* 586 F.2d 481, 498 (5th Cir.1978), *cert. denied,* 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d 243 (1979), *and* 441 U.S. 927, 99 S.Ct. 2041, 60 L.Ed.2d 402 (1979), and *United States v. Leshuk,* 65 F.3d 1105, 1111-12 (4th Cir.1995)). Similarly, in *United States v. Monteleone,* 77 F.3d 1086 (8th Cir.1996), the Eighth Circuit Court of Appeals explicitly held that 18 U.S.C. § 922(d), although it "does not contain any jurisdictional element which limits its scope to those offense affecting interstate commerce, and it could thus be applied to wholly intrastate transactions ... [s]till ... is [not] rendered unconstitutional by the Supreme Court's narrow holding in *Lopez.*" *Monteleone,* 77 F.3d at 1091. In so concluding, the court examined congressional findings of the effect on interstate commerce of widespread traffic in firearms. *Id.* at 1092; *see also Dinwiddie,* 76 F.3d at 920 (never

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examining the statute in question for a jurisdictional element, but instead examining congressional findings concerning the impact of the regulated activity on interstate commerce). Furthermore, the Eighth Circuit Court of Appeals reads *Lopez* to reaffirm that "[i]n cases challenging Congress' lawmaking power under the third category, ... 'the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce,' " *Bates,* 77 F.3d at 1104 (quoting *Lopez,* 514 U.S. at 559, 115 S.Ct. at 1629-30), not as instituting a new test of statutes under the third category of Commerce Clause power based solely on whether the statutes include a jurisdictional element.

This court finds that the *Lopez* decision itself supports such a reading of "jurisdictional elements" and "congressional findings" of effect on interstate commerce as alternative ways in which a statute ostensibly founded on Commerce Clause power can meet the *requirement* of a substantial effect on interstate commerce. In *Lopez,* the Court began its analysis of whether there was a substantial effect upon interstate commerce from the activity targeted by the Gun Free School Zone Act by looking at whether the statute contained any "jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce." *Lopez,* 514 U.S. at 561, 115 S.Ct. at 1631. The Court cited its prior decision in *United States v. Bass,* 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), in which it had required that a felon not only possess a firearm, but that the possession in question showed " 'the requisite nexus with interstate commerce.' " *Id.* at 562, 115 S.Ct. at 1631 (citing *Bass,* 404 U.S. at 349, 92 S.Ct. at 523). The court in *Lopez* found that, unlike the statute in *Bass,* the one then before it "has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce." *Id.* The Court then considered whether "legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce" established the required effect on interstate commerce. *Id.* In the case of the statute before the Court in *Lopez,* there were no such legislative findings to meet the requirement; thus, "to the extent that congressional findings would enable [the Court] to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye," they were lacking in the case of the Gun Free School Zone Act. *Id.* at 563, 115 S.Ct. at 1632.

Because the Court made alternative inquiries into whether the statute contained "jurisdictional elements" and whether it was supported by congressional findings establishing the substantial effect of the activity addressed on interstate commerce, it is incorrect to assert that the presence of "jurisdictional elements" in the statute is necessary to an exercise of Commerce Clause power. *Contra Brzonkala,* 935 F.Supp. at 792 (stating that "indications exist that [a 'jurisdictional elements'] requirement may be necessary"). To put it another way, the *requirement* is that the activity have a substantial effect on interstate commerce; factors to consider in determining whether there is such a substantial effect include whether there is a jurisdictional element in the statute establishing that the activity addressed on a case-by-case basis has the requisite nexus to interstate commerce, but also *1417 include, in the alternative, whether legislative findings establish the nexus of the activity in question to interstate commerce. *See Lopez,* 514 U.S. at 561-63, 115 S.Ct. at 1630-32; *see also Bates,* 77 F.3d at 1104 (reading *Lopez* to state that the test of lawmaking power under the third category is whether the regulated activity substantially affects interstate commerce). This court's reading of *Lopez* is in accord with that of the District of Columbia Circuit Court of Appeals:

> We do not view *Lopez* as holding that federal criminal statutes must contain jurisdictional elements. If a jurisdictional element were critical to a statute's constitutionality, the Court in *Lopez* would not have gone on to examine the Government's proffered rationales for the constitutionality of the gun possession statute. *See Lopez,* [514] U.S. [at 563-64], 115 S.Ct. at 1632-34.... Congress may [ensure that there is a substantial effect on interstate commerce] either through its own legislative findings or by including a jurisdictional element in the statute; *it need not do both.* Where, as here, detailed congressional findings support the conclusion that the activities prohibited by the Access Act substantially affect interstate commerce, the absence of a jurisdictional element is not fatal to the statute's constitutionality. *See [United States v.] Wilson,* 73 F.3d [675,] 685 [(7th Cir.1995)] ("In discussing the lack of a jurisdictional

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element in *Lopez*, the Court simply did not state or imply that all criminal statutes must have such an element, or that all statutes with such an element would be constitutional, or that any statute without such an element is per se unconstitutional.")[, *cert. denied*, --- U.S. ----, 117 S.Ct. 47, 136 L.Ed.2d 12 (1996)].

Terry v. Reno, 101 F.3d 1412, 1418 (D.C.Cir.1996) (emphasis added), *cert. denied*, 520 U.S. 1264, 117 S.Ct. 2431, 138 L.Ed.2d 193 (1997). The court in *Brzonkala* confused alternative factors establishing a requirement with the requirement itself. "Jurisdictional elements" are not necessarily required to establish a valid exercise of Commerce Clause power.

The decision of the Eighth Circuit Court of Appeals in *Dinwiddie* is instructive on other aspects of the third category of Commerce Clause power. In *Dinwiddie*, the court concluded that, to be a valid exercise of Commerce Clause power, a statute does not have to regulate commercial entities. *Dinwiddie*, 76 F.3d at 920. Instead, the court noted that "[i]t is settled law that the Commerce Clause gives Congress the power to regulate activity that diminishes interstate commerce in a good or service." *Id.* (citing *Katzenbach v. McClung*, 379 U.S. 294, 299-300, 85 S.Ct. 377, 381-82, 13 L.Ed.2d 290 (1964), and *Wickard v. Filburn*, 317 U.S. 111, 128-29, 63 S.Ct. 82, 90-91, 87 L.Ed. 122 (1942)). Furthermore, the court clarified the meaning of *Lopez* with regard to distant relationships between the regulated activity and interstate commerce, finding that what *Lopez* rejects is the exercise of Commerce Clause power that requires the court to "pile inference upon inference" to conclude that the regulated activity has a substantial effect on interstate commerce. *Id.* at 921 (citing *Lopez*, 514 U.S. at 567, 115 S.Ct. at 1633-34). Again, the court looked at how directly the congressional findings establish an effect upon interstate commerce, such as an interference with business or a reduction in the availability of goods or services. *Id.*

Although *Dinwiddie* explains that statutes enacted pursuant to the Commerce Clause power do not have to regulate commercial entities, there seems to be a mounting uncertainty as to whether *Lopez* rejects Commerce Clause regulation of non-commercial or non-economic activity. Half of an equally-divided *en banc* court of the Fifth Circuit Court of Appeals observed, "*Lopez* sends a clear cautionary signal that federal criminalization of intrastate noneconomic activity, when such regulation is not essential to a broader regulation of commercial activity, will have difficulty satisfying the substantial effects basis for Commerce Clause regulation." *United States v. Kirk*, 105 F.3d 997, 1009 (5th Cir.1997) (opinion of Jones, J., on behalf of judges who would reverse the district court on the constitutionality under the Commerce Clause of 18 U.S.C. § 922(*o*), which criminalizes the manufacture, transfer, and possession of machineguns), *petition for cert. filed*, *1418 65 U.S.L.W. 3756 (May 5, 1997) (No. 96-1759). However, this is far from any conclusion that *Lopez* excludes entirely from Commerce Clause power the regulation of non-economic or non-commercial activity. The judges voting to reverse in *Kirk* recognized that regulation of non-economic activity would encounter problems satisfying Commerce Clause requirements "when such regulation is not essential to a broader regulation of commercial activity." *Id.* As one judge of the Sixth Circuit Court of Appeals has explained,

> As I understand it, then, Congress *can* regulate non-"commercial" or non-"economic" activity under the third category of its interstate commerce authority. But it can only do so where the non-"commercial" or non-"economic" regulation is, as *Lopez* explained, "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez*, [514] U.S. at [561], 115 S.Ct. at 1631.

United States v. Chesney, 86 F.3d 564, 575 n. 3 (6th Cir.1996) (Batchelder, J., concurring), *cert. denied*, 520 U.S. 1282, 117 S.Ct. 2470, 138 L.Ed.2d 225 (1997).

Similarly, this court reads *Lopez* to have invalidated the Gun Free School Zone Act, not because it regulated non-commercial or non-economic activity, but because the Court could not find that the non-commercial, non-economic activity regulated had the requisite substantial effect upon interstate commerce, since the regulation lacked either jurisdictional elements or supporting legislative findings demonstrating that the activity had the necessary substantial effect. *Lopez*, 514 U.S. at 561-63, 115 S.Ct. at 1630-32. This is certainly the understanding of *Lopez* held by the District of Columbia Circuit Court of Appeals in *Terry*. *Terry*, 101 F.3d at 1418. In *Terry*, the court wrote,

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> *Lopez*'s fundamental proposition is that Congress must ensure that its Commerce Clause power to regulate noncommercial activities extends to only those activities that substantially affect interstate commerce.

Terry, 101 F.3d at 1418. Thus, the VAWA's regulation of gender-based violence is not beyond the reach of the Commerce Clause power simply because it involves regulation of non-economic or non-commercial activity.

The decision in *Brzonkala* raises one further issue regarding proof of a substantial effect on interstate commerce. That issue is whether "effects on the national economy" can be used interchangeably with "effects on interstate commerce." *Brzonkala,* 935 F.Supp. at 792. The court in *Brzonkala* conceded that "[a] reasonable inference from the congressional findings is that violence against women has its major effect on the national economy." *Id.* However, that court concluded that to use "effects on the national economy" interchangeably with "effects on interstate commerce" was "wrong":

> Undoubtedly effects on the national economy in turn affect interstate commerce. Such a chain of causation alone, however, is insufficient to bring an act within the purview of the commerce power. If such a chain of causation sufficed, Congress's power would extend to an unbounded extreme.

Brzonkala, 935 F.Supp. at 792-93. The court then compared the huge effect of gender-based violence on the national economy with the effect of insomnia, suggesting that it would be unreasonable to allow the exercise of Commerce Clause power in either case because a substantial effect on the national economy had some incidental effect on interstate commerce. *Id.* at 793.

Although this portion of the analysis in the *Brzonkala* decision is at best slight, it is not wholly without support in the Supreme Court's decision in *Lopez.* In *Lopez,* the Court rejected the government's arguments that *an inference* of an effect on the national economy establishing *an inference* of a substantial effect upon interstate commerce sufficed to draw regulation of guns in school zones within Commerce Clause authority. *Lopez,* 514 U.S. at 563-64, 115 S.Ct. at 1631-32. In *Lopez,* the government asserted, without supporting findings from Congress, "that possession of a firearm in a school zone *may* result in violent crime and that violent crime can be *expected* to affect the functioning *1419 of the national economy in two ways." *Id.* at 563, 115 S.Ct. at 1632 (emphasis added). Those two *expected* effects on the national economy that *might* result from violent crime that in turn *might* result from possession of a firearm in a school zone were costs of violent crime spread nationally by insurance and unwillingness of individuals to travel into areas of the country perceived to be unsafe. *Id.* at 563-64, 115 S.Ct. at 1631-32. Additionally, the government argued that guns in schools might ultimately affect the learning environment and thus produce less productive citizens. *Id.* at 564, 115 S.Ct. at 1632. The Supreme Court was unimpressed with this chain of inferences, concluding that the "costs of crime" reasoning would allow federal regulation of all violent crime, no matter how distantly related to interstate commerce, while the "national productivity" reasoning would lead to regulation of matters formerly regarded as within the sovereignty of the states, such as family law. *Id.*

However, the Supreme Court has long recognized that a substantial effect on the national economy validates the exercise of Commerce Clause power, even when the activity regulated pursuant to the Commerce Clause is purely intrastate. Reviewing the history of the Commerce Clause, the Supreme Court observed, "As interstate commerce has become ubiquitous, activities once considered purely local have come to have effects on the national economy, and have accordingly come within the scope of Congress' commerce power." *New York v. United States,* 505 U.S. 144, 158, 112 S.Ct. 2408, 2419, 120 L.Ed.2d 120 (1992) (citing *Katzenbach v. McClung,* 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964), and *Wickard v. Filburn,* 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942)). Indeed, what *Lopez* rejects is not this premise, but the premise that a chain of inferences from the regulated activity to an effect on the national economy and a further chain of inferences from some effect on the national economy to an effect on interstate commerce could suffice to establish that the regulated activity had the requisite *substantial* effect on interstate commerce. *Lopez,* 514 U.S. at 567, 115 S.Ct. at 1633 ("To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."); *Dinwiddie,* 76 F.3d at 921 (clarifying Lopez as

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rejecting the exercise of Commerce Clause power that requires the court to "pile inference upon inference" to conclude that the regulated activity has a substantial effect on interstate commerce, citing *Lopez,* 514 U.S. at 567, 115 S.Ct. at 1634). *Lopez* certainly does not bar the exercise of Commerce Clause power to regulate an activity that is shown by congressional findings to have a *direct* rather than merely inferential, effect on the national economy. Even the court in *Brzonkala* conceded that "[u]ndoubtedly effects on the national economy in turn affect interstate commerce." *Brzonkala,* 935 F.Supp. at 792. Plainly then, *Lopez* also does not bar the exercise of Commerce Clause power where the regulated activity's direct effect on the national economy is also shown by congressional findings to be coupled with a *substantial* direct effect on interstate commerce.

ii. Deference to congressional findings. The ground on which the champions of the constitutionality of the VAWA here take the *Brzonkala* decision most severely to task, however, is that the *Brzonkala* decision fails to demonstrate, indeed eschews, any deference to Congress's findings of an interstate nexus to gender-motivated violence. This court agrees that the analysis of the constitutionality of the VAWA in *Brzonkala* is fatally flawed in this respect.

The court is mindful that in *Lopez,* the Supreme Court wrote, "Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce." *Lopez,* 514 U.S. at 562, 115 S.Ct. at 1631 (citing *McClung,* 379 U.S. at 304, 85 S.Ct. at 383-84). However, that statement is no license to disregard congressional findings when they are present, nor is the Court's comment elsewhere in the *Lopez* decision that it is to decide whether there is a rational basis for Congress's conclusion that the activity in question has a substantial effect on interstate commerce. *Id.* at 557 & n. 2, 115 S.Ct. at 1628-29 & n. 2. Indeed, the Court in *Lopez* also wrote, "[A]s ***1420** part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce." *Id.* at 562, 115 S.Ct. at 1631.

Decisions of several federal circuit courts of appeals post-*Lopez* confirm that deference to a congressional finding that a regulated activity has a substantial effect on interstate commerce is alive and well. The District of Columbia Circuit Court of Appeals reads *Lopez* to clarify that an activity must not only "affect" interstate commerce, but must "substantially affect" it. *Terry,* 101 F.3d at 1416. However, the court did not suggest that this clarification ended deference to Congressional findings, but instead simply required the court to review the legislative findings to see if a "substantial" effect was supported by those findings. *Id.* at 1416-17. Similarly, the Third Circuit Court of Appeals concluded in *Pic-A-State Pa., Inc. v. Reno,* 76 F.3d 1294 (3d Cir.), *cert. denied,* 517 U.S. 1246, 116 S.Ct. 2504, 135 L.Ed.2d 194 (1996), that

> "[t]he task of a court that is asked to determine whether a particular exercise of congressional power is valid under the Commerce Clause is relatively narrow." *Hodel v. Virginia Surface Mining & Reclamation Assn.,* 452 U.S. at 276, 101 S.Ct. at 2360. "The court must defer to a congressional finding that a regulated activity affects interstate commerce, if there is any rational basis for such a finding." *Id.*

Pic-A-State Pa., Inc., 76 F.3d at 1301. Later in the opinion, that court also observed that deference to Congress extends to the congressional determination of the means used to effect the desired end:

> We do not substitute our judgment for that of Congress. "Where the legislative judgment is drawn in question," our inquiry "must be restricted to the issue of whether any state of facts either known or which could reasonably be assumed affords support for it." *United States v. Carolene Prod. Co.,* 304 U.S. 144, 154, 58 S.Ct. 778, 784, 82 L.Ed. 1234 (1938). The Supreme Court's recent decision in *United States v. Lopez,* [514] U.S. [549], 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), does not change the nature of this inquiry. *Lopez* asks whether the activity at issue could rationally be understood to affect commerce. The Court did not reach the question of whether the legislation itself was rationally related to its announced goal.

Id. at 1301-02. Similarly, when considering the constitutionality of the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248, in light of *Lopez,* the Seventh Circuit Court of Appeals found that what *Lopez* added, or reiterated, was that congressional findings must not only show an effect on interstate commerce from the regulated activity, but a substantial effect. *United States v. Wilson,* 73

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F.3d 675, 681 (7th Cir.1995). The court wrote,

> Thus courts must ask the additional question whether the relation to interstate commerce is substantial. *The district court erred further by giving no deference to Congress's findings.* Courts need only look for a rational basis. *Hodel,* 452 U.S. at 276, 101 S.Ct. at 2360. The district court essentially converted the rational basis test into a less deferential standard. Here it is plainly rational that reproductive health facilities are engaged in interstate commerce and that obstruction of such facilities brings the commerce to a halt.

Wilson, 73 F.3d at 681. The court found that the proper counterweight to excessive expansion of Commerce Clause power was not institution of a non- deferential review of congressional findings, but the requirement that the effects Congress has found must be substantial. *Id.* ("If individuals travel interstate more often to seek and provide reproductive health services than to bowl or to camp, Congress's authority to regulate may very well reach health facilities but not bowling alleys or campgrounds: courts must apply the substantial effects test to draw the proper distinction."). The district court had therefore improperly dismissed out of hand Congress's findings of a substantial effect of the regulated activity upon interstate commerce. *Id.* [FN36]

> FN36. Writing for four judges of an equally-divided Fifth Circuit Court of Appeals *en banc,* Judge Higginbotham wrote, *Lopez,* then, adhered to a rational basis standard of review. This deferential standard does not insist that Congress actually make factual findings. To the contrary, its tolerance of hypothetical, judicially supposed purposes and means gives the rational basis standard its deferential character. Courts can assume a more activist role in judicial review by refusing to look to a basis for legislation not identified by Congress. This elevates the standard of review, according significantly less deference to Congress. Giving weight to the absence of congressional findings lies in the middle ground between an intrusive absolute insistence upon legislative findings and traditional rational basis inquiry. Congressional findings are not merely playthings of formalism. They help define the respective roles of the courts and the Congress and the federal and the state governments. So the role of findings demands our attention. But their absence does not end our inquiry.
>
> *Kirk,* 105 F.3d at 999 (Higginbotham, J., writing for four judges who would vote to affirm the district court's determination that 18 U.S.C. § 922(*o*) was a constitutional exercise of Commerce Clause power). Although the judges joining in this opinion found that there were no legislative findings to support 18 U.S.C. § 922(*o*), copious findings support the VAWA.

*1421 ***iii. Congressional findings.*** A brief review of Congress's findings in support of the substantial effect of gender-motivated violence upon interstate commerce, garnered in four years of hearings prior to enactment of the VAWA, clearly establishes Congress's rational basis for finding that the regulated activity had the necessary interstate nexus. [FN37] The congressional findings on the scope of the problem of gender-based violence are staggering:

> FN37. The court finds that counsel for plaintiff/intervenor United States and *amici* thoroughly and effectively marshaled the pertinent portions of the legislative findings, providing the most effective form of advocacy, solid factual basis coupled with legally correct argument.

. "Violence is the leading cause of injury to women ages 15-44." S.Rep. No. 103-138, at 38 (1993).

. "Every week, during 1991, more than 2,000 women were raped and more than 90 women were murdered--9 out of 10 by men." *Id.*

. "[W]omen in the United States are at least three times more likely to become rape victims than their European counterparts." *Violence Against Women: Hearing before the House Committee on the Judiciary, Subcommittee on Crime and Criminal Justice,* Serial No. 42, 102d Cong., 2d Sess., 62 (Feb. 6, 1992).

. "[F]or the past 4 years [prior to 1993], the U.S. Surgeons General have warned that family

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violence--not heart attacks or cancer or strokes--poses the single largest threat of injury to adult women in this country." S.Rep. No. 103-138, at 41-42 (1993).

. "An estimated 4 million American women are battered each year by their husbands or partners. Approximately 95% of all domestic violence victims are women." H.R.Rep. No. 103-395, at 26 (1993).

. "Three out of four women will be victims of violent crimes sometime during their life." *Id.* at 25.

See also Doe, 929 F.Supp. at 611 (citing several of the same or similar findings). Yet, staggering as the scope of the problem may be, the activity regulated under the Commerce Clause must also have a substantial effect on interstate commerce. *Lopez,* 514 U.S. at 559, 115 S.Ct. at 1629. Congress certainly did not lack a rational basis for concluding that such a substantial effect from gender-based violence was apparent:

. "Gender-based violence bars its most likely targets--women--from full [participation] in the national economy." S.Rep. No. 103-138, at 54 (1993).

. Domestic violence costs employers an estimated $3 to $5 billion annually due to absenteeism from the workplace. *Women And Violence: Hearing before the Senate Committee on the Judiciary,* S. Hrg. 101-939, Pt. 1, 101st Cong., 2d Sess., 58 (June 20, 1990).

. "[W]e spend $5 to $10 billion a year on health care, criminal justice and other social costs of domestic violence." S.Rep. No. 103-138, at 41 (1993) (footnote omitted).

. "[A]s many as 50 percent of homeless women and children are fleeing domestic *1422 violence." S.Rep. No. 101-545, at 37 (1990).

. Fear of gender-based violence affects the economy and interstate travel by women, because "it deters women from taking jobs in certain areas or at certain hours that pose a significant risk of such violence." S.Rep. No. 103-138, at 54 (1993).

. Women often refuse higher paying night jobs in service and retail industries because they fear attack. *Id.* at 54 n. 70; *see also Violence Against Women: Victims of the System: Hearing before the Senate Committee on the Judiciary,* S. Hrg. 102-369, 102d Cong., 1st Sess., 86 (April 9, 1991) (testimony of Burt Neuborne).

. "[A]lmost 50 percent of rape victims lose their jobs or are forced to quit in the aftermath of the crime." S.Rep. No. 103-138, at 54 (1993).

. Fear of gender-motivated crime deters use of public transportation, and thus "acts as a barrier to mobility, particularly for those women who have no alternative to public transportation because of economic constraints." S. Hrg. 101-939, Pt. 1, at 69 (testimony of Helen Neuborne); *see also* S. Hrg. 102-369 at 2 (statement of Sen. Biden).

. Fear of gender-based violence deters women's free movement interstate, and limits every economic choice, including education, employment, and travel. *Crimes of Violence Motivated by Gender: Hearing before House Subcomm. on Civil and Constitutional Rights, House Committee on the Judiciary,* 103d Cong., 1st Sess., at 5 (Nov. 16, 1993).

See also Doe, 929 F.Supp. at 611 (citing these or similar findings). These findings led Congress to the following conclusion:

> [Gender-motivated violence has] a substantial adverse effect on interstate commerce, by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved, in interstate commerce.

H.R.Rep. No. 103-711 at 385 (1994), U.S. Code Cong. & Admin. News at 1801, 1853. In light of its findings, Congress concluded that enactment of the civil remedies of the VAWA was "firmly based on the Commerce Clause." S.Rep. No. 103-138 at 54 (1993).

Also in light of these findings, giving them the deference they are properly due in a Commerce Clause analysis, this court finds that there was undeniably a rational basis for Congress's conclusions that gender-motivated violence has a substantial effect on interstate commerce. *See Lopez,* 514 U.S. at 557, 115 S.Ct. at 1628-29 (the first prong of the test for the proper exercise of Commerce Clause is whether Congress had a rational basis for concluding that the regulated activity had a substantial effect on interstate commerce); *Dinwiddie,* 76 F.3d at 920 (same). Unlike the situation presented in *Lopez,* no chain of inferences from the regulated activity to an effect on the national economy to an effect on interstate commerce is required. *See Lopez,* 514 U.S. at 567, 115 S.Ct. at 1634 ("To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to

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convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."); *Dinwiddie,* 76 F.3d at 921. Instead the congressional findings demonstrate not only a direct and substantial impact of gender-motivated violence on the national economy, *see, e.g., Women And Violence: Hearing before the Senate Committee on the Judiciary,* S. Hrg. 101-939, Pt. 1, 101st Cong., 2d Sess., 58 (June 20, 1990) (domestic violence costs employers an estimated $3 to $5 billion annually due to absenteeism from the workplace), but a direct and substantial effect on interstate commerce. *See, e.g., Crimes of Violence Motivated by Gender: Hearing before House Subcomm. on Civil and Constitutional Rights, House Committee on the Judiciary,* 103d Cong., 1st Sess., at 5 (Nov. 16, 1993) (fear of gender-based violence deters women's free movement interstate, and limits every economic choice, including education, employment, and travel). Furthermore, because the effects on interstate commerce reflected in Congress's *1423 findings are so profound, the substantiality of the effects demonstrates that enactment of the VAWA was an exercise of Commerce Clause power in properly limited circumstances. *See Wilson,* 73 F.3d at 681 (substantiality of effect, not a lack of deference to congressional findings, is the proper limitation on Commerce Clause power).

iv. Reasonable adaptation of means to goal. Having concluded that Congress did indeed have a rational basis for concluding that gender-motivated violence has a substantial effect on interstate commerce, the court next turns to the second part of the Commerce Clause analysis, which asks whether the means chosen by Congress are "reasonably adapted" to the asserted goals of the legislation. *Hodel,* 452 U.S. at 276, 101 S.Ct. at 2360; *Heart of Atlanta Motel, Inc.,* 379 U.S. at 258, 85 S.Ct. at 358. On this prong of the analysis, this court can do little better than adopt the conclusion of a fellow district court judge in *Doe:*

> Given the important nature of the conduct sought to be prevented and the previously-approved private attorney general method of remedy, this court concludes that the statutory scheme which creates a federal civil rights remedy for gender-motivated violence is reasonably adapted to an end permitted by the Constitution. This conclusion is consistent with prior precedent related to other federal civil rights remedies enacted by Congress and upheld by courts as constitutional under the Commerce Clause.

Doe, 929 F.Supp. at 617.

The court would add only these points, often reiterated by the plaintiff, the plaintiff/intervenor, and *amici.* First, 42 U.S.C. § 13981 has been cast as a civil rights statute, not a criminal statute, and thus falls within the traditional purview of federal regulation. Just as importantly, the statute defers to state definitions of crimes and clearly supplements rather than supplants state regulation of criminal and family law matters. As such, the statute is not only reasonably adapted to serve the goals Congress had in mind, but reasonably adapted to avoid the parlaying of Commerce Clause power into a general police power, leading to a completely centralized government that obliterates our dual system of government. *See Lopez,* 514 U.S. at 557, 115 S.Ct. at 1628-29 (stating these concerns). Thus, contrary to the view of the district court in *Brzonkala,* the concerns of the Supreme Court in *Lopez* simply are not present here.

In short, defendants' challenge to the civil remedies provision of the VAWA, 42 U.S.C. § 13981, on the ground that it exceeds Congress's power under the Commerce Clause is overruled, and their challenge to the court's subject matter jurisdiction pursuant to *Fed.R.Civ.P.* 12(b)(1) is denied. [FN38]

> FN38. Because the court finds that the civil remedies portion of the VAWA is constitutional under the Commerce Clause, the court does not reach defendants' challenge to the constitutionality of the statute under section five of the Fourteenth Amendment.

C. Supplemental Jurisdiction

Defendants contend that, even if the court has subject matter jurisdiction over a federal VAWA claim and that claim is adequately pleaded, the court should decline to exercise supplemental jurisdiction over the plaintiff's many and varied state-law claims. Defendants contend that the state-law claims predominate over the single federal claim, both on the basis of mere numerosity and on the basis that the state-law claims are quantitatively different. They also contend that the court should decline to exercise supplemental jurisdiction over

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the state-law claims, because they involve novel and complex issues of state law. Plaintiff counters that her claims all arise from a common nucleus of operative fact, and thus can and should reasonably be tried together, and that her state-law claims are neither so complex, novel, or quantitatively different that this court should refrain from hearing them.

The statute defining the supplemental jurisdiction of the federal courts provides as follows:

> [I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of *1424 the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). The Eighth Circuit Court of Appeals has observed that the word "shall" in the phrase "shall have supplemental jurisdiction" "is a mandatory command." *McLaurin v. Prater,* 30 F.3d 982, 984 (8th Cir.1994). The court pointed out further that

> Congress has directed that federal district courts 'shall' have jurisdiction in both 28 U.S.C. § 1331 (1988) (federal question jurisdiction) and 28 U.S.C. § 1332 (1988) (diversity jurisdiction), and the accepted import of the terms is that federal courts must accept and cannot reject jurisdiction in such cases.

McLaurin, 30 F.3d at 984-85 (citing *McCarthy v. Madigan,* 503 U.S. 140, 145-47, 112 S.Ct. 1081, 1087, 117 L.Ed.2d 291 (1992), and *Willcox v. Consolidated Gas Co.,* 212 U.S. 19, 40, 29 S.Ct. 192, 195, 53 L.Ed. 382 (1909)).

[32] There are exceptions to this mandate, however, and some of those exceptions are cast in discretionary terms. *Id.* at 985 (citing 28 U.S.C. § 1367(b) and (c)). [FN39] A court "may decline to exercise supplemental jurisdiction" if

> (1) the claim raises a novel or complex issue of State law,
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). This subsection gives a court the discretion to reject jurisdiction over supplemental claims, "but only to a point." *McLaurin,* 30 F.3d at 985. "The statute plainly allows the district court to reject jurisdiction over supplemental claims only in the four instances described therein." *Id.* Thus, where the case clearly fits within one of the subsections listed above, the court may decline to exercise supplemental jurisdiction. *Packett v. Stenberg,* 969 F.2d 721, 726-27 (8th Cir.1992); *see also O'Connor v. State of Nev.,* 27 F.3d 357, 362 (9th Cir.1994), *cert. denied,* 514 U.S. 1021, 115 S.Ct. 1367, 131 L.Ed.2d 223 (1995); *Growth Horizons, Inc. v. Delaware County, Pa.,* 983 F.2d 1277, 1285 n. 14 (3d Cir.1993); *Chesley v. Union Carbide Corp.,* 927 F.2d 60, 65-66, n. 3 (2d Cir.1991); *Carroll v. Borough of State College,* 854 F.Supp. 1184, 1200 (M.D.Pa.1994), *aff'd mem.,* 47 F.3d 1160 (3d Cir.1995). The Ninth Circuit Court of Appeals has counseled that, once one of the grounds listed in § 1367(c) is present, "the court should consider whether the exercise of jurisdiction advances 'the values of economy, convenience, fairness, and comity.' " *Allen v. City of Los Angeles,* 92 F.3d 842, 846 (9th Cir.1996) (quoting *Executive Software v. U.S. Dist. Court,* 24 F.3d 1545, 1557 (9th Cir.1994)), *overruled in part, Acri v. Varian Assocs., Inc.,* 114 F.3d 999 (9th Cir.1997) (*en banc*). [FN40] However, "in the absence of the circumstances described in subsections (b) and (c), § 1367(a) requires the district court to accept supplemental jurisdiction over the state-law claims [the plaintiff] has raised in [the] case." *McLaurin,*

> FN39. In *McLaurin,* the court observed that the exceptions are found in both subsection (b) and (c). *McLaurin,* 30 F.3d at 985. According to the court in *McLaurin,* subsection (b) "*prohibits* district courts from exercising supplemental jurisdiction in certain instances when the basis for original jurisdiction is premised on § 1332 (diversity of citizenship)," *id.* (emphasis added), and the court notes that this subsection contains the "mandatory," but negative, words "*shall not* have supplemental jurisdiction." 28 U.S.C. § 1367(b); *cf. McLaurin,* 30 F.3d at 984-85 ("shall" is mandatory). Thus, the court concludes that only subsection (c) provides discretionary grounds for declining to exercise supplemental jurisdiction.

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30 F.3d at 985.

FN40. In *Acri,* the *en banc* court overruled "suggestions" in *Allen* that either the district or appellate courts have an obligation, *sua sponte,* to ensure that the discretionary retention of supplemental jurisdiction under 28 U.S.C. § 1367(c) is prudent where no one has objected and supplemental jurisdiction was proper under § 1367(a). *Acri,* 114 F.3d at 1001-02.

1. Novelty and complexity

[33] The defendants here seek discretionary dismissal of the state- law claims on the *1425 grounds identified in 28 U.S.C. § 1367(c)(1) and (2) . As to novelty, § 1367(c)(1), the District of Columbia Circuit Court of Appeals considered whether the claim asserted merely extended the common-law torts pleaded to new defendants, and looked at whether local courts had granted the relief sought by the plaintiffs on their tort claims--injunctive relief-- and found that such relief was far from "unexceptional" for claims of the sort presented. *Women Prisoners of D.C. Dep't of Corrections v. District of Columbia,* 93 F.3d 910, 921-22 (D.C.Cir.1996), *cert. denied,* 520 U.S. 1196, 117 S.Ct. 1552, 137 L.Ed.2d 701 (1997). The court then observed that " 'the proper function of [a] federal court is to ascertain what the state law is, not what it ought to be,' " *id.* at 922 (quoting *Klaxon Co. v. Stentor Elec. Mfg. Co.,* 313 U.S. 487, 497, 61 S.Ct. 1020, 1022, 85 L.Ed. 1477 (1941)), and further that " 'a federal court should be reluctant to retain pendent jurisdiction over a question for which state jurisprudence gives inadequate guidance.' " *Id.* (quoting *Financial Gen. Bankshares, Inc. v. Metzger,* 680 F.2d 768, 776 (D.C.Cir.1982)). These considerations, the court found, meant that deference to the district court's decision to assert supplemental jurisdiction was "not boundless," and the district court had abused its discretion in asserting supplemental jurisdiction where no local court had granted the relief sought in the context of the claims asserted. *Id.* at 922-23.

By way of contrast, the Ninth Circuit Court of Appeals found that state-law indemnification claims "involve[d] novel issues of California law," but the court nonetheless found that "the values of economy, convenience, and fairness [would be] advanced by the district court's retention of jurisdiction over the [plaintiff's] state law claims." *Allen,* 92 F.3d at 846. The court found that the parties had already completed two trials and the judge who had presided over those trials was therefore intimately familiar with all of the facts and rulings. *Allen,* 92 F.3d at 846.

In this case, the court acknowledges that there may be novel and complex issues presented by some of the plaintiff's claims, including whether some of the claims and the relief sought on those claims can be asserted against particular defendants. *See Women Prisoners of D.C. Dept. of Corrections,* 93 F.3d at 921-22. However, even though proceedings are not very advanced, *cf. Allen,* 92 F.3d at 846, because the plaintiff's claims plainly arise from a common nucleus of operative fact, but have not yet been refined or even reassessed by plaintiff's counsel in light of discovery, "the values of economy, convenience, and fairness [may be] advanced by [this] court's retention of jurisdiction over the [plaintiff's] state law claims," *id.,* at least during a reasonable period of discovery.

2. Predomination

As to whether state-law claims "predominate" over federal claims such that denial of supplemental jurisdiction over the state-law claims is appropriate, 28 U.S.C. § 1367(c)(2), the Ninth Circuit Court of Appeals upheld the district court's dismissal of a state-law inverse condemnation claim even though it retained jurisdiction over several federal substantive and procedural due process claims and equal protection claims. *Patel v. Penman,* 103 F.3d 868, 877 (9th Cir.1996), *cert. denied,* 520 U.S. 1240, 117 S.Ct. 1845, 137 L.Ed.2d 1048 (1997). The district court had noted that the state-law claim relied on the California Constitution rather than the federal constitution, involved "a lot of different evidence," "a lot of different theories," and perhaps even a different trier of fact. *Id.* (quoting the court below). The appellate court noted that the only federal claim actually tried was a post- closure procedural due process claim, which the court described as "a slender federal reed on which to base jurisdiction over a state-law claim as substantial as inverse condemnation." *Id.* [FN41]

FN41. A judge on the Eleventh Circuit

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Court of Appeals, dissenting from the majority opinion, nonetheless provided useful insights on how the court is to determine whether state-law claims predominate over federal claims within the meaning of 28 U.S.C. § 1367(c)(2). The dissenting judge found that, "[b]ecause Congress did not explain explicitly how to determine when state law predominates over federal question jurisdiction where the pleadings invoke both state and federal law, 'a value judgment by the federal court' is required." *In re City of Mobile,* 75 F.3d 605, 613 (11th Cir.1996) (Birch, J., dissenting) (quoting *Martin v. Drummond Coal Co.,* 756 F.Supp. 524, 527 (N.D.Ala.1991), and also citing *Moore v. DeBiase,* 766 F.Supp. 1311, 1319 (D.N.J.1991)).

State law predominates " '[i]f the federal court finds that the federal claim, while plausible, is not really the plaintiff's main mission; that it is only an incident or adjunct of the state claim and that the state claim is the crux of the action....' " *Moore,* 766 F.Supp. at 1319 (quoting 28 U.S.C.A. § 1441 Commentary (West Supp.1991)); *see Burnett [v. Birmingham Bd. of Educ.],* 861 F.Supp. [1036,] 1038 [(N.D.Ala.1994)].... A district court decides whether state law predominates by examining the "nature of the claims as set forth in the pleading and by determining whether the state law claims are more complex or require more judicial resources to adjudicate or are more salient in the case as a whole than the federal law claims." *Moore,* 766 F.Supp. at 1319 (footnote omitted). Thus, Congress accorded district courts *"broad discretion"* in determining whether to retain a removed case or to remand it **entirely** to state court. *Id.* (emphasis added).

In re City of Mobile, 75 F.3d at 613. Applying this test, the dissenter would have upheld the district court's refusal to exercise supplemental jurisdiction over state claims and its decision to remand the case following removal, where the matter had proceeded for two years in state court before a federal claim was added and the action was then removed to federal court. *Id.* at 614. The majority, however, reversed the district court's remand order, because the district court had improperly remanded the-entire case to state court, including the federal claim. *Id.* at 608 (majority opinion).

***1426** In this case, the federal claim is no such "slender reed," *id.,* nor, as has been suggested by the defendants, a case of the tail wagging the dog. Rather, the federal claim is clearly substantial, and clearly is really the plaintiff's main mission, not merely an incident or adjunct of the state claim. *Moore v. DeBiase,* 766 F.Supp. 1311, 1319 (D.N.J.1991). The court concludes, in its discretion, that it need not decline to exercise supplemental jurisdiction over the state-law claims on the ground that they predominate over the federal claim.

D. Challenges To State-Law Claims

The defendants have also moved to dismiss various of the state-law claims for failure to state a claim upon which relief can be granted pursuant to *Fed.R.Civ.P.* 12(b)(6). The counts in question are Count 3, which asserts fraud against Hartz and against defendants Church, Diocese, and Bishop; Count 4, which asserts breach of fiduciary duty against the Diocese and Bishop; Count 10, which asserts negligent hiring, training, and supervision against defendants Church, Diocese, and Bishop; Count 11, which asserts negligent breach of duty to protect against the Church and Diocese; Count 12, which asserts premises liability against the Church; and Count 13, which asserts respondeat superior liability of the Church. Of the challenges to these state-law claims, the court concludes that it need discuss in detail only the challenge to the negligent hiring, training, and supervision claim, as it involves both nonconstitutional and constitutional grounds for dismissal.

1. Negligent hiring, training, and supervision

Count 10 of Doe's complaint is a negligent hiring, training, and supervision claim directed against defendants Church, Diocese, and Bishop. In this count, Doe alleges that the named defendants failed to provide professional help to Father Hartz, an agent or employee, known or suspected to have tendencies toward sexual abuse and exploitation, and also failed to prevent, reprimand or punish,

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supervise or control Father Hartz's sexually abusive behavior or to respond to previous allegations of inappropriate behavior by Father Hartz. Defendants challenge the count on two grounds. First, they allege that Iowa has only recognized the tort of negligent supervision, hiring, or retention in limited circumstances not presented here. Second, they allege that recognition of such a claim against a religious institution concerning the conduct of a member of the clergy would violate the First Amendment to the United States Constitution. The plaintiff concedes that dismissal is appropriate as to her claim of negligent hiring of Father Hartz, because she agrees that such a claim trespasses on the Church's First Amendment protection from interference by secular courts on a "canonical act." However, she asserts the viability, the First Amendment notwithstanding, for her negligent retention and supervision claims, as these matters can be decided applying neutral principles of law that do not intrude upon religious matters.

*1427 As with a challenge to a statutory cause of action, the court will begin its consideration of the defendants' challenge to this common-law cause of action by examining nonconstitutional arguments, and only if it is "unavoidable," will the court turn to constitutional challenges. *Jean,* 472 U.S. at 854, 105 S.Ct. at 2996-97.

a. Recognition of the tort as alleged

[34] Defendants first challenge Doe's negligent retention and supervision claim on the ground that it does not fit within the narrow definition of the tort recognized by the Iowa Court of Appeals in *D.R.R. v. English Enters., CATV, Div. of Gator Transp., Inc.,* 356 N.W.2d 580 (Iowa.Ct.App.1984). Defendants read *D.R.R.* to acknowledge the availability of the tort only against common carriers and innkeepers or employers with an analogous "special duty" to the injured person. *See D.R.R.,* 356 N.W.2d at 584.

In *D.R.R.,* the Iowa Court of Appeals considered the arguments that a plaintiff who had been raped by a cable company employee could not hold the cable company liable for the employee's conduct under a tort defined by Restatement (Second) of Agency § 213. *D.R.R.,* 356 N.W.2d at 583. Restatement (Second) of Agency § 213 provides as follows:

> A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:
>
> a. In giving improper or ambiguous orders or in failing to make proper regulation; or
>
> b. In the employment of improper persons or instrumentalities in work involving risk of harm to others; or
>
> c. In the supervision of the activity; or
>
> d. In permitting, or failing to permit, negligent or other tortious conduct by persons, whether or not his agents or servants, upon premises or with instrumentalities under his control.

Restatement (Second) of Agency § 213; *D.R.R.,* 356 N.W.2d at 583. In *D.R.R.,* the court acknowledged decisions of other states that contained "language to similar effect," citing the following from a Michigan Supreme Court decision:

> An employer who knew or should have known of his employee's propensities and criminal record before a commission of an intentional tort by an employee upon a customer who came to employer's place of business would be liable for damages to such customer.

D.R.R., 356 N.W.2d at 583 (quoting *Hersh v. Kentfield Builders, Inc.,* 385 Mich. 410, 412, 189 N.W.2d 286, 288 (1971)). Finding no Iowa cases directly on point, the Iowa Court of Appeals nonetheless found that "a negligent hiring cause of action does exist under Iowa law when the employer owes a special duty to the injured party." *Id.* (citing *Nesbit v. Chicago, Rock Island & Pac. Ry.,* 163 Iowa 39, 143 N.W. 1114 (1913); *Fagg v. Minneapolis & St. Louis Ry.,* 175 Iowa 459, 462, 157 N.W. 148, 148-49 (1916); *Garvik v. Burlington, Cedar Rapids & Northern Ry.,* 131 Iowa 415, 418-19, 108 N.W. 327, 328 (1906); and *Giarratano v. Weitz Co.,* 259 Iowa 1292, 147 N.W.2d 824 (1967)). In *D.R.R.,* the court found that evidence, if true, that the employee who committed the tortious act had access to a master key to the victim's apartment through his employment would be sufficient to demonstrate a special duty on the part of the employer to the victim. *Id.* at 584. The court found that the employer before it was "analogous to the carrier because both operate pursuant to a public franchise," and the employer was also "analogous to an innkeeper because both have access to master keys to another person's living quarters." *Id.* The court found that summary judgment was improper on the claim in light of genuine issues of material

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fact as to whether the employer provided master keys to the employee and whether hiring the employee without checking his criminal background was a breach of the special duty that arose from the employer's provision of master keys. *Id.* Furthermore, the court held that the employee's wrongful conduct was not a superseding cause of the harm to the victim if the employment relationship was instrumental to the employee committing the crime. *Id.* at 585-86. Defendants contend that the church here simply is not analogous to an innkeeper or common ***1428** carrier, and therefore no "special duty" exists here that would satisfy the requirements of the tort as recognized by the Iowa Court of Appeals.

Notwithstanding defendants' objections, numerous courts have recognized the tort as defined by Restatement (Second) of Agency § 213 to be applicable to a church where a victim of sexual abuse by a member of the clergy asserted a cause of action against the church. Such courts have not found a "special duty" between the church and the victim to be the impediment, but whether the church had adequate notice of the clergy member's propensity to sexual abuse. For example, in *Kenneth R. v. Roman Catholic Diocese of Brooklyn,* 229 A.D.2d 159, 654 N.Y.S.2d 791 (N.Y.App.Div.1997), the New York court held that, although the church could not be held vicariously liable for a priest's sexual abuse of infants, the church "can still be held liable under theories of negligent hiring, negligent retention, and negligent supervision," citing Restatement (Second) of Agency § 213. *Kenneth R.,* 654 N.Y.S.2d at 793. However, the court found that "a necessary element of such causes of action is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury." *Id.* The court found that there were sufficient allegations in the complaint and bill of particulars to satisfy the notice requirement for purposes of a motion to dismiss. *Id.* at 795.

Most recently in *L.L.N. v. Clauder,* 209 Wis.2d 674, 563 N.W.2d 434 (1997), the Wisconsin Supreme Court held that, assuming such a claim would not violate the First Amendment to the United States Constitution, a claim pursuant to Restatement (Second) of Agency § 213 would lie against a church for conduct of a chaplain, but *only if* the church "knew or should have known that its employee would subject a third party to an unreasonable risk of harm." *L.L.N.,* 563 N.W.2d at 445 (citing Restatement (Second) of Agency § 213 cmt. d, and *Moses v. Diocese of Colo.,* 863 P.2d 310, 329 (Colo.1993) (*en banc*), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994) , and concluding that no genuine issue of material fact had been generated that the defendants did not have such notice).

Although a church is neither a common carrier nor an innkeeper, the question under the formulation of the negligent supervision tort, as recognized in *D.R.R.,* is not whether the employer fits in either category, nor even whether the employer has access to the victim's place of residence, but whether the party sought to be held liable "owes a special duty to the injured party." *D.R.R.,* 356 N.W.2d at 583. That duty, as defined in authorities upon which the court in *D.R.R.* relied, extends to " 'licensees, invitees, or customers of the employer.' " *Id.* (quoting Note, *The Responsibility of Employers for the Actions of Their Employees: The Negligent Hiring Theory of Liability,* 53 CHI.-KENT L. REV. 717, 721 (1979), and citing *Hersh,* 385 Mich. at 412, 189 N.W.2d at 288 (tort cause of action is available to "a customer who came to the employer's place of business")). Thus, the "special duty" requirement is not as exclusive as defendants would have it and certainly extends to a parishioner, as an invitee upon the premises of a church, even discounting any other special relationship and duties that might arise from the intimate and personal, rather than commercial, relationship between a church and a member. Under other decisions applying the tort to religious institutions, the further question is whether the institution had notice of the propensities of a clergy member to tortious conduct. *L.L.N.,* 563 N.W.2d at 445-46; *Kenneth R.,* 654 N.Y.S.2d at 793. Doe has adequately alleged that the institutional defendants she seeks to hold liable on her negligent supervision claim had such notice of Father Hartz's propensity to sexual abuse of women.

Therefore, the court concludes that Iowa courts have not only recognized a tort action for negligent supervision sufficiently broad to encompass the circumstances alleged, but that the elements of such a claim are adequately alleged. Defendants' motion to dismiss the negligent supervision claim on these grounds will be denied.

b. Constitutionality of the tort as against religious

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institutions

i. The "entanglement" test. Defendants also contend that a tort claim of negligent ***1429** retention and supervision against a religious institution arising from the conduct of a member of the clergy is barred by the First Amendment to the United States Constitution. The test the Eighth Circuit Court of Appeals has used to determine whether prosecution of a civil tort claim against a religious institution is barred by the Religion Clauses [FN42] of the First Amendment is whether consideration of the claim would risk "excessive entanglement" of the court in a religious matter. *See Roxas v. Presentation College,* 90 F.3d 310, 318 n. 6 (8th Cir.1996) (finding that consideration of Title VII and ADEA claims by a priest who left his employment with a private church-affiliated college would not risk such entanglement); *Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468, 472 (8th Cir.1993) ("The Synod has not offered any religious explanation for its actions which might entangle the court in a religious controversy in violation of the First Amendment."); *see also Weissman v. Congregation Shaare Emeth,* 38 F.3d 1038, 1042 (8th Cir.1994) (framing the question of whether application of the ADEA to a religious institution would "present a significant risk of infringement upon the First Amendment," and concluding that the ADEA posed only a minimal intrusion upon religious beliefs or practices or the essentially religious relationship between a priest and the church). [FN43] In *Drevlow,* the court explained,

> FN42. The Eighth Circuit Court of Appeals has not made clear whether such claims are tested against the "establishment" clause or "free exercise" clause of the First Amendment. *See, e.g., Roxas v. Presentation College,* 90 F.3d 310 (8th Cir.1996) (referring to "entanglement" with religion in violation of the First Amendment, without explaining whether the entanglement is with free exercise or establishment); *Weissman v. Congregation Shaare Emeth,* 38 F.3d 1038, 1044 & nn. 5 & 7 (8th Cir.1994) (referring to "the Religion Clauses of the First Amendment," although citing cases referring to the free exercise clause); *Drevlow v. Lutheran Church, Missouri Synod,* 991 F.2d 468 (8th Cir.1993) (not explaining whether the clause of the First Amendment at issue is the establishment or free exercise clause). There appears to be some uncertainty or a split in authority in other jurisdictions as to which clause of the First Amendment is implicated by a claim against religious institutions or members of the clergy. *See, e.g., Isely v. Capuchin Province,* 880 F.Supp. 1138 (E.D.Mich.1995) (not clarifying whether the provision of the First Amendment at issue was the establishment or free exercise clause); *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991) ("Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the *establishment clause.* U.S. Const. amend. I"; emphasis added); *L.L.N. v. Clauder,* 209 Wis.2d 674, 563 N.W.2d 434 (1997) ("The entanglement doctrine, which prohibits excessive governmental entanglement with religion, springs from the Establishment Clause.... It is well- settled that excessive governmental entanglement with religion will occur if a court is required to interpret church law, policies, or practices; therefore, the First Amendment prohibits such an inquiry."); *Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441 (Maine 1997) ("Courts, however, 'do not inhibit *free exercise* of religion merely by opening their doors to [civil] disputes [and] there are neutral principles of law ... which can be applied ...,' " emphasis added); *Kenneth R. v. Roman Catholic Diocese of Brooklyn,* 229 A.D.2d 159, 654 N.Y.S.2d 791 (N.Y.App.Div.1997) (viewing the question as whether tort suits burden the free exercise of religion or violate separation of church and state); *Bear Valley Church of Christ v. DeBose,* 928 P.2d 1315 (Colo.1996) (*en banc*) (considering a priest's "free exercise" defense to tort liability); *Konkle v. Henson,* 672 N.E.2d 450 (Ind.Ct.App.1996) (using *Lemon* entanglement test, without explaining whether the question is one involving the free exercise or

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establishment clause).

FN43. A considerable portion of the defendants' brief devoted to a discussion of First Amendment impediments to a negligent supervision claim addressed cases in which courts had held that discrimination claims by members of the clergy against their churches could not be sustained, and offering these cases as analogous to the present case, even though the plaintiff here is a third party. Not only does the court find cases brought by members of the clergy to be largely inapposite to cases brought by third parties against churches for injuries inflicted by members of the clergy, but the court concludes that the holdings of the cases cited by defendants are contrary to the binding precedent of the Eighth Circuit Court of Appeals approving such causes of action as not barred by the First Amendment. *Roxas,* 90 F.3d at 318 n. 6; *Drevlow,* 991 F.2d at 472.

It is a fundamental tenet of First Amendment jurisprudence that:

the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. ***1430** When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 724-25, 96 S.Ct. 2372, 2387-88, 49 L.Ed.2d 151 (1976). The Constitution forbids secular courts from deciding whether religious doctrine or ecclesiastical law supports a particular decision made by church authorities. *Scharon v. St. Luke's Episcopal Presbyterian Hosps.,* 929 F.2d 360, 363 (8th Cir.1991).

* * *

The First Amendment proscribes intervention by secular courts into many employment decisions made by religious organizations based on religious doctrine or beliefs. Personnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law. [Citing cases omitted here.] The First Amendment does not shield employment decisions made by religious organizations from civil court review, however, where the employment decisions do not implicate religious beliefs, procedures, or law. [Citation omitted.]

Drevlow, 991 F.2d at 470-71 (footnote omitted).

In *Drevlow,* the court concluded that it was unable, at the motion to dismiss stage of the proceedings, "to predict that the evidence offered at trial will definitely involve the district court in an impermissible inquiry into the Synod's bylaws or religious beliefs" to decide the plaintiff's claims of libel, negligence, and intentional interference with his legitimate expectancy of employment arising from placement of false information in his personal file. *Id.* at 471. The court therefore reversed the district court's dismissal of the complaint and remanded for further proceedings. *Id.* at 472. However, the court cautioned that, "if further proceedings reveal that this matter cannot be resolved without interpreting religious procedures or beliefs, the district court should reconsider the Synod's motion to dismiss." *Id.*

ii. Federal decisions. Surprisingly few federal courts have considered the question of a First Amendment bar to a negligent hiring and retention claim brought against a church institution arising from wrongful conduct of a member of the clergy. One such decision is that of the United States District Court for the Eastern District of Michigan in *Isely v. Capuchin Province,* 880 F.Supp. 1138, 1151 (E.D.Mich.1995). Applying the "excessive entanglement" test, the court found that claims based on a "negligent hiring" theory could not be sustained, as such claims would involve an inquiry into who should be permitted to become or remain a priest and such an inquiry would in turn necessarily involve the court in interpretation of church canons and internal church policies and practices. *Isely,* 880 F.Supp. at 1150-51. The plaintiff here has conceded as much, and this court need not consider further the negligent hiring portion of her claim.

However, the court in *Isely* found that, unlike hiring decisions, supervisory decisions could be examined in light of neutral principles of law

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without determining questions of church law and policies. *Id.* at 1151. The court concluded that "no First Amendment issues are implicated which would mandate dismissal of the negligent supervision claims." *Id.* (but finding that the Wisconsin Supreme Court had not recognized the tort of negligent supervision, and therefore dismissing such claims). [FN44]

> FN44. However sound the reasoning of the court in *Isely* on the First Amendment issue, this court believes that the issues of recognition and constitutionality of the claims should be addressed in that order, and that the court should only reach the constitutionality of such a claim if it is recognized under state law and adequately pleaded. *Cf. Jean,* 472 U.S. at 854, 105 S.Ct. at 2996-97 (directing courts to examine nonconstitutional questions before constitutional questions, and to reach the constitutional questions only if it is "unavoidable").

The United States District Court for the Southern District of New York reached the opposite conclusion in *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991). The court first concluded that negligent supervision and retention claims, as well as negligent hiring claims, against a church for the conduct of a *1431 pastor were time-barred. *Schmidt,* 779 F.Supp. at 332. In the alternative, the court found that "any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises ... First Amendment problems of entanglement ..., which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs." *Id.* The court observed that a pastor of the Presbyterian Church "is not analogous to a common law employee," because he may not be removed without action by the presbytery "functioning essentially as an ecclesiastical court." *Id.* Because the ecclesiastical tribunals were more learned in ecclesiastical law than the federal courts, the court determined that it would be

> inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant Bishop Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause. U.S. Const. amend. I.

Schmidt, 779 F.Supp. at 332.

[35] Thus, on the one hand, the federal district court in *Isely* upheld the negligent supervision claim over First Amendment objections, because only application of "neutral" principles of law, rather than examination of church doctrine or policies, was required, and hence "no First Amendment issues are implicated which would mandate dismissal of the negligent supervision claims." *Isely,* 880 F.Supp. at 1151. However, for the federal district court in *Schmidt,* the mere possibility that the inquiry "might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs" was sufficient to dismiss a negligent supervision claim on First Amendment grounds, at least where an ecclesiastic tribunal or something analogous to it was perceived to be required to make decisions to remove a cleric. *Schmidt,* 779 F.Supp. at 332. This court concludes that the court in *Isely* was nearer the mark, because, while who may become or remain a priest must, almost inevitably involve an inquiry into church doctrine or policies, barring a negligent hiring or retention claim on First Amendment grounds, negligent supervision can probably be determined applying only neutral principles of law and an inquiry that does not intrude upon church doctrine or policy. *Isely,* 880 F.Supp. at 1150-51.

In addition, however, this court has the further guidance of the decision of the Eighth Circuit Court of Appeals in *Drevlow.* That decision would suggest that dismissal is inappropriate, on the record at the Rule 12(b) stage of the proceedings, because the court is unable "to predict that the evidence offered at trial will *definitely* involve the district court in an impermissible inquiry into the [church's] religious beliefs." *Drevlow,* 991 F.2d at 471 (emphasis added). This court would add that it might be possible for a showing of excessive entanglement to be made at the summary judgment stage of the proceedings, but the court cannot say that such entanglement is definitely involved upon the pleadings.

iii. State court decisions. Numerous state court

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decisions also reflect a split in authority on whether negligent supervision claims against churches, arising from tortious conduct of members of the clergy, can be sustained on First Amendment grounds. *Compare, e.g., L.L.N. v. Clauder,* 209 Wis.2d 674, 563 N.W.2d 434 (1997) (on a motion for summary judgment, the court concluded that undisputed facts established that a negligent supervision claim, arising from improper sexual relations between a hospital chaplain and a patient, necessarily required examination of church law, policies, and practices, including the vow of celibacy and whether a person with notice of a truant priest's conduct was an agent of the church, and thus such a claim was barred by the First Amendment, reaffirming *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780 (1995)); *Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441 (Maine 1997) (in a case in which the superior court had granted a motion to dismiss as to negligent selection and training claims against a church arising from a priest's sexual relations with a woman who ***1432** came to him for marriage counseling, the supreme court held that the negligent supervision claim must also be dismissed as barred by the First Amendment); *with, e.g., Kenneth R. v. Roman Catholic Diocese of Brooklyn,* 229 A.D.2d 159, 654 N.Y.S.2d 791 (N.Y.App.Div.1997) (on a motion to dismiss claims arising from a priest's alleged sexual abuse of infants, negligent supervision and retention claims were not barred by the First Amendment, but negligent hiring claim was properly dismissed); *Bear Valley Church of Christ v. DeBose,* 928 P.2d 1315 (Colo.1996) (*en banc*) (after trial on the merits of claims brought on behalf of a child alleging improper touching by a minister during counseling sessions, the court sustained verdicts in favor of the child against the church, holding that courts may review an injured third party's claim that a religious institution negligently hired, supervised, or failed to discharge one of its employees without implicating or running afoul of the First Amendment, and citing in support *Van Osdol v. Vogt,* 908 P.2d 1122 (Colo.1996), and *Moses v. Diocese of Colo.,* 863 P.2d 310 (Colo.1993) (*en banc*), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994)), *cert. denied,* 520 U.S. 1248, 117 S.Ct. 1862, 137 L.Ed.2d 1062 (1997); *Doe v. Dorsey,* 683 So.2d 614 (Fla.Dist.Ct.App.1996) (affirming dismissal as time-barred a claim of negligent hiring and supervision based on sexual molestation of an altar boy by a priest, but observing in dicta that the First Amendment would not protect a church from negligent supervision claims based on criminal conduct); *Konkle v. Henson,* 672 N.E.2d 450 (Ind.Ct.App.1996) (First Amendment did not bar claims for negligent hiring and retention based on minister's sexual molestation of plaintiff, and therefore grant of church's summary judgment motion was reversed).

This split in authority, which may in part depend upon the stage of proceedings at which the court assessed the entanglement issue, suggests the propriety of this court's conclusion that, at least at the motion to dismiss stage, the First Amendment does not necessarily bar a claim of negligent supervision against a religious institution for the tortious conduct of a member of the clergy. The *Drevlow* decision of the Eighth Circuit Court of Appeals further supports this court's denial of the defendants' motion to dismiss the negligent supervision claim on First Amendment grounds at this stage of the proceedings when the extent of any entanglement that may be required by adjudication of that claim cannot yet be determined. *Drevlow,* 991 F.2d at 471.

Defendants' motion to dismiss the negligent retention and supervision portions of her claim in Count 10 will therefore be denied. [FN45]

> FN45. Again, the plaintiff has conceded that dismissal of the negligent hiring portion of this claim is appropriate on "entanglement" grounds.

2. Other state-law claims

The court has considered the defendants' challenges to the adequacy of the pleading of the other state-law claims presently at issue, Counts 3, 4, 11, 12, and 13, as well as the defendants' assertions of other "insuperable bars" to these claims, and finds that the relief of dismissal is not required. Assuming that all of the facts alleged in the plaintiff's complaint are true, and liberally construing those allegations, *Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; *Doe,* 107 F.3d at 1303-04; *WMX Techs., Inc.,* 105 F.3d at 1198; *First Commercial Trust,* 77 F.3d at 1083, it is not clear that no relief could be granted under any set of

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facts that could be proved consistent with Doe's allegations. *Handeen,* 112 F.3d at 1347-48; *accord Conley,* 355 U.S. at 45-46, 78 S.Ct. at 101-02; *WMX Techs., Inc.,* 105 F.3d at 1198. A record amplified and clarified by discovery may demonstrate that some of the claims are not viable, in which case the court will no doubt be called upon to revisit the merits of those claims, on either factual or legal grounds.

The portion of defendants' motion seeking dismissal of various state law claims will therefore be denied. Similarly, the court concludes that the portions of the motion asking that the court abstain or certify questions to the Iowa Supreme Court are premature, as attempting to answer certified questions *1433 in the absence of a more complete record may be difficult, impossible, or merely unproductive.

E. Certification For Interlocutory Appeal

[36] The court finds that this matter should be certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). That statute provides, in pertinent part, as follows:

> (b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

28 U.S.C. § 1292(b). As the Eighth Circuit Court of Appeals has observed, the statute provides for certification of controlling questions of law by the district court for interlocutory appeal in circumstances where an appeal is otherwise unavailable. *City of Fort Madison, Iowa v. Emerald Lady,* 990 F.2d 1086, 1088 n. 4 (8th Cir.1993). However, the appellate court must, upon certification, decide, in its discretion, whether to permit the appeal on the question certified. *Id.* [FN46]

> FN46. Because § 1292(b) provides for appeal of orders otherwise unappealable, and thus provides an avenue for resolving disputed and controlling questions of law, the resolution of which will materially further the litigation, the appellate court reviews *de novo* the questions of law certified by the district court. *Simon v. G.D. Searle & Co.,* 816 F.2d 397, 400 (8th Cir.), *cert. denied,* 484 U.S. 917, 108 S.Ct. 268, 98 L.Ed.2d 225 (1987). The nature and scope of the appellate court's review is not rigidly determined by the certified questions, however. *Id.* (citing *In re Oil Spill by the Amoco Cadiz,* 659 F.2d 789, 793 n. 5 (7th Cir.1981)). The appellate court
> remain[s] free to consider " ' "such questions as are basic to and underlie" ' " the questions certified by the district court. *[In re Oil Spill by the Amoco Cadiz,* 659 F.2d at 793 n. 5] (quoting *Helene Curtis Indus., Inc. v. Church & Dwight Co.,* 560 F.2d 1325, 1335 (7th Cir.1977) (quoting 9 J. Moore, *Moore's Federal Practice* ¶ 110.25[1], at 270)); *Merican, Inc. v. Caterpillar Tractor Co.,* 713 F.2d 958, 962 n. 7 (3d Cir.1983), *cert. denied,* 465 U.S. 1024, 104 S.Ct. 1278, 79 L.Ed.2d 682 (1984); *United States v. Connolly,* 716 F.2d 882, 885 (Fed.Cir.1983), *cert. denied,* 465 U.S. 1065, 104 S.Ct. 1414, 79 L.Ed.2d 740 (1984).
> *Simon,* 816 F.2d at 400.

In a recent decision, the Eighth Circuit Court of Appeals considered the standards applicable to an interlocutory appeal pursuant to § 1292(b). *See White v. Nix,* 43 F.3d 374 (8th Cir.1994). The court held that "[t]he requirements of § 1292(b) are jurisdictional," and the statute should be used with care to avoid piece-meal appeals. *White,* 43 F.3d at 376. Thus, the court stated that § 1292(b) " 'should and will be used only in exceptional cases where a decision on appeal may avoid protracted and expensive litigation, as in antitrust and similar protracted cases.' " *Id.* (quoting S.Rep. No. 2434, 85th Cong., 2d Sess. (1958), reprinted in 1958

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U.S.C.C.A.N. 5255, 5260). Thus, the statute should be used "sparingly" and the burden, on the movant, is a heavy one to show that the case is an "exceptional" one in which immediate appeal is warranted. *Id.* Nonetheless, the court's grant of interlocutory appeal is reviewed for abuse of discretion. *Id.* (finding abuse of discretion in that case in failure to consider whether the appeal involved a controlling question of law). The court therefore reiterated that § 1292(b) establishes three criteria that must be met for certification by the court: "the district court must be 'of the opinion that' (1) the order 'involves a controlling question of law'; (2) 'there is substantial ground for difference of opinion'; and (3) certification will 'materially advance the ultimate termination of the litigation.' " *Id.* at 377.

[37] The court is of the opinion that this decision presents an "exceptional case" in which immediate interlocutory appeal should be permitted. *Id.* The court finds that this order involves a controlling question of law, specifically, the constitutionality of the civil *1434 remedies provision of the VAWA and the elements of a VAWA claim in this case. *Id.* If the VAWA is unconstitutional as an exercise of Commerce Clause power, then this court will lack jurisdiction over the federal claim, and consequently will lack supplemental jurisdiction over the various state-law claims. It is also clear to the court that "there is substantial ground for difference of opinion," *id.*, since the only two courts to consider the constitutionality of this portion of the VAWA have split upon the appropriate outcome of a Commerce Clause analysis. Furthermore, there is an absence of precedent on the precise elements of a civil VAWA claim or the requirements of a predicate offense. Also, the court has identified the split in authority as to whether the First Amendment bars a negligent supervision claim against a religious institution based on the tortious conduct of a member of the clergy. Finally, certification will "materially advance the ultimate termination of the litigation," *id.*, because, if this court is incorrect in its conclusion that the VAWA is constitutional, or in its identification of the elements of such a claim, the defendants are entitled to dismissal of the complaint for lack of a federal question. This matter will therefore be certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) on the questions of the constitutionality of the civil remedies provision of the VAWA, the elements of such a claim in this case, and whether the First Amendment bars Doe's negligent supervision claim. However, this court will not enter any stay of the proceedings in this case while such an interlocutory appeal is pending. 28 U.S.C. § 1292(b).

III. CONCLUSION

Deprived of the use of a sword to loosen the complex knot of legal issues presented here, the court has instead painstakingly attempted to untangle the various strands in its analysis. Taking the defendants' nonconstitutional challenge to the plaintiff's VAWA claim first, the court has extracted from the federal statute and the state statute identified as defining a predicate offense the elements of Doe's VAWA claim. The court concludes that Doe has adequately pleaded, although just barely, each of the essential elements of such a claim. Thus, the defendants are not entitled to dismissal of the VAWA claim on Rule 12(b)(6) grounds for failure to state a claim, nor are they entitled to dismissal of that claim or the entire action pursuant to Rule 12(b)(1) on the ground that Doe has failed to allege an essential element of the federal claim upon which the court's subject matter jurisdiction depends.

Turning to the question at the focus of the attention of the parties and *amici*, the court next considered whether it lacked subject matter jurisdiction over the complaint, because the civil remedies provision of the VAWA is unconstitutional as beyond Congress's Commerce Clause power. Applying the standards for such an analysis stated by the United States Supreme Court in *Lopez*, as clarified by various circuit courts of appeals post-*Lopez*, the court concludes that the lack of jurisdictional elements is not fatal to the constitutionality of the statute, nor is the fact that the statute regulates non-commercial or non-economic activity. Giving congressional findings the deference they continue to be due post-*Lopez*, the court concludes instead that Congress had a rational basis for finding that gender-motivated violence has a substantial effect on interstate commerce. Furthermore, the means Congress adopted in the civil remedies provision of the VAWA to combat gender- motivated violence were reasonably adapted to that goal. The civil remedies provision of the VAWA mirrors other statutory mechanisms for private enforcement of civil rights. Furthermore, the civil remedies provision of the VAWA avoids the concern of the

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Supreme Court in *Lopez* that the Commerce Clause would become a vehicle for establishment of a centralized government exercising plenary police powers, because the statute is plainly constructed to supplement rather than supplant state criminal laws pertaining to gender- motivated violence. The court concludes that the VAWA is a valid exercise of Congress's authority under the Commerce Clause to address conduct with a substantial effect on interstate commerce. [FN47]

FN47. The court therefore did not reach the defendants' challenge to the VAWA as an exercise of congressional authority under section five of the Fourteenth Amendment.

*1435 The court's analysis was not finished there, however, as the court was still required to consider the defendants' challenges to the plaintiff's state-law claims. The court rejects the defendants' arguments that the exercise of supplemental jurisdiction over the plaintiff's state-law claims is inappropriate, because the court finds that it need not dismiss the state claims on the grounds of novelty or complexity, or on the ground that those claims predominate over the federal claim. The novelty and complexity arguments may be better addressed on a more complete record, and, as to predomination, the court finds that the federal claim is the central claim of plaintiff's complaint, not merely an add-on to establish federal jurisdiction.

Of the defendants' other challenges to the plaintiff's state-law claims, the court has considered in detail only the defendants' challenge to the negligent supervision and retention claim. The court finds that the other state-law claims have been adequately pleaded. As to the negligent supervision and retention claim, [FN48] the court finds that the claim is, first, permitted under the existing formulation of the tort in Iowa, and not barred at this stage of the proceedings by the First Amendment. The court finds that it is not definitely apparent that consideration of a claim of negligent retention and supervision against a religious institution arising from allegedly tortious conduct of a member of the clergy will involve an unwarranted entanglement with religion. However, if a more complete record establishes that such entanglement in this case is inevitable, the defendants may still be entitled to summary judgment on or dismissal of the negligent retention and supervision claim.

FN48. The plaintiff conceded that the negligent hiring portion of this claim could not be sustained over a First Amendment bar.

The court finds that there is no need, at this point in the proceedings, either to abstain or to certify questions to the Iowa Supreme Court, because only a fuller record would make such a course productive. Finally, the court certifies this matter for interlocutory appeal pursuant to 28 U.S.C. § 1292(b), because the court is of the opinion that this order involves controlling questions of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.

The defendants' motion to dismiss, abstain, or certify questions is therefore **denied** except to the extent that the plaintiff has conceded certain claims cannot properly be asserted. This order is **certified for interlocutory appeal,** but this matter is *not* stayed while any such interlocutory appeal is pending. 28 U.S.C. § 1292(b). The stay on discovery imposed by a magistrate judge of this court on November 20, 1996, is hereby **lifted.** The parties shall file a proposed scheduling order and discovery plan in compliance with N.D. Ia. LR 16(a)(1) within **thirty (30) days** of the date of this order.

IT IS SO ORDERED.

APPENDIX

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A. Amici Appearing Through
NOW Legal Defense And Education Fund

NOW Legal Defense And Education Fund (NOW LDEF)

Anti-Defamation League (ADL)

Ayuda, Inc.

Center For Women Policy Studies

Equal Rights Advocates (ERA)

Iowa Coalition Against Sexual Assault (Iowa CASA)

Jewish Women International

National Alliance of Sexual Assault Coalitions (NASAC)

National Coalition Against Domestic Violence

National Network To End Domestic Violence (NNEDV)

National Women's Law Center (NWLC)

Northwest Women's Law Center

Women's Law Project (WLP)

Women's Legal Defense Fund (WLDF)

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FN49. Affiliations are listed for identification purposes only.

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EXHIBIT 17

269 F.Supp.2d 328
(Cite as: 269 F.Supp.2d 328)

C

United States District Court,
S.D. New York.

Karl EHRENS, Plaintiff,
v.
THE LUTHERAN CHURCH-MISSOURI SYNOD, the Lutheran Church-Missouri Synod Atlantic District and Ronald F. Fink, Individually and as President of the Lutheran Church-Missouri Synod Atlantic District Defendants.

No. 02 CIV. 2771(CLB).

June 18, 2003.

Church member brought action against ecclesiastical authorities of church synod, alleging that authorities negligently supervised or retained pastor who allegedly committed a series of sexual assaults upon church member while he was a minor. Defendants moved for summary judgment. The District Court, Brieant, J., held that: (1) First Amendment prevented court from determining, after the fact, whether authorities negligently supervised or retained pastor, as such determination would involve government entanglement with religion; (2) member's allegation was insufficient to support finding that authorities had foreseeable duty of care to warn member of pastor's tendencies, as required for negligence claim under New York law; and (3) under New York law, letter concerning pastor's evaluation by a psychologist, and making reference to a previous incident of pastor touching a child on the leg many years earlier, was insufficient to support cause of action against authorities for negligent hiring or supervision.

Motion granted.

West Headnotes

[1] Constitutional Law ⚖84.5(10)
92k84.5(10) Most Cited Cases

[1] Religious Societies ⚖30
332k30 Most Cited Cases

First Amendment prevented court from determining, after the fact, whether the ecclesiastical authorities of church synod negligently supervised or retained pastor, as contended by church member in action against synod and others for alleged sexual assaults committed upon him by pastor, as such determination would involve government entanglement with religion. U.S.C.A. Const.Amend. 1.

[2] Religious Societies ⚖30
332k30 Most Cited Cases

Church member's allegation, that ecclesiastical authorities knew of pastor's pedophilic activities, "as confirmed by pastor's subsequent conviction" was insufficient to support finding that authorities had foreseeable duty of care to warn member of pastor's tendencies, as required for negligence claim under New York law in connection with pastor's alleged assault upon member while he was a minor, where conviction referred to arose out of the alleged incident with member.

[3] Negligence ⚖202
272k202 Most Cited Cases

Under New York law, to establish a prima facie case of negligence, the following must be shown: (1) a duty owed to the plaintiff; (2) a breach of that duty; (3) a reasonably close causal connection between the contact and the resulting injury; and (4) actual loss, harm or damage.

[4] Religious Societies ⚖30
332k30 Most Cited Cases

Under New York law, letter concerning pastor's evaluation by a psychologist, and making reference to a previous incident of pastor touching a child on the leg many years earlier, was insufficient to support cause of action against ecclesiastical authorities of church synod for negligent hiring or supervision, in action by church member for alleged sexual assaults committed upon him by pastor, where there was no indication that authorities had knowledge of the incident described in the letter.

[5] Master and Servant ⚖303
255k303 Most Cited Cases

To state a claim under New York law for negligent hiring, supervision, and retention, the plaintiff must

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show that the employer knew or should have known of the employee's propensity for the conduct which caused the injury.

*329 David B. Stein, Rubin Weisman, Colasanti, Kajko & Stein, LLP, Lexington, MA, John Haris, Epstein, Becker and Green, New York City, for plaintiff.

Renee Simon Lesser, New York City, for defendant.

Memorandum and Order

BRIEANT, District Judge.

In this diversity case controlled by New York law, seeking damages for sexual abuse of a minor, Defendants move for summary judgment pursuant to Fed.R.Civ.P. 56 on various grounds. [FN1] The motion was heard and fully submitted on May 23, 2003.

> FN1. This action was originally filed in Bronx County Supreme Court on November 19, 2001. Pursuant to 28 U.S.C. § 1441, Defendants removed this action to this Court based on diversity of citizenship, 28 U.S.C. § 1332(a)(1).

The following facts are not in dispute except as noted. Plaintiff Karl Ehrens ("Ehrens") is a citizen of Wollaston, Massachusetts. Defendant The Lutheran Church-Missouri Synod is a national religious organization with its principal place of business in St. Louis, Missouri. Defendant The Lutheran Church-Missouri Synod *330 Atlantic District is a religious organization conducting business within the State of New York and having its principal office in Bronxville, New York. The Individual Defendant, Reverend Ronald F. Fink ("Rev.Fink"), was President of the Lutheran Church-Missouri Synod Atlantic District until 1989 and is a resident of the State of North Carolina. [FN2]

> FN2. Defendant Fink has never been served with the summons and complaint in this action. The time to serve him has passed. Plaintiff has waived his opportunity to depose Rev. Fink. He was required by a prior direction of this Court to depose him by March 14, 2003 and did not do so.

The complaint pleads two claims against Defendant The Lutheran Church Missouri Synod framed as claims for negligence imposing responsibility for the wrongful conduct of Reverend Frederick Chapman, not sued, and now deceased, (count I), and negligent infliction of emotional distress (count II). These same two claims are alleged separately against Defendant The Lutheran Church Missouri Synod--Atlantic District. Plaintiff characterizes his claims as for "negligent hiring, supervision or retention" of a clergyman. See Plaintiff's Opposition brief filed May 14, 2003 at 10.

Because Reverend Fink was not served with process the action is dismissed against him at the outset and the counts pleaded against him are not considered.

Factual Background

Our analysis must be based on the facts well pleaded as amplified by the affidavits and exhibits, without regard to the legal theories or labels attached by the pleader. The facts, denied by Defendants, but assumed to be true for purposes of the motion, are found in the Plaintiff's complaint and brief in opposition (Doc. 24).

Some knowledge of the history and organization of the Lutheran Church in America is necessary to resolve the motion. Defendants take their name from the Rev. Dr. Martin Luther (1483-1546) a Roman Catholic priest whose act in posting his *95 theses* on the church door in Wittenberg, in what is now Germany, on October 31, 1517, causes that day to be considered as the "Birthday of the Protestant Reformation". The *95 theses* are also known as the *Lutheran Confessions*. The Lutheran Church itself was founded June 25, 1530. Its origin and growth parallel that of the Presbyterian Church, said to have been founded in Scotland by John Knox (1514-1572) and the Reformation of the Anglican Church under the leadership of Archbishop Thomas Cranmer (1489-1556) in England, and other subsequent European Protestant denominations.

Lutherans today are the third largest grouping of Christians, worldwide. Defendant Lutheran

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Church--Missouri Synod ("the Synod") was organized in 1847 and is but one of a number of similar bodies which constitute a unity, for purposes of self-government of their constituent member Lutheran churches in the United States and Canada. Defendant The Lutheran Church--Missouri Synod--Atlantic District, is an administrative facility within the Synod responsible for approximately 100 congregations in Metropolitan New York, Long Island and Eastern New York State. Massachusetts is within the New England District of the Synod.

Under the governance of the Synod, a congregation cannot become a member of the Synod until its Constitution and bylaws are approved by a District of the Synod. The Wollaston Church discussed *infra* was not a member of the Atlantic District although it did belong to the Missouri Synod.

*331 A congregation may "call" (retain or employ) only ordained and commissioned workers who are members of the Synod. This requirement applies to a Pastor, as well as certain other church offices not material to this action. The right to call a Pastor remains exclusively with the Congregation, but one so called must be endorsed by and a member of the Synod. Such a person eligible to serve as a Pastor is said to be "rostered", in that his name appears on a list or roster of eligible priests maintained by the Synod. A Pastor once called may be removed from office only for cause by a two-thirds vote of the members of the congregation assembled. Neither the Synod nor the District has the power to remove a Pastor once called.

Reverend Frederick Chapman, now deceased, was Pastor of a Lutheran church in Laurelton, New York. Chapman served in the Atlantic District as a Pastor until 1981. At that time he requested and was granted *emeritus* (retired) status and moved to New England. His roster membership was subsequently transferred to the New England District, and Rev. Fink had no further contact with him of any kind. Reverend Chapman resigned from the national clergy roster in 1997. Frederick Chapman was retired on pension as of 1978 or 1979. Although retired he continued to remain on the roster and to serve at the Wollaston Church, until 1997.

Plaintiff Karl Ehrens was a member of Wollaston Lutheran Church, in the New England District. Plaintiff alleges that beginning in the Spring of 1994 until July 1995, while he was under age, Chapman took advantage of his pastoral role within the church (as Pastor Emeritus at Wollaston) and began to develop an inappropriate sexual relationship with Ehrens. Ehrens alleges that while he was alone with Ehrens, Chapman committed a series of sexual assaults upon him. Chapman was convicted in 1997 in Massachusetts on criminal charges relating to that misconduct.

Defendant Synod provides evidence that it was not until 1997 that the Atlantic District learned of allegations of sexual misconduct lodged against Frederick Chapman in Massachusetts. "No allegations of sexual misconduct are on record in the Atlantic District office." Exhibit B. There is no evidence to the contrary. Since, organizationally, the District is part of the Synod, its knowledge would be imputed to the Synod.

Discussion

F.R.Civ.P. 56 provides that summary judgment shall be rendered if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In evaluating the record to determine whether there is a genuine issue as to any material fact, "the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986).

Plaintiff's legal theory is that Defendants employed or supervised or retained Chapman as a Pastor in a position of trust with the knowledge that he had a history of sexually assaulting minors. Plaintiff alleges that in 1977, while serving as Pastor in New York, Chapman was forced to leave that post because of inappropriate behavior towards female members including minors. Reverend Ronald Fink was the President of the Atlantic District in 1977 and is claimed to have had personal knowledge concerning that misconduct. In August 1980, in connection with Chapman's transfer to the New England District, Rev. Fink failed to inform the New *332 England District of Chapman's prior misconduct, and Defendants allowed him to remain rostered, knowing that during his ministry in the New England District, Chapman would have

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unsupervised access to children, including Plaintiff. This failure is alleged to be the cause of Plaintiff's injuries which are the subject of the suit.

This Court agrees that Plaintiff's allegation that Chapman was "working for the Atlantic District" at the time of the alleged assaults is not supported by the evidence, and indeed is contradicted by his claims previously filed by Mr. Ehrens in his two prior lawsuits in Massachusetts.

[1] Defendants point out, and this Court agrees that the Court is prevented by the First Amendment to the United States Constitution from determining, after the fact, that the ecclesiastical authorities of the Lutheran Church negligently supervised or retained a clergyman, as Plaintiff contends. It is constitutionally dubious for a court or jury to set a standard of reasonable care for religious bodies which maintain rosters of clergy eligibility for employment by congregations. New York courts have ruled that "any attempt to define the duty of care owed by a member of the clergy to a parishioner fosters excessive entanglement with religion." *Langford v. Roman Catholic Diocese,* 271 A.D.2d 494, 705 N.Y.S.2d 661, 662 (2d Dep't 2000). The same is true with regard to the duty of care in determining the continued eligibility of a priest to serve as a Pastor. As this Court has previously held in *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991) in which Plaintiff's claims against the Church Defendants were dismissed as a matter of law:

> "Any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement .... which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. He may not demit his charge nor be removed by the session, without the consent of the presbytery, functioning essentially as an ecclesiastical court. The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millenia.
>
> As the Supreme Court stated long before the *Lemon* formulation was developed: It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. *Watson v. Jones,* 80 U.S. 679, 13 Wall. 679, 729, 20 L.Ed. 666 (1871). *See also St. Nicholas Cathedral of Russian Orthodox Church of North America v. Kedroff,* 302 N.Y. 1, 13, 96 N.E.2d 56 (1950) rev'd on other grounds, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952)".

The so-called "third prong" of the much maligned case of *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) which forbade the state to "foster excessive government entanglement with religion" remains valid. We know from history that the First Amendment was passed in light of concern by Congress and the states that their new national government might at some future time follow the practices of European states in which the *333 ruler for the time being presumed to dictate the religious affiliations of his subjects and interfere with the free exercise of their own conscience. We may not forget that "the men and women who left Scrooby for Leyden and eventually came to Plymouth in order to worship God where they wished and in their own way must have thought they had terminated the interference of public authorities with free and unhandicapped exercise of religion." [FN3]

> FN3. Chief Judge Albert Conway writing for the New York Court of Appeals in *Matter of Community Synagogue v. Bates,* 1 N.Y.2d 445, 458, 154 N.Y.S.2d 15, 136 N.E.2d 488 (1956).

Any effort of this Court to instruct the trial jury as to the duty of care by which a denomination keeps its "roster" of those priests (and others) authorized to accept canonical employment by a parish church would of necessity require the court and jury to consider the fundamental perspective and approach to ordination and supervision of clergy and constituent churches inherent in the beliefs and practices of the particular denomination. The selection and deployment of clergy is about as central to the life and purpose of a group of

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affiliated churches as anything we can imagine. The mainstream denominations differ greatly in their rules and policies for "calling" and removing clergy. For a court to intervene to set standards of care for the performance of this work, which is founded in scripture and in history, implicating apostolic succession in some denominations, is as unconstitutional as it is impossible. When such intervention is directed to retention, the problem becomes worse and such claims become a pleading substitute for the doctrine of *respondent superior,* inapplicable in New York to crimes committed by clergy, and not alleged by Plaintiff in this case. *Bassile v. Covenant House,* 152 Misc.2d 88, 575 N.Y.S.2d 233 (1991); *Joshua S. v. Casey,* 206 A.D.2d 839, 615 N.Y.S.2d 200 (App. Div. 4th Dept.1994); *Paul J.H. v. Lum,* 291 A.D.2d 894, 736 N.Y.S.2d 561 (App. Div. 4th Dept.2002)

Any award of damages would have a chilling effect, leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause. Because it would be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained Reverend Chapman, this case must be dismissed.

[2] Defendants also contend alternatively that there is no proof of prior notice to them that Chapman would commit a sexual assault against a young man sixteen years after he left the Atlantic District and moved to Massachusetts, simply by reason of a prior history of misconduct of an unspecified sexual nature years earlier with women.

[3] Under New York law, to establish a *prima facie* case of negligence, the following must be shown: (i) a duty owed to the plaintiff; (ii) a breach of that duty; (iii) "a reasonably close causal connection between the contact and the resulting injury", and (iv) "actual loss, harm or damage." See *Dooner v. Keefe, Bruyette & Woods, Inc.,* 157 F.Supp.2d 265 (S.D.N.Y.2001). Plaintiff's evidence fails to satisfy the essential elements necessary to prevail in an action for negligence.

Plaintiff argues that Defendants knew of "Chapman's pedophilic activities... [as] confirmed by Chapman's subsequent conviction." See Id. at ¶ 7. The conviction of Chapman occurred after the alleged assault in 1994. See Id. at ¶ 18. It is illogical that Chapman's post-1994 conviction could be used to create a foreseeable duty *334 of care on the part of the Atlantic District and the Synod dating back to 1980, when Chapman's membership in the Atlantic District ended. [FN4]

> FN4. The pre-sentence report used in connection with Chapman's Massachusetts conviction contains reference to an unidentified prior conviction of a sexual nature in New York. The report is not admissible evidence that such a conviction exists or that these Defendants knew of it at the time Chapman was called by the Wollaston Church.

Plaintiff has not pointed to admissible evidence that either the Synod or the Atlantic District had requisite notice of Chapman's alleged proclivities to commit sexual assault. See Def. Memo at p. 14.

[4][5] To state a claim under New York law for negligent hiring, supervision, and retention, the plaintiff must show that "the employer knew or should have known of the employee's propensity for the conduct which caused the injury." *Wilson v. the Diocese of New York of the Episcopal Church,* 1998 WL 82921, *3, 1998 U.S. Dist. LEXIS 2051 *10 (S.D.N.Y. Feb. 23, 1998); *Kenneth R. v. Roman Catholic Diocese of Brooklyn,* 229 A.D.2d 159, 654 N.Y.S.2d 791, 793 (2d Dep't), cert. denied, 522 U.S. 967, 118 S.Ct. 413, 139 L.Ed.2d 316 (1997). There must be evidence to establish that the employer knew or should have known of any alleged propensity on Chapman's part to commit sexual assault both prior to hiring him and throughout the period of his employment. See *Kenneth R.,* 654 N.Y.S.2d at 795 ("There is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee.").

Plaintiff directs this Court to a June 2, 1994 letter (Pl. Mem. in Opp. Ex. 8) concerning the evaluation of Chapman by a psychologist Dr. David B. Doolittle. The letter makes a reference to "a previous incident of [Chapman] touching a child...on the leg in about 1976." See Id. Absent from the letter is whether the Defendants had

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knowledge of the incident. Plaintiff also refers to two letters in 1977 and 1978, one from Reverend Fink and one from Frederick Chapman. These letters refer to a serious problem concerning Chapman. They do not indicate that the problem was related to child molestation. Reverend Fink addressed this letter in his affidavit:

> I have reviewed a September 12, 1977 letter I wrote to the President of the Iowa District West concerning Mr. Chapman. In that letter, I noted I was not enclosing a "Confidential Information Blank" (which is a form that has basic *curriculum vitae* and background information about clergy members) because of what I described as a "serious problem" that had "not yet been resolved". The "serious problem" I was referring to did not involve any inappropriate behavior on the part of Mr. Chapman towards any members of any congregation, and it certainly did not involve any immoral or illegal acts on the part of Mr. Chapman.

* * * * * *

Moreover, Fink's affidavit dated December 6, 2002 states:

> "Prior to the lawsuit commenced by the plaintiff in Massachusetts, I knew of no allegations, complaints, charges or claims concerning Mr. Chapman's conduct, let alone any claim or allegation that he engaged in any purported 'inappropriate behavior toward female members of the Church, including minors' as alleged in the complaint filed in this action."

Reverend Fink Aff. 56.1 Ex. K ¶ 6.

Defendants show that "on or about July 27, 1977, Mr. Chapman submitted a letter *335 informing Mr. Fink of his decision to resign from the pastorate of the Laurelton [New York] parish. The reason given for his resignation was due to a change in the ethnic [racial] makeup of the parishioners." See Doc. 11, Exhibit E, ¶ 3.

Because there is no evidence of notice which would support the existence of a duty to disclose, there is no negligence. Because, as noted earlier, these Defendants lack the power to remove a Pastor from a Congregation, there is no claim for negligent retention.

For the foregoing reasons, the motion is granted. The Clerk shall file a final judgment.

SO ORDERED.

269 F.Supp.2d 328

END OF DOCUMENT

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EXHIBIT 18

110 S.Ct. 1595
108 L.Ed.2d 876, 58 USLW 4433, 52 Fair Empl.Prac.Cas. (BNA) 855, 53 Empl. Prac. Dec. P 39,826, Unempl.Ins.Rep. (CCH) P 21,933
(Cite as: 494 U.S. 872, 110 S.Ct. 1595)

Briefs and Other Related Documents

Supreme Court of the United States

EMPLOYMENT DIVISION, DEPARTMENT OF HUMAN RESOURCES OF OREGON, et al., Petitioners
v.
Alfred L. SMITH et al.

No. 88-1213.

Argued Nov. 6, 1989.
Decided April 17, 1990.
Rehearing Denied June 4, 1990.
See 496 U.S. 913, 110 S.Ct. 2605.

Claimants sought review of determination that their religious use of peyote, which resulted in their dismissal from employment, was "misconduct" disqualifying them from receipt of Oregon unemployment compensation benefits. In one case, the Oregon Court of Appeals, 75 Or.App. 764, 709 P.2d 246, reversed and remanded. The Oregon Supreme Court, 301 Or. 209, 721 P.2d 445, affirmed as modified. In the second case, the Oregon Court of Appeals, 75 Or.App. 735, 707 P.2d 1274, reversed. The Oregon Supreme Court, 301 Or. 221, 721 P.2d 451, affirmed as modified and remanded. Petition for writ of certiorari was granted. The Supreme Court, Justice Steven's, 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753, vacated judgment and remanded for determination whether sacramental peyote use was proscribed by state's controlled substance law. On remand, the Oregon Supreme Court, 307 Or. 68, 763 P.2d 146, held that sacramental peyote use violated state drug laws, but concluded that prohibition was nonetheless invalid under free exercise clause. The Supreme Court, Scalia, J., held that: (1) free exercise clause did not prohibit application of Oregon drug laws to ceremonial ingestion of peyote, and (2) thus state could, consistent with free exercise clause, deny claimants unemployment compensation for work-related misconduct based on use of drug.

Reversed.

Justice O'Connor filed opinion concurring in judgment, in which opinion Justices Brennan, Marshall and Blackmun joined as to Parts I and II only.

Justice Blackmun filed dissenting opinion, in which Justices Brennan and Marshall join.

Opinion on remand, 310 Or. 376, 799 P.2d 148.

West Headnotes

[1] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1))

Free exercise of religion includes right to believe and profess whatever religious doctrine one desires. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1))

Government may not compel affirmation of religious belief, punish expression of religious doctrine it believes to be false, impose special disabilities on basis of religious views or religious status, or lend its power to one or other side in controversies over religious authority or dogma. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases

Although state would be prohibiting free exercise of religion in violation of free exercise clause if it sought to ban religious acts or abstentions only when they were engaged in for religious reasons, or only because of religious belief that they displayed, right of free exercise does not relieve individual of obligation to comply with valid or neutral law of general applicability on ground that law proscribes, or requires, conduct that is contrary to his religious practice, as long as law does not violate other constitutional protections. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases

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[4] Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases

Exemption from generally applicable, religion-neutral laws that have effect of burdening particular religious practice cannot be evaluated under balancing test of *Sherbert*, which was developed in unemployment compensation context and under which governmental actions that substantially burden religious practice must be justified by compelling governmental interest, nor is it possible to require "compelling governmental interest" only when conduct prohibited is essential to individual's religion, since such inquiry would require judges to determine "centrality" of religious beliefs in applying compelling interest test in free exercise field. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases

Although states may make nondiscriminatory religious practice exemption to drug law, such exemption is not constitutionally required. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(19)
92k84.5(19) Most Cited Cases

[6] Social Security and Public Welfare ⇐388.5
356Ak388.5 Most Cited Cases

State of Oregon could, consistent with free exercise clause, deny claimants unemployment compensation benefits on ground of misconduct for dismissal from drug counseling positions resulting from their sacramental use of drug peyote at ceremony of Native American church, since ingestion of peyote was illegal under Oregon criminal laws and that prohibition was constitutional. U.S.C.A. Const.Amend. 1.

****1596** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 237, 50 L.Ed. 499.

***872** Respondents Smith and Black were fired by a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug, for sacramental purposes at a ceremony of their Native American Church. Their applications for unemployment compensation were denied by the State of Oregon under a state law disqualifying employees discharged for work-related "misconduct." Holding that the denials violated respondents' First Amendment free exercise rights, the State Court of Appeals reversed. The State Supreme Court affirmed, but this Court vacated the judgment and remanded for a determination whether sacramental peyote use is proscribed by the State's controlled substance law, which makes it a felony to knowingly or intentionally possess the drug. Pending that determination, the Court refused to decide whether such use is protected by the Constitution. On remand, the State Supreme Court held that sacramental peyote use violated, and was not excepted from, the state-law prohibition, but concluded that that prohibition was invalid under the Free Exercise Clause.

Held: The Free Exercise Clause permits the State to prohibit sacramental peyote use and thus to deny unemployment benefits to persons discharged for such use. Pp. 1598-1606.

(a) Although a State would be "prohibiting the free exercise [of religion]" in violation of the Clause if it sought to ban the performance of (or abstention from) physical acts solely because of their religious motivation, the Clause does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice and is otherwise constitutional as applied to those who engage in the specified act for nonreligious reasons. See, *e.g.*, *Reynolds v. United States*, 98 U.S. 145, 166-167, 25 L.Ed. 244. The only decisions in which this Court has held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action are distinguished ****1597** on the ground that they involved not the Free Exercise Clause alone, but that Clause in conjunction with other constitutionalprotections. ***873** See, *e.g.*, *Cantwell v. Connecticut*, 310 U.S. 296, 304-307, 60 S.Ct. 900, 903-905, 84 L.Ed.

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1213; *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15. Pp. 1598-1602.

(b) Respondents' claim for a religious exemption from the Oregon law cannot be evaluated under the balancing test set forth in the line of cases following *Sherbert v. Verner,* 374 U.S. 398, 402-403, 83 S.Ct. 1790, 1792-1794, 10 L.Ed.2d 965, whereby governmental actions that substantially burden a religious practice must be justified by a "compelling governmental interest." That test was developed in a context--unemployment compensation eligibility rules--that lent itself to individualized governmental assessment of the reasons for the relevant conduct. The test is inapplicable to an across-the-board criminal prohibition on a particular form of conduct. A holding to the contrary would create an extraordinary right to ignore generally applicable laws that are not supported by "compelling governmental interest" on the basis of religious belief. Nor could such a right be limited to situations in which the conduct prohibited is "central" to the individual's religion, since that would enmesh judges in an impermissible inquiry into the centrality of particular beliefs or practices to a faith. Cf. *Hernandez v. Commissioner,* 490 U.S. 680, 699, 109 S.Ct. 2136, 2148-2149, 104 L.Ed.2d 766. Thus, although it is constitutionally permissible to exempt sacramental peyote use from the operation of drug laws, it is not constitutionally required. Pp. 1602-1606.

307 Or. 68, 763 P.2d 146, reversed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, STEVENS, and KENNEDY, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, in Parts I and II of which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined without concurring in the judgment, *post,* p. 1606. BLACKMUN, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined, *post,* p. 1615.

Dave Frohnmayer, Attorney General of Oregon, argued the cause for petitioners. With him on the briefs were *James E. Mountain, Jr.,* Deputy Attorney General, *Virginia L. Linder,* Solicitor General, and *Michael D. Reynolds,* Assistant Solicitor General.

Craig J. Dorsay argued the cause and filed briefs for respondents.*

* Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *Steven R. Shapiro* and *John A. Powell;* for the American Jewish Congress by *Amy Adelson, Lois C. Waldman,* and *Marc D. Stern;* for the Association on American Indian Affairs et al. by *Steven C. Moore* and *Jack Trope;* and for the Council on Religious Freedom by *Lee Boothby* and *Robert W. Nixon.*

***874** Justice SCALIA delivered the opinion of the Court.

This case requires us to decide whether the Free Exercise Clause of the First Amendment permits the State of Oregon to include religiously inspired peyote use within the reach of its general criminal prohibition on use of that drug, and thus permits the State to deny unemployment benefits to persons dismissed from their jobs because of such religiously inspired use.

I

Oregon law prohibits the knowing or intentional possession of a "controlled substance" unless the substance has been prescribed by a medical practitioner. Ore.Rev.Stat. § 475.992(4) (1987). The law defines "controlled substance" as a drug classified in Schedules I through V of the Federal Controlled Substances Act, 21 U.S.C. §§ 811-812, as modified by the State Board of Pharmacy. Ore.Rev.Stat. § 475.005(6) (1987). Persons who violate this provision by possessing a controlled substance listed on Schedule I are "guilty of a Class B felony." § 475.992(4)(a). As compiled by the State Board of Pharmacy under its statutory authority, see, § 475.035, Schedule I contains the drug peyote, a hallucinogen derived from the plant *Lophophora williamsii Lemaire.* Ore.Admin.Rule 855-80-021(3)(s) (1988).

Respondents Alfred Smith and Galen Black (hereinafter respondents) were fired from their jobs with a private drug rehabilitation organization because they ingested peyote for sacramental

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purposes at a ceremony of the Native American Church, of which **1598 both are members. When respondents applied to petitioner Employment Division (hereinafter petitioner) for unemployment compensation, they were determined to be ineligible for benefits because they had been discharged for work-related "misconduct." The Oregon Court of Appeals reversed that determination, holding that the denial of benefits violated respondents' free exercise rights under the First Amendment.

*875 On appeal to the Oregon Supreme Court, petitioner argued that the denial of benefits was permissible because respondents' consumption of peyote was a crime under Oregon law. The Oregon Supreme Court reasoned, however, that the criminality of respondents' peyote use was irrelevant to resolution of their constitutional claim--since the purpose of the "misconduct" provision under which respondents had been disqualified was not to enforce the State's criminal laws but to preserve the financial integrity of the compensation fund, and since that purpose was inadequate to justify the burden that disqualification imposed on respondents' religious practice. Citing our decisions in *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), and *Thomas v. Review Bd., Indiana Employment Security Div.,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981), the court concluded that respondents were entitled to payment of unemployment benefits. *Smith v. Employment Div., Dept. of Human Resources,* 301 Or. 209, 217-219, 721 P.2d 445, 449-450 (1986). We granted certiorari. 480 U.S. 916, 107 S.Ct. 1368, 94 L.Ed.2d 684 (1987).

Before this Court in 1987, petitioner continued to maintain that the illegality of respondents' peyote consumption was relevant to their constitutional claim. We agreed, concluding that "if a State has prohibited through its criminal laws certain kinds of religiously motivated conduct without violating the First Amendment, it certainly follows that it may impose the lesser burden of denying unemployment compensation benefits to persons who engage in that conduct." *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 485 U.S. 660, 670, 108 S.Ct. 1444, 1450, 99 L.Ed.2d 753 (1988) (*Smith I*). We noted, however, that the Oregon Supreme Court had not decided whether respondents' sacramental use of peyote was in fact proscribed by Oregon's controlled substance law, and that this issue was a matter of dispute between the parties. Being "uncertain about the legality of the religious use of peyote in Oregon," we determined that it would not be "appropriate for us to decide whether the practice is protected by the Federal Constitution." *Id.,* at 673, 108 S.Ct., at 1452. Accordingly, we *876 vacated the judgment of the Oregon Supreme Court and remanded for further proceedings. *Id.,* at 674, 108 S.Ct., at 1452.

On remand, the Oregon Supreme Court held that respondents' religiously inspired use of peyote fell within the prohibition of the Oregon statute, which "makes no exception for the sacramental use" of the drug. 307 Or. 68, 72-73, 763 P.2d 146, 148 (1988). It then considered whether that prohibition was valid under the Free Exercise Clause, and concluded that it was not. The court therefore reaffirmed its previous ruling that the State could not deny unemployment benefits to respondents for having engaged in that practice.

We again granted certiorari. 489 U.S. 1077, 109 S.Ct. 1526, 103 L.Ed.2d 832 (1989).

II

Respondents' claim for relief rests on our decisions in *Sherbert v. Verner, supra, Thomas v. Review Bd. of Indiana Employment Security Div., supra,* and *Hobbie v. Unemployment Appeals Comm'n of Florida,* 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987), in which we held that a State could not condition the availability of unemployment insurance on an individual's willingness to forgo conduct required by his religion. As we observed in *Smith I,* however, the conduct at issue in those cases was not prohibited by law. We held that distinction to be critical, for "if Oregon does prohibit the religious **1599 use of peyote, and if that prohibition is consistent with the Federal Constitution, there is no federal right to engage in that conduct in Oregon," and "the State is free to withhold unemployment compensation from respondents for engaging in work-related misconduct, despite its religious motivation." 485 U.S., at 672, 108 S.Ct., at 1451. Now that the Oregon Supreme Court has confirmed that Oregon does prohibit the religious use of peyote, we

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proceed to consider whether that prohibition is permissible under the Free Exercise Clause.

A

[1][2] The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into *877 the Fourteenth Amendment, see *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940), provides that "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof....* " U.S. Const., Amdt. 1 (emphasis added.) The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious *beliefs* as such." *Sherbert v. Verner, supra,* 374 U.S., at 402, 83 S.Ct., at 1793. The government may not compel affirmation of religious belief, see *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), punish the expression of religious doctrines it believes to be false, *United States v. Ballard,* 322 U.S. 78, 86-88, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944), impose special disabilities on the basis of religious views or religious status, see *McDaniel v. Paty,* 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978); *Fowler v. Rhode Island,* 345 U.S. 67, 69, 73 S.Ct. 526, 527, 97 L.Ed. 828 (1953); cf. *Larson v. Valente,* 456 U.S. 228, 245, 102 S.Ct. 1673, 1683-84, 72 L.Ed.2d 33 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, see *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 445 452, 89 S.Ct. 601, 604-608, 21 L.Ed.2d 658 (1969); *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 95-119, 73 S.Ct. 143, 143-56, 97 L.Ed. 120 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708-725, 96 S.Ct. 2372, 2380-2388, 49 L.Ed.2d 151 (1976).

[3] But the "exercise of religion" often involves not only belief and profession but the performance of (or abstention from) physical acts: assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, abstaining from certain foods or certain modes of transportation. It would be true, we think (though no case of ours has involved the point), that a State would be "prohibiting the free exercise [of religion]" if it sought to ban such acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display. It would doubtless be unconstitutional, for example, to ban the casting of "statues that are to be used *878 for worship purposes," or to prohibit bowing down before a golden calf.

Respondents in the present case, however, seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons. They assert, in other words, that "prohibiting the free exercise [of religion]" includes requiring any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires). As a textual matter, we do not think the words must be given that meaning. It is no more necessary to regard the collection of a general tax, for example, as "prohibiting the free exercise [of religion]" by those citizens who believe support of organized government to be sinful, than it is to regard the same tax as "abridging the freedom ... of the press" of **1600 those publishing companies that must pay the tax as a condition of staying in business. It is a permissible reading of the text, in the one case as in the other, to say that if prohibiting the exercise of religion (or burdening the activity of printing) is not the object of the tax but merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended. Compare *Citizen Publishing Co. v. United States,* 394 U.S. 131, 139, 89 S.Ct. 927, 931-32, 22 L.Ed.2d 148 (1969) (upholding application of antitrust laws to press), with *Grosjean v. American Press Co.,* 297 U.S. 233, 250-251, 56 S.Ct. 444, 449, 80 L.Ed. 660 (1936) (striking down license tax applied only to newspapers with weekly circulation above a specified level); see generally *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue,* 460 U.S. 575, 581, 103 S.Ct. 1365, 1369-70, 75 L.Ed.2d 295 (1983).

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Our decisions reveal that the latter reading is the correct one. We have never held that an individual's religious beliefs ***879** excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition. As described succinctly by Justice Frankfurter in *Minersville School Dist. Bd. of Ed. v. Gobitis,* 310 U.S. 586, 594-595, 60 S.Ct. 1010, 1012-1013, 84 L.Ed. 1375 (1940): "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs. The mere possession of religious convictions which contradict the relevant concerns of a political society does not relieve the citizen from the discharge of political responsibilities (footnote omitted)." We first had occasion to assert that principle in *Reynolds v. United States,* 98 U.S. 145, 25 L.Ed. 244 (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. "Laws," we said, "are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.... Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Id.,* at 166-167.

Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a "valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes)." *United States v. Lee,* 455 U.S. 252, 263, n. 3, 102 S.Ct. 1051, 1058, n. 3, 71 L.Ed.2d 127 (1982) (STEVENS, J., concurring in judgment); see *Minersville School Dist. Bd. of Ed. v. Gobitis, supra,* 310 U.S., at 595, 60 S.Ct., at 1013 (collecting cases). In *Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), we held that a mother could be prosecuted under the child labor laws ***880** for using her children to dispense literature in the streets, her religious motivation notwithstanding. We found no constitutional infirmity in "excluding [these children] from doing there what no other children may do." *Id.,* at 171, 64 S.Ct., at 444. In *Braunfeld v. Brown,* 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961) (plurality opinion), we upheld Sunday-closing laws against the claim that they burdened the religious practices of persons whose religions compelled them to refrain from work on other days. In *Gillette v. United States,* 401 U.S. 437, 461, 91 S.Ct. 828, 842, 28 L.Ed.2d 168 (1971), we sustained the military Selective Service System against the claim that it violated free exercise by conscripting persons who opposed a particular war on religious grounds.

****1601** Our most recent decision involving a neutral, generally applicable regulatory law that compelled activity forbidden by an individual's religion was *United States v. Lee,* 455 U.S., at 258-261, 102 S.Ct., at 1055-1057. There, an Amish employer, on behalf of himself and his employees, sought exemption from collection and payment of Social Security taxes on the ground that the Amish faith prohibited participation in governmental support programs. We rejected the claim that an exemption was constitutionally required. There would be no way, we observed, to distinguish the Amish believer's objection to Social Security taxes from the religious objections that others might have to the collection or use of other taxes. "If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.,* at 260, 102 S.Ct., at 1056-57. Cf. *Hernandez v. Commissioner,* 490 U.S. 680, 109 S.Ct. 2136, 104 L.Ed.2d 766 (1989) (rejecting free exercise challenge to payment of income taxes alleged to make religious activities more difficult).

***881** The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections,

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such as freedom of speech and of the press, see *Cantwell v. Connecticut,* 310 U.S., at 304-307, 60 S.Ct., at 903-905 (invalidating a licensing system for religious and charitable solicitations under which the administrator had discretion to deny a license to any cause he deemed nonreligious); *Murdock v. Pennsylvania,* 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943) (invalidating a flat tax on solicitation as applied to the dissemination of religious ideas); *Follett v. McCormick,* 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938 (1944) (same), or the right of parents, acknowledged in *Pierce v. Society of Sisters,* 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), to direct the education of their children, see *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). (invalidating compulsory school-attendance laws as applied to Amish parents who refused on religious grounds to send their children to school). [FN1] ***882** Some of our cases prohibiting compelled expression, decided exclusively upon free speech grounds, have also involved freedom of religion, cf. *Wooley v. Maynard,* 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed.2d 752 (1977) (invalidating compelled display of a license plate slogan that offended individual religious beliefs); *West Virginia Bd. of Education v. Barnette,* 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628 (1943) (invalidating****1602** compulsory flag salute statute challenged by religious objectors). And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns. *Cf. Roberts v. United States Jaycees,* 468 U.S. 609, 622, 104 S.Ct. 3244, 3251-52, 82 L.Ed.2d 462 (1984) ("An individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State [if] a correlative freedom to engage in group effort toward those ends were not also guaranteed").

> FN1. Both lines of cases have specifically adverted to the non-free- exercise principle involved. *Cantwell,* for example, observed that "[t]he fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged." 310 U.S., at 307, 60 S.Ct., at 905. *Murdock* said:
>
> "We do not mean to say that religious groups and the press are free from all financial burdens of government.... We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon.... Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation." 319 U.S., at 112, 63 S.Ct., at 874.
>
> *Yoder* said that "the Court's holding in *Pierce* stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment." 406 U.S., at 233, 92 S.Ct., at 1542.

The present case does not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity or parental right. Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. There being no contention that Oregon's drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one's children in those beliefs, the rule to which we have adhered ever since *Reynolds* plainly controls. "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." *Gillette v. United States, supra,* 401 U.S., at 461, 91 S.Ct., at 842.

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[4] Respondents argue that even though exemption from generally applicable criminal laws need not automatically be extended to religiously motivated actors, at least the claim for a ***883** religious exemption must be evaluated under the balancing test set forth in *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). Under the *Sherbert* test, governmental actions that substantially burden a religious practice must be justified by a compelling governmental interest. See *id.,* at 402-403, 83 S.Ct., at 1792- 1794; see also *Hernandez v. Commissioner,* 490 U.S., at 699, 109 S.Ct., at 2148. Applying that test we have, on three occasions, invalidated state unemployment compensation rules that conditioned the availability of benefits upon an applicant's willingness to work under conditions forbidden by his religion. See *Sherbert v. Verner, supra; Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Hobbie v. Unemployment Appeals Comm'n of Florida,* 480 U.S. 136, 107 S.Ct. 1046, 94 L.Ed.2d 190 (1987). We have never invalidated any governmental action on the basis of the *Sherbert* test except the denial of unemployment compensation. Although we have sometimes purported to apply the *Sherbert* test in contexts other than that, we have always found the test satisfied, see *United States v. Lee,* 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982); *Gillette v. United States,* 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971). In recent years we have abstained from applying the *Sherbert* test (outside the unemployment compensation field) at all. In *Bowen v. Roy,* 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986), we declined to apply *Sherbert* analysis to a federal statutory scheme that required benefit applicants and recipients to provide their Social Security numbers. The plaintiffs in that case asserted that it would violate their religious beliefs to obtain and provide a Social Security number for their daughter. We held the statute's application to the plaintiffs valid regardless of whether it was necessary to effectuate a compelling interest. See 476 U.S., at 699-701, 106 S.Ct., at 2151-53. In *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), we declined to apply *Sherbert* analysis to the Government's logging and road construction activities on lands used for religious purposes by several Native American Tribes, even though it was undisputed that the activities ****1603** "could have devastating effects on traditional Indian religious practices," 485 U.S., at 451, 108 S.Ct., at 1326. ***884** In *Goldman v. Weinberger,* 475 U.S. 503, 106 S.Ct. 1310, 89 L.Ed.2d 478 (1986), we rejected application of the *Sherbert* test to military dress regulations that forbade the wearing of yarmulkes. In *O'Lone v. Estate of Shabazz,* 482 U.S. 342, 107 S.Ct. 2400, 96 L.Ed.2d 282 (1987), we sustained, without mentioning the *Sherbert* test, a prison's refusal to excuse inmates from work requirements to attend worship services.

Even if we were inclined to breathe into *Sherbert* some life beyond the unemployment compensation field, we would not apply it to require exemptions from a generally applicable criminal law. The *Sherbert* test, it must be recalled, was developed in a context that lent itself to individualized governmental assessment of the reasons for the relevant conduct. As a plurality of the Court noted in *Roy,* a distinctive feature of unemployment compensation programs is that their eligibility criteria invite consideration of the particular circumstances behind an applicant's unemployment: "The statutory conditions [in *Sherbert* and *Thomas*] provided that a person was not eligible for unemployment compensation benefits if, 'without good cause,' he had quit work or refused available work. The 'good cause' standard created a mechanism for individualized exemptions." *Bowen v. Roy, supra,* 476 U.S., at 708, 106 S.Ct., at 2156 (opinion of Burger, C.J., joined by Powell and REHNQUIST, JJ.). See also *Sherbert, supra,* 374 U.S., at 401, n. 4, 83 S.Ct., at 1792, n. 4 (reading state unemployment compensation law as allowing benefits for unemployment caused by at least some "personal reasons"). As the plurality pointed out in *Roy,* our decisions in the unemployment cases stand for the proposition that where the State has in place a system of individual exemptions, it may not refuse to extend that system to cases of "religious hardship" without compelling reason. *Bowen v. Roy, supra,* 476 U.S., at 708, 106 S.Ct., at 2156-57.

Whether or not the decisions are that limited, they at least have nothing to do with an across-the-board criminal prohibition on a particular form of conduct. Although, as noted earlier, we have

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sometimes used the *Sherbert* test to analyze free exercise challenges to such laws, see ***885***United States v. Lee, supra,* 455 U.S., at 257-260, 102 S.Ct., at 1055-1057; *Gillette v. United States, supra,* 401 U.S., at 462, 91 S.Ct., at 842-43, we have never applied the test to invalidate one. We conclude today that the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the test inapplicable to such challenges. The government's ability to enforce generally applicable prohibitions of socially harmful conduct, like its ability to carry out other aspects of public policy, "cannot depend on measuring the effects of a governmental action on a religious objector's spiritual development." *Lyng, supra,* 485 U.S., at 451, 108 S.Ct., at 1326. To make an individual's obligation to obey such a law contingent upon the law's coincidence with his religious beliefs, except where the State's interest is "compelling"--permitting him, by virtue of his beliefs, "to become a law unto himself," *Reynolds v. United States,* 98 U.S., at 167--contradicts both constitutional tradition and common sense. [FN2]

FN2. Justice O'CONNOR seeks to distinguish *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), and *Bowen v. Roy,* 476 U.S. 693, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986), on the ground that those cases involved the government's conduct of "its own internal affairs," which is different because, as Justice Douglas said in *Sherbert,* " 'the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.' " *Post,* at 1611- 1612 (O'CONNOR, J., concurring in judgment), quoting *Sherbert v. Verner,* 374 U.S. 398, 412, 83 S.Ct. 1790, 1798, 10 L.Ed.2d 965 (1963) (Douglas, J., concurring). But since Justice Douglas voted with the majority in *Sherbert,* that quote obviously envisioned that what "the government cannot do to the individual" includes not just the prohibition of an individual's freedom of action through criminal laws but also the running of its programs (in *Sherbert,* state unemployment compensation) in such fashion as to harm the individual's religious interests. Moreover, it is hard to see any reason in principle or practicality why the government should have to tailor its health and safety laws to conform to the diversity of religious belief, but should not have to tailor its management of public lands, *Lyng, supra,* or its administration of welfare programs, *Roy, supra.*

****1604*** The "compelling government interest" requirement seems benign, because it is familiar from other fields. But using it as the standard that must be met before the government may accord different treatment on the basis of race, see, *e.g., ****886*** *Palmore v. Sidoti,* 466 U.S. 429, 432, 104 S.Ct. 1879, 1881-82, 80 L.Ed.2d 421 (1984), or before the government may regulate the content of speech, see, *e.g., Sable Communications of California v. FCC,* 492 U.S. 115, 126, 109 S.Ct. 2829, 2836, 106 L.Ed.2d 93 (1989), is not remotely comparable to using it for the purpose asserted here. What it produces in those other fields--equality of treatment and an unrestricted flow of contending speech--are constitutional norms; what it would produce here--a private right to ignore generally applicable laws--is a constitutional anomaly. [FN3]

FN3. Justice O'CONNOR suggests that "[t]here is nothing talismanic about neutral laws of general applicability," and that all laws burdening religious practices should be subject to compelling-interest scrutiny because "the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a 'constitutional nor[m],' not an 'anomaly.' " *Post,* at 1612 (opinion concurring in judgment). But this comparison with other fields supports, rather than undermines, the conclusion we draw today. Just as we subject to the most exacting scrutiny laws that make classifications based on race, see *Palmore v. Sidoti,* 466 U.S. 429, 104 S.Ct. 1879, 80 L.Ed.2d 421 (1984), or on the content of speech, see *Sable Communications of California v. FCC,* 492 U.S. 115, 109

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> S.Ct. 2829, 106 L.Ed.2d 93 (1989), so too we strictly scrutinize governmental classifications based on religion, see *McDaniel v. Paty,* 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978); see also *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961). But we have held that race-neutral laws that have the *effect* of disproportionately disadvantaging a particular racial group do not thereby become subject to compelling-interest analysis under the Equal Protection Clause, see *Washington v. Davis,* 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976) (police employment examination); and we have held that generally applicable laws unconcerned with regulating speech that have the *effect* of interfering with speech do not thereby become subject to compelling-interest analysis under the First Amendment, see *Citizen Publishing Co. v. United States,* 394 U.S. 131, 139, 89 S.Ct. 927, 22 L.Ed.2d 148 (1969) (antitrust laws). Our conclusion that generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest is the only approach compatible with these precedents.

Nor is it possible to limit the impact of respondents' proposal by requiring a "compelling state interest" only when the conduct prohibited is "central" to the individual's religion. Cf. *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S., at 474-476, 108 S.Ct., at 1338-1339 (BRENNAN, J., dissenting). It is no ***887** more appropriate for judges to determine the "centrality" of religious beliefs before applying a "compelling interest" test in the free exercise field, than it would be for them to determine the "importance" of ideas before applying the "compelling interest" test in the free speech field. What principle of law or logic can be brought to bear to contradict a believer's assertion that a particular act is "central" to his personal faith? Judging the centrality of different religious practices is akin to the unacceptable "business of evaluating the relative merits of differing religious claims." *United States v. Lee,* 455 U.S., at 263 n. 2, 102 S.Ct., at 1058 n. 2 (STEVENS, J., concurring). As we reaffirmed only last Term, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez v. Commissioner,* 490 U.S., at 699, 109 S.Ct., at 2148. Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim. See, *e.g., Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S., at 716, 101 S.Ct., at 1431; ****1605***Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S., at 450, 89 S.Ct., at 606-07; *Jones v. Wolf,* 443 U.S. 595, 602-606, 99 S.Ct. 3020, 3024-3027, 61 L.Ed.2d 775 (1979); *United States v. Ballard,* 322 U.S. 78, 85-87, 64 S.Ct. 882, 885-87, 88 L.Ed. 1148 (1944). [FN4]

> FN4. While arguing that we should apply the compelling interest test in this case, Justice O'CONNOR nonetheless agrees that "our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular religious practice at issue," *post,* at 1615 (opinion concurring in judgment). This means, presumably, that compelling interest scrutiny must be applied to generally applicable laws that regulate or prohibit *any* religiously motivated activity, no matter how unimportant to the claimant's religion. Earlier in her opinion, however, Justice O'CONNOR appears to contradict this, saying that the proper approach is "to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling." *Post,* at 1611. "Constitutionally significant burden" would seem to be "centrality" under another name. In any case, dispensing with a "centrality" inquiry is utterly unworkable. It would require, for example, the same degree of "compelling state interest" to impede the practice of

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> throwing rice at church weddings as to impede the practice of getting married in church. There is no way out of the difficulty that, if general laws are to be subjected to a "religious practice" exception, *both* the importance of the law at issue *and* the centrality of the practice at issue must reasonably be considered.
> Nor is this difficulty avoided by Justice BLACKMUN's assertion that "although ... courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is 'central' to the religion, ... I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion." *Post,* at 1621 (dissenting opinion). As Justice BLACKMUN's opinion proceeds to make clear, inquiry into "severe impact" is no different from inquiry into centrality. He has merely substituted for the question "How important is X to the religious adherent?" the question "How great will be the harm to the religious adherent if X is taken away?" There is no material difference.

***888** If the "compelling interest" test is to be applied at all, then, it must be applied across the board, to all actions thought to be religiously commanded. Moreover, if "compelling interest" really means what it says (and watering it down here would subvert its rigor in the other fields where it is applied), many laws will not meet the test. Any society adopting such a system would be courting anarchy, but that danger increases in direct proportion to the society's diversity of religious beliefs, and its determination to coerce or suppress none of them. Precisely because "we are a cosmopolitan nation made up of people of almost every conceivable religious preference," *Braunfeld v. Brown,* 366 U.S., at 606, 81 S.Ct., at 1147, and precisely because we value and protect that religious divergence, we cannot afford the luxury of deeming *presumptively invalid,* as applied to the religious objector, every regulation of conduct that does not protect an interest of the highest order. The rule respondents favor would open the prospect of constitutionally required religious exemptions from civic obligations of almost every conceivable kind--ranging from ***889** compulsory military service, see, *e.g., Gillette v. United States,* 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971), to the payment of taxes, see, *e.g., United States v. Lee, supra;* to health and safety regulation such as manslaughter and child neglect laws, see, *e.g., Funkhouser v. State,* 763 P.2d 695 (Okla.Crim.App.1988), compulsory vaccination laws, see, *e.g., Cude v. State,* 237 Ark. 927, 377 S.W.2d 816 (1964), drug laws, see, *e.g., Olsen v. Drug Enforcement Administration,* 279 U.S.App.D.C. 1, 878 F.2d 1458 (1989), and traffic laws, see *Cox v. New Hampshire,* 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941); to social welfare legislation such as minimum wage laws, see *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290, 105 S.Ct. 1953, 85 L.Ed.2d 278 (1985), child labor laws, see *Prince v. Massachusetts,* 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), animal cruelty laws, see, *e.g., Church of the Lukumi Babalu Aye Inc. v. City of Hialeah,* 723 F.Supp. 1467 (SD Fla.1989), cf. *State v. Massey,* 229 N.C. 734, 51 S.E.2d 179, appeal dism'd, 336 U.S. 942, 69 S.Ct. 813, 93 L.Ed. 1099 (1949), environmental protection laws, ****1606** see *United States v. Little,* 638 F.Supp. 337 (Mont.1986), and laws providing for equality of opportunity for the races, see, *e.g., Bob Jones University v. United States,* 461 U.S. 574, 603-604, 103 S.Ct. 2017, 2034-2035, 76 L.Ed.2d 157 (1983). The First Amendment's protection of religious liberty does not require this. [FN5]

> FN5. Justice O'CONNOR contends that the "parade of horribles" in the text only "demonstrates ... that courts have been quite capable of ... strik [ing] sensible balances between religious liberty and competing state interests." *Post,* at 1612-1613 (opinion concurring in judgment). But the cases we cite have struck "sensible balances" only because they have all applied the general laws, despite the claims for religious exemption. In any event, Justice O'CONNOR mistakes the purpose of our parade: it is not to suggest that courts would necessarily permit harmful exemptions from these laws (though they might), but to suggest

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> that courts would constantly be in the business of determining whether the "severe impact" of various laws on religious practice (to use Justice BLACKMUN's terminology *post,* at 1621) or the "constitutiona[l] significan[ce]" of the "burden on the specific plaintiffs" (to use Justice O'CONNOR's terminology *post,* at 1611) suffices to permit us to confer an exemption. It is a parade of horribles because it is horrible to contemplate that federal judges will regularly balance against the importance of general laws the significance of religious practice.

[5] ***890** Values that are protected against government interference through enshrinement in the Bill of Rights are not thereby banished from the political process. Just as a society that believes in the negative protection accorded to the press by the First Amendment is likely to enact laws that affirmatively foster the dissemination of the printed word, so also a society that believes in the negative protection accorded to religious belief can be expected to be solicitous of that value in its legislation as well. It is therefore not surprising that a number of States have made an exception to their drug laws for sacramental peyote use. See, *e.g.,* Ariz.Rev.Stat.Ann. §§ 13-3402(B)(1)-(3) (1989); Colo.Rev.Stat. § 12-22-317(3) (1985); N.M.Stat.Ann. § 30-31-6(D) (Supp.1989). But to say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts. It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs.

* * *

[6] Because respondents' ingestion of peyote was prohibited under Oregon law, and because that prohibition is constitutional, Oregon may, consistent with the Free Exercise Clause, deny respondents unemployment compensation when their dismissal results from use of the drug. The decision of the Oregon Supreme Court is accordingly reversed.

It is so ordered.

***891** Justice O'CONNOR, with whom Justice BRENNAN, Justice MARSHALL, and Justice BLACKMUN join as to Parts I and II, concurring in the judgment. [FN*]

> FN* Although Justice BRENNAN, Justice MARSHALL, and Justice BLACKMUN join Parts I and II of this opinion, they do not concur in the judgment.

Although I agree with the result the Court reaches in this case, I cannot join its opinion. In my view, today's holding dramatically departs from well-settled First Amendment jurisprudence, appears unnecessary to resolve the question presented, and is incompatible with our Nation's fundamental commitment to individual religious liberty.

I

At the outset, I note that I agree with the Court's implicit determination that the constitutional ****1607** question upon which we granted review--whether the Free Exercise Clause protects a person's religiously motivated use of peyote from the reach of a State's general criminal law prohibition--is properly presented in this case. As the Court recounts, respondents Alfred Smith and Galen Black (hereinafter respondents) were denied unemployment compensation benefits because their sacramental use of peyote constituted work- related "misconduct," not because they violated Oregon's general criminal prohibition against possession of peyote. We held, however, in *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753 (1988) (*Smith I*), that whether a State may, consistent with federal law, deny unemployment compensation

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benefits to persons for their religious use of peyote depends on whether the State, as a matter of state law, has criminalized the underlying conduct. See *id.*, at 670-672, 108 S.Ct., at 1450-51. The Oregon Supreme Court, on remand from this Court, concluded that "the Oregon statute against possession of controlled substances, which include peyote, makes no exception for the sacramental use of peyote." 307 Or. 68, 72-73, 763 P.2d 146, 148 (1988) (footnote omitted).

***892** Respondents contend that, because the Oregon Supreme Court declined to decide whether the Oregon Constitution prohibits criminal prosecution for the religious use of peyote, see *id.*, at 73, n. 3, 763 P.2d, at 148, n. 3, any ruling on the federal constitutional question would be premature. Respondents are of course correct that the Oregon Supreme Court may eventually decide that the Oregon Constitution requires the State to provide an exemption from its general criminal prohibition for the religious use of peyote. Such a decision would then reopen the question whether a State may nevertheless deny unemployment compensation benefits to claimants who are discharged for engaging in such conduct. As the case comes to us today, however, the Oregon Supreme Court has plainly ruled that Oregon's prohibition against possession of controlled substances does not contain an exemption for the religious use of peyote. In light of our decision in *Smith I,* which makes this finding a "necessary predicate to a correct evaluation of respondents' federal claim," 485 U.S., at 672, 108 S.Ct., at 1451, the question presented and addressed is properly before the Court.

II

The Court today extracts from our long history of free exercise precedents the single categorical rule that "if prohibiting the exercise of religion ... is ... merely the incidental effect of a generally applicable and otherwise valid provision, the First Amendment has not been offended." *Ante,* at 1600 (citations omitted). Indeed, the Court holds that where the law is a generally applicable criminal prohibition, our usual free exercise jurisprudence does not even apply. *Ante,* at 1603. To reach this sweeping result, however, the Court must not only give a strained reading of the First Amendment but must also disregard our consistent application of free exercise doctrine to cases involving generally applicable regulations that burden religious conduct.

***893** A

The Free Exercise Clause of the First Amendment commands that "Congress shall make no law ... prohibiting the free exercise [of religion]." In *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), we held that this prohibition applies to the States by incorporation into the Fourteenth Amendment and that it categorically forbids government regulation of religious beliefs. *Id.,* at 303, 60 S.Ct., at 903. As the Court recognizes, however, the "free *exercise* " of religion often, if not invariably, requires the performance of (or abstention from) certain acts. *Ante,* at 1599; cf. 3 A New English Dictionary on Historical Principles 401-402 (J. Murray ed. 1897) (defining "exercise" to include "[t]he practice and performance of rites and ceremonies, worship, ****1608** etc.; the right or permission to celebrate the observances (of a religion)" and religious observances such as acts of public and private worship, preaching, and prophesying). "[B]elief and action cannot be neatly confined in logic-tight compartments." *Wisconsin v. Yoder,* 406 U.S. 205, 220, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). Because the First Amendment does not distinguish between religious belief and religious conduct, conduct motivated by sincere religious belief, like the belief itself, must be at least presumptively protected by the Free Exercise Clause.

The Court today, however, interprets the Clause to permit the government to prohibit, without justification, conduct mandated by an individual's religious beliefs, so long as that prohibition is generally applicable. *Ante,* at 1599. But a law that prohibits certain conduct--conduct that happens to be an act of worship for someone--manifestly does prohibit that person's free exercise of his religion. A person who is barred from engaging in religiously motivated conduct is barred from freely exercising his religion. Moreover, that person is barred from freely exercising his religion regardless of whether the law prohibits the conduct only when engaged in for religious reasons, only by members of that religion, or by all persons. It is difficult to deny that a law that prohibits ***894** religiously motivated conduct, even if the law is generally applicable,

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does not at least implicate First Amendment concerns.

The Court responds that generally applicable laws are "one large step" removed from laws aimed at specific religious practices. *Ibid.* The First Amendment, however, does not distinguish between laws that are generally applicable and laws that target particular religious practices. Indeed, few States would be so naive as to enact a law directly prohibiting or burdening a religious practice as such. Our free exercise cases have all concerned generally applicable laws that had the effect of significantly burdening a religious practice. If the First Amendment is to have any vitality, it ought not be construed to cover only the extreme and hypothetical situation in which a State directly targets a religious practice. As we have noted in a slightly different context, " '[s]uch a test has no basis in precedent and relegates a serious First Amendment value to the barest level of minimum scrutiny that the Equal Protection Clause already provides.' " *Hobbie v. Unemployment Appeals Comm'n of Florida,* 480 U.S. 136, 141-142, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987) (quoting *Bowen v. Roy,* 476 U.S. 693, 727, 106 S.Ct. 2147, 2166-67, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part)).

To say that a person's right to free exercise has been burdened, of course, does not mean that he has an absolute right to engage in the conduct. Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute. See, *e.g., Cantwell, supra,* 310 U.S., at 304, 60 S.Ct., at 903-04; *Reynolds v. United States,* 98 U.S. 145, 161-167, 25 L.Ed. 244 (1879). Instead, we have respected both the First Amendment's express textual mandate and the governmental interest in regulation of conduct by requiring the government to justify any substantial burden on religiously motivated conduct by a compelling state interest and by means narrowly tailored to achieve that interest. See ***895***Hernandez v. Commissioner,* 490 U.S. 680, 699, 109 S.Ct. 2136, 2148, 104 L.Ed.2d 766 1989); *Hobbie, supra,* 480 U.S., at 141, 107 S.Ct., at 1049; *United States v. Lee,* 455 U.S. 252, 257-258 (1982); *Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981); *McDaniel v. Paty,* 435 U.S. 618, 626-629, 98 S.Ct. 1322, 1327-1329, 55 L.Ed.2d 593 (1978) (plurality opinion); *Yoder, supra,* 406 U.S., at 215, 92 S.Ct., at 1533; *Gillette v. United States,* 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 168 (1971); *Sherbert v. Verner,* 374 U.S. 398, 403, 83 S.Ct. 1790, 1793-94, 10 L.Ed.2d 965 (1963); see also ****1609** *Bowen v. Roy, supra,* 476 U.S., at 732, 106 S.Ct., at 2169 (opinion concurring in part and dissenting in part); *West Virginia State Bd. of Ed. v. Barnette,* 319 U.S. 624, 639, 63 S.Ct. 1178, 1186, 87 L.Ed. 1628 (1943). The compelling interest test effectuates the First Amendment's command that religious liberty is an independent liberty, that it occupies a preferred position, and that the Court will not permit encroachments upon this liberty, whether direct or indirect, unless required by clear and compelling governmental interests "of the highest order," *Yoder, supra,* 406 U.S., at 215, 92 S.Ct., at 1533. "Only an especially important governmental interest pursued by narrowly tailored means can justify exacting a sacrifice of First Amendment freedoms as the price for an equal share of the rights, benefits, and privileges enjoyed by other citizens." *Roy, supra,* 476 U.S., at 728, 106 S.Ct., at 2167 (opinion concurring in part and dissenting in part).

The Court attempts to support its narrow reading of the Clause by claiming that "[w]e have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Ante,* at 1600. But as the Court later notes, as it must, in cases such as *Cantwell* and *Yoder* we have in fact interpreted the Free Exercise Clause to forbid application of a generally applicable prohibition to religiously motivated conduct. See *Cantwell,* 310 U.S., at 304-307, 60 S.Ct., at 903-905; *Yoder,* 406 U.S., at 214-234, 92 S.Ct., at 1532-1542. Indeed, in *Yoder* we expressly rejected the interpretation the Court now adopts:

> "[O]ur decisions have rejected the idea that religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject ***896** to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. But to

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> agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, *even under regulations of general applicability*....
> "... A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality if it unduly burdens the free exercise of religion." *Id.*, at 219-220, 92 S.Ct., at 1535- 36 (emphasis added; citations omitted).

The Court endeavors to escape from our decisions in *Cantwell* and *Yoder* by labeling them "hybrid" decisions, *ante,* at 1607, but there is no denying that both cases expressly relied on the Free Exercise Clause, see *Cantwell,* 310 U.S., at 303-307, 60 S.Ct., at 903-905; *Yoder, supra,* 406 U.S., at 219-229, 92 S.Ct., at 1535-1540, and that we have consistently regarded those cases as part of the mainstream of our free exercise jurisprudence. Moreover, in each of the other cases cited by the Court to support its categorical rule, *ante,* at 1600-1601, we rejected the particular constitutional claims before us only after carefully weighing the competing interests. See *Prince v. Massachusetts,* 321 U.S. 158, 168-170, 64 S.Ct. 438, 443-444, 88 L.Ed. 645 (1944) (state interest in regulating children's activities justifies denial of religious exemption from child labor laws); *Braunfeld v. Brown,* 366 U.S. 599, 608-609, 81 S.Ct. 1144, 1148-1149, 6 L.Ed.2d 563 (1961) (plurality opinion) (state interest in uniform day of rest justifies denial of religious exemption from Sunday closing law); *Gillette, supra,* 401 U.S., at 462, 91 S.Ct., at 842-43 (state interest in military affairs justifies denial of religious exemption from conscription laws); *Lee, supra,* 455 U.S., at 258-259, 102 S.Ct., at 1055-1056 (state interest in comprehensive Social Security system justifies denial of religious exemption from mandatory participation requirement). That we rejected the free exercise ***897** claims in those cases hardly ****1610** calls into question the applicability of First Amendment doctrine in the first place. Indeed, it is surely unusual to judge the vitality of a constitutional doctrine by looking to the win-loss record of the plaintiffs who happen to come before us.

B

Respondents, of course, do not contend that their conduct is automatically immune from all governmental regulation simply because it is motivated by their sincere religious beliefs. The Court's rejection of that argument, *ante,* at 1602, might therefore be regarded as merely harmless dictum. Rather, respondents invoke our traditional compelling interest test to argue that the Free Exercise Clause requires the State to grant them a limited exemption from its general criminal prohibition against the possession of peyote. The Court today, however, denies them even the opportunity to make that argument, concluding that "the sounder approach, and the approach in accord with the vast majority of our precedents, is to hold the [compelling interest] test inapplicable to" challenges to general criminal prohibitions. *Ante,* at 1603.

In my view, however, the essence of a free exercise claim is relief from a burden imposed by government on religious practices or beliefs, whether the burden is imposed directly through laws that prohibit or compel specific religious practices, or indirectly through laws that, in effect, make abandonment of one's own religion or conformity to the religious beliefs of others the price of an equal place in the civil community. As we explained in *Thomas:*

> "Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists." 450 U.S., at 717-718, 101 S.Ct., at 1432.

***898** See also *Frazee v. Illinois Dept. of Employment Security,* 489 U.S. 829, 832, 109 S.Ct. 1514, 1516-1517, 103 L.Ed.2d 914 (1989); *Hobbie,* 480 U.S., at 141, 107 S.Ct., at 1049. A State that makes criminal an individual's religiously motivated conduct burdens that individual's free exercise of religion in the severest manner possible, for it "results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." *Braunfeld, supra,* 366 U.S., at 605, 81 S.Ct., at 1147. I would have thought it beyond argument that such laws implicate free

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exercise concerns.

Indeed, we have never distinguished between cases in which a State conditions receipt of a benefit on conduct prohibited by religious beliefs and cases in which a State affirmatively prohibits such conduct. The *Sherbert* compelling interest test applies in both kinds of cases. See, *e.g., Lee,* 455 U.S., at 257-260, 102 S.Ct., at 1055-1057 (applying *Sherbert* to uphold Social Security tax liability); *Gillette,* 401 U.S., at 462, 91 S.Ct., at 842-43 (applying *Sherbert* to uphold military conscription requirement); *Yoder,* 406 U.S., at 215-234, 92 S.Ct., at 1533-1538 (applying *Sherbert* to strike down criminal convictions for violation of compulsory school attendance law). As I noted in *Bowen v. Roy* :

> "The fact that the underlying dispute involves an award of benefits rather than an exaction of penalties does not grant the Government license to apply a different version of the Constitution....
> "... The fact that appellees seek exemption from a precondition that the Government attaches to an award of benefits does not, therefore, generate a meaningful distinction between this case and one where appellees seek an exemption from the Government's imposition of penalties upon them." 476 U.S., at 731-732, 106 S.Ct., at 2168-2169 (opinion concurring in part and dissenting in part). ****1611** See also *Hobbie, supra,* 480 U.S., at 141-142, 107 S.Ct., at 1049-1050; *Sherbert,* 374 U.S., at 404, 83 S.Ct., at 1794. I would reaffirm that principle today: A neutral criminal law prohibiting conduct that a State may legitimately regulate is, if anything, *more* burdensome than a neutral civil ***899** statute placing legitimate conditions on the award of a state benefit.

Legislatures, of course, have always been "left free to reach actions which were in violation of social duties or subversive of good order." *Reynolds,* 98 U.S., at 164; see also *Yoder, supra,* at 219-220, 92 S.Ct., at 1535- 1536; *Braunfeld,* 366 U.S., at 603-604, 81 S.Ct., at 1145-1146. Yet because of the close relationship between conduct and religious belief, "[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Cantwell,* 310 U.S., at 304, 60 S.Ct., at 903. Once it has been shown that a government regulation or criminal prohibition burdens the free exercise of religion, we have consistently asked the government to demonstrate that unbending application of its regulation to the religious objector "is essential to accomplish an overriding governmental interest," *Lee, supra,* 455 U.S., at 257-258, 102 S.Ct., at 1055, or represents "the least restrictive means of achieving some compelling state interest," *Thomas, supra,* 450 U.S., at 718, 101 S.Ct., at 1432. See, *e.g., Braunfeld, supra,* 366 U.S. at 607, 81 S.Ct., at 1148; *Sherbert, supra,* 374 U.S., at 406, 83 S.Ct., at 1795; *Yoder, supra,* 406 U.S., at 214-215, 92 S.Ct., at 1532-1533; *Roy,* 476 U.S., at 728-732, 106 S.Ct., at 2167-2169 (opinion concurring in part and dissenting in part). To me, the sounder approach--the approach more consistent with our role as judges to decide each case on its individual merits--is to apply this test in each case to determine whether the burden on the specific plaintiffs before us is constitutionally significant and whether the particular criminal interest asserted by the State before us is compelling. Even if, as an empirical matter, a government's criminal laws might usually serve a compelling interest in health, safety, or public order, the First Amendment at least requires a case-by-case determination of the question, sensitive to the facts of each particular claim. Cf. *McDaniel,* 435 U.S., at 628, n. 8, 98 S.Ct., at 1328, n. 8 (plurality opinion) (noting application of *Sherbert* to general criminal prohibitions and the "delicate balancing required by our decisions in" *Sherbert* and *Yoder*). Given the range of conduct that a State might legitimately make ***900** criminal, we cannot assume, merely because a law carries criminal sanctions and is generally applicable, that the First Amendment *never* requires the State to grant a limited exemption for religiously motivated conduct.

Moreover, we have not "rejected" or "declined to apply" the compelling interest test in our recent cases. *Ante,* at 1602-1603. Recent cases have instead affirmed that test as a fundamental part of our First Amendment doctrine. See, *e.g., Hernandez,* 490 U.S., at 699, 109 S.Ct., at 2148-2149; *Hobbie, supra,* 480 U.S., at 141-142, 107 S.Ct., at 1049-1050 (rejecting Chief Justice Burger's suggestion in *Roy, supra,* 476 U.S., at 707-708, 106 S.Ct., at 2156-2157, that free exercise claims be assessed under a less rigorous "reasonable means" standard). The cases cited by the Court signal no

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retreat from our consistent adherence to the compelling interest test. In both *Bowen v. Roy, supra,* and *Lyng v. Northwest Indian Cemetery Protective Assn.,* 485 U.S. 439, 108 S.Ct. 1319, 99 L.Ed.2d 534 (1988), for example, we expressly distinguished *Sherbert* on the ground that the First Amendment does not "require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development.... The Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens." *Roy, supra,* 476 U.S., at 699, 106 S.Ct., at 2152; see *Lyng, supra,* 485 U.S., at 449, 108 S.Ct., at 1325. This distinction makes sense because "the Free Exercise Clause is written in ****1612** terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government." *Sherbert, supra,* 374 U.S., at 412, 83 S.Ct., at 1798 (Douglas, J., concurring). Because the case *sub judice,* like the other cases in which we have applied *Sherbert,* plainly falls into the former category, I would apply those established precedents to the facts of this case.

Similarly, the other cases cited by the Court for the proposition that we have rejected application of the *Sherbert* test outside the unemployment compensation field, *ante,* at 1603, are distinguishable because they arose in the narrow, specialized contexts in which we have not traditionally required ***901** the government to justify a burden on religious conduct by articulating a compelling interest. See *Goldman v. Weinberger,* 475 U.S. 503, 507, 106 S.Ct. 1310, 1313, 89 L.Ed.2d 478 (1986) ("Our review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society"); *O'Lone v. Estate of Shabazz,* 482 U.S. 342, 349, 107 S.Ct. 2400, 2404, 96 L.Ed.2d 282 (1987) ("[P]rison regulations alleged to infringe constitutional rights are judged under a 'reasonableness' test less restrictive than that ordinarily applied to alleged infringements of fundamental constitutional rights") (citation omitted). That we did not apply the compelling interest test in these cases says nothing about whether the test should continue to apply in paradigm free exercise cases such as the one presented here.

The Court today gives no convincing reason to depart from settled First Amendment jurisprudence. There is nothing talismanic about neutral laws of general applicability or general criminal prohibitions, for laws neutral toward religion can coerce a person to violate his religious conscience or intrude upon his religious duties just as effectively as laws aimed at religion. Although the Court suggests that the compelling interest test, as applied to generally applicable laws, would result in a "constitutional anomaly," *ante,* at 1604, the First Amendment unequivocally makes freedom of religion, like freedom from race discrimination and freedom of speech, a "constitutional nor [m]," not an "anomaly." *Ibid.* Nor would application of our established free exercise doctrine to this case necessarily be incompatible with our equal protection cases. Cf. *Rogers v. Lodge,* 458 U.S. 613, 618, 102 S.Ct. 3272, 3276, 73 L.Ed.2d 1012 (1982) (race-neutral law that " 'bears more heavily on one race than another' " may violate equal protection) (citation omitted); *Castaneda v. Partida,* 430 U.S. 482, 492-495, 97 S.Ct. 1272, 1278-1281, 51 L.Ed.2d 498 (1977) (grand jury selection). We have in any event recognized that the Free Exercise Clause protects values distinct from those protected by the Equal Protection Clause. See *Hobbie,* 480 U.S., at 141-142, 107 S.Ct., at 1049. As the language of the ***902** Clause itself makes clear, an individual's free exercise of religion is a preferred constitutional activity. See, *e.g.,* McConnell, Accommodation of Religion, 1985 S.Ct.Rev. 1, 9 ("[T]he text of the First Amendment itself 'singles out' religion for special protections"); P. Kauper, Religion and the Constitution 17 (1964). A law that makes criminal such an activity therefore triggers constitutional concern--and heightened judicial scrutiny--even if it does not target the particular religious conduct at issue. Our free speech cases similarly recognize that neutral regulations that affect free speech values are subject to a balancing, rather than categorical, approach. See, *e.g., United States v. O'Brien,* 391 U.S. 367, 377, 88 S.Ct. 1673, 1679, 20 L.Ed.2d 672 (1968); *Renton v. Playtime Theatres, Inc.,* 475 U.S. 41, 46-47, 106 S.Ct. 925, 928-929, 89 L.Ed.2d 29 (1986); cf. *Anderson v. Celebrezze,* 460 U.S. 780, 792-794, 103 S.Ct. 1564, 1571-1573, 75 L.Ed.2d 547 (1983) (generally applicable laws may impinge

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on free association concerns). The Court's parade of horribles, *ante,* at 1605-1606, not only fails as a reason for discarding the compelling interest **1613 test, it instead demonstrates just the opposite: that courts have been quite capable of applying our free exercise jurisprudence to strike sensible balances between religious liberty and competing state interests.

Finally, the Court today suggests that the disfavoring of minority religions is an "unavoidable consequence" under our system of government and that accommodation of such religions must be left to the political process. *Ante,* at 1606. In my view, however, the First Amendment was enacted precisely to protect the rights of those whose religious practices are not shared by the majority and may be viewed with hostility. The history of our free exercise doctrine amply demonstrates the harsh impact majoritarian rule has had on unpopular or emerging religious groups such as the Jehovah's Witnesses and the Amish. Indeed, the words of Justice Jackson in *West Virginia State Bd. of Ed. v. Barnette* (overruling *Minersville School Dist. v. Gobitis,* 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375 (1940)) are apt:

> *903 "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." 319 U.S., at 638, 63 S.Ct., at 1185.

See also *United States v. Ballard,* 322 U.S. 78, 87, 64 S.Ct. 882, 886-87, 88 L.Ed. 1148 (1944) ("The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views"). The compelling interest test reflects the First Amendment's mandate of preserving religious liberty to the fullest extent possible in a pluralistic society. For the Court to deem this command a "luxury," *ante,* at 1605, is to denigrate "[t]he very purpose of a Bill of Rights."

III

The Court's holding today not only misreads settled First Amendment precedent; it appears to be unnecessary to this case. I would reach the same result applying our established free exercise jurisprudence.

A

There is no dispute that Oregon's criminal prohibition of peyote places a severe burden on the ability of respondents to freely exercise their religion. Peyote is a sacrament of the Native American Church and is regarded as vital to respondents' ability to practice their religion. See O. Stewart, Peyote Religion: A History 327-336 (1987) (describing modern status of peyotism); E. Anderson, Peyote: The Divine Cactus 41-65 (1980) (describing peyote ceremonies); Teachings from *904 the American Earth: Indian Religion and Philosophy 96-104 (D. Tedlock & B. Tedlock eds. 1975) (same); see also *People v. Woody,* 61 Cal.2d 716, 721-722, 40 Cal.Rptr. 69, 73-74, 394 P.2d 813, 817-818 (1964). As we noted in *Smith I,* the Oregon Supreme Court concluded that "the Native American Church is a recognized religion, that peyote is a sacrament of that church, and that respondent's beliefs were sincerely held." 485 U.S., at 667, 108 S.Ct., at 1449. Under Oregon law, as construed by that State's highest court, members of the Native American Church must choose between carrying out the ritual embodying their religious beliefs and avoidance of criminal prosecution. That choice is, in my view, more than sufficient to trigger First Amendment scrutiny.

There is also no dispute that Oregon has a significant interest in enforcing laws that **1614 control the possession and use of controlled substances by its citizens. See, *e.g., Sherbert,* 374 U.S., at 403, 83 S.Ct., at 1793-94 (religiously motivated conduct may be regulated where such conduct "pose[s] some substantial threat to public safety, peace or order"); *Yoder,* 406 U.S., at 220, 92 S.Ct., at 1535 ("[A]ctivities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare"). As we recently noted, drug abuse is "one of the greatest problems affecting the

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health and welfare of our population" and thus "one of the most serious problems confronting our society today." *Treasury Employees v. Von Raab,* 489 U.S. 656, 668, 674, 109 S.Ct. 1384, 1395, 103 L.Ed.2d 685 (1989). Indeed, under federal law (incorporated by Oregon law in relevant part, see Ore.Rev.Stat. § 475.005(6) (1987)), peyote is specifically regulated as a Schedule I controlled substance, which means that Congress has found that it has a high potential for abuse, that there is no currently accepted medical use, and that there is a lack of accepted safety for use of the drug under medical supervision. See 21 U.S.C. § 812(b)(1). See generally R. Julien, A Primer of Drug Action 149 (3d ed. 1981). In light of our recent decisions holding that the governmental ***905** interests in the collection of income tax, *Hernandez,* 490 U.S., at 699-700, 109 S.Ct., at 2148-2149, a comprehensive Social Security system, see *Lee,* 455 U.S., at 258-259, 102 S.Ct., at 1055-1056, and military conscription, see *Gillette,* 401 U.S., at 460, 91 S.Ct., at 841, are compelling, respondents do not seriously dispute that Oregon has a compelling interest in prohibiting the possession of peyote by its citizens.

B

Thus, the critical question in this case is whether exempting respondents from the State's general criminal prohibition "will unduly interfere with fulfillment of the governmental interest." *Lee, supra,* 455 U.S. at 259, 102 S.Ct., at 1056; see also *Roy,* 476 U.S., at 727, 106 S.Ct., at 2166 ("[T]he Government must accommodate a legitimate free exercise claim unless pursuing an especially important interest by narrowly tailored means"); *Yoder, supra,* 406 U.S., at 221, 92 S.Ct., at 1536; *Braunfeld,* 366 U.S., at 605-607, 81 S.Ct., at 1146-1148. Although the question is close, I would conclude that uniform application of Oregon's criminal prohibition is "essential to accomplish," *Lee, supra,* at 455 U.S., at 257, 102 S.Ct., at 1055, its overriding interest in preventing the physical harm caused by the use of a Schedule I controlled substance. Oregon's criminal prohibition represents that State's judgment that the possession and use of controlled substances, even by only one person, is inherently harmful and dangerous. Because the health effects caused by the use of controlled substances exist regardless of the motivation of the user, the use of such substances, even for religious purposes, violates the very purpose of the laws that prohibit them. Cf. *State v. Massey,* 229 N.C. 734, 51 S.E.2d 179 (denying religious exemption to municipal ordinance prohibiting handling of poisonous reptiles), appeal dism'd *sub nom. Bunn v. North Carolina,* 336 U.S. 942, 69 S.Ct. 813, 93 L.Ed. 1099 (1949). Moreover, in view of the societal interest in preventing trafficking in controlled substances, uniform application of the criminal prohibition at issue is essential to the effectiveness of Oregon's stated interest in preventing any possession of peyote. Cf. *Jacobson v.* ***906** *Massachusetts,* 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (denying exemption from small pox vaccination requirement).

For these reasons, I believe that granting a selective exemption in this case would seriously impair Oregon's compelling interest in prohibiting possession of peyote by its citizens. Under such circumstances, the Free Exercise Clause does not require the State to accommodate respondents' religiously motivated conduct. See, *e.g., Thomas,* 450 U.S., at 719, 101 S.Ct., at 1432-33. Unlike in *Yoder,* where we noted that "[t]he record strongly indicates that accommodating the ****1615** religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society," 406 U.S., at 234, 92 S.Ct., at 1542; see also *id.,* at 238-240, 92 S.Ct., at 1544-1545 (WHITE, J., concurring), a religious exemption in this case would be incompatible with the State's interest in controlling use and possession of illegal drugs.

Respondents contend that any incompatibility is belied by the fact that the Federal Government and several States provide exemptions for the religious use of peyote, see 21 CFR § 1307.31 (1989); 307 Or., at 73, n. 2, 763 P.2d, at 148, n. 2 (citing 11 state statutes that expressly exempt sacramental peyote use from criminal proscription). But other governments may surely choose to grant an exemption without Oregon, with its specific asserted interest in uniform application of its drug

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laws, being *required* to do so by the First Amendment. Respondents also note that the sacramental use of peyote is central to the tenets of the Native American Church, but I agree with the Court, *ante,* at 1604, that because " '[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith,' " quoting *Hernandez, supra,* at 699, 109 S.Ct., at 2148, our determination of the constitutionality of Oregon's general criminal prohibition cannot, and should not, turn on the centrality of the particular ***907** religious practice at issue. This does not mean, of course, that courts may not make factual findings as to whether a claimant holds a sincerely held religious belief that conflicts with, and thus is burdened by, the challenged law. The distinction between questions of centrality and questions of sincerity and burden is admittedly fine, but it is one that is an established part of our free exercise doctrine, see *Ballard,* 322 U.S., at 85-88, 64 S.Ct., at 885-87, and one that courts are capable of making. See *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290, 303-305, 105 S.Ct.1953, 1962-1963, 85 L.Ed.2d 278 (1985).

I would therefore adhere to our established free exercise jurisprudence and hold that the State in this case has a compelling interest in regulating peyote use by its citizens and that accommodating respondents' religiously motivated conduct "will unduly interfere with fulfillment of the governmental interest." *Lee, supra,* 455 U.S., at 259, 102 S.Ct., at 1056. Accordingly, I concur in the judgment of the Court.

Justice BLACKMUN, with whom Justice BRENNAN and Justice MARSHALL join, dissenting.

This Court over the years, painstakingly has developed a consistent and exacting standard to test the constitutionality of a state statute that burdens the free exercise of religion. Such a statute may stand only if the law in general, and the State's refusal to allow a religious exemption in particular, are justified by a compelling interest that cannot be served by less restrictive means. [FN1]

FN1. See *Hernandez v. Commissioner,* 490 U.S. 680, 699, 109 S.Ct. 2136, 2149, 104 L.Ed.2d 766 (1989) ("The free exercise inquiry asks whether government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden"); *Hobbie v. Unemployment Appeals Comm'n of Fla.,* 480 U.S. 136, 141, 107 S.Ct. 1046, 1049, 94 L.Ed.2d 190 (1987) (state laws burdening religions "must be subjected to strict scrutiny and could be justified only by proof by the State of a compelling interest"); *Bowen v. Roy,* 476 U.S. 693, 732, 106 S.Ct. 2147, 2169, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("Our precedents have long required the Government to show that a compelling state interest is served by its refusal to grant a religious exemption"); *United States v. Lee,* 455 U.S. 252, 257-258, 102 S.Ct. 1051, 1055, 71 L.Ed.2d 127 (1982) ("The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest"); *Thomas v. Review Bd. of Indiana Employment Security Div.,* 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981) ("The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest"); *Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972) ("[O]nly those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion"); *Sherbert v. Verner,* 374 U.S. 398, 406, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963) (question is "whether some compelling state interest ... justifies the substantial infringement of appellant's First Amendment right").

****1616 *908** Until today, I thought this was a settled and inviolate principle of this Court's First Amendment jurisprudence. The majority,

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however, perfunctorily dismisses it as a "constitutional anomaly." *Ante,* at 1604. As carefully detailed in Justice O'CONNOR's concurring opinion, *ante,* p. 1606, the majority is able to arrive at this view only by mischaracterizing this Court's precedents. The Court discards leading free exercise cases such as *Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), and *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972), as "hybrid." *Ante,* at 1602. The Court views traditional free exercise analysis as somehow inapplicable to criminal prohibitions (as opposed to conditions on the receipt of benefits), and to state laws of general applicability (as opposed, presumably, to laws that expressly single out religious practices). *Ante,* at 1603-1604. The Court cites cases in which, due to various exceptional circumstances, we found strict scrutiny inapposite, to hint that the Court has repudiated that standard altogether. *Ante,* at 1602-1603. In short, it effectuates a wholesale overturning of settled law concerning the Religion Clauses of our Constitution. One hopes that the Court is aware of the consequences, and that its result is not a product of overreaction to the serious problems the country's drug crisis has generated.

This distorted view of our precedents leads the majority to conclude that strict scrutiny of a state law burdening the free exercise of religion is a "luxury" that a well-ordered society ***909** cannot afford, *ante,* at 1605, and that the repression of minority religions is an "unavoidable consequence of democratic government." *Ante,* at 1606. I do not believe the Founders thought their dearly bought freedom from religious persecution a "luxury," but an essential element of liberty--and they could not have thought religious intolerance "unavoidable," for they drafted the Religion Clauses precisely in order to avoid that intolerance.

For these reasons, I agree with Justice O'CONNOR's analysis of the applicable free exercise doctrine, and I join parts I and II of her opinion. [FN2] As she points out, "the critical question in this case is whether exempting respondents from the State's general criminal prohibition 'will unduly interfere with fulfillment of the governmental interest.' " *Ante,* at 1614, quoting *United States v. Lee,* 455 U.S. 252, 259, 102 S.Ct. 1051, 1056, 71 L.Ed.2d 127 (1982). I do disagree, however, with her specific answer to that question.

> FN2. I reluctantly agree that, in light of this Court's decision in *Employment Division, Dept. of Human Resources of Ore. v. Smith,* 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753 (1988), the question on which certiorari was granted is properly presented in this case. I have grave doubts, however, as to the wisdom or propriety of deciding the constitutionality of a criminal prohibition which the State has not sought to enforce, which the State did not rely on in defending its denial of unemployment benefits before the state courts, and which the Oregon courts could, on remand, either invalidate on state constitutional grounds, or conclude that it remains irrelevant to Oregon's interest in administering its unemployment benefits program.
>
> It is surprising, to say the least, that this Court which so often prides itself about principles of judicial restraint and reduction of federal control over matters of state law would stretch its jurisdiction to the limit in order to reach, in this abstract setting, the constitutionality of Oregon's criminal prohibition of peyote use.

I

In weighing the clear interest of respondents Smith and Black (hereinafter respondents) in the free exercise of their religion ****1617** against Oregon's asserted interest in enforcing its drug laws, it is important to articulate in precise terms the state interest involved. It is not the State's broad interest ***910** in fighting the critical "war on drugs" that must be weighed against respondents' claim, but the State's narrow interest in refusing to make an exception for the religious, ceremonial use of peyote. See *Bowen v. Roy,* 476 U.S. 693, 728, 106 S.Ct. 2147, 2167, 90 L.Ed.2d 735 (1986) (O'CONNOR, J., concurring in part and dissenting in part) ("This Court has consistently asked the Government to demonstrate that unbending application of its regulation to the religious objector 'is essential to accomplish an overriding governmental interest,' " quoting *Lee,* 455 U.S., at

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257-258, 102 S.Ct., at 1055); *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 719, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624 (1981) ("focus of the inquiry" concerning State's asserted interest must be "properly narrowed"); *Yoder*, 406 U.S., at 221, 92 S.Ct., at 1536 ("Where fundamental claims of religious freedom are at stake," the Court will not accept a State's "sweeping claim" that its interest in compulsory education is compelling; despite the validity of this interest "in the generality of cases, we must searchingly examine the interests that the State seeks to promote ... and the impediment to those objectives that would flow from recognizing the claimed Amish exemption"). Failure to reduce the competing interests to the same plane of generality tends to distort the weighing process in the State's favor. See Clark, Guidelines for the Free Exercise Clause, 83 Harv.L.Rev. 327, 330-331 (1969) ("The purpose of almost any law can be traced back to one or another of the fundamental concerns of government: public health and safety, public peace and order, defense, revenue. To measure an individual interest directly against one of these rarified values inevitably makes the individual interest appear the less significant"); Pound, A Survey of Social Interests, 57 Harv.L.Rev. 1, 2 (1943) ("When it comes to weighing or valuing claims or demands with respect to other claims or demands, we must be careful to compare them on the same plane ... [or else] we may decide the question in advance in our very way of putting it").

The State's interest in enforcing its prohibition, in order to be sufficiently compelling to outweigh a free exercise claim, *911 cannot be merely abstract or symbolic. The State cannot plausibly assert that unbending application of a criminal prohibition is essential to fulfill any compelling interest, if it does not, in fact, attempt to enforce that prohibition. In this case, the State actually has not evinced any concrete interest in enforcing its drug laws against religious users of peyote. Oregon has never sought to prosecute respondents, and does not claim that it has made significant enforcement efforts against other religious users of peyote. [FN3] The State's asserted interest thus amounts only to the symbolic preservation of an unenforced prohibition. But a government interest in "symbolism, even symbolism for so worthy a cause as the abolition of unlawful drugs," *Treasury Employees v. Von Raab*, 489 U.S. 656, 687, 109 S.Ct. 1384, 1402, 103 L.Ed.2d 685 (1989) (SCALIA, J., dissenting), cannot suffice to abrogate the constitutional rights of individuals.

> FN3. The only reported case in which the State of Oregon has sought to prosecute a person for religious peyote use is *State v. Soto*, 21 Ore.App. 794, 537 P.2d 142 (1975), cert. denied, 424 U.S. 955, 96 S.Ct. 1431, 47 L.Ed.2d 361 (1976).

Similarly, this Court's prior decisions have not allowed a government to rely on mere speculation about potential harms, but have demanded evidentiary support for a refusal to allow a religious exception. See *Thomas*, 450 U.S., at 719, 101 S.Ct., at 1432 (rejecting State's reasons for refusing religious exemption, for lack of "evidence in the record"); *Yoder*, 406 U.S., at 224-229, 92 S.Ct., at 1537-38 (rejecting State's argument concerning the dangers of a religious exemption as speculative, and unsupported by the record); *Sherbert v. Verner*, 374 U.S. 398, 407, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963) **1618 ("[T]here is no proof whatever to warrant such fears ... as those which the [State] now advance[s]"). In this case, the State's justification for refusing to recognize an exception to its criminal laws for religious peyote use is entirely speculative.

The State proclaims an interest in protecting the health and safety of its citizens from the dangers of unlawful drugs. It offers, however, no evidence that the religious use of peyote *912 has ever harmed anyone. [FN4] The factual findings of other courts cast doubt on the State's assumption that religious use of peyote is harmful. See *State v. Whittingham*, 19 Ariz.App. 27, 30, 504 P.2d 950, 953 (1973) ("[T]he State failed to prove that the quantities of peyote used in the sacraments of the Native American Church are sufficiently harmful to the health and welfare of the participants so as to permit a legitimate intrusion under the State's police power"); *People v. Woody*, 61 Cal.2d 716, 722-723, 40 Cal.Rptr. 69, 74, 394 P.2d 813, 818 (1964) ("[A]s the Attorney General ... admits, ... the opinion of scientists and other experts is 'that peyote ... works no permanent deleterious injury to the Indian' ").

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> FN4. This dearth of evidence is not surprising, since the State never asserted this health and safety interest before the Oregon courts; thus, there was no opportunity for factfinding concerning the alleged dangers of peyote use. What has now become the State's principal argument for its view that the criminal prohibition is enforceable against religious use of peyote rests on no evidentiary foundation at all.

The fact that peyote is classified as a Schedule I controlled substance does not, by itself, show that any and all uses of peyote, in any circumstance, are inherently harmful and dangerous. The Federal Government, which created the classifications of unlawful drugs from which Oregon's drug laws are derived, apparently does not find peyote so dangerous as to preclude an exemption for religious use. [FN5] Moreover, ***913** other Schedule I drugs have lawful uses. See *Olsen v. Drug Enforcement Admin.*, 279 U.S.App.D.C. 1, 6, n. 4, 878 F.2d 1458, 1463, n. 4 (medical and research uses of marijuana).

> FN5. See 21 CFR § 1307.31 (1989) ("The listing of peyote as a controlled substance in Schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law"); see *Olsen v. Drug Enforcement Admin.*, 279 U.S.App.D.C. 1, 6-7, 878 F.2d 1458, 1463-1464 (1989) (explaining DEA's rationale for the exception).
>
> Moreover, 23 States, including many that have significant Native American populations, have statutory or judicially crafted exemptions in their drug laws for religious use of peyote. See 307 Ore. 68, 73, n. 2, 763 P.2d 146, 148, n. 2 (1988) (case below). Although this does not prove that Oregon must have such an exception too, it is significant that these States, and the Federal Government, all find their (presumably compelling) interests in controlling the use of dangerous drugs compatible with an exemption for religious use of peyote. Cf. *Boos v. Barry*, 485 U.S. 312, 329, 108 S.Ct. 1157, 1168, 99 L.Ed.2d 333 (1988) (finding that an ordinance restricting picketing near a foreign embassy was not the least restrictive means of serving the asserted government interest; existence of an analogous, but more narrowly drawn, federal statute showed that "a less restrictive alternative is readily available").

The carefully circumscribed ritual context in which respondents used peyote is far removed from the irresponsible and unrestricted recreational use of unlawful drugs. [FN6] The Native American Church's internal restrictions on, and supervision of, its members' use of peyote substantially obviate the State's health and safety concerns. See *Olsen, id.*, at 10, 878 F.2d, at 1467 (" 'The Administrator [of the Drug Enforcement Administration ****1619** (DEA)] finds that ... the Native American Church's use of peyote is isolated to specific ceremonial occasions,' " and so " 'an accommodation can be made for a religious organization which uses peyote in circumscribed ceremonies' " (quoting DEA Final Order)); *id.*, at 7, 878 F.2d, at 1464 ("[F]or members of the Native American Church, use of peyote outside the ritual is sacrilegious"); *Woody*, 61 Cal.2d, at 721, 394 P.2d, at 817 ("[T]o use peyote for nonreligious purposes is sacrilegious"); R. Julien, A Primer of Drug Action 148 (3d ed. 1981) ("[P]eyote is seldom abused by members of the Native American ***914** Church"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 104 (D. Tedlock & B. Tedlock eds. 1975) ("[T]he Native American Church ... refuses to permit the presence of curiosity seekers at its rites, and vigorously opposes the sale or use of Peyote for non-sacramental purposes"); Bergman, Navajo Peyote Use: Its Apparent Safety, 128 Am.J. Psychiatry 695 (1971) (Bergman). [FN7]

> FN6. In this respect, respondents' use of

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peyote seems closely analogous to the sacramental use of wine by the Roman Catholic Church. During Prohibition, the Federal Government exempted such use of wine from its general ban on possession and use of alcohol. See National Prohibition Act, Title II, § 3, 41 Stat. 308.

However compelling the Government's then general interest in prohibiting the use of alcohol may have been, it could not plausibly have asserted an interest sufficiently compelling to outweigh Catholics' right to take communion.

FN7. The use of peyote is, to some degree, self-limiting. The peyote plant is extremely bitter, and eating it is an unpleasant experience, which would tend to discourage casual or recreational use. See *State v. Whittingham,* 19 Ariz.App. 27, 30, 504 P.2d 950, 953 (1973) (" '[P]eyote can cause vomiting by reason of its bitter taste' "); E. Anderson, Peyote: The Divine Cactus 161 (1980) ("[T]he eating of peyote usually is a difficult ordeal in that nausea and other unpleasant physical manifestations occur regularly. Repeated use is likely, therefore, only if one is a serious researcher or is devoutly involved in taking peyote as part of a religious ceremony"); Slotkin, The Peyote Way, in Teachings from the American Earth 96, 98 (D. Tedlock & B. Tedlock eds. 1975) ("[M]any find it bitter, inducing indigestion or nausea").

Moreover, just as in *Yoder,* the values and interests of those seeking a religious exemption in this case are congruent, to a great degree, with those the State seeks to promote through its drug laws. See *Yoder,* 406 U.S., at 224, 228-229, 92 S.Ct., at 1540 (since the Amish accept formal schooling up to 8th grade, and then provide "ideal" vocational education, State's interest in enforcing its law against the Amish is "less substantial than ... for children generally"); *id.,* at 238, 92 S.Ct., at 1544 (WHITE, J., concurring). Not only does the church's doctrine forbid nonreligious use of peyote; it also generally advocates self-reliance, familial responsibility, and abstinence from alcohol. See Brief for Association on American Indian Affairs et al. as *Amici Curiae* 33-34 (the church's "ethical code" has four parts: brotherly love, care of family, self-reliance, and avoidance of alcohol (quoting from the church membership card)); *Olsen,* 279 U.S.App.D.C., at 7, 878 F.2d, at 1464 (the Native American Church, "for all purposes other than the special, stylized ceremony, reinforced the state's prohibition"); ***915** *Woody,* 61 Cal.2d, at 721-722, n. 3, 394 P.2d, at 818, n. 3 ("[M]ost anthropological authorities hold Peyotism to be a positive, rather than negative, force in the lives of its adherents ... the church forbids the use of alcohol ..."). There is considerable evidence that the spiritual and social support provided by the church has been effective in combating the tragic effects of alcoholism on the Native American population. Two noted experts on peyotism, Dr. Omer C. Stewart and Dr. Robert Bergman, testified by affidavit to this effect on behalf of respondent Smith before the Employment Appeal Board. Smith Tr., Exh. 7; see also E. Anderson, Peyote: The Divine Cactus 165-166 (1980) (research by Dr. Bergman suggests " that the religious use of peyote seemed to be directed in an ego-strengthening direction with an emphasis on interpersonal relationships where each individual is assured of his own significance as well as the support of the group"; many people have " 'come through difficult crises with the help of this religion.... It provides real help in seeing themselves not as people whose place and way in the world is gone, but as people whose way can be strong enough to change and meet new challenges' " (quoting Bergman 698)); Pascarosa & Futterman, Ethnopsychedelic Therapy for Alcoholics: Observations in the Peyote Ritual of the Native American Church, 8 J. of Psychedelic Drugs, No. 3, p. 215 (1976) (religious peyote use has been helpful in overcoming alcoholism); Albaugh & Anderson, Peyote in the Treatment of Alcoholism among American Indians, 131 Am.J. Psychiatry 1247, 1249 (1974) ("[T]he ****1620** philosophy, teachings, and format of the [Native American Church] can be of great benefit to the Indian alcoholic"); see generally O. Stewart, Peyote Religion 75 *et seq.* (1987) (noting frequent observations, across many tribes and periods in history, of correlation between peyotist religion and abstinence from alcohol). Far from promoting the lawless and irresponsible use of drugs, Native American Church members' spiritual

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*916 code exemplifies values that Oregon's drug laws are presumably intended to foster.

The State also seeks to support its refusal to make an exception for religious use of peyote by invoking its interest in abolishing drug trafficking. There is, however, practically no illegal traffic in peyote. See *Olsen,* 279 U.S.App.D.C., at 6, 7, 878 F.2d, at 1463, 1467 (quoting DEA Final Order to the effect that total amount of peyote seized and analyzed by federal authorities between 1980 and 1987 was 19.4 pounds; in contrast, total amount of marijuana seized during that period was over 15 million pounds). Also, the availability of peyote for religious use, even if Oregon were to allow an exemption from its criminal laws, would still be strictly controlled by federal regulations, see 21 U.S.C. §§ 821-823 (registration requirements for distribution of controlled substances); 21 CFR § 1307.31 (1989) (distribution of peyote to Native American Church subject to registration requirements), and by the State of Texas, the only State in which peyote grows in significant quantities. See Texas Health & Safety Code Ann. § 481.111 (1990 pamphlet); Texas Admin.Code, Tit. 37, pt. 1, ch. 13, Controlled Substances Regulations, §§ 13.35-13.41 (1989); *Woody,* 61 Cal.2d, at 720, 394 P.2d, at 816 (peyote is "found in the Rio Grande Valley of Texas and northern Mexico"). Peyote simply is not a popular drug; its distribution for use in religious rituals has nothing to do with the vast and violent traffic in illegal narcotics that plagues this country.

Finally, the State argues that granting an exception for religious peyote use would erode its interest in the uniform, fair, and certain enforcement of its drug laws. The State fears that, if it grants an exemption for religious peyote use, a flood of other claims to religious exemptions will follow. It would then be placed in a dilemma, it says, between allowing a patchwork of exemptions that would hinder its law enforcement efforts, and risking a violation of the Establishment Clause by arbitrarily limiting its religious exemptions. This *917 argument, however, could be made in almost any free exercise case. See Lupu, Where Rights Begin: The Problem of Burdens on the Free Exercise of Religion, 102 Harv.L.Rev. 933, 947 (1989) ("Behind every free exercise claim is a spectral march; grant this one, a voice whispers to each judge, and you will be confronted with an endless chain of exemption demands from religious deviants of every stripe"). This Court, however, consistently has rejected similar arguments in past free exercise cases, and it should do so here as well. See *Frazee v. Illinois Dept. of Employment Security,* 489 U.S. 829, 835, 109 S.Ct. 1514, 1518, 103 L.Ed.2d 914 (1989) (rejecting State's speculation concerning cumulative effect of many similar claims); *Thomas,* 450 U.S., at 719, 101 S.Ct., at 1432 (same); *Sherbert,* 374 U.S., at 407, 83 S.Ct., at 1795.

The State's apprehension of a flood of other religious claims is purely speculative. Almost half the States, and the Federal Government, have maintained an exemption for religious peyote use for many years, and apparently have not found themselves overwhelmed by claims to other religious exemptions. [FN8] Allowing an exemption for religious **1621 peyote use *918 would not necessarily oblige the State to grant a similar exemption to other religious groups. The unusual circumstances that make the religious use of peyote compatible with the State's interests in health and safety and in preventing drug trafficking would not apply to other religious claims. Some religions, for example, might not restrict drug use to a limited ceremonial context, as does the Native American Church. See, *e.g., Olsen,* 279 U.S.App.D.C., at 7, 878 F.2d, at 1464 ("[T]he Ethiopian Zion Coptic Church ... teaches that marijuana is properly smoked 'continually all day' "). Some religious claims, see n. 8, *supra,* involve drugs such as marijuana and heroin, in which there is significant illegal traffic, with its attendant greed and violence, so that it would be difficult to grant a religious exemption without seriously compromising law enforcement efforts. [FN9] That the State might grant an exemption for religious peyote use, but deny other religious claims arising in different circumstances, would not violate the Establishment Clause. Though the State must treat all religions equally, and not favor one over another, this obligation is fulfilled by the uniform application of the "compelling interest" *test* to all free exercise claims, not by reaching uniform *results* as to all claims. A showing that religious peyote use does not unduly interfere with the State's interests is "one that probably few other religious groups or sects could make," *Yoder,* 406 U.S., at

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236, 92 S.Ct., at 1543; this does not mean that an exemption limited to peyote use is tantamount to an establishment of religion. See *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 144-145, 107 S.Ct. 1046, 1051, 94 L.Ed.2d 190 (1987) ("[T]he government may (and ***919** sometimes must) accommodate religious practices and ... may do so without violating the Establishment Clause"); *Yoder*, 406 U.S., at 220-221, 92 S.Ct., at 1536 ("Court must not ignore the danger that an exception from a general [law] ... may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise"); *id.*, at 234, n. 22, 92 S.Ct., at 1542, n. 22.

FN8. Over the years, various sects have raised free exercise claims regarding drug use. In no reported case, except those involving claims of religious peyote use, has the claimant prevailed. See, *e.g.*, *Olsen v. Iowa*, 808 F.2d 652 (CA8 1986) (marijuana use by Ethiopian Zion Coptic Church); *United States v. Rush*, 738 F.2d 497 (CA1 1984) (same), cert. denied, 470 U.S. 1004, 105 S.Ct. 1355, 84 L.Ed.2d 378 (1985); *United States v. Middleton*, 690 F.2d 820 (CA11 1982) (same), cert. denied, 460 U.S. 1051, 103 S.Ct. 1497, 75 L.Ed.2d 929 (1983) (same); *United States v. Hudson*, 431 F.2d 468 (CA5 1970) (marijuana and heroin use by Moslems), cert. denied, 400 U.S. 1011, 91 S.Ct. 575, 577, 27 L.Ed.2d 624 (1971); *Leary v. United States*, 383 F.2d 851 (CA5 1967) (marijuana use by Hindu), rev'd on other grounds, 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969); *Commonwealth v. Nissenbaum*, 404 Mass. 575, 536 N.E.2d 592 (1989) (marijuana use by Ethiopian Zion Coptic Church); *State v. Blake*, 5 Haw.App. 411, 695 P.2d 336 (1985) (marijuana use in practice of Hindu Tantrism); *Whyte v. United States*, 471 A.2d 1018 (D.C.App.1984) (marijuana use by Rastafarian); *State v. Rocheleau*, 142 Vt. 61, 451 A.2d 1144 (1982) (marijuana use by Tantric Buddhist); *State v. Brashear*, 92 N.M. 622, 593 P.2d 63 (1979) (marijuana use by nondenominational Christian); *State v. Randall*, 540 S.W.2d 156 (Mo.App.1976) (marijuana, LSD, and hashish use by Aquarian Brotherhood Church). See generally Annotation, Free Exercise of Religion as Defense to Prosecution for Narcotic or Psychedelic Drug Offense, 35 A.L.R.3d 939 (1971 and Supp.1989).

FN9. Thus, this case is distinguishable from *United States v. Lee*, 455 U.S. 252, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982), in which the Court concluded that there was "no principled way" to distinguish other exemption claims, and the "tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief." *Id.*, at 260, 102 S.Ct., at 1056.

II

Finally, although I agree with Justice O'CONNOR that courts should refrain from delving into questions whether, as a matter of religious doctrine, a particular practice is "central" to the religion, *ante*, at 1614, I do not think this means that the courts must turn a blind eye to the severe impact of a State's restrictions on the adherents of a minority religion. Cf. *Yoder*, 406 U.S., at 219, 92 S.Ct., at 1535 (since "education is inseparable from and a part of the basic tenets of their religion ... [, just as] baptism,****1622** the confessional, or a sabbath may be for others," enforcement of State's compulsory education law would "gravely endanger if not destroy the free exercise of respondents' religious beliefs").

Respondents believe, and their sincerity has *never* been at issue, that the peyote plant embodies their deity, and eating it is an act of worship and communion. Without peyote, they could not enact the essential ritual of their religion. See Brief for Association on American Indian Affairs et al. as *Amici Curiae* 5-6 ("To the members, peyote is consecrated with powers to heal body, mind and spirit. It is a teacher; it teaches the way to spiritual

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110 S.Ct. 1595
108 L.Ed.2d 876, 58 USLW 4433, 52 Fair Empl.Prac.Cas. (BNA) 855, 53 Empl. Prac. Dec. P 39,826, Unempl.Ins.Rep. (CCH) P 21,933
(Cite as: 494 U.S. 872, 110 S.Ct. 1595)

life through living in harmony and balance with the forces of the Creation. The rituals are an integral part of the life process. They embody a form of worship in which the sacrament Peyote is the means for communicating with the Great Spirit"). See also O. Stewart, Peyote Religion 327-330 (1987) (description of peyote ritual); ***920** T. Hillerman, People of Darkness 153 (1980) (description of Navajo peyote ritual).

If Oregon can constitutionally prosecute them for this act of worship, they, like the Amish, may be "forced to migrate to some other and more tolerant region." *Yoder,* 406 U.S., at 218, 92 S.Ct., at 1534-1535. This potentially devastating impact must be viewed in light of the federal policy--reached in reaction to many years of religious persecution and intolerance--of protecting the religious freedom of Native Americans. See American Indian Religious Freedom Act, 92 Stat. 469, 42 U.S.C. § 1996 (1982 ed.) ("[I]t shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions ..., including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites"). [FN10] Congress recognized that certain substances, such as peyote, "have religious significance because they are sacred, they have power, they heal, they are necessary to the exercise of ***921** the rites of the religion, they are necessary to the cultural integrity of the tribe, and, therefore, religious survival." H.R.Rep. No. 95-1308, p. 2 (1978), U.S.Code Cong. & Admin.News 1978, pp. 1262, 1263.

> FN10. See Federal Agencies Task Force, Report to Congress on American Indian Religious Freedom Act of 1978, pp. 1-8 (Aug. 1979) (history of religious persecution); Barsh, The Illusion of Religious Freedom for Indigenous Americans, 65 Ore.L.Rev. 363, 369-374 (1986).
> Indeed, Oregon's attitude toward respondents' religious peyote use harkens back to the repressive federal policies pursued a century ago: "In the government's view, traditional practices were not only morally degrading, but unhealthy. 'Indians are fond of gatherings of every description,' a 1913 public health study complained, advocating the restriction of dances and 'sings' to stem contagious diseases. In 1921, Commissioner of Indian Affairs Charles Burke reminded his staff to punish any Indian engaged in 'any dance which involves ... the reckless giving away of property ... frequent or prolonged periods of celebration ... in fact, any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.' Two years later, he forbid Indians under the age of 50 from participating in any dances of any kind, and directed federal employees 'to educate public opinion' against them." *Id.,* at 370-371 (footnotes omitted).

The American Indian Religious Freedom Act, in itself, may not create rights enforceable against government action restricting religious freedom, but this Court must scrupulously apply its free exercise analysis to the religious claims of Native Americans, however unorthodox they may be. Otherwise, both the First Amendment and the stated policy of Congress will offer to Native Americans merely an unfulfilled and hollow promise.

III

For these reasons, I conclude that Oregon's interest in enforcing its drug laws against religious use of peyote is not sufficiently compelling to outweigh respondents' right to the free exercise of their religion. Since the State could not constitutionally enforce its criminal prohibition against respondents, ****1623** the interests underlying the State's drug laws cannot justify its denial of unemployment benefits. Absent such justification, the State's regulatory interest in denying benefits for religiously motivated "misconduct," see *ante,* at 1598, is indistinguishable from the state interests this Court has rejected in *Frazee, Hobbie, Thomas,* and *Sherbert.* The State of Oregon cannot, consistently with the Free Exercise Clause, deny

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respondents unemployment benefits.

I dissent.

110 S.Ct. 1595, 494 U.S. 872, 108 L.Ed.2d 876, 58 USLW 4433, 52 Fair Empl.Prac.Cas. (BNA) 855, 53 Empl. Prac. Dec. P 39,826, Unempl.Ins.Rep. (CCH) P 21,933

Briefs and Other Related Documents (Back to top)

• 1989 WL 1126854 (Appellate Brief) Reply Brief for Petitioners (Aug. 21, 1989)

• 1989 WL 1126850 (Appellate Brief) Brief for Respondents (Jul. 14, 1989)

• 1989 WL 1126851 (Appellate Brief) Brief Amicus Curiae of the American Civil Liberties Union and the Aclu of Oregon in Support of Respondents (Jul. 14, 1989)

• 1989 WL 1126852 (Appellate Brief) Brief of Council on Religious Freedom as Amicus Curiae in Support of Respondents (Jul. 14, 1989)

• 1989 WL 1126853 (Appellate Brief) Brief Amici Curiae Association on American Indian Affairs, Native American Church of North America, Native American Church of Colorado, Kiowa Chapter of the Native American Church of Oklahoma, Native American Church of Oklahoma, Native American Churc h of the Omaha Tribe, Native American Church of South Dakota, and the Native American Church of Winnebago, Nebraska in Support of Respondents (Jul. 14, 1989)

• 1989 WL 1126849 (Appellate Brief) Brief Amicus Curiae of the American Jewish Congress in Support of Respondents (Jun. 21, 1989)

• 1989 WL 1126846 (Appellate Brief) Brief for Petitioners (May. 22, 1989)

• 1988 WL 1025590 (Appellate Brief) Supplemental Brief for Respondents (Oct. Term 1988)

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EXHIBIT 19

781 P.2d 383
(Cite as: 99 Or.App. 104, 781 P.2d 383)

Court of Appeals of Oregon.

Christine E. ERICKSON, Appellant,
v.
Bryan W. CHRISTENSON; Luther Memorial Church, Portland, Oregon; American Lutheran Church, North Pacific District, Respondents,
and
American Lutheran Church, Defendant.

A8710-06662; CA A49695.

Argued and Submitted April 14, 1989.
Decided Oct. 25, 1989.

Church parishioner sued pastor, her church, and the district office of the church's denomination, seeking recovery for intentional infliction of emotional harm allegedly caused by pastor's mentally manipulating her and seducing her through counseling relationship. The Circuit Court, Multnomah County, Lee Johnson, J., dismissed complaint for failure to state claims, and parishioner appealed. The Court of Appeals, Rossman, J., held that: (1) claim of intentional infliction of emotional harm was not invalid as being essentially restatement of abolished claim of seduction; (2) claim was not barred on First Amendment grounds, as being essentially claim of clerical malpractice which would require for proof impermissible government examination of validity of religious beliefs and interference with access to clerical counseling; (3) complaint stated claim against church for liability for torts of pastor under respondeat superior doctrine; (4) complaint stated cause of action against church for negligent supervision of pastor; and (5) complaint stated cause of action against district office of denomination for negligence in requiring parishioner to seek removal of pastor through confrontational process involving rest of church, causing her emotional harm.

Reversed and remanded.

West Headnotes

[1] Damages ⇐50.10
115k50.10 Most Cited Cases

Claim by church parishioner against her pastor for intentional infliction of emotional harm through pastor's alleged abuse of confidential relationship by mentally manipulating her to have close contact and sexual relations with him was not invalid by reason of being equivalent to abolished tort of seduction; parishioner had alleged that pastor's actions made her unable to trust other adults, to trust authority and deal with religion and her faith in God, and if claims were true resulting harm to parishioner stemmed from pastor's misconduct of his position of trust and not from seduction.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies ⇐30
332k30 Most Cited Cases

Claim by parishioner that pastor had inflicted intentional emotional harm upon her was not invalid under free exercise and establishment clauses of First Amendment because it was essentially claim of clerical malpractice which would require for proof development of community standards as to proper pastoral conduct which in return would involve permissible government inquiry into validity of religious beliefs and interference with clerical counseling; parishioner had claimed breach of confidential relationship rather than any elements of clerical malpractice. U.S.C.A. Const.Amend. 1.

[3] Religious Societies ⇐30
332k30 Most Cited Cases

Church would be liable to parishioner, on theory of respondeat superior, if parishioner established claim that pastor had abused confidential relationship between himself and parishioner by mentally manipulating her to become dependent upon him and coercing and manipulating her to have close contacts and sexual relations with him.

[4] Religious Societies ⇐30
332k30 Most Cited Cases

Parishioner accusing church of negligent supervision of pastor who allegedly abused confidential relationship with her and manipulated her into having close contact and sexual relations with him stated cause of action; parishioner alleged that church knew or should have known pastor was not adequately trained as counselor and that he had

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used and misused his position in past to take advantage of parishioners and people he counseled.

[5] Religious Societies ⚖31(4)
332k31(4) Most Cited Cases

Dismissal of complaint in response to motion to dismiss for failure to state ultimate facts sufficient to state claims was not warranted in case where parishioner of church accused district office of church's denomination of negligent supervision of pastor who mentally manipulated her into having sexual contact with him; nothing in complaint supported contentions on which dismissal was granted, that district office was merely administrative department of denomination and lacked capacity to be sued, and that claim was barred by two-year statute of limitations. ORS 12.110(1).

[6] Religious Societies ⚖31(4)
332k31(4) Most Cited Cases

Parishioner suing district office of her church's denomination stated claim for negligent supervision of church's pastor who allegedly manipulated her into having sexual relations with him; parishioner alleged that after she initiated church complaint against pastor district office undertook role of her advocate and then forced her to proceed through confrontational process involving congregation in order to have pastor removed from his position, causing her extreme emotional distress.
**384 *104 David R. Nepom, Portland, argued the cause and filed the briefs for appellant.

I. Franklin Hunsaker, Portland, argued the cause and filed the brief for respondent American Lutheran Church, North Pacific Dist. With him on the brief were Chrys A. Martin, Lisa E. Lear and Bullivant, Houser, Bailey, Pendergrass & Hoffman, Portland.

David J. Edstrom, Portland, argued the cause and filed the brief for respondent Bryan W. Christenson.

Ralph C. Spooner, Salem, argued the cause and filed the brief for respondent Luther Memorial Church. With him on the brief was Spooner & Much, Salem.

Before RICHARDSON, P.J., JOSEPH, C.J., and ROSSMAN, J.

*106 ROSSMAN, Judge.

Plaintiff brought this action against her pastor (Christenson), the church that employed him (Luther Memorial) and the American Lutheran Church, North Pacific District (ALC-NPD), [FN1] alleging four claims for injuries sustained after Christenson allegedly manipulated her and seduced her through a counseling relationship. The trial court granted defendants' motions under ORCP 21 A to dismiss for failure to state ultimate facts sufficient to state claims, **385 and plaintiff appeals. We reverse and remand.

FN1. Pursuant to the stipulation of plaintiff and American Lutheran Church (ALC), the trial court entered an order dismissing claims against ALC without prejudice. The court incorporated that order into its judgment dismissing plaintiff's claims against all defendants.

In reviewing a motion to dismiss for failure to state a claim, we are limited to the facts stated in the complaint. *Richards v. Dahl,* 289 Or. 747, 752, 618 P.2d 418 (1980). We accept as true the allegations and all reasonable inferences that may be drawn from them. *See Overbay v. Ledridge,* 97 Or.App. 292, 294, 776 P.2d 29, *on reconsideration* 98 Or.App. 148, 778 P.2d 981 (1989). A pleading that contains an allegation of material fact as to each element of the claim for relief, even if vague, is sufficient to survive a motion to dismiss. *Mazurek v. Rajnus,* 253 Or. 555, 557-58, 456 P.2d 83 (1969). We discuss plaintiff's claims against each defendant in turn.

Plaintiff's claims against Christenson are for "breach of fiduciary duty" (which we treat as a claim for breach of a confidential relationship) and intentional infliction of severe emotional distress. [FN2] Her allegations may be summarized: (1) In 1970, when plaintiff was age 13, Christenson established a confidential relationship with her, acting as her pastor, counselor, confessor, advisor, friend, teacher and surrogate father. (2) Christenson abused that relationship by "mentally

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manipulating" her to become dependent upon him and by "coercing and manipulating" her to have close contact and sexual relations with him for his own purposes; he continued to exercise dominion and control over plaintiff until the fall or winter of 1986, and attempted to manipulate the relationship until *107 May, 1987. (3) Defendants' failure to advise plaintiff of the improper relationship prevented her from obtaining professional help. (4) As a result of Christenson's misuse of his position, plaintiff suffered sexual abuse, extreme emotional distress, physical illness, loss of sleep and memory, clinical depression and loss in her "ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God."

> FN2. Although plaintiff has characterized her claim as one for "outrageous conduct," it is actually for intentional infliction of severe emotional distress. *Patton v. J.C. Penney Co.*, 301 Or. 117, 119 n. 1, 719 P.2d 854 (1986).

[1] Christenson argues that those allegations actually state a claim for seduction, a cause of action that was abolished in 1973. Or.Laws 1973, ch. 640. We disagree. In *Spiess v. Johnson,* 89 Or.App. 289, 748 P.2d 1020, *aff'd by equally divided court* 307 Or. 242, 765 P.2d 811 (1988), we considered the sufficiency of a complaint alleging that a psychiatrist from whom a couple had sought psychiatric counseling for the wife had become sexually intimate with her during the course of treatment. The defendant argued that the husband's claim for intentional infliction of severe emotional distress was actually for the abolished torts of criminal conversation and alienation of affections. We rejected that argument, noting that the different claims were distinguishable by the nature of the loss that they alleged. 89 Or.App. at 294, 748 P.2d 1020.

The tort of seduction provided recovery for damage to character and reputation, as well as for mental anguish and pecuniary losses. *See Breon v. Hinkle,* 14 Or. 494, 500, 13 P. 289 (1887). By contrast, plaintiff's claim alleges that Christenson misused his position as pastor and counselor to abuse her sexually, causing her not only emotional distress but also "loss of ability to trust other adults, to trust authority, and * * * in her ability to deal with religion and her faith in God." Accepting the allegations as true, the harm to plaintiff stemmed from Christenson's misuse of his position of trust, not from the seduction as such. Plaintiff has stated a claim.

In her second claim against Christenson, plaintiff has claimed losses due to intentionally inflicted severe emotional distress, as opposed to losses related to character or reputation. The mere fact that sexual intimacy was the means of inflicting that distress does not convert her claim into one for seduction. *See Spiess v. Johnson, supra,* 89 Or.App. at 294, 748 P.2d 1020. Moreover, the character of Christenson's relationship with plaintiff is relevant both to the degree of culpability required **108** to impose liability and to whether his conduct ****386** was so offensive as to be outrageous. *Hall v. The May Dept. Stores,* 292 Or. 131, 137, 637 P.2d 126 (1981); *Torgeson v. Connor,* 86 Or.App. 179, 181, 738 P.2d 994 (1987). Because plaintiff has alleged a confidential relationship, proof of her other allegations would permit the jury to infer that Christenson's actions exceeded the limits of social toleration, that they were done with the knowledge that they would cause her grave distress and that they in fact caused her severe emotional distress. That is sufficient to state a claim for intentional infliction of emotional distress. *See Torgeson v. Connor, supra.*

[2] Christenson argues that plaintiff's claims are barred by the First Amendment. According to him, her claim for "breach of a fiduciary duty" actually is a claim for clerical malpractice, a cause of action that requires developing a community standard of care. Because imposing such a standard would involve examining the validity of religious beliefs and could interfere with access to clerical counseling, he argues, it violates both the Free Exercise and Establishment Clauses of the First Amendment. Similarly, he contends, because plaintiff's seduction could not be considered "outrageous" were it not for the fact that he is a pastor, plaintiff's claim of intentional infliction of emotional distress penalizes him for exercising his religion.

Christenson's arguments misconstrue the nature of plaintiff's claims. First, regardless of how plaintiff designated her claims, a claim for breach of a confidential relationship is different from a claim for clerical malpractice. Plaintiff's complaint

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alleged the existence and breach of a confidential relationship; it did not allege the elements of malpractice. Moreover, plaintiff's claim for outrageous conduct is not premised on the mere fact that Christenson is a pastor, but on the fact that, because he was *plaintiff's* pastor and counselor, a special relationship of trust and confidence developed.

[3] Plaintiff's claims against Luther Memorial are that it is vicariously liable for the torts allegedly committed by Christenson and that it was negligent in supervising him. "Under the doctrine of *respondeat superior,* an employer is liable for an employee's torts when the employee acts within the scope of employment." *Chesterman v. Barmon,* 305 Or. 439, 442, 753 P.2d 404 (1988). An employe's act is within the scope of the ***109** employment if it occurs substantially within the time and space limits authorized by the employment, the employe is at least partially motivated by a purpose to serve the employer and the act is of a kind which the employe was hired to perform. *Chesterman v. Barmon, supra,* 305 Or. at 442, 753 P.2d 404. Plaintiff has alleged that, in the exercise of his duties as a pastor, Christenson established a confidential relationship with her and caused her harm by abusing that relationship. Confining our analysis to the four corners of the complaint, we conclude that it alleges that she sustained harm from acts performed within Christenson's scope of employment. [FN3]

> FN3. Luther Memorial argues that it cannot be held liable under a theory of *respondeat superior,* because Christenson's seduction of plaintiff is neither the kind of act that he was hired to perform nor motivated by a desire to serve the employer. As previously noted, however, the gravamen of plaintiff's complaint is not simply that Christenson seduced her but that he abused his position as her pastor to do so. Because the alleged wrongful act was improper performance of pastoral counseling duties, whether it occurred within the scope of employment is a factual issue.

[4] With respect to her claim for negligence in supervision, Luther Memorial argues that plaintiff has failed to allege facts showing that its "conduct unreasonably created a foreseeable risk to a protected interest of the kind of harm that befell the plaintiff," as required by *Fazzolari v. Portland School Dist. No. 1J,* 303 Or. 1, 17, 734 P.2d 1326 (1987). However, in her amended complaint, plaintiff has alleged that Luther Memorial knew or should have known that Christenson was not adequately trained as a counselor and that it knew or should have known that he had misused his position in the past to take advantage of parishioners and counseled persons. These allegations, if proven, would make it ****387** reasonable for a trier of fact to infer that the risk of harm to plaintiff was reasonably foreseeable to Luther Memorial. Similarly, her allegations, if proven, that Luther Memorial employed and directed Christenson to counsel parishioners, failed to investigate claims of his sexual misconduct, failed to remove him or to warn parishioners of his misuse of his position and failed to supervise him adequately following his nervous breakdown or to direct him to seek expert advice to deal with his abusive behavior would make it reasonable for the jury to infer that it created the risk of harm to plaintiff. The complaint states a claim for negligent supervision. It follows that plaintiff's ***110** claims against Luther Memorial should not have been dismissed. [FN4]

> FN4. Relying on *Norwest v. Presbyterian Intercommunity Hosp.,* 293 Or. 543, 652 P.2d 318 (1982), Luther Memorial asserts that plaintiff has alleged only emotional injury, an insufficient basis for a claim for ordinary negligence. In alleging sexual abuse, physical illness, lost sleep and losses in memory and concentration, however, plaintiff has alleged more than emotional injury.

[5] Plaintiff repeated her claim of negligent supervision against ALC-NPD, alleging the same facts and adding that ALC-NPD supervised Luther Memorial and that the agents and employes of ALC-NPD supervised Christenson. ALC-NPD responds that, because it is merely an administrative department of ALC, it lacks the capacity to be sued, that plaintiff's claim is barred by the two-year Statute of Limitations in ORS 12.110(1) and that, because it was not Christenson's employer, but

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simply an unincorporated division of ALC with only a tenuous connection to Luther Memorial and Christenson, it could neither have created nor foreseen the risk of harm to plaintiff.

ALC-NPD's contentions are premature. Nothing on the face of the complaint permits a determination that ALC-NPD is not a proper party or that, as a matter of law, plaintiff's alleged injuries occurred more than two years before the commencement of her action. *See* ORCP 21 A(9). Plaintiff has alleged sufficient facts to withstand a motion to dismiss.

[6] Plaintiff's last claim is that ALC-NPD was negligent in its performance of pastoral duties. In essence, she alleges that, after she initiated a church complaint against Christenson, ALC-NPD undertook the role of her advocate and counselor; that, in that role, it required her to "proceed through a confrontational process * * * in order to have Bryan Christenson removed from his pastor position"; and that, despite Christenson's voluntary admission to a sexual dependency unit, it continued to require her to "confront and oppose the church congregation," causing her extreme emotional distress. Those allegations, taken as true, would permit a trier of fact to make the inference that ALC-NPD's conduct unreasonably created a foreseeable risk of harm to plaintiff. Under *111 *Fazzolari v. Portland School Dist. No. 1J, supra,* plaintiff's allegations are sufficient to state a claim for negligence. [FN5]

FN5. Characterizing plaintiff's claim as one for "clerical malpractice," ALC-NPD argues that recognizing such a cause of action would require the court to develop a standard of care for pastoral counseling, an undertaking which inevitably would violate the First Amendment and Article I, sections 2, 3, and 5 of the Oregon Constitution. However, plaintiff's complaint alleges simple negligence. Although the First Amendment or Oregon Constitution may provide ALC-NPD with an affirmative defense at some later stage of the proceeding, which we need not and do not decide here, it does not provide a basis for dismissal at this stage.

Reversed and remanded.

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EXHIBIT 20

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65 USLW 2010
(Cite as: 291 N.J.Super. 262, 677 A.2d 258)

Superior Court of New Jersey,
Appellate Division.

F.G., Plaintiff-Appellant,
v.
Rev. Alex MacDONELL, in his capacity as former Rector, and Rev. Fletcher Harper, in his capacity as Rector of All Saints' Episcopal Church, Bergenfield, New Jersey and St. Luke's Episcopal Church, Haworth, New Jersey, Defendants-Respondents.

Argued April 15, 1996.
Decided June 14, 1996.

Church member who became involved in sexual relationship with church rector to whom she had gone to seek counseling brought action asserting claims of negligence as provider of pastoral care and counseling, negligent infliction of emotional distress, and breach of fiduciary duty, and also asserted claim against second rector who had informed congregation of relationship. Defendants moved to dismiss, and the Superior Court, Law Division, Bergen County, granted motion. Church member appealed, and the Superior Court, Appellate Division, D'Annunzio, J., held that: (1) one test to determine whether civil action against cleric is cognizable is whether adjudication requires evaluation of dogma or ritual, or other matters of purely ecclesiastical concern, which will implicate First Amendment, and (2) allegations were sufficient to state claims of professional or clergy malpractice.

Reversed and remanded.

West Headnotes

[1] Pretrial Procedure ⇐622
307Ak622 Most Cited Cases

Trial courts should approach with great caution applications for dismissal based on failure of complaint to state claim on which relief may be granted; test for determining adequacy of pleading is whether cause of action is "suggested" by facts. R. 4:6-2(e).

[2] Appeal and Error ⇐863
30k863 Most Cited Cases

In reviewing complaint which has been dismissed for failure to state claim, inquiry is limited to examining legal sufficiency of facts alleged on face of complaint; however, reviewing court searches complaint in depth and with liberality to ascertain whether fundament of cause of action may be gleaned even from obscure statement of claim, opportunity being given to amend if necessary. R. 4:6-2(e).

[3] Pretrial Procedure ⇐683
307Ak683 Most Cited Cases

For purposes of analysis used in determining whether complaint is subject to dismissal for failure to state claim, plaintiffs are entitled to every reasonable inference of fact. R. 4:6-2(e).

[4] Pretrial Procedure ⇐679
307Ak679 Most Cited Cases

Examination of complaint's allegations of fact required in determining whether complaint is subject to dismissal for failure to state claim should be one that is at once painstaking and undertaken with generous and hospitable approach. R. 4:6-2(e).

[5] Negligence ⇐321
272k321 Most Cited Cases
(Formerly 272k102)

"Malpractice," which is nothing more than negligent performance of professional service and is a deviation from standards of performance applicable to professional service in question, is a negligence cause of action.

[6] Negligence ⇐1662
272k1662 Most Cited Cases
(Formerly 272k134(1))

Major distinction between usual negligence case and case of professional negligence is that in the latter, standard of care ordinarily must be established by expert testimony.

[7] Religious Societies ⇐14

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332k14 Most Cited Cases

One test to determine whether cause of action against cleric is cognizable in civil courts is whether adjudication of claim requires evaluation of dogma or ritual, or other matters of purely ecclesiastical concern, which will implicate First Amendment. U.S.C.A. Const.Amend. 1.

[8] Religious Societies ⇐30
332k30 Most Cited Cases

Allegations by church member that rector at church had exploited vulnerabilities of church member, who had sought counseling from rector, to induce member to engage in sexual acts with him were sufficient to state claim of professional or clergy malpractice against rector; no excessive entanglement with religion was likely to occur, as it was unlikely that defendant would assert that sex with counselee by pastoral counselor is sanctioned by or somehow involves tenets of Episcopalian church, or would otherwise create entanglement with religious beliefs or rituals creating First Amendment concerns. U.S.C.A. Const.Amend. 1.

[9] Pleading ⇐53(1)
302k53(1) Most Cited Cases

[9] Torts ⇐1
379k1 Most Cited Cases

No rule requires that cause of action fall outside scope of other recognized torts before it may be maintained; to the contrary, rules permit pleading of alternative causes of action regardless of their consistency. R. 4:5-6.

[10] Religious Societies ⇐31(4)
332k31(4) Most Cited Cases

Allegation by church member who had engaged in sexual acts with rector she had seen for counseling that second minister at church had acted improperly by informing congregation of sexual relationship was sufficient to state claim for professional or clergy malpractice against second minister.
****259 *265** Herbert D. Friedman, Boston, MA, and Alan L. Zegas, West Orange, for appellant.

Gregory D. Winter, Livingston, for respondents (Felzenberg, Winter & Winkler, attorneys).

Before Judges HAVEY, D'ANNUNZIO and BRAITHWAITE.

The opinion of the court was delivered by

D'ANNUNZIO, J.A.D.

This action for damages is based on a sexual relationship between plaintiff, an adult female, and defendant Rev. Alex MacDonell. The action against defendant Rev. Fletcher Harper is based on his disclosure to the congregation of the relationship between plaintiff and MacDonell.

Defendants moved for judgment on the pleadings, pursuant to *R.* 4:6-2(e). The court granted the motion on all counts against MacDonell and on Count IX against Harper. The three counts against MacDonell allege causes of action for negligence as a provider of "pastoral care and pastoral counseling," negligent infliction of emotional distress "in committing pastoral care and pastoral counseling malpractice," and breach of fiduciary duty. Count IX charged that Harper breached his fiduciary duty to plaintiff by "exploiting [her] trust and confidence by invading her privacy, making negligent misrepresentations to her ... defaming her, and by depicting her in a false light." The remaining counts against Harper allege invasion of privacy, negligent misrepresentation, defamation and depicting plaintiff in a false light.

The trial court determined that the counts against MacDonell and Count IX against Harper asserted causes of action described as clergy malpractice and that such a cause of action is not recognized, citing *Schmidt v. Bishop,* 779 *F.Supp.* 321 (S.D.N.Y.1991) . In *Schmidt* the court ruled that clergy malpractice was not actionable under New York law. The court held that recognition ***266** of such a cause of action would unduly entangle the courts with religion, in violation of the First Amendment.

We granted plaintiff's motion for leave to appeal, and we now reverse and remand for further proceedings.

[1][2][3][4] The standard under which motions to dismiss are considered is well-established in New Jersey. Trial courts should "approach with great

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caution applications for dismissal under *R.* 4:6-2(e) for failure of a complaint to state a claim on which relief may be granted." *Printing Mart-Morristown v. Sharp Elec. Corp.,* 116 *N.J.* 739, 771-72, 563 *A.* 2d 31 (1989). The test for determining the adequacy of a pleading is whether a cause of action is "suggested" by the facts. *See Velantzas v. Colgate- Palmolive Co.,* 109 *N.J.* 189, 192, 536 *A.* 2d 237 (1988). In reviewing a complaint dismissed pursuant to *R.* 4:6-2(e), the inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. *See* ***260Rieder v. State Department of Transp.,* 221 *N.J.Super.* 547, 552, 535 *A.*2d 512 (App.Div.1987). However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Di Cristofaro v. Laurel Grove Memorial Park,* 43 *N.J.Super.* 244, 252, 128 *A.*2d 281 (App.Div.1957). For purposes of analysis plaintiffs are entitled to every reasonable inference of fact. *See Independent Dairy Workers Union v. Milk Drivers Local 680,* 23 *N.J.* 85, 89, 127 *A.*2d 869 (1956). "The examination of a complaint's allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach." *Printing Mart-Morristown, supra,* 116 *N.J.* at 746, 563 *A.*2d 31.

Applying these principles, we glean from the complaint the following allegations. Plaintiff was a parishioner at All Saints' Episcopal Church, and MacDonell was the rector there and at Saint Luke's Episcopal Church. Plaintiff sought counseling from MacDonell. The nature and scope of the counseling is not defined *267 in the complaint. MacDonell assumed the role of counselor and thereby became aware of plaintiff's emotional vulnerabilities. MacDonell exploited those vulnerabilities to induce plaintiff to engage in sexual acts with him. The complaint describes the counseling relationship between plaintiff and MacDonell as "a special relationship in which MacDonell owed a special duty of care not to engage in unethical and harmful behavior towards [plaintiff]." Plaintiff alleges that MacDonell violated that duty of care causing physical, emotional and psychological injury.

Count III alleges that MacDonell had a fiduciary duty to act in plaintiff's best interests and "to refrain from conduct which carried with it the foreseeable and unreasonable risk of mental or emotional harm to her," and that MacDonell breached his fiduciary duty "by wrongfully and unlawfully exploiting [plaintiff's] trust and confidence by engaging in inappropriate sexual behavior with plaintiff."

The complaint also alleges that plaintiff filed a complaint with the "Standing Commission on Clergy Ethics of the Diocese of Newark," and that the committee determined that MacDonell "violated his pastoral relationship with plaintiff ... by engaging in inappropriate sexual behavior toward her." The committee "sanctioned" MacDonell in March 1994.

In Count IX, the count against Harper dismissed by the court, plaintiff alleges that Harper breached a fiduciary duty owed to plaintiff by the manner in which he informed the congregation of plaintiff's relationship with MacDonell.

The trial court's dismissal of the counts against MacDonell was consistent with a line of decisions resistant to the concept of "clergy malpractice." As previously indicated, the trial court cited *Schmidt v. Bishop, supra,* 779 *F.Supp.* 321. Schmidt was a member of a New York Presbyterian church. In 1960, when she was twelve, her parents brought her to Reverend Bishop, the church's pastor, for " 'emotional, spiritual and familial counseling.' " *Id.* at 324. Schmidt alleged that she became emotionally dependent on Bishop and that he initiated sexual contact with her *268 shortly after the counseling relationship began. According to Schmidt, defendant "invoked God as supporting the conduct ... and informed her that 'the relationship was special and acceptable in the eyes of the Lord.' " *Ibid.* The relationship between Schmidt and Bishop continued until 1989 when Schmidt terminated it as a result of psychotherapy she had begun in 1988.

The *Schmidt* court characterized Bishop's conduct as a crime of sexual abuse in the second degree under New York's penal code. *Ibid.* The court observed that the allegations of the complaint "support clearly an action for a battery or some similar intentional tort, for which the statute of limitations is one year." *Ibid.* The court, however, granted summary judgment to defendant on the complaint which alleged negligence, malpractice

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and breach of fiduciary duty. The court viewed those counts as sounding in clergy malpractice and rejected them.

****261** The court saw the First Amendment of the United States Constitution as the major obstacle to a cause of action for clergy malpractice. *Id.* at 327. The court agreed with *Nally v. Grace Community Church of the Valley,* 47 *Cal.*3d 278, 253 *Cal.Rptr.* 97, 763 *P.*2d 948 (1988), *cert. denied,* 490 *U.S.* 1007, 109 *S.Ct.* 1644, 104 *L.Ed.*2d 159 (1989), that defining and imposing a duty of care on pastoral counselors would unduly entangle the courts in religious philosophy or ecclesiastical teachings. *Ibid.* The court in *Schmidt* stated:

> Any effort by this Court to instruct the trial jury as to the duty of care which a clergyman should exercise, would of necessity require the Court or jury to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community. This in turn would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion.
>
> [779 *F.Supp.* at 328.]

Nally v. Grace Community Church of the Valley, supra, relied on by the *Schmidt* court, is inapposite. There, the Supreme Court of California upheld a "nonsuit" granted by the trial court, *i.e.,* a trial court determination that the evidence was insufficient to ***269** permit a jury to find in plaintiffs' favor. *Nally, supra,* 253 *Cal.Rptr.* at 104-05, 763 *P.2d* at 955. Plaintiffs sought damages resulting from the suicide of their son. Plaintiffs sued the church, a Protestant Christian congregation, and four church pastors who had participated in counseling decedent. Plaintiffs alleged that defendants had failed in their duty to recognize that decedent was suicidal and to refer him to psychiatric care.

In affirming the nonsuit, thereby reversing the intermediate appellate court, the California Supreme Court held that defendants, as nontherapist counselors, had no duty to refer a counselee to psychiatric care. The court refused to extend the duty to prevent suicide, previously imposed on psychiatrists and hospitals caring for a suicidal patient, to non-licensed nontherapist counselors who provide counseling on "secular or spiritual matters." *Id.* 253 *Cal.Rptr.* at 110, 763 *P.*2d at 961. The court observed that "it would certainly be impractical, and quite possibly unconstitutional, to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity." *Id.* 253 *Cal.Rptr.* at 109, 763 *P.*2d at 960.

We distinguish *Nally* from the present case on three grounds. First, constitutional considerations played a minimal role in the court's analysis. Second, the alleged breach of duty was closely connected with the content of the counseling and advice provided by the counselors. Lastly, *Nally* did not involve exploitation of the counselee for the counselors' sexual gratification.

Destefano v. Grabrian, 763 *P.*2d 275 (Colo.1988), was an action against a Catholic priest and diocese arising out of a marriage counseling relationship between the counselor-priest and a married couple, Robert and Edna Destefano. The priest and Edna became sexually involved, and the Destefanos' marriage dissolved. Robert commenced an action for damages, originally naming Edna as a co-defendant, and Edna cross-claimed against the priest and the diocese.

***270** In evaluating Edna's claim, the court defined the "threshold issue" as whether the First Amendment immunized the priest's conduct. The court held that it did not because "[w]hen the alleged wrongdoing ... clearly falls outside the beliefs and doctrine of [the priest's] religion, he cannot avail himself of the protection afforded by the first amendment." *Id.* at 284.

Nevertheless, the court held that the claim for clergy malpractice was properly dismissed because "clergy malpractice is not supported by precedent and raises serious first amendment issues." *Id.* at 285. The court's ruling in this regard appears to have been based on Colorado licensing statutes which the court construed as evidencing "an intent to exclude religious counselors from the liability provision of the statute creating ****262** liability for mental health professionals." *Id.* at 286.

The court, however, did recognize Edna's causes of

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action for breach of a fiduciary duty, intentional or reckless infliction of emotional distress through outrageous conduct, and, as against the diocese, negligent supervision of the priest. *See also Moses v. Diocese of Colorado,* 863 *P.*2d 310, 321 (Colo.1993) (reaffirming the viability of a cause of action for breach of fiduciary duty and the invalidity of a cause of action for clergy malpractice), *cert. denied,* --- *U.S.* 2153, 114 *S.Ct.* 2153, 128 *L.Ed.*2d 880 (1994).

Dausch v. Rykse, 52 *F.*3d 1425 (7th Cir.1994) was a diversity action applying Illinois law. Plaintiff alleged that she sought counseling from defendant Ryske, the pastor of her Presbyterian church. She alleged in her complaint that Ryske engaged "in sexual contact during the course of psychotherapy with the plaintiff, an emotionally dependent patient." *Id.* at 1427. Plaintiff appealed from the dismissal of her complaint for failure to state a claim upon which relief could be granted.

The court of appeals agreed with the trial court that a claim for clergy malpractice would not be viable under Illinois law, citing *Baumgartner v. First Church of Christ, Scientist,* 141 *Ill.App.*3d 898, 96 *Ill.Dec.* 114, 490 *N.E.*2d 1319, *cert. denied,* 479 *U.S.* 915, 107 *S.Ct.* 317, 93 *L.Ed.*2d 290 (1986). ***271***Dausch, supra,* 52 *F.*3d at 1432. The court in *Baumgartner* determined that an action for clergy malpractice was not justiciable because adjudication of such a complaint " 'would require the court to extensively investigate and evaluate religious tenets and doctrines.' " *Dausch, supra,* 52 *F.*3d at 1432 (quoting *Baumgartner, supra,* 96 *Ill.Dec.* 114, 490 *N.E.*2d at 1324.) [FN1] The court of appeals noted the risk of entangling civil courts in the examination of religious tenets if clergy malpractice were a recognized cause of action. *Ibid.*

> FN1. In footnote 4 of the *Dausch* opinion, 52 *F.*3d at 1432, the court of appeals lists state court decisions rejecting clergy malpractice.

The court of appeals, however, recognized that these First Amendment concerns have not been extended "to situations in which the conduct in question does not bear such a direct relationship to the doctrinal or organizational aspects of religious practice." *Ibid.* The court characterized "pastoral counseling" as "clearly and directly centered on matters of religion, and claims of negligence are not cognizable in the civil courts." *Id.* at 1433. However, if a church offers "purely secular counseling ... to the members of its congregation," those persons who provided such services on the church's behalf would be subject to civil adjudication of their performance. *Ibid.*

> Therefore, if a complaint alleges that the psychological services that were provided were "secular" in nature, or that the provider held himself out to be providing the services of a psychological counselor, the negligence claim cannot be characterized as one for clergy malpractice. Tort claims for behavior by a cleric that does not require the examination of religious doctrine are cognizable.
>
> [*Ibid.*]

The court of appeals held that some of the allegations in Mrs. Dausch's complaint could be read as stating a claim based on secular psychological counseling and not pastoral counseling. Consequently, it reversed the dismissal of plaintiff's claim based on professional negligence. *Id.* at 1435.

[5][6][7][8] The viability of a claim for clergy malpractice is an issue of first impression in New Jersey. Malpractice is a negligence ***272** cause of action. It is nothing more than the negligent performance of a professional service. It is a deviation from the standards of performance applicable to the professional service in question. *See Sanzari v. Rosenfeld,* 34 *N.J.* 128, 134-35, 167 *A.*2d 625 (1961). A major distinction between the "usual negligence case" and a case of professional negligence is that in the latter, the standard of care ordinarily must be established by expert testimony. *Id.* at 134-35, 167 *A.*2d 625.

Regarding the risk of undue entanglement in ecclesiastical affairs arising out of a case of ****263** clergy malpractice, we share the concerns of those courts that have addressed the issue. We are, however, persuaded that those concerns are overstated in circumstances, such as the present case, involving a cleric's sexual misconduct. *Cf. Welter v. Seton Hall Univ.,* 128 *N.J.* 279, 291, 608

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*A.*2d 206 (1992) (holding that defendants failed to demonstrate that an employment dispute turned "on issues of doctrine or polity" and, therefore, the trial court properly exercised jurisdiction and the "sincerity" of defendant's religious beliefs was not legally relevant to their jurisdictional claim). *But cf. DeBose v. Bear Valley Church of Christ,* 890 *P.*2d 214, 222 (Colo.Ct.App.1994) (reversing a judgment in favor of plaintiffs and holding that the trial court erred in not instructing the jury that the cleric could not be held liable if his massage of the minor plaintiff "was engaged in solely in a sincere effort to facilitate the minor's communication with God").

We are also persuaded that the distinction suggested in *Dausch v. Rykse, supra,* between pastoral counseling and secular psychological counseling, is unworkable because it is difficult to apply. A cleric's counseling activities may be infused with doctrinal and spiritual content, though the cleric is providing secular services regarding marital discord, depression, anxiety and parent-child conflicts.

We conclude that one test to determine whether a cause of action against a cleric is cognizable in civil courts is whether adjudication of the claim requires an evaluation of dogma or ritual, ***273** or other matters of purely ecclesiastical concern. In the present case, it is unlikely that defendants will assert that sex with a counselee by a pastoral counselor is sanctioned by or somehow involves tenets of the Episcopalian church, or would otherwise create an entanglement with religious beliefs or rituals of First Amendment concern. *See Strock v. Pressnell,* 38 *Ohio St.*3d 207, 527 *N.E.*2d 1235 (1988) (holding that the First Amendment was not available as a defense in action against minister who had sexual relations with plaintiff's wife while counseling the couple regarding their marital difficulties).

Moreover, there is a bright line between counseling culminating in a sexual relationship with a counselee and other types of harms allegedly resulting from a failed counseling relationship. *Cf. Nally v. Grace Community Church of the Valley, supra,* 253 *Cal.Rptr.* 97, 763 *P.*2d at 948 (holding that claim for son's suicide was not actionable). Thus, we do not share the concern expressed in *Schmidt v. Bishop, supra,* 779 *F.Supp.* 321, that to recognize a cause of action for the sexual exploitation of a child would place civil courts "on the slippery slope," because we "must consider not only this case, but the next case to follow, and the ones after that, before we embrace the newly invented tort of clergy malpractice." *Id.* at 328.

Courts in other jurisdictions have recognized additional barriers to claims of clergy malpractice. The Ohio Supreme Court summarized some of them in *Strock v. Pressnell, supra* 527 *N.E.*2d at 1239:

> The reluctance of courts to embrace the tort of clergy malpractice may be attributed to the many, and often complex, questions that arise under it. For example, what exactly are the "professional services" rendered by a cleric? And does the standard of the professional vary with the ecclesiastical office? In other words, is a rabbi, priest, pastor, or lay elder held to the same standard of care regardless of training or wide variances in the authority and obligation of religious offices? Also, where a "professional service," such as the marriage counseling involved in this case, is not unique to the cleric, should the cleric be held to the same duty of care as secular counselors?
>
> [*Ibid.*]

***274** We do not minimize these concerns. They appear, however, to present problems of proof and definition which should not be addressed on a motion to dismiss under *R.* 4:6-2(e), but rather, should await resolution on a more fully informed record.

Ultimately, the court in *Strock* rejected plaintiff's clergy malpractice claims because "[m]alpractice ... is not a theory of ordinary negligence or of intentional tort. It is a separate and distinct cause of action." ****264** *Strock, supra,* 527 *N.E.*2d at 1239. To be recognized, clergy malpractice "must fall outside the scope of other recognized torts." *Ibid.* The court held that the alleged acts of the defendant "fell within the realm of intentional tort law," and, therefore, were not actionable as malpractice. *Ibid.* The court then reasoned that the intentional tort alleged in the complaint was an amatory action, such as alienation of affection and seduction, which the Ohio Legislature had abolished. *Id.* at 1240. The court concluded, therefore, that plaintiff's cause of action for intentional infliction of emotional distress could not

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be maintained. *Id.* at 1243. The court, for the same reason, ruled that a cause of action for breach of a fiduciary duty was not viable. *Id.* at 1243-44.

[9] In New Jersey we have no rule that requires a cause of action to "fall outside the scope of other recognized torts" before it may be maintained. To the contrary, our rules permit the pleading of alternative causes of action "regardless of their consistency." *R.* 4:5-6. *See Burd v. Sussex Mutual Ins. Co.*, 56 *N.J.* 383, 267 *A.*2d 7 (1970). In any event, as previously indicated, an action for malpractice is, at its core, a negligence action.

Sanders v. Casa View Baptist Church, 898 *F.Supp.* 1169 (N.D.Tex.1995), is another example of judicial reluctance to entertain a claim for clergy malpractice. In that case, the court denied a minister's motion for summary judgment. Ruling that plaintiffs could not maintain a claim based on clergy malpractice, the court construed the claim as one for "professional malpractice by a marriage counselor, not clergy malpractice." *Id.* at 1175. The action was deemed to be maintainable under that rubric.

***275** Finally, in *DeBose v. Bear Valley Church of Christ, supra*, 890 *P.*2d 214, the court rejected a claim based on clergy malpractice because such a course of action would require the promulgation of standards against which a cleric's performance would be measured. The court stated that "[t]o attempt to require members of the clergy to comply with such a standard, however, could very well restrict their right freely to exercise and practice their religion." *Id.* at 225.

New Jersey courts have recognized causes of action for professional negligence against chiropractors, *Rosenberg by Rosenberg v. Cahill*, 99 *N.J.* 318, 492 *A.*2d 371 (1985), accountants, *Rosenblum v. Adler*, 93 *N.J.* 324, 461 *A.*2d 138 (1983), and real estate brokers, *Paris of Wayne v. Richard A. Hajjar Agency*, 174 *N.J.Super.* 310, 416 *A.*2d 436 (App.Div.), *certif. denied*, 85 *N.J.* 454, 427 *A.*2d 555 (1980); *Sullivan v. Jefferson, Jefferson & Vaida*, 167 *N.J.Super.* 282, 400 *A.*2d 836 (App.Div.1979). We perceive no impenetrable barrier, on the limited record before us, to establishing a standard of care applicable to cleric-counselors in the context of an allegation that the counselor used his position to sexually exploit the counselee. *Cf. Simmons v. United States*, 805 *F.* 2d 1363, 1365 (9th Cir.1986) (affirming judgment based on sexual exploitation of plaintiff by a social worker-counselor, discussing the "transference phenomenon" and noting that "[w]hen the therapist mishandles transference and becomes sexually involved with a patient, medical authorities are nearly unanimous in considering such conduct to be malpractice"); *Corgan v. Muehling*, 143 *Ill.*2d 296, 158 *Ill.Dec.* 489, 574 *N.E.*2d 602 (1991) (holding that complaint stated cause of action for negligence arising from psychologist's engaging in relations with plaintiff during course of treatment); *N.J.A.C.* 13:42-10.9 (prohibiting a psychologist licensed in New Jersey from engaging in sexual relations "with a current psychotherapy client, a former client, ... a current student, a direct supervisee or supervisor, or a research participant.").

Whether plaintiff can establish an applicable standard of care, show that MacDonell breached this standard, and prove the ***276** damages proximately flowing from that breach, are all issues of proof which cannot be determined on a motion for judgment on the pleadings. *Cf. Simmons v. United States, supra*, 805 *F.*2d at 1366 (suggesting a distinction between a therapist-patient relationship and sexual involvement of a minister with a parishioner because the minister "does not offer a course of counselling predicated upon handling the transference phenomenon.") (citing A. Stone, M.D., *Law, Psychiatry, and Morality* 199 (1984)).

****265** Finally, we note again that this is a case of first impression in New Jersey. We also note that issues regarding inappropriate sexual behavior by clerics are matters of current public concern. We are persuaded that those issues should not be addressed except on a well-informed record. *See Jackson v. Muhlenberg Hospital*, 53 *N.J.* 138, 142, 249 *A.*2d 65 (1969).

[10] Although defendant Harper was not sexually involved with plaintiff, the trial court treated Count IX, alleging breach of a fiduciary, as a malpractice count and dismissed it on that basis. For the reasons expressed above, we conclude that the court erred in dismissing this "malpractice" count. We do not, however, foreclose the trial court, as the record develops below, from treating the fiduciary duty counts as stating causes of action separate and distinct from negligence-malpractice. *See Moses v.*

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Diocese of Colorado, supra, 863 *P.*2d 310; *Destefano v. Grabrian, supra,* 763 *P.*2d 275.

The order dismissing all counts against MacDonell and Count IX against Harper is reversed and the case is remanded for further proceedings.

677 A.2d 258, 291 N.J.Super. 262, 65 USLW 2010

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EXHIBIT 21

99 S.Ct. 35
439 U.S. 1369, 58 L.Ed.2d 63, 58 L.Ed.2d 77
(Cite as: 439 U.S. 1355, 99 S.Ct. 35)

Supreme Court of the United States

The GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF the UNITED METHODIST
CHURCH, Petitioner,
v.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO (Frank T. Barr, et al., Real
Parties in Interest).

No. A-200.

Aug. 24, 1978.
Sept. 1, 1978.

Illinois religious organization applied for a stay of a suit against it in a California state court pending Supreme Court consideration of its petition for writ of certiorari to review the assertion of personal jurisdiction over it. After issuing a temporary stay, Mr. Justice Rehnquist, as Circuit Justice, held that the application would be denied, because it was unlikely that the issue would command the votes necessary for certiorari, in that there was no indication that the California court failed to apply due process standards applicable to the exertion of long-arm jurisdiction.

Application denied; temporary stay terminated.

West Headnotes

[1] Federal Courts ⇐446
170Bk446 Most Cited Cases

Any intrusion into state court proceedings at interlocutory stage must be carefully considered and will be granted only upon showing of compelling necessity. (Per Mr. Justice Rehnquist, as Circuit Justice.)

[2] Federal Courts ⇐446
170Bk446 Most Cited Cases

Party seeking stay of state court judgment or proceeding in Supreme Court must first demonstrate that there is reasonable probability that four justices will consider issues sufficiently meritorious to vote to grant certiorari or note probable jurisdiction. (Per Mr. Justice Rehnquist, as Circuit Justice.)

[3] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[3] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

First and Fourteenth Amendments do not prevent civil court from independently examining and making ultimate decision regarding structure and actual operation of hierarchical church and its constituent units in purely secular dispute between church and third party. (Per Mr. Justice Rehnquist, as Circuit Justice.) U.S.C.A.Const. Amends. 1, 14.

[4] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[4] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

First and Fourteenth Amendments do not forbid resort to traditional minimum contacts analysis in determining the existence of personal jurisdiction over defendant that is affiliated with organized religion. (Per Mr. Justice Rehnquist, as Circuit Judge.) U.S.C.A.Const. Amends. 1, 14.

[5] Federal Courts ⇐446
170Bk446 Most Cited Cases

Suit against Illinois religious organization in California state court would not be stayed pending Supreme Court consideration of organization's petition for writ of certiorari to review propriety of extension of personal jurisdiction over organization, because it was unlikely that issue would command votes necessary for certiorari, in that there was no indication that California court failed to apply due process standards applicable to exertion of long-arm jurisdiction. (Per Mr. Justice Rehnquist, as Circuit Justice.) U.S.C.A.Const. Amends. 1, 14.

****36** ORDER GRANTING TEMPORARY STAY

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*1355 Mr. Justice REHNQUIST, Circuit Justice.

Applicant requests that proceedings in the Superior Court of the State of California for the County of San Diego in which it is a defendant be stayed as to it pending consideration by this Court of its petition for a writ of certiorari to review the judgment of that court filed March 20, 1978. I have decided to grant a temporary stay of the proceedings against applicant pending receipt and my consideration of a response to the application.

Applicant has, in my opinion, inexcusably delayed the filing of its application for a stay. The Supreme Court of the State of California denied applicant's petition for hearing on its request for a writ of mandate on July 27, 1978. On August 3, 1978, the Superior Court granted applicant 30 days from July 27, 1978, until August 28, in which to plead, but denied any additional stay of the proceedings. Applicant did not seek any further stay of the proceedings from either the California Court of Appeal or the California Supreme Court. Nevertheless, it did not file its application for a stay in this Court until August 22, nearly three weeks after the Superior Court's order and only six days before it was required to plead.

*1356 It is only because a delay of a few days will have virtually no effect on the progress of the state-court proceedings that I have decided to grant this temporary stay. It should be noted, however, that in deciding whether to grant or deny any further relief of this nature beyond that provided in this order, I shall take into consideration the above-described delay on the applicant's part.

ORDER DENYING STAY

*1369 Mr. Justice REHNQUIST, Circuit Justice.

The General Council on Finance and Administration of the United Methodist Church requests that proceedings in the Superior Court of the State of California for the County of San Diego, in which it is a defendant, be stayed as to it pending this Court's consideration of its petition for a writ of certiorari. Applicant, an Illinois not-for-profit corporation, is one of six defendants in a class action seeking, *inter alia*, damages for breach of contract, fraud, and violations of state securities laws arising out of the financial collapse of the Pacific Homes Corp., a California nonprofit corporation that operated 14 retirement homes and convalescent hospitals on the west coast. *Barr v. United Methodist Church*, No. 404611 (Cal.Super.Ct., San Diego County, Mar. 20, 1978). Respondent real parties **37 in interest (hereafter respondents), some 1,950 present and former residents of the homes, allege that Pacific Homes was the alter ego, agency, or instrumentality of the United Methodist Church (Methodist Church), applicant, and certain other defendants affiliated with the Methodist Church. The judgment at issue is the Superior *1370 Court's denial of applicant's motion to quash service of process for lack of *in personam* jurisdiction. That court, in a minute order decision, concluded that applicant was "doing business" in the State of California and, therefore, was subject to the jurisdiction of the California courts. Applicant's petition for a writ of mandate to review the judgment of the Superior Court was denied by the Court of Appeal for the Fourth Appellate District in a one-sentence order, and the California Supreme Court summarily denied applicant's petition for a hearing on the issue. Thereafter, applicant was ordered by the Superior Court to respond to respondents' complaint on or before August 28, 1978. I granted a temporary stay of the proceedings below to permit consideration of a response to the application. *Ante*, p. 36.

Applicant challenges the Superior Court's order on three grounds. First, citing this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), applicant maintains that the Superior Court violated the First and Fourteenth Amendments in basing its assertion of jurisdiction on respondents' characterization of applicant's role in the structure of the Methodist Church and rejecting contrary testimony of church officials and experts and statements set forth in the Book of Discipline, which contains the constitution and bylaws of the Methodist Church. Applicant's next contention is that use of the "minimum- contacts" standard of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945), in determining jurisdiction over a nonresident religious organization violates the First and Fourteenth Amendments. Finally, applicant argues that even under the traditional minimum-contacts mode of analysis, its connection with the State of California is too attenuated, under the standards

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implicit in the Due Process Clause of the Fourteenth Amendment, to justify imposing upon it the burden of a defense in California.

Because the Superior Court's order denied a pretrial motion, ***1371** an initial question is whether the judgment below is "final" within the meaning of 28 U.S.C. § 1257 (1976 ed.), which permits this Court to review only "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . ." Applicant argues that it can preserve its jurisdictional argument only by suffering a default judgment, since under California law in order to defend on the merits it must appear generally and, accordingly, waive its objection to *in personam* jurisdiction. See *McCorkle v. Los Angeles*, 70 Cal.2d 252, 74 Cal.Rptr. 389, 449 P.2d 453 (1969). It therefore finds itself between Scylla and Charybdis, and, citing *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), asserts that under such circumstances the Superior Court's judgment is final. In *Shaffer*, this Court taking a "pragmatic approach" to the question of finality, held that a Delaware court's pretrial decision to assert jurisdiction over the defendants was final within the meaning of § 1257 because under Delaware law the defendants' only choices were to incur default judgments or to file general appearances and defend on the merits, thereby submitting themselves to the court's jurisdiction. 433 U.S., at 195-196, n. 12, 97 S.Ct. at 2575-2576. Respondents contest applicant's interpretation of California procedural law. They claim that a defendant can defend on the merits and still preserve his jurisdictional objections so long as he seeks immediate appellate review of an adverse decision on a motion to quash. See Cal.Civ.Proc.Code Ann. § 418.10 (West 1973). As noted above, applicant did avail itself of this procedure.

If the views of the respective parties are each to be credited, California law may not be clear on this issue, and it certainly is not ****38** within my province to resolve their differences with respect to it. [FN*] If California procedural law is as applicant ***1372** describes it, I am convinced that this Court would find the Superior Court's judgment to be "final" within the meaning of § 1257. See *Shaffer v. Heitner*, *supra*; *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975). I need not resolve this issue, however, since I have concluded that even if the Superior Court's order were a final judgment under § 1257, a stay is nonetheless not warranted in this case.

> FN* I recognize that in determining whether to grant a stay, Members of this Court may hold differing views on the weight to be accorded any doubt as to the finality of a state-court judgment. See *New York Times Co. v. Jascalevich*, 439 U.S. 1331, 99 S.Ct. 11, 58 L.Ed.2d 38 (MARSHALL, J., in chambers); *New York Times Co. v. Jascalevich*, 439 U.S. 1317, 99 S.Ct. 6, 58 L.Ed.2d 25 (WHITE, J., in chambers); *Bateman v. Arizona*, 429 U.S. 1302, 1306, 97 S.Ct. 1, 3, 50 L.Ed.2d 32 (1976) (REHNQUIST, J., in chambers). It is not necessary to explore that issue in this case.

[1][2] Any intrusion into state-court proceedings at an interlocutory stage must be carefully considered and will be granted only upon a showing of compelling necessity. *Bateman v. Arizona*, 429 U.S. 1302, 1305, 97 S.Ct. 1, 3, 50 L.Ed.2d 32 (1976) (REHNQUIST, J., in chambers). Those proceedings are presumptively valid. See *Whalen v. Roe*, 423 U.S. 1313, 1316, 96 S.Ct. 164, 165, 46 L.Ed.2d 18 (1975) (MARSHALL, J., in chambers). A party seeking a stay of a state-court judgment or proceeding must first demonstrate that there is a reasonable probability that four Justices will consider the issues sufficiently meritorious to vote to grant certiorari or note probable jurisdiction. *Bateman v. Arizona, supra*, 429 U.S. at 1305, 97 S.Ct. at 3. Applicant has failed to clear this first hurdle.

[3][4] In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding, the structure and actual operation of a hierarchical church and its constituent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. See *Serbian Eastern Orthodox Diocese v. Milivojevich*. But this Court never has suggested that those

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constraints similarly apply outside the context of such intraorganization disputes. Thus, *Serbian Eastern Orthodox Diocese* and the other cases cited by applicant are not in point. *1373 Those cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. 426 U.S., at 709-710, 96 S.Ct., at 2380-2381. Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged. As the Court stated in another context: "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." *Cantwell v. Connecticut*, 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213 (1940). Nor is it entirely clear that the Superior Court's determination of the jurisdictional question was based upon its interpretation of Methodist polity; it is equally likely that the court's decision was founded on the related but separate issue of applicant's contacts with the State of California.

Likewise untenable, in my view, is applicant's claim that the First and Fourteenth Amendments somehow forbid resort to traditional minimum-contacts analysis in determining the existence of *in personam* jurisdiction over a defendant that is affiliated with an organized religion. Not surprisingly, applicant has failed to cite any authority in support of this novel proposition.

[5] The only remaining issue presented by applicant is whether the quality and **39 nature of its contacts with the State of California are such that "maintenance of the suit [in the forum state] does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington*, 326 U.S., at 316, 66 S.Ct., at 158, quoting, *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 342, 85 L.Ed. 278 (1940). Such questions generally tend to depend on the particular facts of each case, *Kulko v. California Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978), and I believe that only a marked departure by a lower court in the application of established law would persuade four Justices to grant certiorari. While *1374 the Superior Court's decision does not purport to resolve all of the factual disputes between the parties, there is no indication that it failed to apply the due process standards enunciated in *International Shoe*, and cases which have followed it, to the circumstances presented, and, therefore, I believe it unlikely that this issue would command the votes necessary for certiorari.

Accordingly, the application for a stay pending review on certiorari is denied. The temporary stay I previously entered is hereby terminated.

99 S.Ct. 35, 439 U.S. 1355, 439 U.S. 1369, 58 L.Ed.2d 63, 58 L.Ed.2d 77

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EXHIBIT 22

50 S.Ct. 5
74 L.Ed. 131
(Cite as: 280 U.S. 1, 50 S.Ct. 5)

Supreme Court of the United States

GONZALEZ
v.
ROMAN CATHOLIC ARCHBISHOP OF MANILA.

No. 6.

Argued April 8, 9, 1929.
Decided Oct. 14, 1929.

On Certiorari to the Supreme Court of the Philippine Islands.

Suit by Raul Rogerio Gonzalez against the Roman Catholic Archbishop of Manila. Decree for petitioner in the Court of First Instance of Manila was reversed by the Supreme Court of the Philippine Islands, and petitioner brings certiorari. Judgment of Supreme Court affirmed.

West Headnotes

[1] Federal Courts ⇐491
170Bk491 Most Cited Cases
(Formerly 106k387(3))

Supreme Court has jurisdiction of suit between residents of Philippine Islands involving amount in excess of $25,000. Act Feb. 13, 1925, c. 229, § 7; 28 U.S.C.A. § 349.

[2] Religious Societies ⇐24
332k24 Most Cited Cases

Philippine courts had jurisdiction of suit against Roman Catholic archbishop involving trust, notwithstanding petitioner's right rested on heirship to collative chaplaincy, as to which ecclesiastical courts asserted exclusive jurisdiction.

[3] Religious Societies ⇐12(5)
332k12(5) Most Cited Cases

Determination of church authorities as to qualifications of applicant for chaplaincy are conclusive in secular courts.

[4] Religious Societies ⇐27(1)
332k27(1) Most Cited Cases

Right to chaplaincy under deed of foundation *held* to depend on canonical law at date of applicant's presentation, and not that in force at date of foundation.

[5] Charities ⇐48(1)
75k48(1) Most Cited Cases

Relative of founder of trust creating chaplaincy, denied appointment as chaplain for want of qualifications, held not entitled to claim surplus income of trust fund, in view of provisions of deed of foundation.

[6] Judgment ⇐256(5)
228k256(5) Most Cited Cases

One suing individually cannot claim relief as representative of class.
****5 *3** Messrs. Howard Thayer Kingsbury and Frederic R. Coudert, both of New York City, for petitioner.

***6** Messrs. William D. Guthrie and George J. Gillespie, both of New York City, for respondent.

***10** Mr. Justice BRANDEIS delivered the opinion of the Court.

This case is here on certiorari to the Supreme Court of the Philippine Islands. 278 U. S. 588, 49 S. Ct. 17, 73 L. Ed. 522. The subject-matter is a collative chaplaincy in the Roman Catholic Archdiocese of Manila, which has been vacant since December 1910. [FN1] The main questions for decision are whether the petitioner is legally entitled to be appointed the chaplain, and whether he shall recover the surplus income accrued during the vacancy.

FN1 A chaplaincy in the Roman Catholic Church is an institution founded by an individual for the purpose of celebrating or causing to be celebrated annually a certain number of masses conforming to the will of the founder. Chaplaincies are

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commonly divided into two classes-lay and ecclesiastical. A laical or mercenary chaplaincy is one instituted without the intervention of ecclesiastical authority, does not require a title in order to be ordained, and is not subject to ecclesiastical authority. The ecclesiastical or collative chaplaincy, although also founded by an individual, is one erected into a benefice by the proper spiritual authority, requires a title of ordination, and is thus subject to ecclesiastical control. When the foundation of an ecclesiastical or collative chaplaincy calls for relatives of the founder to enjoy the chaplaincy, it is called colativa familiar. When individuals of a certain family are not called to the possession, but the patron is authorized to nominate, then the chaplaincy is called colativa simple or gentilicia. But whether the chaplaincy is colativa familiar or colativa simple, intervention of the proper spiritual authority to appoint and ordain is essential. Alcubilla, Diccionario de la Administration Espanola, (5th Ed.) vol. II, p. 259; The Catholic Encyclopedia, vol. III, p. 580.

**6 [1] Raul Rogerio Gonzalez, by his guardian ad litem, brought the suit against the archbishop in the court of *11 first instance of Manila, on August 5, 1924. He prayed for judgment declaring the petitioner the lawful heir to the chaplaincy and its income; establishing the right of the petitioner and his successors to be appointed to and receive the income of the chaplaincy during their infancy whenever it may be vacant and, pending such appointment, to receive the income for their maintenance and support; declaring the trust character of the property and ordering it to be so recorded; directing the archbishop to appoint the petitioner chaplain and to account to him for the income of the property from 1910 on; and directing the defendant to pay the petitioner 1,000 pesos a month pending the final determination of the case. The trial court directed the archbishop to appoint the petitioner chaplain; and ordered payment to him of 173,725 pesos ($86,862.50), that sum being the aggregate net income of the chaplaincy during the vacancy, less the expense of having the prescribed masses celebrated in each year. It reserved to the petitioner any legal right he may have to proceed in the proper court for cancellation of the certificate of registration of the property in the name of the archbishop. The Supreme Court of the Philippine Islands reversed the judgment on February 4, 1928, and absolved the archbishop from the complaint, 'without prejudice to the right of proper persons in interest to proceed for independent relief,' in respect to the income accrued during the vacancy, or in respect to the reformation of the certificate of registration so as to show the fiduciary character of the title. As the amount in controversy exceeds $25,000, this court has jurisdiction on certiorari. Act Feb. 13, 1925, c. 229, s 7, 43 Stat. 936, 940 (28 USCA s 349).

The chaplaincy was founded in 1820, under the will of Don a Petronila de Guzman. By it, she requested 'the father chaplain to celebrate sixty masses annually' in behalf of the souls of her parents, brothers, sisters, and *12 herself. The deed of foundation, which was executed by the testamentary executor of Don a Petronila, provided that 'said property is segregated from temporal properties and transferred to the spiritual properties of this archbishopric, without its being possible to alienate or convert the property as such into any other estate for any cause, even though it be of a more pious character, * * * so that by virtue of this deed of foundation canonical collation may be conferred on the said appointed chaplain.' By appropriate proceedings an ecclesiastical decree approved 'the foundation of the chaplaincy with all the circumstances and conditions provided for in said clause (of the wall) and in the deed of said clause (of the will) and in the deed of of seventeen hundred pesos against said building, converting said sum into spiritual property of a perpetual character subject to the ecclesiastical forum and jurisdiction.'

The will provided that the foundation should effect the immediate appointment as chaplain of D. Esteban de Guzman, the great-grandson of the testatrix, and 'in his default the nearest relative, and in default of the latter a collegian (colegial) of San Juan de Letran, who should be an orphan mestizo, native of this said town.' It named the president of that college as the patron of the chaplaincy. Esteban was appointed chaplain in 1820. From time to time thereafter four other descendants of the testatrix were successively appointed. The latest of these renounced the chaplaincy in December, 1910,

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married soon thereafter, and in 1912 became the father of the petitioner, Raul Rogerio Gonzalez, who is a legitimate son of the fifth chaplain, and claims to be the nearest relative in descent from the first chaplain and the foundress.

Raul was presented to the archbishop for appointment in 1922. The archbishop refused to appoint him, on the ground that he did not then have 'the qualifications required for chaplain of the said chaplaincy.' He added: *13 'The grounds of my conclusion are the very canons of the new Code of Canon Law. Among others, I can mention canon 1442, which says: 'Simple chaplaincies or benefices are conferred upon clergymen of the secular clergy,' in connection with canon 108, paragraph 1, 'Clergymen are those already initiated in the first tonsure,' and canon 976, paragraph 1, 'No one can be promoted to first tonsure before he has begun the course in theology.' In view of the canon as above mentioned, and other reasons which may be adduced, I believe that the boy, Raul Gonzalez, is not legally (ecclesiastically speaking) capacitated to the enjoyment of a chaplaincy.'

Ever since the Council of Trent (1545-1563), it has been the law of the church that no one can be appointed to a collative chaplaincy before his fourteenth year. When Raul was presented for appointment, he was in his tenth year. He was less than 12 when this suit was begun. He was 14 when the trial court entered its judgment. It is also urged on behalf of the archbishop that at no time since that Council could one be lawfully appointed who lacked elementary knowledge of Christian doctrine.

The new Codex Juris Canonici, which was adopted in Rome in 1917 and was promulgated by the church, to become effective in 1918, provides that no one shall be appointed to a collative chaplaincy who is not a cleric. Canon 1442. It requires students for the priesthood to attend a seminary; and prescribes their studies. Canons 1354, 1364. It provides that in order to be a cleric one must have had 'prima tonsura' (Canon 108, par. 1); that in order to have 'prima tonsura' one must have begun the study of theology (Canon 976, par. 1); and that in order to study **7 theology one must be a 'bachiller'-that is, must have obtained the first degree in the sciences and liberal arts (Canon 1365). It also provides that no one may validly receive ordination, unless in the opinion of the ordinary he *14 has the necessary qualifications. Canon 968, par. 1, 1464. Petitioner concedes that the chaplaincy here involved is a collative one, and that Raul lacked, at the time of his presentment and of the commencement of the suit, the age qualification required by the canon law in force when the chaplaincy was founded. [FN2] It is also conceded that he lacked, then and at the time of the entry of the judgment, other qualifications of a candidate for a collative chaplaincy essential, if the new Codex was applicable.

> FN2 In order to overcome this obstacle, petitioner filed an amended complaint in the trial court, without objection, when he was in his fourteenth year. The Supreme Court assumed 'for the purposes of this decision that the immaturity of the plaintiff in point of age is not a fatal obstacle to the maintenance of the action.'

Raul's contention, in effect, is that the nearest male relative in descent from the foundress and the first chaplain, willing to be appointed chaplain, is entitled to enjoy the revenues of the foundation, subject only to the duty of saying himself the sixty masses in each year, if he is qualified so to do, or of causing them to be said by a qualified priest and paying the customary charge therefor out of the income. He claims that the provisions of the new Codex are not applicable, and that his rights are to be determined by the canon law in force at the time the chaplaincy was founded, and that the judgment of the trial court should be reinstated, because he possessed at the time of the entry of the judgment all the qualifications required by the canon law in force in 1820. Raul argues that contemporaneous construction and long usage have removed any doubt as to what these qualifications were; that when the foundation was established, and for a long time thereafter, the ecclesiastical character of the incumbent was a minor consideration; that this is shown by the administration of this chaplaincy; and that his own ecclesiastical qualifications, at the time of the entry of the *15 judgment in the trial court, were not inferior to those of the prior incumbents. He asserts that, although chaplaincies were disamortized in Spain prior to 1867 (Alcubilla, Diccionario, Vol. II, p. 118), they had in the Philippines remained undisturbed by any legislation

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of Spain, and that the rights of the church were preserved by article 8, of the Treaty of Paris. 30 Stat. 1754, 1758; Ponce v. Roman Catholic Church, 210 U. S. 296, 315-322, 28 S. Ct. 737, 52 L. Ed. 1068. He contends that to deprive him of his alleged right to the chaplaincy because of a change made in 1918 in the canon law would violate the Constitution of the United States, the Treaty with Spain of 1898, and the Organic Act of the Philippine Islands (32 Stat. 691).

The trial court rested its judgment for Raul largely on the ground that he possessed, at the time of its entry, the qualifications required by the canon law in force when the chaplaincy was founded, and that, hence, he was entitled both to be appointed chaplain and to recover the income accrued during the vacancy, even though he did not possess the qualifications prescribed by the new Codex then otherwise in force. The Supreme Court held that to give effect to the provisions of the new Codex would not impair the obligation of the contract made in 1820, as it was an implied term of the deed of foundation that the qualifications of a chaplain should be such as the church authorities might prescribe from time to time, and that, since Raul confessedly did not possess the qualifications prescribed by the new Codex which had been promulgated before he was presented, he could not be appointed.

[2] First. The archbishop interposes here, as he did below, an objection to the jurisdiction of the Philippine courts. He insists that, since the chaplaincy is confessedly a collative one, its property became spiritual property of a perpetual character subject to the jurisdiction of the ecclesiastical *16 forum, and that thereby every controversy concerning either the right to appointment or the right to the income was removed from the jurisdiction of secular courts. The objection is not sound. The courts have jurisdiction of the parties. For the archbishop is a juristic person amenable to the Philippine courts for the enforcement of any legal right; and the petitioner asserts such a right. There is jurisdiction of the subject-matter; for the petitioner's claim is, in substance, that he is entitled to the relief sought as the beneficiary of a trust.

[3] The fact that the property of the chaplaincy was transferred to the spiritual properties of the archbishopric affects not the jurisdiction of the court, but the terms of the trust. Watson v. Jones, 13 Wall. 679, 714, 729, 20 L. Ed. 666. The archbishop's claim in this respect is that by an implied term of the gift, the property, which was to be held by the church, should be administered in such manner and by such persons as may be prescribed by the church from time to time. Among the church's laws, which are thus claimed to be applicable, are those creating tribunals for the determination of ecclesiastical controversies. Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although **8 affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. [FN3] Under like circumstances, effect is given in the courts to the determinations *17 of the judicatory bodies established by clubs and civil associations. [FN4]

FN3 Watson v. Jones, 13 Wall. 679, 727, 733, 20 L. Ed. 666; Shepard v. Barkley, 247 U. S. 1, 38 S. Ct. 422, 62 L. Ed. 939; Barkley v. Hayes (D. C.) 208 F. 319, 327, affirmed sub. nom. Duvall v. Synod of Kansas (C. C. A.) 222 F. 669; Brundage v. Deardorf (C. C. A.) 92 F. 214, 228; Connitt v. Reformed Protestant Dutch Church, 54 N. Y. 551, 562.

FN4 Commonwealth v. Union League, 135 Pa. 301, 327, 19 A. 1030, 8 L. R. A. 195, 20 Am. St. Rep. 870; Engel v. Walsh, 258 Ill. 98, 103, 101 N. E. 222, 45 L. R. A. (N. S.) 353; Richards v. Morison, 229 Mass. 458, 461, 118 N. E. 868; People ex rel. Johnson v. New York Produce Exchange, 149 N. Y. 401, 409, 410, 413, 414, 44 N. E. 84; Van Poucke v. Netherland St. Vincent De Paul Society, 63 Mich. 378, 29 N. W. 863.

[4] Second. The archbishop contended that Raul

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lacked even the minimum of training and knowledge of Christian doctrine made indispensable by the canon law in force in 1820; that his confessed lack of the essential age at the time of the presentment and also at the time of the institution of the suit were insurmountable obstacles to the granting of the prayer for appointment to the chaplaincy; and, moreover, that the failure to take an appeal to the Pope from the decision of the archbishop, as provided by the canon law, precluded resort to legal proceedings. We have no occasion to consider the soundness of these contentions. For we are of opinion that the canon law in force at the time of the presentation governs, and the lack of the qualification prescribed by it is admitted. Neither the foundress, nor the church authorities, can have intended that the perpetual chaplaincy created in 1820 should, in respect to the qualifications of an incumbent, be forever administered according to the canons of the church which happened to be in force at that date. The parties to the foundation clearly contemplated that the archbishop would, before ordination, exercise his judgment as to the fitness of the applicant; and they must have contemplated that, in the course of the centuries, the standard of fitness would be modified.

When the new Codex was promulgated in 1918, Raul was only six years old and had not yet been presented. If he had been presented, he obviously could not have been appointed. No right was then being enjoyed by him *18 of which the promulgation of the new Codex deprived him. When he was presented later, he was ineligible under the then existing canon law. In concluding that Raul lacked the qualifications essential for a chaplain the archbishop appears to have followed the controlling canon law. There is not even a suggestion that he exercised his authority arbitrarily.

[5] Third. Raul urges that, even though he is not entitled to be appointed chaplain, he is entitled to recover the surplus net income earned during the vacancy. Indeed, it is the property rights involved that appear to be his main consideration. The value of the property in 1820 was about 1,700 pesos. The annual net income was then 180 pesos, a sum sufficient only to defray the annual expense of 60 masses. The annual net income has grown to about 12,000 pesos, and the annual expense of the 60 masses does not now exceed 300 pesos. In each year during the vacancy the masses have been duly celebrated. The surplus income accruing during the vacancy has been used by the archbishop currently for pious purposes, namely, education. By canon 1481 of the new Codex, the surplus income of a chaplaincy, after deducting expenses of the acting chaplain, must one-half be added to the endowment or capital and one- half to the repair of the church, unless there is a custom of using the whole for some common good to the diocese. The use made of the surplus of this chaplaincy was in accordance with what was claimed to be the long established custom of the archdiocese. Both the custom and the specific application made of this surplus have been approved by the Holy See. The Supreme Court held that, since Raul had sought the income only as an incident of the chaplaincy, he could not recover anything.

Raul's claim, which is made even in respect to income accrued prior to his birth, is rested upon some alleged right by inheritance, although his father is still living. *19 The intention of the foundress, so far as expressed, was that the income should be applied to the celebration of masses and to the living of the chaplain, who should preferably be the nearest male relative in the line of descent from herself or the first chaplain. The claim that Raul individually is entitled as nearest relative to the surplus by inheritance is unsupported by anything in the deed of gift or the applicable law. Since Raul is not entitled to be appointed chaplain, he is not entitled to a living from the income of the chaplaincy.

[6] Raul urges also an alleged right as representative of the heirs of the testatrix as a class. This suggestion was, we think, properly met by the ruling of the Supreme Court that the suit was not brought as a class suit. Whether the surplus income earned during the vacancy has been properly disposed of by the archbishop and what disposition shall be made of it in the future we have no occasion to inquire. The entry of the judgment without prejudice 'to the right of proper persons in interest to proceed for independent relief' leaves any existing right of that nature unaffected.

Affirmed.

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EXHIBIT 23

913 S.W.2d 92
106 Ed. Law Rep. 415
(Cite as: 913 S.W.2d 92)

Missouri Court of Appeals,
Eastern District.

H.R.B. and B.B., Plaintiffs/Appellants,
v.
J.L.G., and Archbishop Justin Rigali of the Archdiocese of the City of St. Louis, Missouri, and Church of the Immaculate Conception School and Parish, by and through Father John Gavin, Defendants/Respondents.

No. 68010.

Dec. 19, 1995.

Former student of church-run school brought action for breach of fiduciary duties and personal injuries against priest, church official, and church arising from alleged child sexual abuse occurring approximately 30 years earlier. The Circuit Court, City of St. Louis, James R. Dowd, J., dismissed action. Former student appealed. The Court of Appeals, Gary M. Gaertner, J., held that: (1) as matter of first impression, former student could not bring action for breach of fiduciary duty against priest, church official, and church, since such action would require court to inquire into religious aspects of duty owed by priest and divisions of church to parishioners; (2) petition did not indicate on its face and without exception that claim was time barred, and priest's motion to dismiss thus should not have been granted; and (3) church was not liable under doctrine of respondeat superior for priest's alleged acts.

Affirmed in part; reversed and remanded in part.

West Headnotes

[1] Assault and Battery ⇐21
37k21 Most Cited Cases

[1] Limitation of Actions ⇐31
241k31 Most Cited Cases

Action for sexual abuse may be brought as battery action, in which case plaintiff has two years to file action, or action may be brought pursuant to statute that requires that tort actions not specifically enumerated by statute, but recognized at law, be brought within five years. V.A.M.S. §§ 516.120(4), 516.140.

[2] Limitation of Actions ⇐72(1)
241k72(1) Most Cited Cases

If alleged sexual abuse occurred when plaintiff was minor, statute tolls applicable statute of limitations until plaintiff turn 21. V.A.M.S. § 516.170.

[3] Limitation of Actions ⇐6(9)
241k6(9) Most Cited Cases

Statute providing for independent civil actions for damages suffered as result of childhood sexual abuse does not revive actions that have expired prior to its effective date, and, if plaintiff's suit was already barred by existing statute of limitations on that date, defendant has obtained vested right to be free from suit. V.A.M.S. § 537.046.

[4] Limitation of Actions ⇐179(2)
241k179(2) Most Cited Cases

Petition in personal injury action by former student of church-run school against priest alleging child sexual abuse did not indicate on its face and without exception that claim was time barred, and priest's motion to dismiss thus should not have been granted; former student's allegation that he developed "psychological coping mechanisms" could encompass involuntary repression of memory consistent with former student being unaware of harm or legal harm done to him at time of alleged abuse. V.A.M.S. §§ 516.120(4), 537.046.

[5] Limitation of Actions ⇐95(1)
241k95(1) Most Cited Cases

In determining when statute of limitations begins running, damage is ascertainable when fact of damage can be discovered or made known, not when plaintiff actually discovers injury or wrongful conduct; when damage is ascertainable is objective determination.

[6] Limitation of Actions ⇐180(7)
241k180(7) Most Cited Cases

If statute of limitations raised as affirmative

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defense, trial court may not dismiss unless it is clearly established, on petition's face and without exception, that action is barred.

[7] Appeal and Error ⇐919
30k919 Most Cited Cases

In reviewing dismissal of petition, reviewing courts must allow pleading its broadest intendment, treating all facts alleged as true and construing petition's allegations favorably to plaintiff.

[8] Appeal and Error ⇐916(1)
30k916(1) Most Cited Cases

Court of Appeals was required to allow pleading its broadest intendment and to construe petition's allegations favorably to plaintiff.

[9] Appeal and Error ⇐916(1)
30k916(1) Most Cited Cases

Court of Appeals must take all allegations in petition as true, suspending any skepticism as to merits of plaintiff's allegations.

[10] Appeal and Error ⇐856(2)
30k856(2) Most Cited Cases

Court of Appeals will affirm dismissal of petition if it can be sustained on any ground presented to and considered by trial court, regardless of whether court relied on that ground.

[11] Religious Societies ⇐30
332k30 Most Cited Cases

Church was not liable under doctrine of respondeat superior for priest's alleged acts of sexual abuse against student of church-run school; alleged acts were not part of priest's duties as priest or teacher, and were not intended to further any religious or educational interests of church.

[12] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

Under doctrine of respondeat superior, employer is liable to third parties for tort committed by employee, if tort was committed while employee was engaged in activities within course and scope of his or her employment.

[13] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

Act is committed within "scope and course of employment," for purposes of determining employer's liability for tort committed by employee, if it is done by virtue of the employment and in furtherance of the business or interest of employer, regardless of time or motive of conduct.

[14] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

If act is fairly and naturally incident to employer's business, although mistakenly or ill advisedly done, and did not arise wholly from some external, independent or personal motive, it is done while engaged in employer's business, for purposes of determining whether employer is liable for tort committed by its employee.

[15] Religious Societies ⇐31(1)
332k31(1) Most Cited Cases

Clergy and religious organizations are not absolutely immune from civil liability.

[16] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[16] Religious Societies ⇐30
332k30 Most Cited Cases

Tort actions against religious groups or persons are not offensive to First Amendment if based on purely secular activities, and related to their religious function; if alleged wrongdoing was clearly outside tenets of the religion, notwithstanding its religious pretext, then it is actionable. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[17] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[17] Religious Societies ⇐30
332k30 Most Cited Cases

Former student of church-run school could not bring action for breach of fiduciary duty, arising

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from alleged sexual abuse by priest, against priest, church official, and church, since such action would inevitably require court to inquire into religious aspects of duty owed by priest and divisions of church to parishioners. U.S.C.A. Const.Amend. 1.

[18] Constitutional Law ⚖84.1
92k84.1 Most Cited Cases

[18] Religious Societies ⚖14
332k14 Most Cited Cases

First Amendment does not allow secular courts to judge sectarian matters. U.S.C.A. Const.Amend. 1.

[19] Husband and Wife ⚖209(3)
205k209(3) Most Cited Cases

[19] Husband and Wife ⚖209(4)
205k209(4) Most Cited Cases

When married person is injured, two independent, separate and distinct causes of action arise, one accruing to injured person for injuries, and the other accruing to injured person's spouse for damages suffered as result of his or her loss of injured person's services, society and companionship.

[20] Husband and Wife ⚖209(3)
205k209(3) Most Cited Cases

[20] Husband and Wife ⚖209(4)
205k209(4) Most Cited Cases

Loss of consortium action is derivative only; spouse cannot recover for loss of consortium if other spouse has no valid claim for personal injuries.

[21] Husband and Wife ⚖209(3)
205k209(3) Most Cited Cases
Services

[21] Husband and Wife ⚖209(4)
205k209(4) Most Cited Cases

Claims for loss of consortium based on spousal injury sustained prior to marriage are precluded, unless neither spouse is aware of tortious conduct or injury at time of marriage.

*94 Rebecca M. Randles, Kansas City, for appellants.

Barry A. Short, John Michael Hessel, Lewis, Rice & Fingersh, St. Louis, Gerard Thomas Noce, Evans & Dixon, St. Louis, for respondent.

GARY M. GAERTNER, Judge.

Appellants, H.R.B. ("plaintiff") and B.B. ("wife"), appeal from the judgment of the Circuit Court of the City of St. Louis dismissing their petition against respondents, J.L.G. ("defendant"), Archbishop Justin Rigali of the Archdiocese of St. Louis, Missouri ("the archbishop"), and Church of the Immaculate Conception School and Parish ("the church"). We affirm in part and reverse and remand in part.

On September 30, 1994, plaintiff and wife filed a ten-count petition alleging the following: In 1963, plaintiff was a thirteen-year-old student at a school run by the church, which was under the direct supervision and control of the archbishop. Through 1963 and 1964, plaintiff suffered various instances of sexual abuse by defendant J.L.G., a Roman Catholic priest employed by the church. As a direct result of defendant's conduct, plaintiff suffered, *inter alia,* severe emotional distress, lost earnings and earning capacity, sexual addiction and dysfunction, depression, anxiety, panic attacks, "and other psychological and emotional sequelae."

The petition further alleged:

> 15. Plaintiff and defendant ... had a confidential and/or fiduciary relationship. The power imbalance between defendant ... and plaintiff increased the plaintiff's vulnerability to defendant ... and had the effect of silencing plaintiff.
> 16. The nature of the relationship and the sexual exploitation perpetrated upon plaintiff caused him to develop certain psychological coping mechanisms. Plaintiff was unable to ascertain his injuries and their connection to the sexual abuse perpetrated upon him until approximately October 1992.
> 17. In approximately October 1992, plaintiff ... was hospitalized as being suicidal. At this time, he discovered that his psychological illnesses and emotional difficulties were the result of sexual abuse suffered at the hands of [defendant]. Prior to this time, he had never been diagnosed nor had any indication that the events involving sexual

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> abuse had caused injury and ascertainable damage.
> 18. Therefore, plaintiff brings this action in a timely fashion pursuant to R.S.Mo. [§§ 537.046] and 516.100, in that he did not discover and could not reasonably ascertain the damages he suffered as a result of the sexual abuse until October of 1992.

The first three counts of plaintiff's and wife's petition were brought by plaintiff against defendant: breach of fiduciary duty (Count I), intentional infliction of emotional distress (Count II), and childhood sexual abuse (Count III). The next five counts were brought by plaintiff against the archbishop [FN1] and the church: respondeat superior (Count IV), negligence (Count V), negligent infliction of emotional distress (Count VI), intentional infliction of emotional distress (Count VII), and breach of fiduciary duty (Count VIII). The final two counts were loss of consortium claims against all the respondents, brought by plaintiff (Count IX) and wife (Count X).

> FN1. The petition named the archdiocese and the archbishop as separate parties, but the two are treated as one and the same in the trial court's judgment and by the parties on appeal.

On October 12, 1994, the archbishop and the church moved to dismiss the claims against them in Counts IV through X of the petition. On November 3, 1994, defendant moved to dismiss the claims against him in Counts I, II, III, IX, and X. The motions were taken under submission on January 13, 1995.

On February 22, 1995, the trial court granted both motions to dismiss. The court ***95** determined plaintiff's damages were sustained and capable of ascertainment at the time of the alleged sexual abuse, and his cause of action therefore accrued at that time. The court noted that "[p]laintiff attempts to avoid the five year statute of limitations [RSMo § 516.120(4)] [FN2] by arguing that his psychological coping mechanisms repressed any memory of the abuse until 1992." However, the court found, in reliance on *Doe v. Roman Catholic Diocese,* 862 S.W.2d 338 (Mo.banc 1993) and *Vandenheuvel v. Sowell,* 886 S.W.2d 100 (Mo.App.W.D.1994), that "repressed memory does not serve to extend the statute of limitations for Plaintiffs' claims to the time plaintiff's memory revived." The court further found RSMo § 537.046 did not extend the time for filing the petition, as the original statutes of limitations--RSMo §§ 516.120 and 516.100--had already expired and the respondents had therefore acquired a vested right to be free from suit.

> FN2. All statutory references are to RSMo 1994 unless otherwise indicated.

The trial court dismissed all the counts against defendant: Counts I, II, and III were dismissed "based on the statute of limitations[;]" Count IX (plaintiff's claim of loss of consortium) was dismissed for failure to state a claim; and Count X (wife's claim of loss of consortium) was dismissed because wife was not married to plaintiff at the time his cause of action accrued. The court also dismissed Counts IV through X against the archbishop and the church. This appeal followed.

[1][2][3] Several statutes of limitations are involved in this case. An action for sexual abuse may be brought as a battery action, in which case the plaintiff has two years to file the action, RSMo § 516.140; or the action may be brought pursuant to RSMo § 516.120(4), which requires that tort actions not specifically enumerated by statute (but recognized at law) be brought within five years. *See Doe v. Roman Catholic Diocese,* 862 S.W.2d at 339. If the alleged abuse occurred when the plaintiff was a minor, RSMo § 516.170 tolls the applicable statute of limitations until the plaintiff turns twenty-one. *See J.D. v. M.F.,* 758 S.W.2d 177, 178 (Mo.App.E.D.1988). With respect to RSMo §§ 516.120(4) and 516.140, RSMo § 516.100 provides that

> the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, *but when the damage resulting therefrom is sustained and capable of ascertainment,....*

(emphasis added.) Also, RSMo § 537.046.2 provides for independent civil actions for damages suffered as a result of childhood sexual abuse, if the

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action is brought within five years of the plaintiff's eighteenth birthday, or "within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse," whichever is later. However, RSMo § 537.046 does not revive actions that have expired prior to its effective date of August 28, 1990, and, if a plaintiff's suit was already barred by an existing statute of limitations on that date, the defendant has obtained a vested right to be free from suit. *Doe v. Roman Catholic Diocese,* 862 S.W.2d at 342.

[4] In this case, the petition alleges defendant's acts occurred in 1963 and 1964, when plaintiff was still a minor. If plaintiff's cause of action did accrue at the time these acts occurred, time would start running upon plaintiff's twenty-first birthday in 1971 and would have expired in 1976. In their petition, plaintiff and wife allege their cause of action did *not* accrue at the time defendant allegedly sexually abused plaintiff, and claim the damage to plaintiff caused by defendant's alleged conduct was not capable of ascertainment until October of 1992, due to "certain psychological coping mechanisms" of plaintiff. According to plaintiff and wife, as their cause of action did not accrue until 1992, none of their claims were time-barred.

[5][6][7] In determining when a statute of limitations begins running, "[d]amage is ascertainable when the fact of damage 'can be discovered or made known,' not when a plaintiff actually discovers injury or wrongful conduct.... When damage is ascertainable is an objective determination." *96*Sheehan v. Sheehan,* 901 S.W.2d 57, 58-59 (Mo.banc 1995) (citations omitted). If the statute of limitations is raised as an affirmative defense, the trial court may not dismiss unless it is clearly established, on the petition's face and without exception, that the action is barred. *Id.* at 59. In reviewing the dismissal of a petition, reviewing courts must allow the pleading its broadest intendment, treating all facts alleged as true and construing the petition's allegations favorably to the plaintiff. *Id.*

Sheehan was handed down by the Missouri Supreme Court subsequent to the dismissal of plaintiff's and wife's claims. In that case, the trial court dismissed as barred by the statute of limitations a personal injury action by a daughter against her father for childhood sexual abuse. Daughter's petition alleged father committed numerous batteries and assaults when she was a minor, and was therefore subject to the two-year limit set out in RSMo § 516.140. Daughter's petition further alleged she "involuntarily repressed conscious memory" of the alleged abuse by father "throughout her childhood and young adulthood until August 1990 or thereafter." In granting father's motion to dismiss the petition, the trial court found that daughter's cause of action accrued when she was a minor and that she failed to bring her action within the two-year period allowed to her after her twenty-first birthday.

The Missouri Supreme Court reversed, ruling daughter's petition did not "clearly indicate on its face and without exception" that suit was barred before the effective dates of RSMo §§ 537.046.2 and 516.371. [FN3] *Id.* The Court stated:

> FN3. RSMo § 516.371 provides an action for familial sexual abuse, and went into effect August 28, 1989.

> [Daughter] alleges that [father]'s conduct caused "consequential injuries and damages." The petition does not state the date [daughter] "sustained and suffered" these injuries and damages; it is ambiguous as to when she objectively could have discovered or made known the fact of damage. The only date alleged is that she "involuntarily repressed conscious memory" of the abuse "until August 1990 or thereafter." Construing the allegations of the petition broadly and favorably to [daughter], her damage may not have been ascertainable "until August 1990 or thereafter."

Id. The Court distinguished *Vandenheuvel v. Sowell,* 886 S.W.2d 100, 104 (Mo.App.W.D.1994) --in which the Western District held that involuntary repression of memories of sexual abuse did not toll the applicable statute of limitations--on the ground *Vandenheuvel* was decided by summary judgment, "where matters outside the pleadings indicated when damages became ascertainable." *Sheehan,* 901 S.W.2d at 59. "In this case--decided on a bare motion to dismiss--there is no such record evidence." *Id.*

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Here, plaintiff's and wife's petition claimed plaintiff was abused in 1963 and 1964, but was unable to ascertain the injuries he allegedly sustained due to "psychological coping mechanisms." The respondents argue this petition, unlike the petition in *Sheehan,* does not allege repression of memory, and its terms ("increased the plaintiff's vulnerability," "had the effect of silencing plaintiff," "coping") imply plaintiff was aware of the harm or legal wrong done to him at the time of the alleged abuse.

[8][9] However, we are required to allow the pleading its broadest intendment and to construe the petition's allegations favorably to the plaintiff. *See id.* The petition's term "psychological coping mechanisms" may encompass, and the trial court clearly regarded it as including, involuntary repression of memory. In other words, the petition is ambiguous enough as to when plaintiff could have objectively discovered or made known the fact of injury from defendant's alleged conduct, to withstand a motion to dismiss on limitations grounds. We must take all the allegations in the petition as true, suspending any skepticism as to the merits of plaintiff's allegations. Plaintiff's damages may not have been ascertainable until October, 1992. If such was the case, the September 30, 1994, petition was timely filed with respect to RSMo §§ 516.120(4) and 537.046.

*97 Pursuant to *Sheehan,* we find the petition does not clearly indicate on its face and without exception that Counts I through VIII, and Count X (wife's loss of consortium claim), are barred by the statute of limitations.

[10][11] However, we will affirm the dismissal of a petition if it can be sustained on any ground presented to and considered by the trial court, regardless of whether the court relied on that ground. *Property Exchange & Sales, Inc. v. King,* 822 S.W.2d 572, 573 (Mo.App.E.D.1992). The archbishop and the church argue Count IV, plaintiff's claim of respondeat superior, failed to state a cause of action and was properly dismissed. According to the archbishop and the church, the petition on its face shows defendant was not acting within the course and scope of his employment when he allegedly engaged in sexual contact with plaintiff.

[12][13][14] Under the doctrine of respondeat superior, an employer is liable to third parties for torts committed by an employee, if the tort was committed while employee was engaged in activities within the course and scope of his or her employment. *P.S. v. Psychiatric Coverage, Ltd.,* 887 S.W.2d 622, 624 (Mo.App.E.D.1994). An act is committed within "the scope and course of employment" if it is done by virtue of the employment and in furtherance of the business or interest of the employer, regardless of the time or motive of the conduct. *Id.* "If the act is fairly and naturally incident to the employer's business, although mistakenly or ill advisedly done, and did not arise wholly from some external, independent or personal motive, it is done while engaged in the employer's business." *Id.*

In *Psychiatric Coverage,* we held the employer was not vicariously liable under respondeat superior for the sexual misconduct of an employee therapist, as this misconduct did not occur as part of any therapy program nor was it intended to further the employer's business, but rather "resulted from purely private and personal desires." *Id.* at 625. Further, other jurisdictions have refused to find religious organizations vicariously liable on respondeat superior grounds for the sexual misconduct of individual clerics. *See Tichenor v. Roman Catholic Church of New Orleans,* 32 F.3d 953, 959-960 (5th Cir.1994); *Destefano v. Grabrian,* 763 P.2d 275, 287 (Colo.1988) (sexual misconduct of defendant priest "is contrary to the principles of Catholicism and is not incidental to the tasks assigned a priest by the diocese"); *Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584, 588 (1991) (relied on by *Psychiatric Coverage,* 887 S.W.2d at 625 n. 4).

The above reasoning applies here. The acts of defendant alleged in plaintiff's and wife's petition clearly were not part of defendant's duties as a priest or as a teacher, nor were they intended to further any religious or educational interests of the Catholic Church. Accordingly, we affirm the dismissal of Count IV.

The respondents also offer alternative justifications for affirming the trial court's dismissal of plaintiff's claims of breach of fiduciary duty against defendant (Count I) and the archbishop and the church (Count VIII). Count I of plaintiff's and wife's petition

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alleged defendant "gained the trust and confidence of plaintiff" by holding himself out as a "teacher, counselor and qualified parish priest" and alleged his actions "constitute a breach of his fiduciary duties and of his trusted, confidential relationship with the plaintiff." Count VIII alleged plaintiff "reposed trust and confidence" in the archbishop and the church "as safe, competent spiritual advisors and counselors" who "owed plaintiff a duty of trust and loyalty and the duty to work solely for the benefit of their parishioners and supplicants including plaintiff." Count VIII further alleged the archbishop and the church "breached their fiduciary duties towards their parishioners, including plaintiff, and abused their position of trust and confidence in failing to protect plaintiff and others similarly situated from defendant ... after [they] knew or should have known of his dangerous propensities...."

The respondents contend Missouri does not recognize the claims set out in Counts I and VIII of plaintiff's petition, citing *Doe v. Roman Catholic Diocese* as authority. In that case (wherein the plaintiff's claims of **98** breach of fiduciary duty and clergy malpractice were found barred by the statutes of limitations) the Missouri Supreme Court noted:

> Although battery is clearly actionable, Missouri courts have not addressed the propriety of the causes of action for clergy malpractice or the tort of breach of fiduciary duty, at least in the context of childhood sexual assaults.

862 S.W.2d at 339 n. 2. The respondents also contend Counts I and VIII are not justiciable controversies, on the ground the First Amendment prohibits secular courts from defining and analyzing the scope of fiduciary duties owed by clergy and churches to their parishioners.

[15][16] Clergy and religious organizations are not absolutely immune from civil liability. *See Hester v. Barnett,* 723 S.W.2d 544, 552 (Mo.App.W.D.1987). Tort actions against religious groups or persons are not offensive to the First Amendment if based on purely secular activities, unrelated to their religious functions; if the alleged wrongdoing was clearly outside the tenets of the religion, notwithstanding its religious pretext, then it is actionable. *See id.* at 558-564.

[17] Missouri courts have not addressed whether clergy and religious organizations can be held civilly liable in actions for breach of fiduciary duty with respect to sexual misconduct of clergy. Our review of the law in other jurisdictions compels us to conclude such actions should not be recognized, as they will inevitably entangle civil courts in religious matters.

Causes of action for breach of fiduciary duty with respect to sexual misconduct of clergy were recognized in *Jones by Jones v. Trane,* 153 Misc.2d 822, 591 N.Y.S.2d 927, 931 (Sup.1992), *Moses v. Diocese of Colorado,* 863 P.2d 310, 322 (Colo.1993), *Destefano v. Grabrian,* 763 P.2d 275, 284 (Colo.1988), and *Erickson v. Christenson,* 99 Or.App. 104, 781 P.2d 383, 386 (1989). These cases reasoned that if the tortious behavior of the cleric was not religiously motivated, could be evaluated by means of "neutral principles" applicable to clergy and lay persons alike, and did not require inquiry into the tenets and beliefs of the particular cleric's faith, the First Amendment was not a defense to such actions. *See Moses,* 863 P.2d at 321. In other words,

> inasmuch as it is conduct, and not creed, that underlies plaintiffs' actions, and that the potential for civil consequences exists equally as to religious and non-religious persons, and as to clergy and lay persons of all religions alike, the Free Exercise aspect of the First Amendment does not come into play to preclude plaintiffs' [breach of fiduciary duty action]....

Jones, 591 N.Y.S.2d at 931 (citation omitted).

Conversely, similar causes of action for breach of fiduciary duty were rejected in *Schmidt v. Bishop,* 779 F.Supp. 321, 325-326 (S.D.N.Y.1991), *Dausch v. Rykse,* 52 F.3d 1425, 1438 (7th Cir.1994), and *Schieffer v. Catholic Archdiocese of Omaha,* 244 Neb. 715, 508 N.W.2d 907, 912 (1993). In those cases, the courts held that analyzing and defining the scope of fiduciary duty owed persons by their clergy (assuming pastoral relationships were "fiduciary") would require courts to define and express the standard of care followed by reasonable clergy of the particular faith involved, which in turn

> would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as

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it is impossible. It fosters excessive entanglement with religion.

Schmidt, 779 F.Supp. at 328. Further, while it may be argued that "it requires no excessive entanglement with religion to decide that reasonably prudent clergy of any sect do not molest children[,]" allowing actions for breach of fiduciary duty in such situations places courts "on the slippery slope and is an unnecessary venture, since existing laws ... provide adequate protection for society's interests." *Id.*

We align ourselves with the jurisdictions that have refused to recognize breach-of-fiduciary-duty actions against clergy for sexual misconduct. It is true the alleged behavior of defendant was not religiously motivated; in fact, it contravened the tenets and principles of the Catholic Church. However, other causes of action are available for these acts ***99** (i.e., intentional infliction of emotional distress, childhood sexual abuse), which do not require the trial court to determine whether defendant breached "his trusted, confidential relationship with the plaintiff" or whether the archbishop and the church breached "their fiduciary duties towards their parishioners, including plaintiff, and abused their position of trust and confidence[,]" as alleged in plaintiff's petition.

[18] Religion was not merely incidental to plaintiff's relationship with defendant, the archbishop, and the church; it was the foundation for it. Counts I and VIII will inevitably require inquiry into the religious aspects of this relationship, that is, the duty owed by Catholic priests, parishes, and dioceses to their parishioners. The First Amendment does not allow secular courts to judge sectarian matters. Counts I and VIII are not actionable and their dismissal is affirmed. [FN4]

FN4. Plaintiff did not bring a clergy malpractice claim in the immediate case; however, we note courts in other jurisdictions have uniformly refused to recognize clergy malpractice as a cause of action for sexual misconduct of a cleric. *See Dausch v. Rykse,* 52 F.3d 1425, 1432 (7th Cir.1994); *Schmidt v. Bishop,* 779 F.Supp. 321, 327-328 (S.D.N.Y.1991); *Schieffer v. Catholic Archdiocese of Omaha,* 244 Neb. 715, 508 N.W.2d 907, 911 (1993); *Jones by Jones v. Trane,* 153 Misc.2d 822, 591 N.Y.S.2d 927, 930 (Sup.1992); *Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584, 587 (1991); *Destefano v. Grabrian,* 763 P.2d 275, 285 (Colo.1988).
We further note that, while the archbishop and the church challenged Counts V, VI, and VII--plaintiff's claims of negligence in the hiring and supervision of defendant, of negligent infliction of emotional distress, and of intentional interference with emotional distress, respectively--on limitations grounds only and offered no alternative grounds for their dismissal at trial or on appeal, the allegations in these counts raise First Amendment concerns which may need to be addressed upon remand. *See Isely v. Capuchin Province,* 880 F.Supp. 1138, 1150-1158 (E.D.Mich.1995); *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 303, 533 N.W.2d 780, 789-792 (1995).

[19][20] Finally, Count IX, plaintiff's action for loss of consortium, was properly dismissed by the trial court for failure to state a claim. When a married person is injured, two independent, separate and distinct causes of action arise: one accrues to the injured person for the injuries, and the other accrues to the injured person's spouse for damages suffered as a result of his or her loss of the injured person's services, society and companionship. *Smith v. Paslode Corp.,* 799 F.Supp. 960, 964 (E.D.Mo.1992). The latter action is derivative only; a spouse cannot recover for loss of consortium if the other spouse has no valid claim for personal injuries. *Teschner v. Physicians Radiology,* 761 S.W.2d 665, 667 (Mo.App.E.D.1988).

[21] Here, the petition does not allege any direct personal injury sustained by wife; she had no valid claim of her own. Plaintiff seeks to derive his loss of consortium claim from his own injuries, not those of wife, thereby duplicating the damages he seeks in his primary claim. Plaintiff failed to state a cause of action on this claim. We affirm the trial court's dismissal of Count IX. [FN5]

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> FN5. With respect to Count X, wife's claim of loss of consortium, we note if it is determined on remand that plaintiff's cause of action accrued prior to their marriage, wife will not be able to recover on this claim. Claims for loss of consortium based on spousal injuries sustained prior to marriage are precluded, unless neither spouse is aware of the tortious conduct or injury at the time of their marriage. *Smith v. Paslode Corp.*, 799 F.Supp. at 964.

The dismissal of Counts I, IV, VIII, and IX is affirmed; the dismissal of Counts II, III, V, VI, VII, and X is reversed and cause remanded for further proceedings.

SMITH, P.J. and RHODES RUSSELL, J. concur.

913 S.W.2d 92, 106 Ed. Law Rep. 415

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EXHIBIT 24

880 F.Supp. 1138
99 Ed. Law Rep. 797
(Cite as: 880 F.Supp. 1138)

▷

United States District Court,
E.D. Michigan,
Southern Division.

Paul ISELY, Plaintiff,
v.
CAPUCHIN PROVINCE, et al., Defendants.

No. 93-CV-74820-DT.

March 16, 1995.

Student brought action against priests who allegedly sexually abused him, in both Wisconsin and Michigan as well as priests' supervisors, seminary, and others (nonabusers), seeking compensatory and punitive damages. Student's claims against nonabusers were based on breach of contract, statutory negligence, negligent hiring, negligent supervision, failure to warn, and failure to adopt sexual abuse policy. Nonabusers and one purported abuser priest moved for judgment as a matter of law. The District Court, Rosen, J., held that: (1) any breach of contract action student may have had against nonabusers was barred by Michigan's six-year statute of limitations; (2) under Michigan law, Michigan nonabusers were not liable for negligent hiring, negligent supervision, negligent failure to warn or negligent failure to prevent sexual abuse; (3) under Michigan law, prenovitiate program did not have duty to have sexual abuse policy; (4) Wisconsin's reporting statute which requires school administrators to report injuries or other abuse inflicted on children did not provide private cause of action; (5) student's action against Wisconsin nonabusers for negligent hiring was barred by First Amendment; (6) under Wisconsin law as predicted by district court, there was no cause of action for negligent supervision at time student was allegedly sexually abused by priests; (7) under Wisconsin law, student stated cause of action against certain Wisconsin nonabusers for negligent failure to warn or failure to prevent sexual abuse of student; and (8) student was not entitled to punitive damages.

Motions granted in part and denied part; action dismissed in part.

See also 877 F.Supp. 1055.

West Headnotes

[1] Federal Civil Procedure ⇐2121.1
170Ak2121.1 Most Cited Cases

Although issue of whether court should enter judgment as matter of law is matter usually raised by party by way of motion, district court also has power to grant such judgments sua sponte, even when no motion is made. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

[2] Federal Civil Procedure ⇐2111
170Ak2111 Most Cited Cases

Federal district court sitting in diversity is to apply standard for judgment as matter of law used by courts of state whose substantive law governs action. Fed.Rules Civ.Proc.Rule 50(a), 28 U.S.C.A.

[3] Contracts ⇐187(1)
95k187(1) Most Cited Cases

Student at seminary could not recover breach of contract damages for alleged sexual abuse of student by priests on theory that he was third-party beneficiary of contract between his parents, seminary and seminary's governing province, where there was no evidence of any contract between parents and seminary or parents and governing province.

[4] Contracts ⇐187(1)
95k187(1) Most Cited Cases

Proof of existence of contract and its terms is prerequisite for action by third-party beneficiary to enforce contractual duty.

[5] Limitation of Actions ⇐95(9)
241k95(9) Most Cited Cases

Any breach of contract action student may have had against seminary or seminary's governing province resulting from alleged sexual abuse of student by priests was barred by Michigan's six-year statute of limitations; although student repressed memory of purported sexual abuse for more than ten years, any breach of contract action accrued when purported sexual abuse occurred, not when student recalled purported abuse. M.C.L.A. § 600.5807(8).

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[6] Limitation of Actions ⇐95(9)
241k95(9) Most Cited Cases

Under Michigan law, breach of contract claim accrues on date of breach, not date that breach is discovered, for purposes of Michigan's six-year statute of limitations. M.C.L.A. § 600.5807(8).

[7] Limitation of Actions ⇐95(9)
241k95(9) Most Cited Cases

Six-year Wisconsin statute of limitations for breach of contract begins to run on date breach occurs, not date when breach is discovered. W.S.A. 893.43.

[8] Colleges and Universities ⇐5
81k5 Most Cited Cases

[8] Master and Servant ⇐303
255k303 Most Cited Cases

Under Michigan law, supervisors of priests, prenovitiate program, and program's governing province were not liable for negligent hiring, negligent supervision, negligent failure to warn or negligent failure to prevent sexual abuse in action by seminary student who was allegedly sexually abused by priests, where student never reported sexual abuse to anyone and there was no evidence that anyone else ever reported sexual abuse by priests.

[9] Colleges and Universities ⇐5
81k5 Most Cited Cases

At time priests allegedly sexually abused student who attended prenovitiate program, prenovitiate program did not have duty to have sexual abuse policy under Michigan law and, thus, student could not recover in negligence for prenovitiate program's failure to have sexual abuse policy; student had repressed his memory of purported instances of sexual abuse for more than ten years, and although duty to establish sexual abuse policy may have existed at time of trial, there was no evidence of any duty to establish sexual abuse policy at time sexual abuse allegedly occurred.

[10] Action ⇐3
13k3 Most Cited Cases

Wisconsin's reporting statute which requires school administrators to report injuries or other abuse inflicted on children did not provide private cause of action and, thus, student who was allegedly abused by priests while he attended seminary could not bring negligence action under reporting statute against priests' supervisors, seminary, or province governing seminary for failure to report purported sexual abuse of student; at time of alleged sexual abuse, reporting statute was purely criminal in nature. W.S.A. 48.981.

[11] Infants ⇐13
211k13 Most Cited Cases

Even if Wisconsin's reporting statute, which requires school administrators to report injuries or other abuse inflicted on children, provided private cause of action, seminary's administers, seminary, and province governing seminary did not negligently fail to report priests' alleged sexual abuse of student at seminary in violation of statute, where there was no evidence that any alleged abuse victim personally reported his own sexual abuse to anyone at seminary. W.S.A. 48.981.

[12] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Inquiry into seminary's decisions regarding who should be permitted to become or remain a priest would have involved excessive entanglement with religion which is prohibited by First Amendment and, thus, First Amendment prohibited student's action against priests' supervisors, seminary, and seminary's governing province for negligent hiring of priests who allegedly sexually abused student; questions of hiring and retention of clergy necessarily require interpretation of church canons and internal church policies and practices. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

When court is required to interpret canon law or internal church policies and practices, First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion. U.S.C.A. Const.Amend. 1.

[14] Colleges and Universities ⇐5

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81k5 Most Cited Cases

[14] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Matters pertaining to supervision of priests at seminary could be decided without determining questions of church law and policy and, thus, negligent supervision claims brought by student who was allegedly sexually abused by priests were not barred by First Amendment. U.S.C.A. Const.Amend. 1.

[15] Federal Courts ⇐390
170Bk390 Most Cited Cases

When state law supplies rule of decision, it is incumbent upon federal court to determine how highest court of state would decide case if it were presented to it.

[16] Torts ⇐2
379k2 Most Cited Cases

Tort action is to be determined by application of law which existed at time of occurrence of events upon which action is predicated.

[17] Colleges and Universities ⇐5
81k5 Most Cited Cases

Under Wisconsin law as predicted by district court, there was no cause of action for negligent supervision at time student was allegedly sexually abused by priests and, thus, student could not maintain negligent supervision action against priests' supervisors, seminary, or province governing seminary; negligent supervision claim had still not been recognized as independent cause of action in Wisconsin nearly 20 years after sexual abuse allegedly occurred and negligent supervision tort had not been universally accepted in other jurisdictions at time sexual abuse allegedly occurred.

[18] Schools ⇐89.2
345k89.2 Most Cited Cases

Under Wisconsin law, no duty can be imposed on a school to protect a student from intentional torts of teacher simply because of their status as student and teacher; rather, there must be evidence that school's supervisory officials had knowledge of activities of teacher who was subject of complaints.

[19] Colleges and Universities ⇐5
81k5 Most Cited Cases

Under Wisconsin law, priest's supervisors, seminary and seminary's governing province were not liable to student who was allegedly sexually abused by priest for negligent failure to warn or failure to prevent sexual abuse; plaintiff student did not report alleged sexual abuse to anyone at seminary, and another student's report that priest had "hurt" him, yelled at him, called him stupid, made him feel bad and made him feel ashamed was insufficient to constitute notice of sexual abuse by priest.

[20] Colleges and Universities ⇐5
81k5 Most Cited Cases

Under Wisconsin law, allegations that student reported to seminary's athletic director that priest had sexually abused him and that another student had reported that priest has massaged his neck and ran his hand down student's chest to his belt stated cause of action against athletic director, seminary, and seminary's governing province for negligent failure to warn or failure to prevent sexual abuse of student by priest.

[21] Damages ⇐208(8)
115k208(8) Most Cited Cases

Under Wisconsin law, whether there is sufficient evidence to submit question of punitive damages to jury is question of law to be decided by court.

[22] Damages ⇐91(1)
115k91(1) Most Cited Cases

Under Wisconsin law, remedy of punitive damages is only available when defendant acts in wanton, willful, or reckless disregard of plaintiff's rights or interests.

[23] Damages ⇐184
115k184 Most Cited Cases

Under Wisconsin law, outrageous conduct which would support award of punitive damages must be proven by clear and convincing evidence.

[24] Damages ⇐91(1)

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115k91(1) Most Cited Cases

Under Wisconsin law, fact that conduct on which suit is based is unlawful and would subject defendant to criminal prosecution is not itself sufficient to impose punitive damages.

[25] Damages ⇦184
115k184 Most Cited Cases

[25] Religious Societies ⇦30
332k30 Most Cited Cases

Student who was allegedly sexually abused by priests while he attended seminary was not entitled to punitive damages against priests' supervisors, seminary, or seminary's governing province in student's breach of contract and negligence action; although there was some evidence that defendants had notice of priests' sexual abuse, evidence was at best contradictory and was not clear and convincing.

[26] Religious Societies ⇦30
332k30 Most Cited Cases

Student's claims against priests who allegedly sexually abused him for professional negligence, which were essentially claims for clergy malpractice, did not state cause of action under Wisconsin law.

[27] Religious Societies ⇦30
332k30 Most Cited Cases

Student's claims against priests who allegedly sexually abused student for "intentional conduct" precluded student's negligence claims against priests; it was legally impossible to claim that alleged perpetration of deliberate sexual abuse injured student negligently.
*1141 Heidi L. Salter and Don Ferris, Ann Arbor, MI, for plaintiff.

James N. Martin and Michael R. Janes, Mt. Clemens, MI, for defendants Capuchin, St. Lawrence, Thiel, Hoelscher, Kowalsky, Werner Wolf and Smith

Frank W. Brochert, Detroit, MI, for Jim Wolf.

Gerald Boyle, Milwaukee, WI, for defendant Leifeld.

OPINION AND ORDER REGARDING DEFENDANTS' MOTIONS FOR DIRECTED VERDICT/JUDGMENT AS A MATTER OF LAW

ROSEN, District Judge.

I. *INTRODUCTION*

This matter is presently before the Court on the Motion of Defendants Capuchin Province, St. Lawrence Seminary, Lloyd Thiel, Kevin Hoelscher, Myron Kowalsky, Werner Wolf and Ron Smith (the "non-abuser Defendants") for Judgment as a Matter of Law pursuant to Fed.R.Civ.Pro. 50 and, on the separate "Motion for Directed Verdict" [FN1] filed *1142 by individual Defendant Jim Wolf. Both of these motions were submitted to the Court after Plaintiff concluded his proofs. The Court deferred ruling on the motions until the Defendants concluded their case, as well.

FN1. Rule 50 was revised in 1991, and that revision abandoned the terminology "directed verdict". The standards applicable to "judgments as a matter of law", however, remain the same as the standards under the former "directed verdict". *See* Advisory Committee Notes on the 1991 Amendment to Fed.R.Civ.Pro. 50. Although Defendants have used the terms directed verdict and judgment as a matter of law interchangeably, the Court will use the term "judgment as a matter of law" in this Opinion and Order.

Having reviewed and considered the briefs filed by the moving Defendants and the opposition briefs filed by Plaintiff, [FN2] and having heard the oral arguments of counsel at the hearing held on March 15, 1995, the Court is now prepared to rule on these motions. This Opinion and Order sets forth that ruling.

FN2. In addition to their Brief specifically filed in support of their Rule 50 Motion, the non-abuser Defendants have filed two "Supplemental Briefs" in further support of their Motion, and also have incorporated

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by reference the various Memoranda of Law they submitted during the course of trial regarding punitive damages, negligence *per se,* and First Amendment issues. Plaintiff also responded to these various other briefs. The Court has reviewed and considered all of these briefs in considering the Rule 50 motions presently before it.

II. *SUMMARY OF PLAINTIFF'S CLAIMS AGAINST THE VARIOUS DEFENDANTS*

In his Complaint, Plaintiff has asserted 17 counts. With respect to the two individuals Plaintiff accuses of actually abusing him, Defendants Gale Leifeld and Jim Wolf, Plaintiff has alleged that these two Defendants sexually molested him while he was a student at St. Lawrence Seminary in Fond-du-Lac, Wisconsin and while he was a resident at the Pre-Novitiate house, in Detroit, Michigan. He has asserted three separate causes of action against each of these two individuals: "intentional misconduct" (Counts I and IX); "common law negligence" (Counts II and X); and "professional negligence" (Counts III and XI).

As to the non-abuser Defendants, Plaintiff has alleged the following claims:

(A) "Breach of Contract"
. Against St. Lawrence Seminary [Count V];
. Against the Capuchin Detroit Pre-Novitiate Program [Count XIII]; and
. Against the Capuchin Province [Count XVII].
(B) "Statutory Negligence" (for failure to report the alleged abuse of Jim Buser and Gale Leifeld in violation of the Wisconsin Reporting Statute):
. Against Kevin Hoelscher [Count VI];
. Against Lloyd Thiel [Count VII];
. Against Myron Kowalski [Count VIII];
. Against St. Lawrence Seminary [Count IV];
. Against the Capuchin Province [Count XVI].
(C) "Common Law Negligence"
(1) predicated upon the alleged actions of Jim Buser and Gale Leifeld in Wisconsin:
. Against Kevin Hoelscher [Count VI];
. Against Lloyd Thiel [Count VII];
. Against Myron Kowalski [Count VIII];
. Against St. Lawrence Seminary [Count IV];
. Against the Capuchin Province [Count XVI]; and
(2) predicated upon the alleged actions of Jim Wolf in Detroit:
. Against the Capuchin Pre-Novitiate Program [Count XII];
. Against Werner Wolf [Count XIV];
. Against Ron Smith [Count XV];
. Against Lloyd Thiel [Count VII]; and
. Against the Capuchin Province [Count XVI].

Plaintiff has asserted several theories of "common law negligence" under which he seeks to impose liability on the nonabuser Defendants, to-wit:
. negligent hiring of Jim Buser, Gale Leifeld and Jim Wolf;
. negligent supervision of Buser, Leifeld and Jim Wolf;
. failure to warn Plaintiff or his parents that Buser, Leifeld and Jim Wolf were sex abusers and failure to prevent their sex abuse of him; and
. failure to adopt a sexual abuse policy.

*1143 Integral to his Complaint against all of the Defendants is Plaintiff's contention that he repressed the memories of most of Buser's, Leifeld's and Jim Wolf's abuse of him until late in 1992, thus tolling the statutes of limitations on his claims arising out of these incidents. [FN3]

FN3. The Court earlier ruled that the issue of whether such incidents were truly repressed and, if so, when Plaintiff had sufficient recollection of the incidents for purposes of commencing the running of the statutes of limitations were issues for the jury.

III. *DEFENDANTS' ARGUMENTS FOR JUDGMENT AS A MATTER OF LAW.*

Arguments of the Non Abuser Defendants

The non-abusing Defendants argue that a judgment as a matter of law under Rule 50 should be entered in their favor on Plaintiff's breach of contract claims because Plaintiff has not presented evidence of a contract or its material terms with respect to either his education at St. Lawrence Seminary or his stay at the Detroit Pre-Novitiate House. With respect to Plaintiff's claims of statutory negligence for failure to report alleged sexual abuse by Fathers Buser and Leifeld, the non-abusing Defendants contend that Plaintiff has not demonstrated that the Wisconsin

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Reporting Statute was violated by any of them, and even if he has presented factual evidence to establish a breach of the statute's terms, a violation of the statute cannot, as a matter of law, support a private cause of action.

As for Plaintiff's claims of common law negligence, the nonabusing Defendants assert several arguments. First, they argue, with respect to Plaintiff's Wisconsin claims of negligent hiring and negligent supervision, that Wisconsin does not recognize such claims as independent causes of action. They further argue that, even if claims of negligent hiring/negligent supervision were cognizable under Wisconsin law, this Court is without jurisdiction to adjudicate such claims in this case because to do so would amount to excessive entanglement with religion and would violate the First Amendment of the U.S. Constitution and the Wisconsin Constitution, as well.

With respect to Plaintiff's claim that the non-abusing Defendants are liable for failure to warn him of, and failure to prevent, his sexual abuse by Fathers Buser, Leifeld and Jim Wolf, Defendants contend that Plaintiff has not presented evidence establishing that he reported his abuse by these priests, and he has not shown that any supervisory non-abusing Defendant was put on notice of Father Buser's, Leifeld's or Jim Wolf's sexual activities prior to Plaintiff's alleged abuse by them so as to impose liability upon the non- abusers, the seminary or the Order.

As to Plaintiff's claim of failure to have a sexual abuse policy in place, Defendants contend that this claim must be dismissed as well because Plaintiff has not shown that the Defendants had any statutory or common law duty to have a sexual abuse policy.

Defendants further argue with regard to all of Plaintiff's theories of common law negligence, that even if Plaintiff has shown that they were negligent, dismissal of the negligence claims is nonetheless required because Plaintiff has not established that the negligence of the non-abusers proximately caused his alleged damages.

Finally, the non-abusing Defendants contend that the evidence presented does not support Plaintiff's claims for punitive damages. Therefore, they seek dismissal of all of Plaintiff's allegations of punitive damages as to the non- abuser Defendants.

Defendant Jim Wolf's Arguments [FN4]

> FN4. The other individual Defendant accused of abuse, Gale Leifeld, has filed no dispositive motions, nor has he joined in any of the other Defendants' motions.

Defendant Jim Wolf has separately moved for entry of judgment as a matter of law in his favor. His argument is that Plaintiff has not presented sufficient evidence to warrant submitted the case against him to the jury because he has not presented sufficient evidence to establish that the alleged sexual abuse by Jim Wolf occurred or that Plaintiff could not have discovered the alleged abuse less than three years before he filed this *1144 lawsuit. With respect to this latter issue, Defendant Jim Wolf argues that the testimony of Plaintiff's psychological experts is insufficient to allow a reasonable juror to conclude that the repressed memory theory is scientifically valid, and therefore, a directed verdict on this basis alone is required.

IV. *DISCUSSION*

A. *STANDARDS APPLICABLE TO A RULE 50 MOTION FOR ENTRY OF A JUDGMENT AS A MATTER OF LAW*

Motions for entry of judgment as a matter of law (formerly known as "directed verdict" motions) are governed by Fed.R.Civ.Pro. 50(a), which provides:

> **(a) Judgment as a Matter of Law.**
> (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.
> (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitle to the judgment.

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Fed.R.Civ.Pro. 50(a).

[1] Although the issue of whether the court should enter a judgment as a matter of law is a matter usually raised by a party by way of motion, it is well-settled that the district court also has the power to grant such judgments *sua sponte,* even when no motion is made. *Safeway Stores v. Fannan,* 308 F.2d 94, 99 (9th Cir.1962); *Peterson v. Peterson,* 400 F.2d 336, 343 (8th Cir.1968).

State Law Standards Apply

[2] It is well-established in this Circuit that a federal district court sitting in diversity is to apply the standard for judgment as a matter of law used by the courts of the state whose substantive law governs the action. *American & Foreign Ins. Co. v. General Electric Co.,* 45 F.3d 135 (6th Cir.1995); *Potti v. Duramed Pharmaceuticals, Inc.,* 938 F.2d 641, 645 (6th Cir.1991). [FN5] In this case, Michigan law applies to the claims predicated upon events that allegedly occurred at the Detroit Pre-Novitiate House, and Wisconsin law applies to the claims arising out of events that occurred in Wisconsin.

> FN5. This is the rule of the Seventh Circuit, as well. *See McGeshick v. Choucair,* 9 F.3d 1229, 1235 (7th Cir.1993).

According to Michigan law, "[a] trial court may direct a verdict on an issue if the evidence, viewed in a light most favorable to the non-moving party, fails to give rise to a material issue of fact upon which reasonable minds could differ." *American & Foreign Ins. Co. v. General Electric Co., supra,* quoting *Coffey v. State Farm Mutual Auto Insurance Co.,* 183 Mich.App. 723, 455 N.W.2d 740, 742 (1990).

The Wisconsin standard is similar. As summarized by the Wisconsin Supreme Court in *State of Wisconsin v. Leach,* 124 Wis.2d 648, 370 N.W.2d 240 (1985):

> The test is whether there is any credible evidence which under a reasonable view would support a verdict contrary to that which is sought....
> A case should be taken from the jury and a verdict directed against a party:
> "... only when the evidence gives rise to no dispute as to the material issues or only when the evidence is so clear and convincing as reasonably to permit unbiased and impartial minds to come to but one conclusion." ...
> Th[e] court must take the view of the evidence which is most favorable to the party against whom the verdict [is] sought to be directed. If there is any evidence to sustain a defense or a cause of action, the case must be submitted to the jury. The weight and sufficiency of the evidence is ***1145** for the jury, as is the weight to be given to the witness' positive or negative testimony. Furthermore, it is basic that the credibility of the evidence and the inferences to be drawn therefrom are matters for the jury. If there is any evidence other than mere conjecture or incredible evidence to support a contrary verdict, the case must go to the jury.
> Nevertheless, the party having the burden of proof must come forward with evidentiary facts that establish the ultimate facts; and the degree of proof must be such as to remove these ultimate facts from the field of mere speculation and conjecture. A jury cannot be allowed to merely theorize the ultimate facts from what might be a mere possibility.

Id., 370 N.W.2d at 249 (citations omitted).

The Court will decide the motions before it by application of the foregoing principles. The Court will address the non-abuser Defendants' arguments for directed verdict first, and then will address Defendant Jim Wolf's motion and issues concerning the claims against the accused abuser defendants.

B. *PLAINTIFF HAS NOT PRESENTED EVIDENCE OF A CONTRACT*

[3] In his Complaint, Plaintiff alleges that he is a third-party beneficiary of contracts entered into by his parents with St. Lawrence Seminary and the Capuchin Province (Counts V, XIII and XVII) which he claims were breached by these Defendants by virtue of the alleged acts of sexual abuse performed by Fathers Buser and Leifeld at St. Lawrence Seminary in Wisconsin and by Jim Wolf at the Pre-Novitiate Program in Detroit. Plaintiff, however, did not put on any evidence of any contract or its agreed-upon terms. The only

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"evidence" presented at trial was Plaintiff's testimony that his parents paid tuition to St. Lawrence, and paid for his room and board at the Pre- Novitiate Program.

[4] It is black-letter law that proof of the existence of a "contract" and its terms is a pre-requisite for an action by a third-party beneficiary to enforce a contractual duty. *See* Restatement (Second) of Contracts, § 304 ("A promise *in a contract* creates a duty in the promisor to any intended beneficiary to perform the promise, and the intended beneficiary may enforce the duty.")

[5][6] More importantly, however, even if Plaintiff has presented evidence of a contract, its terms, and the breach thereof, the ***breach of contract claims are time-barred.*** The Court has ruled that Michigan statutes of limitations will govern all claims in this action, both those arising out of Michigan activities, as well as those arising out of Wisconsin activities. [FN6] The law in Michigan regarding the statute of limitations for breach of contract is that "[a] breach of contract claim accrues on the date of the breach, *not the date that the breach is discovered.*" *Michigan Millers Mutual Ins. Co., et al. v. West Detroit Building Co.*, 196 Mich.App. 367, 494 N.W.2d 1, 4 n. 1 (1992).

> FN6. See the Court's February 10, 1995 "Opinion and Order Regarding Choice of Law", pp. 7-9.

[7] Michigan's statute of limitations for breach of contract, M.C.L. § 600.5807(8), is six years. Plaintiff left St. Lawrence Seminary in 1978, therefore, at the latest, any action for breach of any contract with St. Lawrence Seminary would have to have been filed by 1984. Plaintiff spent one year in the Detroit Pre-Novitiate Program, from 1978-1979. Therefore, the latest any claim for breach of any contract pertaining to the Pre-Novitiate Program could have been filed was 1985. This action was not filed until October 1993. Clearly, Plaintiff's contract claims are time-barred. [FN7]

> FN7. Although the Court has determined that Michigan statutes of limitations will govern both those arising out of Michigan activities as well as those arising out of Wisconsin activities, the Court notes that even if Wisconsin law were to apply, the result would be the same. Wisconsin law is the same as Michigan's in this regard. The six-year Wisconsin statute of limitations begins to run on the date the breach occurs, not on the date when the breach is discovered. *CLL Associates Limited Partnership v. Arrowhead Pacific Corp.*, 174 Wis.2d 604, 497 N.W.2d 115 (1993). In the *CLL* case, the Wisconsin court specifically held that the delayed discovery rule does not apply to breach of contract claims.

*1146 Therefore, Counts V, XIII, and XVII will be *DISMISSED* in their entirety.

C. JUDGMENT AS A MATTER OF LAW WILL BE ENTERED ON PLAINTIFF'S "COMMON LAW NEGLIGENCE CLAIMS" AGAINST THE NON-ABUSER DEFENDANTS PREDICATED UPON THE ALLEGED ACTIONS OF JIM WOLF AT THE PRE-NOVITIATE PROGRAM IN DETROIT.

Plaintiff has alleged that the non-abusing Defendants are liable for injuries he incurred as a result of sexual abuse perpetrated upon him by Father Jim Wolf at the post-high school Pre-Novitiate Program in Detroit, under theories of negligent hiring/negligent supervision; failure to warn of, and failure to prevent Jim Wolf's sexual abuse; and failure to have a sexual abuse policy in place.

He has asserted these "common law negligence" claims against the following Defendants:

. Against the Capuchin Pre-Novitiate Program [Count XII];
. Against Werner Wolf [Count XIV];
. Against Ron Smith [Count XV];
. Against Lloyd Thiel [part of Count VII]; and
. Against the Capuchin Province [part of Count XVI]

As indicated above, the Court has determined that Michigan substantive law applies to the claims predicated upon events which occurred in Michigan. The law in Michigan regarding

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negligent hiring/negligent retention of employees, failure to warn of an employee's propensities and failure to prevent injuries caused by the intentional conduct of an employee is that

> "[T]here is no liability on the part of an employer for torts intentional or recklessly committed beyond the scope of his master's business.... [However,] the law does impose upon employers the duty of using reasonable care in the hiring of employees.... *[I]n order to find negligence in such a case, [the finder of fact must be presented with evidence demonstrating that] the employer knew or should have known of [the employee's] propensities [to act in the complained of manner.]*"

Hersh v. Kentfield Builders, Inc., 385 Mich. 410, 189 N.W.2d 286 (1971). *See also, Damrow v. Holbrook-Patterson, Inc.*, 951 F.2d 348, 1991 WL 278794, 1991 U.S.App. LEXIS 30690 (6th Cir.1991) (unpublished opinion; text available on LEXIS).

[8] In this case, Plaintiff admits that he has no evidence that notice of Jim Wolf's abuse was ever given to Werner Wolf, Ron Smith or anyone else. He further admits that the only basis for his claims against Lloyd Thiel is the fact that Father Thiel was the provincial (i.e., the head of the Order) at the time that he was in the Pre-Novitiate Program. He admits he never reported Jim Wolf's abuse to anyone, and he admits he has no evidence that anyone else ever reported Jim Wolf's sexual activities to Werner Wolf, Ron Smith, Lloyd Thiel, or any other Capuchin in an administrative or supervisory position connected with the Detroit Pre-Novitiate Program prior to or during 1978-1979.

[9] As for the "failure to have a sex abuse policy in place", Plaintiff has presented no evidence, nor cited any law, that there existed at the time in question, any duty (either statutory or under common law) to have such a policy in place, and the Court has found no cases which might support an allegation of such a duty.

This, perhaps, reflects one of the problems, or challenges, presented to plaintiffs in repressed memory cases. At the time of the sexual abuse incidents in question, the problem of child sexual abuse was not as much in the public conscience as it is today and, consequently, the decisional precedent from courts from that time which might create a duty to have a sex abuse policy simply does not exist, nor had the policy branches of government addressed this problem. Thus, courts sitting today in cases of repressed memory are without statutory or decisional guidance as to the source or nature of any duty that might be alleged relating to past incidents of sexual abuse. However, it is clear to this Court that it would be unfair to apply contemporary standards of duty and care to create a cause of action that did not *1147 exist at the time of the incidents. Such bootstrapping of past incidents into contemporary mores would place an undue burden on defendants attempting to defend such cases. Unfortunately, in cases of repressed memory, it may be, as here, that the law at the time simply did not provide a cause of action with an attendant remedy.

Since no evidence was presented at trial to establish that the Defendants were under any duty to have a sex abuse policy in place in 1978-1979, or that Werner Wolf, Ron Smith, Lloyd Thiel, or any other Capuchin in an administrative or supervisory position connected with the Detroit Pre-Novitiate Program were ever put on notice of Jim Wolf's sexual activities, Plaintiff's common law negligence claims against the non-abuser Defendants predicated upon Jim Wolf's alleged actions at the Detroit Pre-Novitiate Program must be dismissed.

Accordingly, Counts XII, XIV, and XV will be DISMISSED in their entirety and, with respect to Counts VII and XVI, those specific claims against Defendant Thiel and the Capuchin Order predicated upon Jim Wolf's actions at the Pre-Novitiate Program in Detroit, will also be dismissed. (The claims against Thiel and the Order predicated upon the Wisconsin actions are discussed, *infra.*)

D. *THE WISCONSIN TORT CLAIMS AGAINST THE NON-ABUSER DEFENDANTS*

1. *"STATUTORY NEGLIGENCE"*

[10] Plaintiff has alleged "statutory" negligence against the following Defendants for failure to report the sex abuse of Jim Buser and Gale Leifeld in violation of the Wisconsin Reporting Statute, Wisc.Stat. § 48.981:

. Kevin Hoelscher [Count VI];
. Lloyd Thiel [Count VII];

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. Myron Kowalsky [Count VIII];
. St. Lawrence Seminary [Count IV]; and
. Capuchin Province [Count XVI]

During 1974-78, Kevin Hoelscher was St. Lawrence's athletic director and Myron Kowalski was a music teacher and in charge of the sophomore class. Lloyd Thiel was not at St. Lawrence at the time. He was the provincial head of the Capuchin's St. Joseph province.

At the time in question, the Wisconsin Reporting Statute was purely criminal in nature. It provided as follows:

Reports on Abused or Injured Children.

(1) A physician or surgeon ... or a nurse, social worker or *school administrator having reasonable cause to believe that a child brought to him or coming before him has had physical injury or other abuse inflicted upon him by another,* other than by accidental means, *shall orally report the same, and the facts and circumstances forming the opinion.* The report shall be made immediately by telephone or otherwise, and followed by a report in writing to a child welfare agency specified in 48.56(1) or the sheriff of the county....

* * * * * *

(3) Anyone knowingly and willfully violating this section by failing to file a report as required may be fined not more than $100 or imprisoned not more than 6 months or both.

Wisc.Stat. 48.981. [FN8]

FN8. This statute was amended in 1979, after the incidents alleged by Plaintiff, to expand both the scope of the reporting duties and the categories of officials who had a duty to report. Included in these expanded responsibilities were school teachers and counselors. As amended in 1979, § 48.981 provides in pertinent part, as follows:

A physician, coroner, medical examiner, nurse, dentist, chiropractor, optometrist, acupuncturist, other medical or mental health professional, social worker, marriage and family therapist, professional counselor, public assistance worker, *school teacher, administrator or counselor,* mediator under § 767.11, child care worker in a day care center or child caring institution, day care provider, alcohol or other drug abuse counselor, member of the treatment staff employed by or working under contract with a county department ..., physical therapist, occupational therapist, speech-language pathologist, audiologist, emergency medical technician or police or law enforcement officer *having reasonable cause to suspect that a child seen in the course of professional duties has been abused or neglected or having reason to believe that a child seen in the course of professional duties has been threatened with abuse or neglect and that abuse or neglect of the child will occur shall, except as provided under subsection (2m), report as provided in subsection (3)....*

Although no Wisconsin state or federal court has been called upon to decide specifically *1148 whether a civil negligence action can be maintained for violation of the Wisconsin Reporting Statute, [FN9] several courts have been called upon to decide this issue in the context of child abuse reporting statutes with virtually identical language to that of the Wisconsin statute. All of these courts have concluded that no private right of action can lie for failure to report. *See, Borne v. Northwest Allen County School Corp.,* 532 N.E.2d 1196 (Ind.App.1989), *app. denied,* 558 N.E.2d 828 (Ind.1990); *Doe "A" v. Special School District of St. Louis County,* 637 F.Supp. 1138 (E.D.Mo.1986), *aff'd,* 901 F.2d 642 (8th Cir.1990); *Thelma D. v. Board of Education,* 669 F.Supp. 947 (E.D.Mo.1987); *Fischer v. Metcalf,* 543 So.2d 785 (Fla.App.1989).

FN9. Defendants have stated in Paragraph 5 of their February 20, 1995 "Motion to Dismiss Plaintiff's Allegations of Negligence Based on the Wisconsin Reporting Statute", that

"the Wisconsin Court of Appeals stated that with respect to the Wisconsin Reporting Statute, there was no legislative intent to create a private right of action and

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> therefore no action could be maintained for failure to report. *Fortier v. Flambeau Plastics Co.,* 164 Wis.2d 639, 476 N.W.2d 593 (1991)."
> Contrary to Defendants' representation, the case cited by Defendants, *Fortier v. Flambeau Plastics,* has absolutely nothing to do with the Wisconsin Reporting Statute. That case is a toxic dumping case.

These cases make clear that in deciding whether a violation of the reporting statute can support a private negligence cause of action, the court should consider the provisions of the statute *as a whole* to determine whether the legislature intended to authorize a civil action. Having reviewed the entire text of Section 48.981 as it existed in 1974-78, this Court finds nothing to indicate that the Wisconsin legislature intended to authorize a private cause of action for failure to report. The Court agrees with the reasoning of the Indiana Court of Appeals which explained in *Borne, supra:*

> When the provisions of the act are considered as a whole, there is no apparent intent to authorize a civil action for failure of an individual to make the oral report.... Furthermore, such an action is not authorized at common law and its maintenance would raise substantial questions of causation since the failure would not in the direct sense, be a proximate cause of the injury to the child. It would, we believe, misdirect judicial time and attention from the very real problems of children in need of services in favor of pursuing collateral individuals, who are presumably capable of responding in money damages, on the ground that they knowingly failed to make an oral report. We conclude that was not within the legislative purpose of the act.

532 N.E.2d at 1203. [FN10]

> FN10. The Court notes that the Milwaukee County Circuit Court also determined that no private cause of action exists for violation of Section 48.981. In *Brown v. Archdiocese of Milwaukee,* Milwaukee County Circuit Court No. 93-CV-003237 (Sept. 26, 1994 decision), the court stated:
> ... Sec. 48.981 in this Court's opinion does not impose a duty on organizations to report abuse, nor does it create a civil cause of action. It is strictly a regulatory reporting statute that involves individuals. So the 48.981 claims will be dismissed....
> [Ex. B to Defendants' Motion to Dismiss Plaintiff's Allegations of Negligence Based on the Wisconsin Reporting Statute, p. 6.]

[11] Moreover, even assuming arguendo that a private cause of action can be maintained for violation of 48.981, Plaintiff has not presented sufficient evidence to establish that the statute was violated. The statute, by its terms requires reporting only when (1) an abuse victim is "brought before" a school administrator or "comes before" the administrator, and (2) the administrator had a "reasonable cause" to suspect that the boys were abused.

With respect to the "brought before"/"comes before" requirement, in *Landeros v. Flood,* 17 Cal.3d 399, 131 Cal.Rptr. 69, 551 P.2d 389 (1976), the California Supreme Court was called upon to construe a similar requirement in the California reporting statute. The California court determined that a doctor could be held liable for violation of the statute only if the child actually appeared before him and his injuries were apparent. ***1149** Although this Court does not necessarily read into the statute the requirement that a child be brought physically before a school administrator before the reporting duty is triggered, the Court believes that the "brought before" language does reflect a legislative intent that the nature of the abuse report brought to the attention of the administrator be more than simply rumor, conjecture or speculation. This intent is also clearly reflected in the "reasonable cause" requirement of the statute, which is the same kind of requirement imposed in the Missouri reporting statute. In construing this provision of the Missouri statute, the court in *Doe "A", supra,* explained,

> *The statute does not require school* teachers and *administrators to report every suspicion of abuse.*
> Rather, the statute specifically requires reporting on when there is a *reasonable* cause to suspect abuse. This requirement calls for the exercise of a teacher's or administrator's professional judgment.

637 F.Supp. at 1148. *See also, Rosacrans v.*

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Kingon, 154 Mich.App. 381, 397 N.W.2d 317 (1986), *app. denied*, 428 Mich. 862 (1987) (violation of Michigan reporting statute not established in absence of evidence showing that the defendants had reasonable cause to suspect abuse.)

In this case, there was trial testimony that at St. Lawrence Seminary, the athletic director is deemed to be an "administrator". [FN11] As indicated above, Kevin Hoelscher was the athletic director at St. Lawrence during the period of time in question. However, Plaintiff has presented no evidence to establish that any alleged abuse victim personally reported his own sexual abuse to Hoelscher. [FN12] Hoelscher testified only that he had "heard rumors" about Leifeld. [FN13]

FN11. The Court questions whether an "athletic director" would, in 1975-76 have been deemed by the Wisconsin legislature to be a "school administrator" subject to the provisions of the Reporting Statute prior to the 1979 revision of the act which added "teachers" to the list of persons required to report abuse. It seems to the Court that the legislature would have deemed only those supervisory school employees who had hiring, firing, evaluative and disciplinary authority to be "school administrators". While Defendants have cited a number of cases and a statute which they contend establish such a definition of school administrators, *none* of the cases nor the statutory provision cited by Defendants stand for this proposition.
Defendants rely upon *Crear v. Labor & Indus. Review Com.*, 114 Wis.2d 537, 339 N.W.2d 350 (1983); *Madison Teachers, Inc. v. Madison Metro School District*, 159 Wis.2d 429, 464 N.W.2d 679, 1990 WL 250225 (1990); *State v. Crisdhome Farms, Inc.*, 115 Wis.2d 696, 339 N.W.2d 366, 1983 WL 162058 (1983); and Wis.Stat. § 40.02(55), as support for their contention that only school personnel with the authority for hiring, firing and discipline are deemed to be "school administrators" in Wisconsin. The *Crear* case does not involve teachers or school administrators, at all. That case involved the issue of who was a "supervisor" of a department of social services social worker. The *Madison Teachers* case dealt with collectively-bargained definitions of teachers' union employees and whether a teacher could be deemed a "supervisor" of a classroom aide under the Municipal Employment Relations Act. *State v. Crisdhome Farms* did not involve any employer/employee relationship. That case involved a civil forfeiture action imposed as a penalty upon the defendant for dumping waste in a river. As for the cited statute, § 40.02(55) addresses the question of which school employees are entitled to participate in the Wisconsin teachers retirement plan.
Not having been presented with any legal authority that school administrators are only those with hiring/firing authority, the Court is left with the uncontroverted trial testimony of Father Brian Braun that at St. Lawrence the athletic director was considered an administrator.

FN12. The only evidence of face-to-face personal reports to administrators is Paul Isely's testimony about telling Hoelscher of Leifeld's massaging his shoulders and running his hand down his chest to his belt line and David Grieber's testimony about telling Father Zickert about Jim Buser having "hurt him" and having called him stupid. However, because the Court has determined that the statute cannot support a private civil cause of action, the Court need not reach the issue of whether these reports might constitute a sufficient basis under the statute for giving a school administrator reasonable cause to believe that sexual abuse occurred.

FN13. Even if the statute were deemed to support a private cause of action, and even if the statute were found to have been violated, dismissal of the statutory negligence claims against St. Lawrence and the Capuchin Province would still be required because there can be no vicarious liability for an individual's violation of a

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statute which mandates actions only on the part of the individual. *Thelma D. v. Board of Education, supra* (liability for a teacher's failure to report abuse cannot be imputed to the School Board.)

***1150** For these reasons, Plaintiff's "statutory negligence" claims against Kevin Hoelscher Lloyd Thiel and Myron Kowalski in Counts VI, VII and VIII, and the claims against St. Lawrence Seminary in Count IV and the Capuchin Province in Count XVI will be dismissed. [FN14]

FN14. To the extent that Plaintiff has also argued that violation of the statute establishes a *claim* of "negligence *per se*", that claim is also dismissed. As the Court explained on the record at the March 15, 1995 hearing on these motions, negligence *per se* relates to the *standard of care* that would be applicable to a cause of action based on a statutory violation *if* such a cause of action existed; it does *not* create a new duty giving rise to a separate cause of action. Thus, because there is no private cause of action for failure to make a § 48.981 report, the issue of negligence *per se* does not arise in this case.

2. *COMMON LAW NEGLIGENCE*

Plaintiff also claims that the non-abuser Defendants are liable to him for being abused by Leifeld and Buser under several theories of "common law negligence". Specifically, Plaintiff alleges theories of:

(a) negligent hiring/retention of Buser and Leifeld;
(b) negligent supervision of Buser and Leifeld;
(c) failure to warn Plaintiff or his parents that Leifeld and Buser were sex abusers, and failure to prevent their sex abuse of him; and
(d) failure to adopt a sexual abuse policy.

The Court will address each of these theories *ad seriatim.*

(a) *Negligent Hiring*

[12] Plaintiff claims that the Capuchin Order negligently "hired", and negligently retained, Fathers Buser and Leifeld as priests. [FN15] Questions of hiring and retention of clergy necessarily will require interpretation of church canons, and internal church policies and practices.

FN15. As indicated, *supra,* Plaintiff has also asserted this negligent hiring/negligent retention claim against St. Lawrence Seminary and individual Defendants Lloyd Thiel and Myron Kowalsky.

[13] It is well-settled that when a court is required to interpret Canon Law or internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion. *See Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) . *See also: Gonzalez v. Roman Catholic Archbishop,* 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929) (civil courts may not inquire into clergy hiring decisions of church); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) ("Freedom to select the clergy ... must now be set to have federal constitutional protection as part of the free exercise of religion against state interference." *Id.* at 116, 73 S.Ct. at 154); *Rayburn v. General Conference of Seventh Day Adventists,* 772 F.2d 1164 (4th Cir.1985), *cert. denied,* 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739 (1986); *Van Osdol v. Vogt,* 892 P.2d 402 (Colo.App.1994). [FN16] This is true whether the "hiring" at issue is church hiring *per se* or the hiring of school personnel for a church-run school. *NLRB v. Catholic Bishop of Chicago,* 440 U.S. 490, 99 S.Ct. 1313, 59 L.Ed.2d 533 (1979) ("Because religious authority necessarily pervades a church-operated school, personnel decisions affecting the school may involve ecclesiastical issues as much as decisions affecting church employees." *Id.* at 502, 99 S.Ct. at 1319). *See also, Black v. St. Bernadette Congregation,* 121 Wis.2d 560, 360 N.W.2d 550 (Wis.App.1984) (discharge of a lay principal of a Catholic school not reviewable by court).

FN16. Excessive entanglement with religious tenets also violates the Wisconsin

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Constitution. *See Olston v. Hallock,* 55 Wis.2d 687, 201 N.W.2d 35 (1972); *Black v. St. Bernadette Congregation,* 121 Wis.2d 560, 360 N.W.2d 550 (Wis.App.1984).

The foregoing cases make clear that any inquiry into the decision of who should be permitted to become or remain a priest necessarily would involve prohibited excessive entanglement with religion. Therefore, Plaintiff's claims of negligence predicated ***1151** upon a "negligent hiring" theory will be dismissed. [FN17]

FN17. The cited authorities also make it clear that Plaintiff may not rely upon Canon Law or any purported violation thereof to establish any of his claims of negligence in this action. Furthermore, even if the entanglement issue did not preclude judicial inquiry, there was absolutely not a shred of evidence in the record that either the Capuchin or St. Lawrence Defendants had any notice of the abuse proclivities of Fathers Buser of Leifeld prior to their "hiring" of them as priests or teachers at St. Lawrence. The "negligent retention" claim is simply another rubric for Plaintiff's "negligent supervision" claims, discussed, *infra.*

(b) ***Negligent Supervision***

It is true that some courts have held that whenever a court is called upon to impose a standard of care on clerics--whether in hiring or in *supervising* other clerics--First Amendment excessive entanglement issues arise which preclude civil court adjudication. *See e.g., Dausch v. Rykse,* 52 F.3d 1425 (7th Cir.1994); *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991); *Moses v. Diocese of Colorado,* 863 P.2d 310 (Colo.1993), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994).

However, the Supreme Court has made clear that if only "neutral" principles of law can be applied without determining underlying questions of church law and policies, then a court may intervene. *Serbian E. Orthodox Diocese, supra; Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972) ("A way of life, however virtuous and admirable, may not be interposed as a barrier to a reasonable state regulation ... if it is based on purely secular considerations." *Id.*) *See also, Jones v. Trane,* 153 Misc.2d 822, 591 N.Y.S.2d 927 (1992); *Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988); *Moses v. Diocese of Colorado, supra* (application of a secular standard to secular conduct that is tortious is not prohibited by the Constitution).

[14] In this case, the Court believes that, unlike in the case of hiring decisions, matters pertaining to the supervision of Fathers Buser and Leifeld can be decided without determining questions of church law and policies. Therefore, the Court finds that no First Amendment issues are implicated which would mandate dismissal of the negligent supervision claims.

However, as all parties acknowledge in this case, the Wisconsin Supreme Court has never explicitly recognized a cause of action for negligent supervision, [FN18] and the most recent decisions of the Wisconsin Court of Appeals have also refused to find such a cause of action. *See Jane Doe v. Archdiocese of Milwaukee,* 188 Wis.2d 79, 524 N.W.2d 647 (1994) (unpublished opinion; text available on LEXIS); *Pritzlaff v. Archdiocese of Milwaukee,* 188 Wis.2d 79, 524 N.W.2d 647 (1994) (unpublished opinion; text available on LEXIS); *Sherrill v. Smart,* 181 Wis.2d 366, 514 N.W.2d 422 (Wis.App.1993) (unpublished opinion; text available on LEXIS).

FN18. The only case in which the Wisconsin court has recognized a cause of action even related to "negligent supervision" involved a hospital being found to have negligently granted a orthopedic surgical privileges to a doctor and held liable for failing to do a pre-hire check on a surgeon's claimed past hospital affiliations and certifications in violation of statutory requirements imposed upon hospitals. *Johnson v. Misericordia Community Hospital,* 99 Wis.2d 708, 301 N.W.2d 156 (1981). At best, the case could be construed as a "negligent hiring" case. No mention, however, is made in

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Johnson of a "common law" cause of action for negligent hire or the elements set forth in the Restatement. Cases subsequent to *Johnson* have characterized that decision as involving "special circumstances", and essentially a theory of liability for medical malpractice. *See* cases discussed *infra* in the text of this Opinion.

In *Pritzlaff* the court explained:

> The author of this opinion concludes ... that the amended complaint states no ground for relief because the Wisconsin Supreme Court has not explicitly recognized the tort of negligent supervision.... the supreme court has sustained causes of action analogous to the tort of negligent supervision of employees in the past, and it might choose to explicitly sustain such a cause of action in the future. This writer is reluctant, however, to recognize a new cause of action in this case. This court is not primarily a law- developing or law-declaring ***1152** body.... For this court to extend a religious body's liability to negligent supervision--in effect, to declare a new cause of action in Wisconsin--is to step out of its primary error- correcting function and assume a role more properly left to the supreme court.

In *Gallun v. Soccer U.S.A.,* 184 Wis.2d 401, 516 N.W.2d 789 (1994) (unpublished opinion; text available on LEXIS), the plaintiff, a women's soccer player, sued a soccer club under a theory of negligent hiring, training, supervision and retention of a soccer club maintenance employee who clandestinely videotaped the plaintiff changing clothes in the club's locker room through a "peep hole" in the locker room ceiling.

The trial court noted that the tort of negligent supervision has not been recognized by the Wisconsin Supreme Court but assumed, for the sake of the defendant's summary judgment argument that the tort existed under Wisconsin law. The court nonetheless dismissed the cause of action on the defendants' summary judgment motion because the court found that the record did not provide any basis for a reasonable inference that there was a foreseeability of probable harm in failing to supervise the employee more closely, and the appellate court affirmed.

In *Sherrill v. Smart, supra,* a case relied upon by Plaintiff here, the plaintiff sued the owners of a tavern for injuries sustained when he was shot in the back by the tavern's bouncer during a confrontation between the bouncer, the plaintiff and several others. The plaintiff alleged two theories of recovery from the taverns owners: respondeat superior liability, and a direct claim of negligent hiring and supervision.

On the defendants' motion for summary judgment, the trial court held that the bouncer was not acting within the scope of his employment when he shot the plaintiff and, therefore, dismissed the plaintiff's respondeat superior claim. The trial court also determined that the dismissal of the respondeat superior claim also required dismissal of the plaintiff's direct claim of negligent hiring/negligent supervision. The court found that once the defendants were released from liability for their employee's acts, the remaining direct claims failed for lack of causation because there was nothing to link the actions of the defendants to the harm suffered by the plaintiff. Therefore, it granted defendants' motion for summary judgment.

The court of appeals reversed finding that an issue of material fact existed as to whether the bouncer had been acting within the scope of his employment when he shot the plaintiff. The appellate court also determined that the plaintiff's direct negligence claim was not dependent upon a finding of vicarious liability.

However, contrary to Plaintiff Isely's assertions, the *Sherrill* court did *not* adopt the tort of negligent supervision. Quite the contrary, the court specifically pointed out that "Wisconsin has neither adopted nor rejected the negligent hiring and negligent supervision torts." *Id.* The court continued, "Here, neither party briefed the issues relating to the validity of, or the elements of, these torts in this jurisdiction. Lacking this assistance, we decline to address them." *Id.* [FN19]

> FN19. Plaintiff also relies upon *A.E. Investment Corp. v. Link Builders, Inc.,* 62 Wis.2d 479, 214 N.W.2d 764 (1974), and *Schuster v. Altenberg,* 144 Wis.2d 223, 424 N.W.2d 159 (1988), for the proposition that Wisconsin has recognized

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a cause of action for negligent supervision of an employee. Neither of these cases support Plaintiff's contention as neither of these cases involve an employer's negligent hiring or negligent supervision of an employee.

The *A.E. Investment* case involved an action brought by a building tenant against a contractor for negligent construction of the building in which the plaintiff had leased space. The only mention of "negligent supervision" in the case is in the court's summation of the plaintiff's complaint allegations:

It was alleged that the architect was negligent in its failure to adequately supervise construction, *in that it failed to determine the nature and condition of the subsoil prior to and during construction.* * * * It was alleged that as the direct and proximate result of the negligence, the floor space leased to the plaintiff began to settle, damage was caused to the walls, the floor became uneven, and eventually the premises became untenable.

214 N.W.2d at 765. Contrary to Plaintiff's assertions, no allegation was ever made that the contractor negligently supervised his employees and no claim was made that the contractor's negligent supervision of his employees caused the damages suffered by A.E. Investment. Moreover, the precise issue in that case is whether a tenant, who had no privity of contract with the contractor, could sue for damages for negligent construction.

Schuster v. Altenberg is similarly inapplicable. That case involved a psychiatrist's duty to warn his patient and her family about the side effects of medication he had prescribed for Mrs. Schuester and of Mrs. Schuester's dangerous condition and its implications.

*1153 While the Wisconsin state courts have clearly never expressly recognized the existence of a separate cause of action for negligent supervision, the Seventh Circuit, nonetheless, concluded in *Midwest Knitting Mills, Inc. v. United States*, 950 F.2d 1295 (7th Cir.1991), that the Wisconsin Supreme Court would recognize negligent supervision as a separate cognizable tort.

Midwest was a Federal Tort Claims Act action brought by a manufacturer against the Small Business Association. Midwest was a Milwaukee manufacturer of knitted goods. It was a subcontractor for several SBA contracts under a program which permitted capital-poor minority companies to receive advance payments needed to compete. Midwest had successfully completed several contracts prior to 1983.

In 1983, the SBA assigned the task of processing Midwest's applications for advance payments to one of its employees, Frederick Matthews. In 1984 and 1985, Midwest was awarded five contracts, the largest in excess of $1,250,000. Allegedly because of "dereliction, negligence, and deliberate sabotage" by Matthews, Midwest never received any advance payments. At the end 1985, Midwest was forced to surrender its contracts and go out of business.

According to Midwest, Matthews had a chemical dependency that resulted in "physical, intellectual and emotional infirmities." Midwest further alleged that Matthews' supervisors at the SBA retained him during this period even though they were aware of his poor performance.

Midwest sued the SBA for the amount of the contracts it had to cancel plus the value of future business lost as a result of its cessation of business under two theories: (1) the SBA's negligent supervision and retention of Matthews and (2) tortious interference by the SBA with its own contract with Midwest. The parties agreed that Wisconsin substantive law would govern the action.

The district court held that Wisconsin courts would not recognize the tort of negligent supervision of an employee in this situation, nor would they recognize a claim for interference with one's own contract. Therefore, it granted the Government's motion to dismiss.

The Seventh Circuit affirmed, but for different reasons. The appellate court believed that the Wisconsin Supreme Court would recognize the tort of negligent supervision, but concluded that Wisconsin would decline to allow recovery in the case of Midwest because Midwest was alleging only a commercial loss and was seeking purely economic

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damages. 950 F.2d at 1300.

With respect to its determination that Wisconsin would recognize the tort of negligent supervision, the Seventh Circuit stated as follows:

> The tort of negligent supervision places liability upon a master for injuries inflicted on third persons by its servants when the master was guilty of selecting a servant incompetent or otherwise unfit to perform the services for which he was employed. 57 C.J.S. *Master and Servant,* S 559 (1948). As the parties correctly note, the Wisconsin Supreme Court has never explicitly recognized the existence of this tort by holding an employer liable for negligent retention or supervision of an employee. However, we have no reason to believe that Wisconsin would reject this cause of action if the matter were before its supreme court as a matter of first impression. The tort of negligent supervision of employees enjoys a secure position in the mainstream of American common law. The Restatements of both Torts and Agency recognize it, as does at least one of Wisconsin's neighbors. *See Ponticas v. K.M.S. Inv.,* 331 N.W.2d 907, 910 (Minn.1983) . [FN20] Professors Prosser and Keeton *1154 write that a master "may, of course, be liable on the basis of any negligence of his own in selecting or dealing with the servant ... upon familiar principles of negligence and agency law."
>
> FN20. The *Ponticas* case actually dealt with the tort of negligent hiring, not negligent supervision. The court in that case merely noted in dicta that it saw "no substantial difference in imposing a duty on an employer to use reasonable care in the initial hiring from his duty to use that care in the retention of an employee." 331 N.W.2d at 911.

Wisconsin cases have sustained causes of action analogous to the tort of negligent supervision of employees. In *Kamp v. Coxe Brothers & Co.,* 122 Wis. 206, 99 N.W. 366 (1904), the Wisconsin Supreme Court examined whether a wrongful death action could exist against an employer when an incompetent employee failed to warn a fellow employee of danger and that employee was killed.... While the facts, and to some extent, the policy concerns underlying the *Kamp* decision are analogous to this case, it is not controlling. The Wisconsin Supreme Court's holding is limited to interpreting an exception to the common law fellow-servant rule [which was abrogated and replaced by the workers' compensation acts]....
Later, Wisconsin cases have recognized claims arising from the failure to supervise adequately the work of an independent contractor [in the construction context].... Also, in the context of medical malpractice, the Wisconsin Supreme Court has held that a hospital has a duty to employ competent physicians. *Johnson v. Misericordia Community Hospital,* 99 Wis.2d 708, 301 N.W.2d 156, 170-171 (1981)....

950 F.2d at 1298-1299.

This Court is not convinced that Wisconsin *would* adopt negligent supervision as a distinct cause of action. First, to the extent that the *Midwest* court relies upon the fact that the Restatements and Prosser and Keeton recognize the tort, the Court notes that the Restatements are replete with causes of action that not all state courts recognize. Second, as noted in footnote 20, contrary to the Seventh Circuit's assertion, Minnesota does not recognize a separate tort of negligent supervision, and, in fact, only a few jurisdictions do recognize it. [FN21]

> FN21. As observed in Am.Jur.2d. there is considerable disagreement among the states as to whether the negligence of an employer in selecting, retaining or supervising employees is an independent basis for the employer's liability to third-parties. See, 53 Am.Jur.2d, Master and Servant, § 422, p. 435, and cases cited therein. Contrary to the *Midwest* court's intimation, there are not that many jurisdictions which recognize this tort.

Further, in all three Wisconsin cases cited by the *Midwest* court, the Wisconsin Supreme Court made it very clear that it was limiting its holding to the particular facts and circumstances of those cases and not stating a general principle of law. [FN22]

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99 Ed. Law Rep. 797
(Cite as: 880 F.Supp. 1138)

FN22. Moreover, the fellow-servant rule holding of the *Kamp* case has been abrogated and replaced by the workers' compensation act.

[15][16] Finally, and perhaps most importantly, it is fundamental that when state law supplies the rule of decision, it is incumbent upon a federal court to determine how the highest court of the state would decide the case if it were presented to it. *Konradi v. United States,* 919 F.2d 1207, 1213 (7th Cir.1990). The precise issue, as this Court sees it in this "delayed discovery" tort action, is not whether now--20 years after the occurrences upon which Plaintiff's claims are predicated--the Wisconsin Supreme Court would adopt the tort of negligent supervision, but rather whether, had the claim been presented to the Wisconsin Court in 1974-78, would the court have recognized it then? This is consistent with the generally accepted principle that a tort action is to be determined by application of the law which existed at the time of the occurrence of the events upon which the action is predicated. *See e.g., Duncan v. Steeper,* 17 Wis.2d 226, 116 N.W.2d 154 (1962) (court required to allow the defense of charitable immunity and the case accordingly dismissed because when the tort was committed, the charitable immunity defense was still recognized in Wisconsin).

This reflects this Court's concern, expressed *supra,* that it would be unfair to juxtapose contemporary mores and contemporary causes of action upon parties for *1155 events which occurred in a different era with a different level of social awareness of problems. It is certainly not that this Court believes that Wisconsin courts would have tolerated or accepted without providing redress the type of conduct alleged by the Plaintiff to have been perpetrated upon him by the alleged abuser priests in question. (Indeed, both criminal and civil actions were clearly available to victims directly against those individuals.) Rather, the concern here is that the law did not then recognize a duty upon the *employer* to be responsible automatically for such *ultra vires* conduct of its employees. (This is different and distinct from any "duty to warn [about] and prevent" such conduct when an employer has advance notice, as the Court discusses, *infra.*)

[17] It is clear to the Court that in 1974-78, no cognizable cause of action for negligent supervision existed in Wisconsin, nor had there been as of that time any remotely similar causes of action decided by the Wisconsin appellate courts or the Wisconsin Supreme Court. Given the facts that (1) the tort of negligent supervision has even today yet to be recognized as an independent cause of action in Wisconsin and (2) the tort is not now, and certainly was not in 1974-78, universally accepted in other jurisdictions, this Court finds that if this case were presented to the Wisconsin Supreme Court 20 years ago, the separate and independent tort of negligent supervision would not be recognized.

For these reasons, the Court will dismiss Plaintiff's claims of negligent supervision.

(c) *Failure to warn of and failure to prevent abuse*

While the tort of negligent supervision would present a novel theory of recovery for the Wisconsin Supreme Court, the Court does not find this to be the case with respect to Plaintiff's theory of "failure to warn/failure to prevent" the sexual abuse allegedly perpetrated upon him by Fathers Leifeld and Buser. This theory is generally recognized as a straightforward, black-letter common law negligence claim involving nothing more the duty imposed upon a reasonable person in similar circumstances. As stated by Prosser and Keeton:

> The duty to take precautions against the negligence of others ... arises ... only where a reasonable person would recognize the existence of an unreasonable risk of harm to others through the intervention of such negligence....
> There is normally much less reason to anticipate acts on the part of others which are malicious and intentionally damaging than those which are merely negligent; and this is all the more true where, as is usually the case, such acts are criminal. Under all ordinary and normal circumstances, in the absence of any reason to expect the contrary, the actor may reasonably proceed upon the assumption that others will obey the criminal law....
> There are, however, other situations, in which either a special responsibility resting upon the defendant for the protection of the plaintiff, or an especial temptation and opportunity for criminal misconduct brought about by the defendant, will

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> call upon him to take precautions against it. *The responsibility for protection ... may be founded upon some relation existing between the parties, such as ... school and pupil....*

Prosser and Keeton on Torts (5th ed.), § 33, pp. 199-203 (emphasis added.) *See also,* 57A Am.Jur.2d § 383, "A duty to warn may ... arise where a person stands in some special relationship to either a person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct." *Id.* at pp. 378-379.

[18] While the foregoing general principles demonstrate that a duty to warn/duty to protect may arise out of a school-pupil relationship, the treatises and case law makes clear that no duty can be imposed on a school to protect a student from intentional torts of a teacher simply because of their status as student and teacher. Rather, there must be evidence that the school's supervisory officials had knowledge of the activities of the teacher who was the subject of the complaints. *See, Kimpton v. School District of New Lisbon,* 138 Wis.2d 226, 405 N.W.2d 740 (Wisc.App.1987). *Cf., Hersh v. Kentfield, supra (*1156 holding that in order to find negligence on the part of an employer for failure to prevent the intentional or reckless acts of an employee, there must be sufficient evidence demonstrating that the employer knew or should have known of the employee's propensities to act in the complained of manner.)*

In *Kimpton,* a high school student and his parents sued a school district alleging that the school district negligently allowed a sexual relationship to develop between the student and a teacher. Although the case involved both federal § 1983 and state common law negligence claims which were ultimately decided by application of the doctrine of governmental immunity, the court's explanation for finding insufficient evidence of a breach of duty to protect the student is instructive:

> To rise to the level of "gross negligence" ... the evidence must show that the district's supervisory officials knew or should have known that the employee was engaging in [illegal] conduct, and they failed to take remedial action. The deposition testimony of employees, supervisors and school board members reveals that none of them were in any way aware of Segerstrom's relationship with James until Segerstrom was arrested. Those facts are not disputed. James himself admitted that he took pains to conceal the relationship and told no one of it until December, 1983. There simply is no evidence that the district had any knowledge of the relationship.
> Nor is there any evidence indicating that the district should have known of Segerstrom's activities, or even the likelihood that they might occur. While school officials were aware that in the mid-1960's an unnamed male teacher was fired because of his sexual attraction to a male supervisor, this knowledge would not form any reasonable basis for the district to take preventative measures on the chance that Segerstrom might initiate a homosexual relationship with a student fifteen years later....
> The affidavits do suggest that school officials were aware of complaints about Segerstrom's disciplinary measures and that he previously had a drinking problem. But this knowledge alone would not reasonably indicate to the school board that Segerstrom was likely to engage in a homosexual relationship with a student. It is undisputed that the school officials knew nothing of Segerstrom's activities, nor is there any basis for believing they should have known of them....
> On these undisputed facts, the trial court properly granted summary judgment to the district.

405 N.W.2d at 746.

The failure to warn/failure to prevent issue has also come up in federal teacher/child sex abuse cases in Missouri. In *Thelma D. v. Board of Education, supra,* the plaintiffs attempted to hold a school district liable for failure to warn of an abusing teacher's sexual propensities and failure to prevent further abuse by him. With respect to the "knowledge" requirement, the plaintiffs sought to impute the knowledge of a teacher (not a supervisor) to the school district. The court expressly rejected the plaintiffs' argument, finding that non-abusing, non-supervisory school personnel had no common law duty to act upon their knowledge of a fellow teacher's sexual abuse of students. The court stated that, although a supervisory police officer might be liable for standing by and doing nothing while another police officer beat a third person in his presence because of the general responsibility of police officers to enforce the laws and keep the peace, there is no basis for holding school personnel similarly liable.

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The court explained:

> Plaintiffs ... contend that Soward, as a teacher, had a common law duty to act upon her alleged knowledge of Tansil's sexual abuse of plaintiffs and to report or prevent him from so abusing them....
>
> * * * * * *
>
> Teachers do have the responsibility for the care and welfare of their youthful charges.... But this obligation is not congruent with that of a police officer. Police officers, unlike teachers, are entrusted with the duty to enforce the laws. As stated in *Byrd [v. Brishke],* 466 F.2d 6 (7th Cir.1972)], "one who is given the badge of authority of a police officer may not ignore the duty imposed by his office...."
> ***1157** The Court finds Soward owed neither a statutory nor a common law duty to plaintiffs. Accordingly, her motion to dismiss is granted.

669 F.Supp. at 950-951.

It is undisputed that Paul Isely and St. Lawrence Seminary stood in a pupil- school relationship. The foregoing authorities make clear, then, that the issue in this case is whether evidence has been presented to demonstrate that any St. Lawrence Seminary or Capuchin Order administrators had notice of Leifeld's and/or Buser's sexual activities prior to their alleged abuse of Paul Isely.

Plaintiff Paul Isely, Defendant Kevin Hoelscher, and three of Plaintiff's witnesses--Peter Isely, David Grieber and Michael Albiero--testified regarding the reporting of the conduct of Jim Buser and Gale Leifeld.

(1) ***Failure to warn/failure to prevent Plaintiff's abuse by Jim Buser***

[19] With respect to the conduct of Jim Buser, Plaintiff testified that he was sexually abused by Buser during his freshman year (i.e., in 1974- 75). However, he admitted that he never reported Buser's alleged abuse of him to anyone at St. Lawrence during his stay at the seminary.

The only trial evidence of reports concerning Buser prior to his alleged abuse of Plaintiff was the testimony of Plaintiff's witness David Grieber. [FN23] Grieber testified that in 1971 he was sodomized by Jim Buser during a tutorial session which Buser conducted, and that after the incident, he stopped going to his tutoring sessions. He testified that a few days later, John Zickert, who at the time was the dean of freshman class, called him into his office to inquire why he was missing his tutorial sessions.

> FN23. Michael Albiero testified that he was abused by Jim Buser in late December of 1976 and that a week later he reported Buser's abuse of him to Father Leifeld, who at the time was the Rector of St. Lawrence. However, Albiero's alleged abuse and his report of the abuse to the Rector occurred more than a year and a half *after* Paul Isely's alleged abuse by Buser. Therefore, Isely may not rely on Albiero's report to Leifeld as the basis for "notice" to the Seminary or the Order for purposes of his failure to warn/failure to prevent abuse claims.

Grieber testified that he did not tell Father Zickert that he had been sodomized or molested or sexually abused by Buser. He only told Zickert that Father Buser had "hurt" him and that Buser yelled at him, called him stupid, made him feel bad, and made him feel ashamed. [Grieber Dep. Tr. pp. 15-16; 33-34.] Grieber admitted that he never reported the incident to anyone else at St. Lawrence and he left the school at the end of the academic year.

Although Grieber testified that even though he never expressly told Zickert that Buser had sexually molested him, he thought Father Zickert understood that he was talking about being sexually abused. However, this is nothing more than conjecture on Grieber's part, and as indicated above, more than conjecture is required to warrant submitting an issue to the jury.

The court finds that Grieber's testimony of Father Buser having "hurt" him, having yelled at him, and having called him stupid is no different than the "notice" that the school district defendants in *Kimpton supra,* had of the conduct of the homosexual teacher in that case. In *Kimpton,* the only notice that school district had regarding the teacher in that case was that there had been

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complaints of his disciplinary tactics. Just as the *Kimpton* court determined with regard to the "notice" of complaints of disciplinary tactics, this Court finds that Grieber's report to told Father Zickert that Buser had hurt him, called him stupid and made him feel bad is insufficient evidence of notice of sexual abuse to warrant submitting to the jury Plaintiff's failure to warn/failure to prevent sexual abuse claims with respect to Plaintiff's alleged abuse by Jim Buser.

(2) ***Failure to warn/failure to prevent Plaintiff's abuse by Gale Leifeld***

[20] With respect to the issue of St. Lawrence's knowledge of Gale Leifeld's conduct, Plaintiff testified that he reported Leifeld's conduct to Kevin Hoelscher, the athletic director, during his sophomore year (i.e., 1975- 76). Isely testified that he told Hoelscher ***1158** about an incident with Leifeld in the movie projection booth when Leifeld massaged his neck, then ran his hand down his chest, down to his belt, at which point Isely "froze," and Leifeld stopped. According to Isely, Hoelscher told him that "he was going to get Father Gale some help". [Isely 2/13/95 Tr. p. 33.]

Kevin Hoelscher testified that he had no precise recollection of Paul Isely talking to him about his own abuse by Leifeld. [Hoelscher Dep. Tr, p. 56]. However, he did state that he had heard rumors about Leifeld massaging the necks of boys who worked with him in the projection booth. Hoelscher testified that he told Father Joe O'Conner, who was the Rector of St. Lawrence until December of 1976, what he had heard. However, precisely when Hoelscher reported this the Rector is unclear.

Isely also testified about another incident of abuse by Leifeld which occurred in the Rector's office. This incident also involved his brother, Peter. Plaintiff testified that this incident also occurred during his sophomore year (i.e., 1975-76). According to the testimony of Peter Isely, the incident occurred in April of 1976. However, it is unclear from Plaintiff's testimony whether this incident occurred before or after the projection booth massaging incident. And, as indicated above, the timing of Hoelscher's report of rumors to the Rector, Father O'Conner, is also unclear.

Plaintiff also testified that he reported Leifeld to Hoelscher a second time, during his junior year (i.e., 1976-77). Isley stated that he went to Hoelscher to report that he had heard from another student that Tom Schmidt, who was also a student at St. Lawrence, was abused by Leifeld. Hoelscher first testified that he *also* reported the Schmidt incident to Father O'Conner, the Rector, but then he later testified that he believed that it was the only incident that he went to Father O'Conner about. [See Hoelscher Dep. Tr. pp. 41-54.]

Although the testimony is unclear and may be contradictory, the Court cannot say that Plaintiff has presented no evidence of prior notice to St. Lawrence administrators. There is evidence of at least one report, and perhaps two reports, made by Hoelscher to Father O'Conner sometime during 1976. Whether the report (or reports) was/were made *before* or after the incident involving Paul and Peter Isely and Leifeld in the Rector's office is an issue of fact that the jury will have to decide.

For these reasons, Defendants motion for summary judgment as a matter of law with respect to the claims against Hoelscher, St. Lawrence Seminary, and the Capuchin Province for failure to warn/failure to prevent Plaintiff's abuse by Gale Leifeld will be denied. [FN24] However, with respect to Defendants Myron Kowalsky and Lloyd Thiel, inasmuch as Plaintiff has admitted that he has no evidence that either of these Defendants had any notice of the alleged abusive conduct of Leifeld or Buser, the motion will be granted. Therefore, Counts VII and VIII (i.e., the claims against Fathers Thiel and Kowalsky) will be dismissed in their entirety. Thus, with respect to the non-abuser Defendants, this leaves only Plaintiff's "failure to warn/failure to prevent" in Counts IV, VI, and XVI to go to the jury. [FN25]

> FN24. With respect to the Capuchin Province, there was trial testimony from Defendants' own witnesses that the Rector of St. Lawrence was appointed by, and is responsible to, the Provincial Council. As such, the Rector is, effectively, the Provincial Council's acting agent in charge of the school. Father Reinhart, who at one time was the Provincial head, testified that he would have expected that the Rector,

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upon receiving a report of suspected abuse, would report the abuse to him. He also testified that the Provincial Council can remove a priest from his post if he is found guilty of abuse. The Court finds that these facts are sufficient evidence from which the jury may infer liability on the part of the Province for failure to prevent abuse.

FN25. With respect to any "duty to warn/duty to prevent" claims arising out of Father Jim Wolf's actions at the Pre-Novitiate Program in Detroit, it is undisputed that there was never any advance notice given to anyone concerning those alleged acts, and consequently such claims must also be dismissed.
Further, for the reasons stated by the Court on the record on March 15, 1995, Plaintiff's may not submit for the jury's consideration any claim for damages arising out of the projection booth "touching" incident. This claim is time-barred as Plaintiff has admitted all along that he always remembered this incident.

*1159 E. *PUNITIVE DAMAGES*

The non-abusing Defendants also ask that the Court dismiss all allegations of punitive damages as to them.

[21] Whether there is sufficient evidence to submit the question of punitive damages to the jury is a question of law to be decided by the court. *Loveridge v. Chartier,* 161 Wis.2d 150, 468 N.W.2d 146, 158 (1991).

[22] In Wisconsin, the remedy of punitive damages is only available when the defendant acts in wanton, willful, or reckless disregard of the plaintiff's rights or interests. *Brown v. Maxey,* 124 Wis.2d 426, 369 N.W.2d 677 (1985). Conduct that justifies punitive damages is generally of two distinct types:

> the first type is that in which the defendant desires to cause the harm sustained by the plaintiff, or believes that the harm is substantially certain to follow his conduct. With the second type of conduct the defendant knows, or should have reason to know, not only that his conduct creates an unreasonable risk or harm, but also that there is a strong probability, although not a substantial certainty, that the harm will result, but, nevertheless, he proceeds with his conduct in reckless or conscious disregard of the consequences. Neither form of conduct, therefore, involves mere inadvertence or what, in the traditional tort sense, would be called ordinary negligence.

Loveridge, supra, 468 N.W.2d at 158.

[23][24] Wisconsin courts often use the short-hand term "outrageous" for the type of conduct which justifies the imposition of punitive damages. *Maxey, supra; Loveridge, supra.* This "outrageous" conduct must be proven by *clear and convincing evidence. Maxey, supra.* However, the fact that the conduct on which the suit is based is unlawful and would subject the defendant to criminal prosecution is *not* itself sufficient to impose punitive damages. *Fahrenberg v. Tengel,* 96 Wis.2d 211, 291 N.W.2d 516 (1980).

[25] Given the "clear and convincing" evidentiary standard which governs the punitive damages, the Court finds that the evidence presented is not sufficient to warrant submitting the punitive damages claims to the jury. As indicated above, although there is *some* evidence of "notice" having been provided to St. Lawrence administration prior to Plaintiff's alleged abuse by Defendant Leifeld, that evidence is far from clear and convincing. The best that can be said is that the evidence presented is contradictory. Without clear and convincing evidence of prior notice there can be no inference that St. Lawrence acted in reckless disregard of Plaintiff's rights in failing to prevent his abuse.

Therefore, the Court will grant the non-abuser Defendants motion for judgment as a matter of law on the issue of punitive damages. Accordingly, Plaintiff's claims for punitive damages against the non-abuser Defendants will not be submitted to the jury. [FN26]

FN26. This ruling does not affect Plaintiff's claim for punitive damages against Defendant Leifeld. (With respect to Plaintiff's intentional tort claims against

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> Defendant Jim Wolf, those claims are governed by Michigan law, and Michigan does not allow punitive damages.)

F. *DEFENDANT JIM WOLF'S MOTION FOR "DIRECTED VERDICT"*

Defendant Jim Wolf has separately moved for entry of a directed verdict in his favor. As discussed above in this Opinion and Order, this defendant's argument is that Plaintiff has not presented sufficient evidence to warrant submitted the case against him to the jury because he has not presented sufficient evidence to establish that the alleged sexual abuse by Jim Wolf occurred or that Plaintiff could not have discovered the alleged abuse less than three years before he filed this lawsuit. With respect to this latter issue, Defendant Jim Wolf argues that the testimony of Plaintiff's psychological experts is insufficient to allow a reasonable juror to conclude that the repressed memory theory is scientifically valid, and therefore, a directed verdict on this basis alone is required.

Both of the issues raised by Defendant Jim Wolf have been already ruled upon by the Court in its Opinion and Order denying the Defendants' Motions for Summary Judgment and in its Opinion and Order Regarding Defendants' Motions *in Limine* to Preclude or Limit the Testimony of Plaintiff's Psychological*1160 Experts and the Court incorporates those rulings by reference in this Opinion and Order.

For the reasons set forth in the Court prior rulings on the issues of statute of limitations and psychological expert testimony, Defendant Jim Wolf's "Motion for Directed Verdict" will be denied.

However, as noted *supra,* even if an issue is not raised in a Rule 50 motion, the Court may, nonetheless, *sua sponte* enter a Judgment as a Matter of Law. The Court finds that in this case, such a *sua sponte* decision is warranted with respect to some of the claims alleged by Plaintiff against the two accused abuser Defendants, Jim Wolf and Gale Leifeld.

As discussed above in this Opinion and Order, Plaintiff has asserted three separate causes of action against each of these two individuals: "intentional misconduct" (Counts I and IX); "common law negligence" (Counts II and X); and "professional negligence" (Counts III and XI). The Court finds that Plaintiff's common law negligence and "professional negligence" claims against the two accused abusers must be dismissed.

[26] First with respect to Plaintiff's claims of "professional negligence", these claims are essentially claims of "clergy malpractice". There is, however, no statutory or case law to establish that Wisconsin recognizes a claim for "clergy malpractice". Michigan does not. *Dlaikan v. Roodbeen,* 206 Mich.App. 591, 522 N.W.2d 719 (1994), Neither does Illinois. *See, Dausch v. Rykse,* 52 F.3d 1425 (7th Cir.1994) (applying Illinois law). *See also, Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991).

[27] With respect to Plaintiff's "common law negligence" claims against Leifeld and Jim Wolf, although the Plaintiff was certainly permitted to plead, in the alternative, claims of negligence and intentional conduct in his Complaint, pursuit at trial of such intentional tort/negligence "double" claims is impermissible. As the court explained in *Schmidt v. Bishop, supra,*

> Once intentional offensive contact has been established, the actor is liable for assault not negligence.... It is thus, legally impossible to claim that the alleged perpetration of deliberate abuse injured the plaintiff negligently.

Id. at 325.

For the foregoing reasons, the Court will dismiss Plaintiff's claims of common law and professional negligence against Defendants Jim Wolf and Gale Leifeld. Only the "intentional conduct" claims against these accused abusers will be submitted to the jury. [FN27]

> FN27. With respect to Plaintiff's "agency" theory of direct liability of St. Lawrence and the Capuchin Province for the actions of Leifeld, Buser and Wolf, Plaintiff predicates this theory upon Section 219(2)(d) of the Restatement (Second) of Agency which permits the imposition of liability upon an employer for the torts of his employee acting outside the scope of

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his employment when it is established that the employee "was aided in accomplishing the tort by the existence of the agency relationship". However, as Plaintiff admits at p. 27 of his Answer to Defendants' Motion for Judgment as a Matter of Law, the doctrine of Section 219(2)(d) has never been applied to priest/parishioner relationships, and this Court declines to do so in this case.

CONCLUSION

For the reasons stated in this Opinion and Order and for the further reasons stated by the Court on the record on March 15, 1995,

IT IS HEREBY ORDERED that the non-abuser Defendants' Motion for Judgment as a Matter of Law is GRANTED, in part, as follows:

(1) Defendants' Motion is granted as to all of Plaintiff's breach of contract claims, all of his claims against Defendants Werner Wolf, Ron Smith, Lloyd Thiel, Myron Kowalsky, and the Detroit Pre-Novitiate Program. Accordingly, Counts V, VII, VIII, XII, XIII, XIV, XV, and XVII are hereby DISMISSED in their entirety.

(2) Defendants' Motion is also granted as to Plaintiff's claims of statutory negligence, negligent hiring, negligent retention, negligent supervision, and failure to have a sex abuse policy in place as alleged against Defendants Kevin Hoelscher, St. Lawrence Seminary, and the Capuchin Province in Counts IV, VI, and XVI.

*1161 (3) Defendants' Motion is also GRANTED as to plaintiff's claims of failure to warn and failure to prevent his abuse by Jim Buser, but as to his allegations of failure to warn and failure to prevent his abuse by Gale Leifeld, Defendants' Motion is DENIED. Accordingly, the Leifeld failure to warn/failure to prevent allegations in Counts IV, VI and XVI will be submitted to the jury.

(4) Defendants' Motion is also granted as to Plaintiff's claims of punitive damages. Accordingly, no punitive damages claims with respect to the conduct of the non-abuser Defendants will be submitted to the jury. The only punitive damages claims that may be submitted to the jury are claims arising out of the actions of individual Defendant Gale Leifeld.

IT IS FURTHER ORDERED that Defendant Jim Wolf's separately filed "Motion for Directed Verdict" is hereby, DENIED.

IT IS FURTHER ORDERED that Plaintiff's claims of common law negligence and professional negligence alleged against the two accused abuser Defendants, Jim Wolf and Gale Leifeld, in Counts II, III, X, and XI are DISMISSED in their entirety with prejudice.

880 F.Supp. 1138, 99 Ed. Law Rep. 797

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EXHIBIT 25

278 F.Supp. 488
(Cite as: 278 F.Supp. 488)

H

United States District Court, W.D. Washington, Northern Division.

JEHOVAH'S WITNESSES IN the STATE OF WASHINGTON et al., Plaintiffs,
v.
KING COUNTY HOSPITAL UNIT NO. 1 (HARBORVIEW) et al., Defendants.

Civ. No. 6595.

June 8, 1967, Addendum to Memorandum Decision of June 8, 1967, and Opinion onthe Merits Nov. 20, 1967.

Religious group and its governing agency and individual members, minors and adults, brought action on their own behalf and as class action asking that three-judge District Court be convened for purposes of declaring legal rights of plaintiffs and to permanently enjoined all defendants from administering blood transfusions to plaintiffs in the future as defendants had allegedly done in the past in violation of constitutional rights of plaintiffs. The three- judge District Court dismissed aspects of case relating to giving blood transfusions to adults, held that it had jurisdiction of infant cases and held that Washington statutes empowering superior court judges to declare children to be dependent for purpose of authorizing blood transfusions of children against expressed objections of parents were not invalid under Constitution of United States.

Action dismissed as to all defendants.

West Headnotes

[1] Federal Courts ⇐991
170Bk991 Most Cited Cases
(Formerly 106k101)

Three-judge district court is statutory creature with limited sphere of operation. 28 U.S.C.A. §§ 2281, 2284.

[2] Federal Courts ⇐991
170Bk991 Most Cited Cases
(Formerly 106k101)

Three-judge district court is extraordinary court and technical requirements relating to its jurisdiction are to be strictly construed. 28 U.S.C.A. §§ 2281, 2284.

[3] Federal Courts ⇐991
170Bk991 Most Cited Cases
(Formerly 106k101)

Generally, disputed substantial federal question must be presented for three- judge district court to consider matter. 28 U.S.C.A. §§ 2281, 2284.

[4] Federal Courts ⇐991
170Bk991 Most Cited Cases
(Formerly 106k101)

Statutory requirements for three-judge district court jurisdiction are requirements of substance, not of form. 28 U.S.C.A. §§ 2281, 2284.

[5] Federal Courts ⇐992
170Bk992 Most Cited Cases
(Formerly 106k101)

Policy behind convening of three-judge district court is that single judge ought not to be empowered to invalidate a state statute under federal claim. 28 U.S.C.A. §§ 2281, 2284.

[6] Federal Courts ⇐991
170Bk991 Most Cited Cases
(Formerly 106k101)

That a single district judge would have jurisdiction to hear questions arising under Civil Rights Act is not determinative of jurisdiction of three-judge district court. 28 U.S.C.A. § 2281; 42 U.S.C.A. § 1983.

[7] Federal Courts ⇐993.1
170Bk993.1 Most Cited Cases
(Formerly 170Bk993, 106k101)

Claim that constitutional rights have been violated by state action not based upon or taken pursuant to specific statute is not sufficient to vest three- judge district court with authority to consider claim. 28 U.S.C.A. §§ 2281, 2284.

[8] Federal Courts ⇐992
170Bk992 Most Cited Cases
(Formerly 106k101)

Issues properly posed for determination by

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three-judge district court arise from enforcement or execution of state statute which is claimed to violate constitutional rights. 28 U.S.C.A. §§ 2281, 2284.

[9] Federal Courts ⇐993.1
170Bk993.1 Most Cited Cases
(Formerly 170Bk993, 106k1011)

Where questions involving adult members of religious sect were not predicated on any constitutionally-challenged state statute, three-judge district court did not have jurisdiction of proceeding. 28 U.S.C.A. §§ 2281, 2284.

[10] Federal Courts ⇐15
170Bk15 Most Cited Cases
(Formerly 106k263)

That three-judge district court was considering constitutional questions arising from actions taken pursuant to enforcement or execution of challenged state statute did not give it pendent jurisdiction to hear closely-related matters, where alleged constitutional deprivations did not occur from acts taken pursuant to challenged state's statute. 28 U.S.C.A. §§ 2281, 2284.

[11] Federal Courts ⇐993.1
170Bk993.1 Most Cited Cases
(Formerly 170Bk993)

Where pleadings of members of religious sect seeking declaration of legal rights and injunction restraining defendants from administering blood transfusions to plaintiffs challenged constitutionality of state statutes whereby state could order transfusion to save life of infant, and statute was a statewide statute, plaintiffs were entitled to have a three-judge district court to hear their complaint. 28 U.S.C.A. §§ 2281, 2284; RCWA 13.04.095.

[12] Declaratory Judgment ⇐121
118Ak121 Most Cited Cases

Even if three-judge district court did have pendent jurisdiction to consider merits of constitutional issues raised by compulsory transfusion of adults, where it appeared that there were only two isolated instances of such compulsory transfusions, court in exercise of its equity powers would not accord declaratory relief for the future predicated thereon. 28 U.S.C.A. §§ 2281, 2284.

[13] Federal Courts ⇐993.1
170Bk993.1 Most Cited Cases
(Formerly 170Bk993, 106k101)

Where state court judge entered order finding child dependent under state statute and authorized transfusion if doctors thought it necessary in course of operation on infant, doctors were acting under color of state law when they performed the operation and, even though no transfusion was given jurisdictional requirement of claimed deprivation of constitutional rights was met and three-judge district court had jurisdiction of doctors in action for declaration of legal rights of plaintiffs and for injunction restraining physicians from administering blood transfusions to plaintiffs in the future. 28 U.S.C.A. § 2281; 42 U.S.C.A. § 1983.

[14] Federal Civil Procedure ⇐181
170Ak181 Most Cited Cases

Inasmuch as two physicians were named as representatives of class of medical doctors, they must remain as defendants in action brought in three-judge district court to declare legal rights of plaintiffs and to permanently enjoin all defendants, individually and as a class, from administering blood transfusions to plaintiffs in the future as they had allegedly done in the past in violation of constitutional rights of plaintiffs. 28 U.S.C.A. § 2281; 42 U.S.C.A. § 1983.

[15] Federal Civil Procedure ⇐1943
170Ak1943 Most Cited Cases

Where plaintiffs made no mention in pre-trial order containing admitted and disputed facts of adult transfusion involving two plaintiffs and of two defendants concerned only with that incident and made no mention of blood transfusion of two other plaintiffs and another defendant concerned only with that instance, action to declare legal rights of plaintiffs and to permanently enjoin all defendants from administering blood transfusions to plaintiffs in the future in violation of constitutional rights of plaintiffs should be dismissed as to such defendants.

[16] Action ⇐70
13k70 Most Cited Cases

Action would be regarded as abandoned as to persons who were named in complaint or supplemental complaint as defendants but as to

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whom no grievance was stated in pretrial order.

[17] Federal Civil Procedure ⚖1938.1
170Ak1938.1 Most Cited Cases
(Formerly 170Ak1938)

Where pretrial order provided that it should not be amended except by order of court pursuant to agreement of parties or to prevent manifest injustice, and plaintiffs had not sought court authority to amend pretrial order by reinstating certain class of physicians which had been eliminated as defendants, such class could not be regarded as class of defendants subject to jurisdiction of court in the cause, although they had been designated in the complaint.

[18] Constitutional Law ⚖84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

State may intervene in name of health and welfare in the indoctrination and participation of children in religion.

[19] Constitutional Law ⚖84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

Right to practice religion freely does not include liberty to expose child to ill health or death.

[20] Courts ⚖96(3)
106k96(3) Most Cited Cases
(Formerly 106k96, 106k365(1))

[20] Federal Courts ⚖371
170Bk371 Most Cited Cases

Special three-judge district court was not bound by any judicial decisions other than those of the United States Supreme Court.

[21] Infants ⚖132
211k132 Most Cited Cases
(Formerly 211k12)

Washington statutes empowering superior court judges to declare children dependent for purpose of authorizing blood transfusions of children against expressed objections of parents who opposed transfusions as contrary to their religion were not invalid under Constitution of United States. RCWA 13.04.010(12), 13.04.095; U.S.C.A.Const. Amends. 1, 14.

[22] Federal Courts ⚖43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

When state action is challenged in federal court on federal constitutional grounds and there are questions of state law which might dispose of case or materially change nature of constitutional problems, federal court may decline to proceed though it has jurisdiction under Constitution and statutes and that abstention policy is usually referred to as the "Pullman Doctrine".

[23] Federal Courts ⚖43
170Bk43 Most Cited Cases
(Formerly 106k269.4)

Federal court's abstention from exercising federal jurisdiction in case where state action is challenged on federal constitutional grounds and there are questions of state law which may dispose of case is proper in order to avoid unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication.

[24] Federal Courts ⚖43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

"Equitable abstention doctrine" is designed to restrict exercise of federal jurisdiction, at least in first instance, by having federal courts defer to state courts in consideration and interpretation of state statutes.

[25] Federal Civil Procedure ⚖2582
170Ak2582 Most Cited Cases

Award of equitable relief is a discretionary matter.

[26] Federal Courts ⚖43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

Federal court should properly consider whether circumstances warrant initial construction of state statute by highest court of state and, if so, abstain from exercise of federal jurisdiction.

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[27] **Federal Courts** ⇐43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

Where constitutionality of state statute is involved, any uncertainty as to its meaning should first be resolved by state, in view of policy of comity between state and federal governments, that state courts ideally should be better informed about state policies and purposes so that construction of statute may be achieved more accurately and meaningfully, and that resolution of uncertain statutory authority by state courts may obviate federal adjudication of constitutional questions arising from the enactment.

[28] **Federal Courts** ⇐43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

Since practical effect of federal court's decision to abstain in case over which it has been given jurisdiction by law is to deny plaintiff his right to federal forum, decision to abstain not only requires reasonably uncertain issues of state statutory interpretation, but also availability of adequate state procedures for resolving the uncertainty.

[29] **Federal Courts** ⇐43
170Bk43 Most Cited Cases
(Formerly 106k260.4)

Abstention doctrine becomes applicable in those situations where it is uncertain that state enactment authorized restrictions imposed on persons bringing federal action or on their activities.

[30] **Appeal and Error** ⇐843(1)
30k843(1) Most Cited Cases

When matter of public interest is involved, Supreme Court of State of Washington has jurisdiction to decide broad issues even though particular case raising them is moot.

[31] **Federal Courts** ⇐54
170Bk54 Most Cited Cases

Even if prior decision were not controlling, thereby precluding injunction restraining physicians from administering blood transfusions to infant plaintiffs under Washington statutes, in view of fact that application of statutes to plaintiffs in blood transfusion cases appeared to be uncertain and that adequate state procedures existed to resolve uncertainty, federal court, under doctrine of abstention, would deny relief.

*491 Kenneth A. MacDonald, Frederic C. Tausend, Seattle, Wash., W. Glen How, Q.C., Toronto, Canada, Daniel Brink, Seattle, Wash., for plaintiffs.

John J. O'Connell, State Atty. Gen., James B. Wilson, Asst. Atty. Gen., Seattle, Wash., Robert E. Schillberg, Snohomish County Pros. Atty., Donald E. Priest, Deputy Snohomish County Pros. Atty., Everett, Wash., Charles O. Carroll, King County Pros. Atty., John M. Watson, James E. Kennedy, Deputy Pros. Attys. for King County, Seattle, Wash., Anderson & Hunter, Everett, Wash., Little & Jones, Charles T. Sharp, Clarkston, Wash., Williams, Lanza, Kastner & Gibbs, Holman, Marion, Perkins, Coie & Stone, Seattle, Wash., for defendants.

MEMORANDUM DECISION

Before HAMLEY, Circuit Judge, and LINDBERG and BEEKS, District Judges.

PER CURIAM.

The Jehovah's Witnesses, a minority religious group; the Watch Tower Bible and Tract Society of Pennsylvania, legal governing agency for the Jehovah's Witnesses; and individually-named Jehovah's Witnesses, including minors as well as adults; have brought the above-entitled action on their own behalf and as a class action on behalf of all Jehovah's Witnesses in the State of Washington. The prayer of the complaint asks that a special three-judge district court be convened pursuant to 28 U.S.C. §§ 2281 and 2284 for the purposes of declaring the legal rights of the plaintiffs and permanently enjoining all defendants, individually and as a class, from administering blood transfusions to plaintiffs in the future, as defendants allegedly have done in the past, in violation of certain constitutional rights of the plaintiffs.

The parties defendant are individually-named Superior Court judges, Juvenile Court employees, hospitals and hospital personnel, and physicians; also physicians named as representatives of a class

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which includes all medical doctors in the State of Washington who are employed in and paid by public institutions operating directly with funds raised entirely or in part from the taxpayers of the State of Washington, or operating under funds granted to said hospitals by the United States government; physicians named as representatives of a class that includes all medical doctors licensed to practice medicine or surgery in the State of Washington; hospitals named as representatives of a class which includes all hospitals in the State of Washington operated by the state, a county, or by any public hospital district; and hospitals named as representatives of a class which includes all licensed hospitals in the State of Washington excepting the type of 'public' hospitals immediately referred to.

The state statute challenged as unconstitutional and giving rise to the request for the special three-judge court is the Juvenile Court Act of the State of Washington, R.C.W. 13.04, and more particularly sections 13.04.010(12) and 13.04.095 of said act. Plaintiffs contend that these particular sections of the act on their face and as applied to the plaintiffs are unconstitutional and invalid. The gist of the plaintiffs' complaint is that the defendant Superior Court judges pursuant to their authority under the Juvenile Court Act and upon petitions by the defendant doctors or hospital personnel have taken the children of plaintiffs and removed them from the protection of their parents by having such children declared wards of the court simply because plaintiffs in the exercise of their judgment disagree with the opinions of the defendant physicians and decline to accept blood transfusions for their children.

All defendants have filed and argued motions to dismiss. At the hearing on said motions the court sua sponte raised the question of its jurisdiction to hear the case at bar, referred to the decision of *492 the Supreme Court in Phillips v. United States, 312 U.S. 246, 61 S.Ct. 480, 85 L.Ed. 800 (1941), and requested briefs on the jurisdictional issue. After consideration of the briefs the court has concluded to reserve until a hearing on the merits its ruling on the jurisdictional issue as well as other issues raised by the motions to dismiss the Superior Court judges, the physicians, hospitals, and hospital personnel as to the eight cases set forth in the pretrial order No. 1 [FN1] and the two cases in the supplemental complaint [FN2] wherein court orders were obtained pursuant to R.C.W. 13.04.010(12), declaring the children of Jehovah's Witnesses wards of the court and permitting blood transfusions to be given to such children.

FN1. Retained in the action until a hearing on the merits are the following parties:
Plaintiffs: Norman C. and Carolyn Maydole and Russell Scott Maydole; and
Defendants: Franklin Kells, M.D.; Donald B. Fager, M.D.; Judge Lawrence Leahy.
Plaintiffs: Laurin and Geraldine Seelye and Bradley Scott Seelye; and
Defendants: Robert F. Miller, M.D.; Judge William G. Long.
Plaintiffs: Clifford and Joyce Burnitt and Thomas Allen Burnitt; and
Defendants: University of Washington Hospital; Loren Winterschied; Judge William G. Long.
Plaintiffs: Arian W. and Beatrice Elam and Jeffrey Ward Elam; and
Defendants: Stevens Memorial Hospital, Edmonds, Washington; Donald E. Brown, M.D.; Allen Sola, M.D.; Judge Phillip Sheridan.
Plaintiffs: James and Helen Lawrence and Heidi Jo Lawrence; and
Defendants: University of Washington Hospital; Lloyd Nyhus, M.D.; Carl B. Erickson; Judge Theodore S. Turner.
Plaintiffs: Jack and Hazel Pen and Michael Pen; and
Defendants: Robert A. Aldrich; Warren Guntheroth; John Allen; Judge William G. Long.
Plaintiffs: Olite and Azell Smith and Jeanetter Smith; and
Defendants: King County Hospital Unit No. 1 (Harborview); Robert F. Miller, M.D.; Judge Robert F. Utter.
Plaintiffs: Richard and Bernice Brockman and Sharilyn Brockman; and
Defendants: J. D. Klein, M.D.; Judge Thomas G. Jordan.

FN2. Also retained are the following parties:
Plaintiffs: Neil and Patsy Nichol and Geri Lynn Nichol; and
Defendants: Lester Sauvage, M.D.; Jack

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Docter, M.D.; Children's Orthopedic Hospital and Medical Center; Judge Robert F. Utter.
Plaintiffs: Gene and Donna Hardy and Loren Hardy; and
Defendants: Quay Cutshall, M.D.; Children's Orthopedic Hospital and Medical Center; Judge Walter T. McGovern.

Before the court for further decision at this time are the motions to dismiss the suit as to the remaining defendants, contentions and issues. The initial issue with respect to these motions is the jurisdiction of a three-judge district court to hear and decide issues related to but in no way directly bearing upon the action challenging on constitutional grounds the application of a state statute.

In pretrial order No. 1 and in the affidavit of Kenneth MacDonald filed for consideration with motion to dismiss for lack of jurisdiction (document 87) plaintiffs delineate four cases [FN3] wherein the constitutional rights of adult Jehovah's Witnesses are alleged to have been violated, but the contested action was not taken pursuant to the constitutionally-challenged state statute. In the supplemental complaint plaintiffs depict another situation [FN4] involving an adult Jehovah's Witness for whom a guardian was appointed to consent to a blood transfusion which the patient had refused on religious grounds. This alleged violation of constitutional rights likewise did not occur from an act based on the challenged state statute. These additional acts plaintiffs claim are actionable constitutional violations under the Civil Rights Act, 42 U.S.C. § 1983. The question is whether the three- judge district court may properly *493 hear questions based on violation of the Civil Rights Act.

FN3. The cases involve plaintiffs, Eugene and Jean Alicki; plaintiffs, Joseph G. and Shirley L. Chabot; plaintiffs, Richard D. and Doris Jean Russell; plaintiff, Evonne Sayers.

FN4. The case involves plaintiff, Martha Ridge.

[1][2][3][4] The three-judge district court is a statutory creature with a limited sphere of operation. It is an extraordinary court and technical requirements relating to its jurisdiction are to be strictly construed. Bailey v. Patterson, 369 U.S. 31, 82 S.Ct. 549, 7 L.Ed.2d 512 (1962); Gate Film Club v. Pesce, 236 F.Supp. 828 (S.D.N.Y.1964). Section 2281 of title 28 of the United States Code sets out the jurisdictional limitations binding on a three-judge court: 1) an interlocutory or permanent injunction must be sought; 2) the injunction sought must be one to restrain the action of a state officer or administrative agency; 3) the action sought to be enjoined must consist of the enforcement or execution of a state statute; 4) the injunction must be sought on the ground that the state statute is unconstitutional. Moreover, generally a disputed substantial federal question must be presented. See Bartlett & Co., Grain v. State Corp. Comm. of Kansas, 223 F.Supp. 975 (Kan.1963). The statutory requirements for three-judge court jurisdiction are requirements of substance, not of form. See Wilentz v. Sovereign Camp, 306 U.S. 573, 59 S.Ct. 709, 83 L.Ed. 994 (1939). [FN5] Thus, it is specifically stated that the questionable action must be taken in the enforcement or execution of a state statute; the acts of the state which are attacked must be based on the constitutionally-challenged statute.

FN5. The Supreme Court in Wilentz was applying the predecessor to section 2281; the court was asked to decide whether the suit brought met the statutory pre-requisites-- that is, was it a suit for an injunction 'restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission'? (306 U.S. at 579, 59 S.Ct. at 713.) In deciding that the case before it was not the kind of case encompassed by the statute, the court noted that the statute sharply and specifically defined the class of cases for the extraordinary three-judge procedure and jurisdiction could not be extended to include cases not satisfying the stated limitations.

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[5] The policy behind the convening of a three-judge court is that a single judge ought not to be empowered to invalidate a state statute under a federal claim. It is significant that in Swift & Co. v. Wickham, 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965), although in another context, the Supreme Court has recently emphasized the restrictive interpretation to be given to section 2281 cases, overruling the court's more liberal holding in Kesler v. Dept. of Public Safety, 369 U.S. 153, 82 S.Ct. 807, 7 L.Ed.2d 641 (1962) as to the cases encompassed by the three-judge procedure. In Wickham the court notes that 'Section 2281 was designed to provide a more responsible forum for the litigation of suits which, if successful, would render void state statutes embodying important state policies.' (382 U.S. 111, 119, 86 S.Ct. 258, 263). Such policy and the limitations of section 2281 must be considered in appraising the additional issues plaintiffs request the three- judge court to determine.

[6][7][8][9][10] The issue of whether or not conduct of judges, physicians, hospitals, and hospital personnel is actionable under the Civil Rights Act is not germane in determining the jurisdiction of a three-judge court. The fact that a single district court judge would have jurisdiction to hear questions arising under the Civil Rights Act is not determinative of the jurisdiction of a three-judge district court. The claim that constitutional rights have been violated by state action not based upon or taken pursuant to a specific statute is not, under the wording or a reasonable interpretation of the federal statute, sufficient to vest a three-judge court with the authority to consider the claim. As stated previously, the issues properly posed for determination by a three-judge court arise from the enforcement or execution of a state statute, which is claimed to violate constitutional rights. The questions involving the ***494** adult Jehovah's Witnesses were not and are not predicated on R.C.W. 13.04, or on any other constitutionally-challenged state statute. Nor is it answer enough to say that because a three-judge court is considering constitutional questions arising from actions taken pursuant to the enforcement or execution of a challenged state statute, such court has 'pendant' jurisdiction to hear closely-related matters. This court does not intend to depart from the traditional, limited construction of three-judge court jurisdiction. The court as a specially convened three-judge court finds no authority to extend its jurisdiction to questions involving the constitutional rights of Jehovah's Witnesses when the alleged constitutional deprivations did not occur from acts taken pursuant to a challenged state statute.

The court therefore dismisses those aspects of the case not based on acts taken in the enforcement or execution of R.C.W. 13.04.010(12) or 13.04.095.

Orders of dismissal in accordance herewith to be submitted by counsel for the various defendants.

ADDENDUM TO MEMORANDUM DECISION OF JUNE 8, 1967

PER CURIAM.

On June 8, 1967 this court entered its memorandum decision directing dismissal of those aspects of the case which involved only actual or threatened blood transfusion of adults, and reserving until trial of the cause the court's ruling on (1) the jurisdictional issue raised by Phillips v. United States, 312 U.S. 246, 61 S.Ct. 480, 85 L.Ed. 800 (1941), and (2) motions raised by various defendants for dismissal of the action as to some or all of them. Subsequently plaintiffs filed a motion to reconsider the court's memorandum decision insofar as it dismissed from the case the adult blood transfusion instances involving plaitniffs, Evonne Sayers and Martha Ridge.

First, as to the jurisdictional issue. Troubled by the effect of the holding of the supreme court in Phillips, [FN1] and cognizant of the technical construction given to three-judge court statutes [FN2] this ***495** court sua sponte raised the question as to whether the instant case was properly a special three-judge case. Briefs were requested and submitted on the issue. With regard to the latter question, the court finds the present case distinguishable from the Phillips case and concludes that this is properly a three-judge court case.

> FN1. In Phillips, the Grand River Dam Authority, a state agency, was empowered to construct the Grand River Dam and to borrow money and accept grants from the United States for such purposes. Construction of the project was begun,

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using money borrowed and grants accepted from the United States. During the construction, state roads were flooded and attempts by the Governor to recover from the state agency on claims resulting from the flooding of the roads were unsuccessful. The Governor later declared martial law in an area surrounding a part of the damsite and ordered the State Adjutant General to occupy it. Acting in conjunction with other state officials the Governor then obtained in a state court an ex parte order restraining further work on the dam by the Grand River Dam Authority. At this point the United States commenced an action in the federal district court to enjoin the Governor and other state officials from interfering with the Grand River Dam construction project. A three- judge district court was convened and an injunction in favor of the United States was issued by the special court. On appeal, the supreme court, Mr. Justice Frankfurter speaking, held that this was not the proper case for convening a three-judge court because the jurisdictional prerequisites had not been met.

FN2. See Memorandum Decision of June 8, 1967, pages 491-494. In Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908) the supreme court upheld the power of a federal trial judge to enjoin the Minnesota attorney general from enforcing a railroad rate statute found to violate due process. The effect of the decision was to bring acts of state officers within the scope of federal judicial review and to subject the states to the restrictions of the federal constitution in situations where they might otherwise ignore it. See Wright, Handbook of the Law of Federal Courts (1963), page 160. The doctrine led to the nullification of state legislative attempts to cope with the increasing needs of a burgeoning industrial society when a single federal judge would issue an injunction invalidating a particular state regulatory statute. Limitations on federal jurisdiction in such circumstances were essential to preserve the proper allocation of power between the United States and the several states, which is at the heart of a federal system. Exhaustion of state remedies before challenging the state action in a federal forum was one limitation. The creation of the three-judge court procedure to handle constitutional attacks on state statutes was another. It was the belief in Congress that there would be less public resentment where the enforcement or operation of the state statute attacked on federal constitutional grounds was stayed by a court of three judges, at least one of whom was a circuit court judge, and the decision of such court was directly appealable to the supreme court.

There are two patent distinctions between the Phillips case and the one now before us. In Phillips the supreme court stated that it was 'significant' that plaintiff did not, in its pleadings, specifically attack the constitutionality of the Oklahoma state constitutional provisions and statutes granting the Governor power to call out the National Guard. (See 312 U.S. at 252, 61 S.Ct. 480). In our case the pleadings expressly challenge the constitutionality of the state statutes. In Phillips the supreme court characterized that suit as 'involving a single, unique exercise' of the powers of the Governor's office. (See 312 U.S. at 253, 61 S.Ct. 480.) In our case plaintiffs complain of ten or more such acts, extending over a considerable period of time and involving three or more counties.

There is no question but that plaintiffs are purporting to attack statutes of the State of Washington, namely two provisions of the state's Juvenile Court Law, on federal constitutional grounds. The provisions in question, namely RCW 13.04.010(12) and RCW 13.04.095, are of statewide application.

These statutes are also mandatory in form. RCW 13.04.010(12) provides, among other things, that for the purpose of the act the words "dependent child' shall mean any child under the age of eighteen years: * * * (12) who is grossly and wilfully neglected as to medical care necessary for his well-being.' This does not appear to leave any room for an exception in the case of a child who is in fact found to be so neglected, but for religious reasons. RCW 13.04.095 provides that when any child shall

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be found to be delinquent or dependent, within the meaning of this chapter, the court 'shall' make such order for the care, custody, or commitment of the child 'as the child's welfare in the interest of the state require.'

It is true that this statute does not expressly require a court to order a medically-neglected child made a ward of the court so that a blood transfusion may be administered. But where the finding of gross and wilful medical neglect is premised upon a finding that a transfusion is necessary to save life there is probably no order other than to require such a transfusion which would discharge the state judge's mandatory duty, under RCW 13.04.095, to 'make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require.'

In more recent litigation courts have held that a three-judge court is required not only where a state statute is challenged as federally unconstitutional on its face, but also 'as applied.' Thus, in Idlewild Bon Voyage Liquor Corp. v. Rohan, 289 F.2d 426 (2 Cir. 1961) it was held at page 428 that the district judge should have convened a three-judge court where the complaint challenged the federal constitutionality of a state statute 'because of the way that statute was being applied.' And when the same case came before the supreme court sub nom. Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715, 82 S.Ct. 1294, 1296, 8 L.Ed.2d 794 (1962) that court stated: 'We agree with the Court of Appeals *496 that a three-judge court should have been convened in this case.' [FN3]

FN3. See also, Kesler v. Dept. of Public Safety, 369 U.S. 153, 157, 82 S.Ct. 807, 7 L.Ed.2d 641, overruled on other grounds in Swift & Co. v. Wickham, 382 U.S. 111, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965); Query v. United States, 316 U.S. 486, 489, 62 S.Ct. 1122, 86 L.Ed. 1616 (1942); Ex parte Bransford, 310 U.S. 354, 361, 60 S.Ct. 947, 84 L.Ed. 1249 (1940); 'The Three-Judge District Court in Constitutional Litigation,' David P. Currie, 32 Univ. of Chicago Law Review, 1, 43. But see Maison v. Confederated Tribes, etc. (9 Cir. 1963) 314 F.2d 169, 170, footnote 1.

[11] In essence, plaintiffs' complaint here is the same: state judges are applying a statewide statute in a federally unconstitutional manner. In view of this, and without regard to the merits of their position, [FN4] we think plaintiffs should not be denied a three-judge court under the Phillips doctrine.

FN4. With respect to the merits of the case, see the court's opinion filed herewith.

Second, as to the plaintiffs' motion to reconsider the court's memorandum decision insofar as it directs the dismissal from the case of those defendants charged in relation to the blood transfusions authorized to be administered to adult plaintiffs, Evonne Sayers and Martha Ridge. With respect to these plaintiffs [FN5] but not in the other adult cases, court orders were obtained authorizing compulsory blood transfusions, contrary to the religious beliefs of the adults. In its decision of June 8, 1967 this court considered and rejected the proposition that it had 'pendent' jurisdiction under the three-judge court procedure to determine the questions raised in the adult cases. [FN6] *497 Because this court regards the three-judge court statute as a limitation on federal jurisdiction, and to be strictly construed, the court must, for the reasons propounded in its earlier decision as well as that stated in footnote 6 herein, deny the plaintiffs' motion to reconsider.

FN5. Both Evonne Sayers and Martha Ridge were suffering from vaginal bleeding. Each had refused blood transfusions and had in fact signed a written document releasing the hospital and doctor from any liability for any injury to her arising from a failure to give her a blood transfusion. Each woman is the mother of five children. In the Ridge instance the court appointed a guardian on the petition of the hospital without giving any notice to her of the proceeding involving her. In fact, Mrs. Ridge first heard of the matter on a radio news broadcast the day after the order had been entered. The court appointed a guardian over Mrs. Sayers on the petition of the patient's mother despite the patient's

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refusal and the refusal of her husband to consent to the blood transfusions. In each case the consent was given by the guardian. In the Ridge instance no transfusion was actually given. In the Sayers instance, a blood transfusion was given.

In the Ridge case, the court noted:

'The interest of the state in preserving the life of the mother for the benefit of the minor children of the ward outweighs the constitutional prohibition against interfering with the free exercise of her religious beliefs.' (Pretrial order No. 2, page 29b). In the Sayers case the court noted:

'The Constitutional right to the free practice of religion is not absolute but must be balanced against other rights, such as the right of children of tender years to have a good and loving parent. * * * The medical control of one's body is not absolute but relative when there are minor children dependent upon the survival of the adult.' (Pretrial order No. 2, pages 32 and 33).

FN6. In support of their motion for reconsideration of the two adult cases, plaintiffs cite Louisville and Nashville Railroad v. Garrett, 231 U.S. 298, 34 S.Ct. 48, 58 L.Ed. 229 (1913); Sterling v. Constantin, 287 U.S. 378, 53 S.Ct. 190, 77 L.Ed. 275 (1932); and Florida Lime and Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73, 80 S.Ct. 568, 4 L.Ed.2d 568 (1960). While these cases upon casual examination appear to support plaintiffs' contention of pendent jurisdiction of this court to consider the adult cases of Sayers and Ridge, a careful consideration of the cases (including the district court opinion in Constantin v. Smith, D.C., 57 F.2d 227) indicates that the supreme court in using language such as:

'The jurisdiction of the District Court so constituted (three-judge district court) * * * extends to every question involved, whether of state or federal law, and enables the court to rest its judgment on the decision of such of the questions as in its opinion effectively dispose of the case.' (Sterling v. Constantin, supra, 287 U.S. pages 393-394, 53 S.Ct. page 193).

was not referring to issues or claims that did not arise directly or indirectly because of action taken by virtue of the state statute under attack. In other words, as indicated by the court in the Florida Lime case, 362 U.S. pages 80 and 84, 80 S.Ct. 568, a three-judge district court has jurisdiction over all claims-- state or federal-- raised against the statute, but no jurisdiction over related matters not in some way challenging the statute.

'While the Sayers and Ridge cases involve Jehovah's Witnesses against whom court orders were entered authorizing blood transfusions over their objections on religious grounds, neither the court orders nor any other action of the defendants were related to or involved the Juvenile Court Law here under attack. Because this court so construes its authority under section 2281, it must for the reasons stated in its June 8, 1967 Memorandum Decision, pages 3 to 6, deny the plaintiffs' motion to reconsider the court's dismissal of plaintiffs, Evonne Sayers and Martha Ridge.

Furthermore, the court having decided on the merits that plaintiffs are entitled to no relief under their principal action attacking the state statute, there would be no occasion to exercise pendent jurisdiction with respect to plaintiffs' adult cases.

[12] Assuming, however, that this court does have pendent jurisdiction to consider the merits of the constitutional issues raised by the compulsory transfusion of adults, the court, in the discretionary exercise of its equity powers, ought not to accord declaratory relief for the future predicated on two isolated instances. Only one county (King County), and only one superior court judge (Judge Robert F. Utter) were involved in the incidents involving plaintiffs, Evonne Sayers and Martha Ridge, both of which occurred in 1966. Even assuming that the two described instances involved violations of the constitution, and that an equitable remedy is otherwise available from this three-judge court, plaintiffs have not made a sufficient showing as to the probability that incidents of this kind will reoccur. [FN7]

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FN7. In this connection, see the court's Opinion filed herewith, dated November 20, 1967.

[13] Third, as to the motions raised by various defendants for dismissal of the action as to some or all of them. [FN8] Defendants, Donald E. Brown and Alan Sola, have moved for dismissal of the action as to them on the ground that subject matter jurisdiction is lacking as to them. The only transfusion incident in which these two defendants are involved pertains to Jeffrey Ward Elam, minor son of plaintiffs Adrian and Patricia Elam.

FN8. The unopposed motions of defendants, Bert DeGroot, M.D., Robert Olson, M.D., and John P. Mucklestone, that the action be dismissed as to them were granted before the trial commenced. During the trial the court granted the motion to dismiss defendant, Everett General Hospital, Alfred Muller and James P. Hunter on the ground that the court had no jurisdiction over said parties.

This boy was injured in an automobile accident and defendant doctors Brown and Sola at first declined to begin necessary surgical procedures. They did so because the parents refused on religious grounds to permit a blood transfusion if, in the course of the operation, the doctors decided that this was necessary. However, Judge Phillip Sheridan, a defendant herein, entered an order finding the child a dependent child and authorized a transfusion if Doctors Brown and Sola thought it necessary. The record does not indicate who petitioned the court for such an order. An operation was then performed and the child recovered without the necessity of a transfusion.

Doctors Brown and Sola argue that, under these circumstances they were not acting under color of state law-- an essential element under 42 U.S.C. § 1983-- and that in any event there was no deprivation of a constitutional right because no transfusion was actually given.

While the parents had consented to an operation it was performed only when the doctors had an order from a state *498 court authorizing a transfusion if the doctors thought it necessary. In our view the doctors were, in these circumstances, acting under color of state law when they performed the operation. While no transfusion was given, the court order was entered and the doctors proceeded with the operation under authority of that order, contrary to the religious objections of the parents.

[14] This was enough to meet the jurisdictional requirement of a claimed deprivation of a constitutional right, whether or not a transfusion was actually given. It should also be noted that Doctors Brown and Sola must remain as defendants for the independent reason that they, among others, are named as representatives of a class of medical doctors. (Pretrial Order No. 2, page 35)

The motion of defendants Brown and Sola for dismissal of the action as to them, because of lack of jurisdiction, is denied.

[15][16] Pursuant to the June 8, 1967 memorandum decision, plaintiffs have made no mention in pretrial order No. 2 (which order contains the admitted and disputed facts as to each instance relied upon by plaintiffs) of the instance of adult transfusion involving plaintiffs Eugene and Jean Alicki and of defendants St. Frances Xavier Cabrini Hospital and Carter Swanson, M.D., who were concerned only with the Alicki incident and, in the case of the hospital, another dismissed incident involving an adult. Similarly, plaintiffs have made no mention in pretrial order No. 2 of the instance of adult transfusion invoving plaintiffs Joseph G. and Shirley L. Chabot and defendant John Caputo, M.D., who were concerned only with the Chabot instance. It follows that the action should be dismissed as to the defendants St. Frances Xavier Cabrini Hospital, Carter Swanson, M.D., and John Caputo, M.D., and it is so ordered.

The action may also be regarded as abandoned, and is therefore ordered dismissed as to a number of persons named in the complaint or supplemental complaint as defendants, but as to whom no grievance is stated in pretrial order No. 2. Falling in this category are F. W. Fells, Business Manager of Firlands Sanatorium; Swedish Hospital; Doctor's Hospital; Group Health Hospital; Everett Clinic, Inc.; Walla Walla General Hospital; Edwin Brockenbrough, M.D.; Jerry De Groot, M.D.; Richard Haugen, M.D.; Fred J. Jarvis, M.D.; Alfred Magar, M.D.; H. F. Newman, M.D.; Thomas W.

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Skalley, M.D.; Franklin Smith, M.D.; Edward Powers, M.D.; Quay Cutshall, M.D.; and George Postill.

The other motions denominated motions for dismissal on the ground of lack of jurisdiction are, in actuality, motions to dismiss for failure to state a claim upon which relief can be granted. We deal with the questions raised by these motions as a part of our consideration of the case on its merits.

OPINION ON THE MERITS

LINDBERG, District Judge:

The principal plaintiffs herein are individual Jehovah's Witnesses whose minor children, contrary to the expressed beliefs and directions of their parents, were given blood transfusions under court orders obtained pursuant to provisions of the Juvenile Court Law of the State of Washington, namely RCW 13.04.010(12) and 13.04.095. [FN1] Under this *499 statutory authority, superior court judges of the State of Washington, on such showing as they deemed sufficient, declared the minor children of Jehovah's Witnesses, included herein as plaintiffs, to be dependent children for the purpose of authorizing blood transfusions of the children against the expressed objections of the parents.

FN1. RCW 13.04.010(12) of the Juvenile Court Law of the State of Washington provides:
'Juvenile court law-- Dependent and delinquent children defined-- Wards of state. This chapter shall be known as the 'Juvenile Court Law' and shall apply to all minor children under the age of eighteen years who are delinquent or dependent; and to any person or persons who are responsible for or contribute to, the delinquency or dependency of such children.
'For the purpose of this chapter the words 'dependent child' shall mean any child under the age of eighteen years:
'(12) who is grossly and wilfully neglected as to medical care necessary for his well-being.'
RCW 13.04.095 provides:
'Commitment of child-- Order of court-- Powers of Department of institutions-- Order rescinded when reformation complete. When any child shall be found to be delinquent or dependent, within the meaning of this chapter, the court shall make such order for the care, custody, or commitment of the child as the child's welfare in the interest of the state require. Subject to further order, the court may commit the child:
'(1) To the care of such child's parents, subject to supervision of the probation officers; or
'(2) To the custody of a probation officer, subject to such conditions as the judge may impose; or
'(3) To a reputable citizen or association able and willing to receive and care for such child; or
'(4) To an appropriate private agency authorized to care for such children; or
'(5) To the department of public assistance; or
'(6) To the department of institutions * * *
'In no case shall a child be committed beyond the age of twenty-one years. A child committed to the department of institutions shall be subject to the supervision and control thereof and the department shall have the power to parole such child under such conditions as may be prescribed.
'The department of institutions shall have the power to discharge such child from custody, and the court shall have the power to rescind the commitment of such child, whenever his or her reformation shall be deemed complete.'

The proceeding was brought by plaintiffs, individually as adults, [FN2] as parents and minors, and as a class action on behalf of the eighty-nine hundred Jehovah's Witnesses in the State of Washington to challenge the constitutionality of the described application of the Juvenile Court Law to plaintiffs. Also joined as parties plaintiff are The Jehovah's Witnesses, an unincorporated religious association, and the Watch Tower Bible and Tract Society of Pennsylvania, a nonprofit corporation chartered by the State of Pennsylvania and the legal governing agency of the Jehovah's Witnesses.

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FN2. In certain instances, the superior court judges also entered orders authorizing blood transfusions of adult Jehovah's Witnesses over the strenuous objections of the adults. This court dismissed those aspects of the case involving the adult Jehovah's Witnesses. See June 8, 1967 Memorandum Decision, pages 491-494 and Addendum, pages 494-498.

[17] The defendants are the Attorney General and other officials of the State of Washington, individual physicians, superior court judges and officials of the superior court, and trustees, administrators and members of the staffs of hospitals in the State of Washington. Some of the defendant physicians were sued not only as individuals but also as representatives of a class which includes 'all medical doctors in the State of Washington who are employed in and paid by public institutions operating directly with funds raised entirely or in part from the taxpayers of the State of Washington.' [FN3] Some of the defendant hospitals * 500 were also sued not only individually but also as representatives of a class which includes all hospitals in the State of Washington operated by the state, a county, or by any public hospital district. [FN4]

FN3. In pretrial order No. 2 the description of this class of physicians also included the clause 'or operating under funds granted to said hospitals by the United States Government.' In their proposed findings of fact plaintiffs deleted this clause.
A second class of physicians was also designated in the complaint, namely, 'all medical doctors in the State of Washington.' (Complaint, page 14) However, in pretrial order No. 2, which superseded the pleadings, this class of physicians was eliminated. (Pretrial order No. 2, page 35) In their 'Additional Proposed Findings of Fact,' plaintiffs seek to reinstate this class of defendant physicians. (Additional Findings of Fact, page 1) Pretrial order No. 2 (page 45a), provides that the pretrial order shall not be amended 'except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.' Plaintiffs have not sought nor obtained court authority to amend pretrial order No. 2 by reinstating this class of physicians, and therefore the same may not be regarded as a class of defendants subject to the jurisdiction of this court in this cause.

FN4. In the complaint the calss of defendant hospitals was described more broadly as 'all licensed hospitals in the State of Washington.' (Complaint, page 14) However, the class of defendant hospitals was narrowed in pretrial order No. 2, as noted above. (Pretrial order No. 2, page 35) In their 'Additional Proposed Findings of Fact,' plaintiffs seek to add a second class of defendant hospitals, conforming to the broad class of defendant hospitals described in the complaint. (Additional Findings of Fact, page 2) However, for the reasons stated in note 3 above, this second class of hospitals may not be regarded as a class of defendants subject to the jurisdiction of this court in this cause.

The action is brought as a civil rights action pursuant to 42 U.S.C. § 1983, claiming that the actions of the state judges under RCW 13.04.010(12) and 13.04.095 violated plaintiffs' federally-guaranteed constitutional rights and asserting that in all probability similar violations of the Constitution will occur unless precluded by intervention of a federal court. Accordingly, plaintiffs seek declaratory and injunctive relief which will stop this practice for the future. Plaintiffs do not seek monetary damages for past deprivations.

Plaintiffs sought and obtained the convening of a special three-judge district court pursuant to 28 U.S.C. §§ 2281 and 2284. This request was made and granted because plaintiffs seek to enjoin the enforcement of a state statute [FN5] of general application on the ground of invalidity under the federal Constitution.

FN5. See footnote 1.

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The gist of the plaintiffs' complaint is that the defendant physicians, hospitals, hospital personnel, superior court judges and juvenile court employees have used the Juvenile Court Law to obtain court orders removing the children of Jehovah's Witnesses from the custody of their parents who refuse on medical and religious or personal grounds to consent to blood transfusions for their children once the children have been placed in the care of a physician. The court order makes the child a ward of the court and authorizes blood transfusions to be given to him when the attending physician determines the transfusion is necessary. This court order is obtained despite the fact that plaintiffs allegedly have given or have sought to give in each instance to the hospitals or doctors affected a written release discharging the hospitals or doctors from any and all liability for any untoward results arising from plaintiffs' refusal to accept blood transfusion for their children. Implicit in the issuance of these court orders is the finding by the court that the Jehovah's Witnesses, despite their attempt both to provide proper medical care for their children and to comply with the tenets of their faith, have been wilfully and grossly neglectful as to the medical care necessary for the well- being of their children.

Plaintiffs assert that the application of the Juvenile Court Law under these circumstances violates fundamental rights and liberties secured to them under the Constitution of the United States. Plaintiffs principally contend:

1. That the actions of the defendants deprive plaintiffs of their rights under the First Amendment to freedom of association, to the free exercise of their religion and to freedom from the fashioning of any laws respecting the establishment of religion, which rights are made applicable to the states by the Fourteenth Amendment.

2. That plaintiffs have been denied life, liberty and property without due ***501** process of law under the Fifth Amendment, made applicable to the states by the Fourteenth Amendment.

3. That plaintiffs have been denied their right of family privacy protected by virtue of the Ninth and Fourteenth Amendments.

4. That plaintiffs have been denied equal protection of the laws of the State of Washington in that the state has protected the religious liberty and parental rights of all other citizens and all other religious denominations except the plaintiffs.

5. That the actions of superior court judges of the State of Washington in compelling blood transfusions over the protests of plaintiffs has caused animosity toward plaintiffs and has interfered with their right of association by making it more difficult for plaintiff, Watch Tower Bible and Tract Society, and individual plaintiffs to attract and hold members for their social and religious purposes. Further, because of the acts taken pursuant to the challenged statute, a member of the Jehovah's Witnesses living in or visiting the State of Washington knows that his conscience and religion will not be respected and his family privacy is not as safe as that of the members of all other religious groups.

6. That plaintiffs are a respectable people who have a deep sense of responsibility and who seriously endeavor to care for their families in harmony with Christian principles as set forth in God's Word, the Holy Bible, and that they have a right to decide what medical treatment they will accept for their children.

7. That the defendant physicians and hospital officials are committing an unlawful assault forbidden by law in forcing medical treatment upon the children of Jehovah's Witnesses contrary to express parental authority. Since Jehovah's Witnesses are exercising parental discretion in order to care for their children's welfare as best then can, there is no lawful basis under the parens patriae power of the state for the state's alleged unlawful and unconstitutional interference with the exercise of parental authority and discretion when a Jehovah's Witness in good faith disagrees with a doctor about medical treatment for his child involving blood transfusion.

8. That plaintiffs will be irreparably injured unless the defendants are permanently enjoined from continuing to apply the Juvenile Court Law to plaintiffs in the manner constitutionally challenged in this action.

With regard to declaratory relief as to the minors involved, plaintiffs seek a decree declaring that RCW 13.04.010(12) and RCW 13.04.095, provisions of the Juvenile Court Law of the State of

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Washington, are invalid under the Constitution of the United States, as applied by defendants in making children of Jehovah's Witnesses wards of the state court for the purpose of authorizing compulsory blood transfusions. [FN6]

FN6. Plaintiffs also sought a declaratory judgment and injunctive relief with respect to blood transfusions administered to adults. This aspect of the case was dismissed. See footnote 2, supra.

Concerning injunctive relief, plaintiffs seek to: (1) enjoin defendant state judges, 'their representatives, agents and successors' from declaring children of plaintiffs or members of plaintiffs' class to be dependent children and wards of the court, pursuant to RCW 13.04.010(12) and RCW 13.04.095, 'solely on a finding that the parents have refused transfusion of blood on religious or medical grounds,' and from entering orders authorizing blood transfusions of such children; (2) enjoin named defendant doctors, hospitals, hospital personnel, 'their representatives, agents, employees, attorneys and successors' from bringing any civil proceeding for the purpose of enforcing or applying RCW 13.04.010(12) and RCW 13.04.095 to Jehovah's Witnesses so as to compel blood transfusions of the children of Jehovah's Witnesses contrary to the stated religious and medical objections of the parents; (3) enjoin the same defendant doctors, ***502** hospitals, etc. from in any way seeking to impose or force blood transfusions on the children of Jehovah's Witnesses against the will of their parents with or without court orders; and (4) enjoin all physicians in the State of Washington as a class, and all hospitals in the State of Washington as a class, in keeping with the requested injunctive provisions described above.

Before the court for a decision on the merits, then, are the ten cases involving the children of Jehovah's Witnesses and enumerated in pretrial order No. 2 wherein oral or written orders [FN7] were obtained from superior court judges of the State of Washington pursuant to the challenged state statute.

FN7. Oral orders issued in the cases involving the Maydole child and the Hardy child; written orders were entered in the eight remaining cases involving the Elam child, the Lawrence child, the Smith child, the Seelye child, the Burnitt child, the Pen child, the Brockman child, and the Nichol child. Blood transfusions were actually administered to five of the ten children made wards of the Juvenile Court for such purpose, that is, to Bradley Scott Seelye, Thomas Allen Burnitt, Michael Pen, Sharilyn Brockman, Geri Lynn Nichol. Although the other five children had been removed from the custody of their parents and declared wards of the Juvenile Court to permit them to receive compulsory blood transfusions, blood transfusions were not in fact given to Russell Scott Maydole, Jeffrey Ward Elam, Heidi Jo Lawrence, Jeanetter Smith and Loren Hardy. Five of the cases involved birth defects; erthro-blastosis fetalis was diagnosed for the Maydole, Seelye and Brockman children; congenital defects requiring surgery correction were diagnosed for the Lawrence and Nichol children. The five remaining cases involved a petic ulcer with gastric intestinal hemorrhaging (Burnitt); osteomyelitis and generalized staphylococcal infection (Pen); damaged pancreas with possible internal bleeding (Elam); severe burns (Hardy); injuries (Smith). In none of the cases is it recorded that the judges heard contrary medical testimony relating to the risks involved in blood transfusions. Little, if any, notice was given to the parents of the children regarding the hearing to determine if the children were 'grossly and wilfully neglected as to the medical care necessary to their well-being.' No notice was given in the Seelye case; it is not apparent from the record whether the parents of the Pen and Brockman Children were given any notice or were present at the hearing; the Smiths were given one hour notice of the hearing. Blood transfusions were actually administered to the Nichol child before the hearing was completed and the court order making her a ward of the court was signed.

In each of the ten enumerated cases, Jehovah's Witnesses have based their refusal to consent to

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blood transfusions on their religious beliefs and medical objections regarding the use of blood. Plaintiffs believe and accept as authoritative and binding upon them the admonition of Almighty God Jehovah found in the Holy Bible commanding Christians to 'abstain from blood.' [FN8] Their belief places a positive religious duty on the father in particular to provide for his children and to apply their religious views, including abstinence from blood, in the family circle. In this connection, it is the responsibility of the father to see that no member of his family receives a blood transfusion, and no court or other official body can relieve him of that responsibility. If a plaintiff receives a blood transfusion, this could, in the view of the plaintiffs, mean permanent spiritual harm to both the child and parent or adult.

> FN8. The foundation for the belief of the Jehovah's Witnesses respecting blood transfusions is found in the following quotation from Acts of the Apostles, chapter 15, vs. 20:
> 'Hence my decision is not to trouble those from the nations who are turning to God, but to write to them to abstain from things polluted by idols and from fornication and from what is strangled and from blood.'
> and the quotation from Leviticus, 17th chapter, vs. 10:
> 'As for any man of the house of Israel or some alien resident who is residing as an alien in your midst, who eats any sort of blood, I shall certainly set my face against the soul that is eating the blood, and I shall indeed cut him off from among his people.'

***503** According to the Jehovah's Witnesses, blood transfusions involve certain risks, are of limited value, and there are alternative means of treatment which makes the use of such therapy unnecessary and inadvisable. [FN9] With respect to this view, plaintiffs contend that in the cases at issue doctors have never testified as to the hazards, dangers or uncertainties of blood transfusions, and the alternative means of treatment have not been placed before any of the superior court judges.

> FN9. Plaintiffs rely on evidence they contend establishes that their views are scientifically supportable, since in the area of blood transfusion knowledge is rapidly expanding, opinions are changing, hazards exist, alternative means of treatment are possible and doctors disagree. The plaintiffs offered evidence tending to show that, as to many types of situations where blood transfusions are often given, there exists medical opinion that transfusions are of little value and, in addition, may substantially harm the patient. They have also offered evidence tending to show that there is opinion that blood transfusions are never indicated, since there are always treatments available which are better than transfusions.
> Dr. Exner testified specifically that transfusions are contraindicated as treatment for continued gastrointestinal bleeding (Transcript, page 208), and erythroblastosis fetalis (transcript, page 210), and that better treatments always exist for excessive hemorrhaging during major surgery (Transcript, page 212). He also testified that transfusions are never mandatory (Transcript, page 254).
> Dr. Riggle, an osteopathic surgeon and Jehovah's Witness from Texas, testified that he had found no cases in which blood transfusions were mandatory (Transcript, page 267) and, in particular, that in his experience alternate therapy was satisfactory for erythroblastosis fetalis.
> Dr. Lodi, a surgeon and Jehovah's Witness since 1950, testified that he has not used transfusions since 1950, and no one has died from non- transfusions (Transcript, page 149). However, he had not treated any cases of severe blood loss due to trauma, except one in which the victim was transfused under a court order over his objection.
> Dr. Wilson, senior pathologist, King County Coroner's Office, knew of no cases in his experience in which death or disability resulted from failure to give a blood transfusion. (Transcript, page 83). However, he also testified that there are instances where transfusions are lifesaving (Transcript, page 113) and that transfusions were accepted medical practice in King County (Transcript, page 139).

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Nevertheless, it is the prevailing medical view that blood transfusions are not only safe but necessary in those kinds of situations presented to the court in the specific instances involving the minor plaintiffs in this case. [FN10]

> FN10. The defendants have admitted that there is often substantial difference of opinion regarding the value of blood transfusions in specific instances. However, they offered proof tending to show that, for some conditions, informed medical opinion agrees that death or disability is very probable if no transfusion is given, and that the probability of recovery in such cases can be appreciably increased only if a transfusion is given. Dr. Guntheroth specifically mentioned that in profound anemia accompanied by generalized severe infection transfusion is essential to save life, and blood substitutes are of no value (Transcript, page 359). He was also of the opinion that blood transfusions are necessary to save life after severe loss of blood due to accident, and also when a baby is suffering from acute erythroblastosis fetalis (Transcript, pages 391-92), and that most, if not all, medical authorities agree to this (Transcript, page 392).
> Dr. Eloise Rosalee Giblett, who testified by deposition, noted that the medical opinion held by the great majority of practitioners in this medical community, in this country, and in the world is that there are people who would die if they were not otherwise transfused. (Deposition, page 6).
> It was the considered opinion of the attending physicians in each of the cases retained in the action that a blood transfusion was or would be vital to save the life of the patient.

As previously noted, plaintiffs argue that RCW 13.04.010(12) and RCW 13.04.095 are invalid under the Constitution of the United States as applied by defendants in compelling the minor children of Jehovah's Witnesses to submit to blood transfusions over the religious ***504** objections of the parents. According to plaintiffs, the reason these statutes are invalid as so applied is because they facilitate state impairment of plaintiffs' religious freedom, contrary to the First and Fourteenth Amendments, and plaintiffs' parental rights as guaranteed by the Due Process Clause of the Fourteenth Amendment.

Substantially the same argument was advanced by Jehovah's Witnesses in Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, involving an appeal from convictions for violating Massachusetts' child labor laws. Contrary to those state laws, the aunt and custodian of a nine-year-old girl permitted and encouraged the girl to sell Bible tracts on the public streets. The aunt contended that the child was exercising her right, under the First and Fourteenth Amendments, to preach the gospel. She buttressed this argument with a claim of parental right as secured by the Due Process Clause of the Fourteenth Amendment.

The Supreme Court affirmed the judgment, holding that the family is not beyond regulation in the public interest, as against a claim of religious liberty. Among rather things, the Court said:

'* * * neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death. People v. Pierson, 176 N.Y. 201, 68 N.E. 243, 63 L.R.A. 187. The catalogue need not be lengthened. It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.' 321 U.S. at 166-167, 64 S.Ct. at 442.

'* * * Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their

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children before they have reached the age of full and legal discretion when they can make that choice for themselves.' 321 U.S. at 170, 64 s.Ct. at 444.

It appears to us that the holding of Prince is applicable here and that our special three-judge court in bound by that decision. Thus, whatever merit there be in plaintiffs' argument that a more thorough consideration of philosophic principles calls for a contrary conclusion, we are not in a position to decide contrary to Prince. It need only be added that our case, as was also true in Prince, does not involve any of the rights of parents to train and indoctrinate their children in religious matters.

[18][19] It is true that in Prince, the court made it clear that it did not intend that opinion to lay the foundation for every state intervention in the indoctrination and participation of children in religion which may be done in the name of their health and welfare. (321 U.S. at 171, 64 S.Ct. 438). But we think it does lay the foundation, binding upon us, for the particular state intervention in the name of health and welfare which is here under review. As stated in Prince, 321 U.S. at 166, 64 S.Ct. at 442, 'The right to practice religion freely does not include liberty expose * * * the child * * * to ill health or death.'

[20] In this special three-judge court case we are not bound by any judicial ***505** decisions other than those of the United States Supreme Court. But it is appropriate to note that in People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769, 774, 30 A.L.R.2d 1132, testing the validity of a court order declaring the minor child of Jehovah's Witnesses a dependent child for the purpose of compelling a blood transfusion, the Supreme Court of Illinois construed the Prince case as we do here. Thus, on the basis of the Prince decision, the Illinois court held that the Juvenile Court Law of that state is not unconstitutional as so applied. In an exhaustive opinion the Supreme Court of New Jersey similarly interpreted Prince in a blood transfusion case involving the minor child of Jehovah's Witnesses. See State v. Perricone, 37 N.J. 463, 181 A.2d 751, 756, 757. See also, Hoener v. Bertinato, 67 N.J. Super. 517, 171 A.2d 140, 143.

[21] We therefore hold, on the compelling authority of Prince that RCW 13.04.010(12) and RCW 13.04.095 are not invalid under the Constitution of the United States, as applied in this case.

[22][23] Assuming, nevertheless, as plaintiffs contend, that the Prince case is not dispositive of the main action because (1) the supreme court specifically limited the Prince holding to the facts of the case, and (2) the supreme court to date has not passed on the merits of the constitutional questions involved in the blood transfusion cases, this court would have before it an open question on the merits of the case. If this be the case sound judicial administration would warrant the application of the equitable abstention doctrine [FN11] with respect to the federal questions raised by plaintiffs' constitutional attack on the state statute.

FN11. When state action is challenged in a federal court on federal constitutional grounds and there are questions of state law which may dispose of the case or materially change the nature of the constitutional problems, the federal court may decline to proceed though it has jurisdiction under the Constitution and the statutes. This abstention policy is usually referred to as the Pullman doctrine from the case of Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). The company in that case sought to enjoin the enforcement of an order of the Texas Railroad Commission on the grounds that the order denied the company rights under the Fourteenth Amendment and that the Commission lacked authority under Texas law to make the order in question. A unanimous supreme court ordered the trial court to abstain from deciding the case so that the state court could decide the state issues. In this way the federal court avoided deciding federal constitutional questions prematurely or unnecessarily; for if the state court held the order unauthorized as a matter of state law, there would be no need for the federal court to pass on the federal questions. Abstention is proper in order to avoid 'unnecessary friction in federal-state relations, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication.' Harman v. Forssenius, 380

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U.S. 528, 534, 85 S.Ct. 1177, 1182, 14 L.Ed.2d 50 (1965).

[24][25][26] Equitable abstention is designed to restrict the exercise of federal jurisdiction, at least in the first instance, by having the federal courts defer to the state courts in the consideration and interpretation of state statutes. Because the award of equitable relief is traditionally regarded as a discretionary matter, the court should properly consider whether the circumstances warrant the initial construction of the statute in question by the highest court of the state and, if so, abstain from the exercise of federal jurisdiction.

[27] Where the constitutionality of a state statute, as in the instant case, is involved, there are sound reasons why any uncertainty as to its meaning should first be resolved by the state. The policy of comity between state and federal governments suggests one reason why the interpretation of a state statute should first be rendered by state authorities. Also, state courts ideally should be better informed about state policies and purposes so that construction of the statute may be achieved more accurately and ***506** meaningfully. In this connection, the supreme court in Prince, unlike this court, had the benefit of the construction placed on the statute therein involved by the Massachusetts high court. The supreme court noted that the decision of the Massachusetts court on what constituted a 'sale' or 'offer of sale' differed from the trend in other states, but that the supreme court was bound by the state determination, 321 U.S. 158, 163, 64 S.Ct. 438, and annotations 5 and 6. More importantly, the resolution of uncertain statutory authority by the state courts may obviate federal adjudication of constitutional questions arising from the enactment. [FN12]

FN12. See Harrison v. NAACP, 360 U.S. 167, 79 S.Ct. 1025, 3 L.Ed.2d 1152 (1959), where there was a finding that the state law was uncertain and abstention was ordered. In NAACP v. Bennett, 360 U.S. 471, 79 S.Ct. 1192, 3 L.Ed.2d 1375 (1959) the supreme court reversed the district court for filing to consider whether the state law was uncertain. Again, the major consideration behind the doctrine of abstention is that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them. See e.g., Government & Civic Employees, etc. v. Windsor, 353 U.S. 364, 77 S.Ct. 838, 1 L.Ed.2d 894 (1957); Albertson v. Millard, 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed. 983 (1953); Shipman v. DuPre, 339 U.S. 321, 70 S.Ct. 640, 94 L.Ed. 877 (1950); American Federation of Labor v. Watson, 327 U.S. 582, 66 S.Ct. 761, 90 L.Ed. 873 (1946); Spector Motor Service, Inc. v. McLaughlin, 323 U.S. 101, 65 S.Ct. 152, 89 L.Ed. 101 (1944); City of Chicago v. Fieldcrest Dairies, Inc., 316 U.S. 168, 62 S.Ct. 986, 86 L.Ed. 1355 (1942); Railroad Comm'n of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941).

[28] The abstention doctrine, however, is not automatically applied. As already noted, whether the court should exercise its equity powers is a discretionary matter, and the decision to defer action initially depends upon a finding hat the special circumstances prerequisite to equitable abstention exist. Since the practical effect of the court's decision to abstain in a case over which it has been given jurisdiction by law is to deny the plaintiff his right to a federal forum, the decision to abstain not only requires a reasonably uncertain issue of state statutory interpretation, but also the availability of adequate state procedures for resolving the uncertainty.

[29] A first prerequisite, then, is that the challenged application of the state enactment be fairly open to interpretation. Where it appears that the statute necessarily had to be interpreted in the manner under attack, no useful purpose would be served by federal abstention to permit the state court to pass upon such application. [FN13] The abstention doctrine becomes applicable in those situations where it is uncertain that the state enactment authorized the restrictions imposed on the persons bringing the action or on their activities. [FN14] This condition would appear to be satisfied in the instant case.

FN13. See, e.g., Dombrowski v. Pfister,

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380 U.S. 479, 85 S.Ct. 1116, 14 L.Ed.2d 22 (1965); Baggett v. Bullitt, 377 U.S. 360, 84 S.Ct. 1316, 12 L.Ed.2d 377 (1964); Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 82 S.Ct. 1294, 8 L.Ed.2d 794 (1962).

FN14. See Baggett v. Bullitt, supra note 9 at pages 376-377, 84 S.Ct. 1316, and note 13. Moreover, even where the state court has considered the precise issue constitutionally attacked in the federal court, abstention has been exercised on the ground that the federal constitutional objections had not been presented to the state court and might have caused that court to interpret the statute differently had those objections been presented. City of Chicago v. Achison, T. & S.F.R.R., 357 U.S. 77, 78 S.Ct. 1063, 2 L.Ed.2d 1174 (1958).

The statutory application herein challenged permits a child to be made a ward of the court upon a finding that the child is 'grossly and wilfully neglected as to medical care necessary for his well-being.' However, it seems pertinent to ask whether 'gross and wilful neglect' is ***507** a permissible finding under the statute when a parent, upon religious grounds or because of his views as to medical treatment, refuses to consent to blood transfusions for his minor child where the attending physician has determined blood transfusions are medically necessary. As applied here when a Jehovah's Witness desires to provide medical care for his child, but cannot consent to a particular form of medical treatment, such as blood transfusions, determined to be necessary by the attending physician, does the Juvenile Court Law require that child to be characterized as one 'grossly and wilfully neglected as to medical care necessary for his well-being?' The statute appears to have two parts: one portion requiring medical care necessary for the well-being of the child, and the other, under a plausible interpretation, providing that the neglect in failing to provide or agree to the medical treatment recommended as necessary be gross and wilful. Although a blood transfusion might be necessary for the well-being of the child, refusal to consent to a blood transfusion, coupled with willingness to consent to substitutes, if any, may not constitute 'gross and wilful' neglect. Use of the language 'grossly and wilfully' in the statute would thus appear to make the application of the statute to plaintiffs in the blood transfusion cases uncertain.

The second prerequisite to the application of the abstention doctrine is that adequate state procedures exist to resolve the uncertainty of the law. This prerequisite would appear to be satisfied by the Washington Uniform Declaratory Judgments Act, RCW 7.24.020. That statute provides in pertinent part:

'A person * * * whose rights, status or other legal relations are affected by a statute * * * may have determined any question of construction or validity arising under the * * * statute * * * and obtain a declaration of rights, status or other legal relations thereunder.'

[30] Although the cases involving the challenged application of the Juvenile Court Law are moot by the time of appeal, jurisdiction may still be exercised under the state declaratory judgments act. When a matter of public interest is involved the Washington supreme court has retained jurisdiction to decide the broad issues even though the particular case raising them is moot. [FN15] The ***508** instant case would seem to be a proper one for an application of the Washington Declaratory Judgments Act similar to the one made in the National Electrical Contractors case. [FN16] In the instant case basic rights are thrown into conflict: the parens patriae power of the state versus the constitutional and civil rights of Jehovah's witnesses. In this connection, the public importance in the correct construction of the Juvenile Court Law cannot be doubted, and the superior courts of the state should have the benefit of the construction of this statute by the state supreme court for future guidance in similar situations.

FN15. See National Electrical Contractors Assoc. Puget Sound Chapter v. Seattle School District No. 1, 66 Wash.2d 14, 400 P.2d 778 (1965). In its opinion, the Washington Supreme Court quoted and specifically relied upon the following language from the opinion of the Illinois Supreme Court in a blood transfusion case, People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769, 772 (1952) as

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support for the proposition that the court should decide a moot issue where sufficient public interest in the question warrants:

'Before we reach the merits, we meet the State's contention that the case is now moot and should be dismissed because the blood transfusion has been administered, the guardian discharged, and the proceeding dismissed. Because the function of courts is to decide controverted issues in adversary proceedings, moot cases which do not present live issues are not ordinarily entertained. 'The general rule is that when a reviewing court has notice of facts which show that only moot questions or mere abstract propositions are involved or where the substantial questions involved in the trial court no longer exist, it will dismiss the appeal or writ of error.' People v. Redlich, 402 Ill. 270, 279, 83 N.E.2d 736, 741.

'But when the issue presented is of substantial public interest, a well-recognized exception exists to the general rule that a case which has become moot will be dismissed upon appeal. (See cases collected in 132 A.L.R. 1185.) Among the criteria considered in determining the existence of the requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question.'

(At 66 Wash.2d 14, 19-20, 400 P.2d 778, 781-782).

FN16. Ibid.

[31] The action before us is, in reality, a declaratory judgment action wherein the application of a state statute is being challenged on constitutional grounds; the challenged application presents a question of statutory interpretation not heretofore passed upon by the Supreme Court of the State of Washington. State procedures exist for resolving the issues of construction raised by the application. The essential prerequisites for invoking the doctrine of equitable abstention we believe are present. The policy behind the development of the doctrine-- in general to preserve the framework of federalism, and in particular to give the state an opportunity to mold its policy to conform to or accord with constitutional standards-- favors utilizing the doctrine in this case. Indeed, resolution of the matter by the state might avoid the constitutional issues presented by the application of the statute.

In sum, if we, as a specially-constituted three-judge court, were to conclude the Prince decision not controlling we would then consider the case before us as tailored to the exercise of federal abstention.

For the reasons set forth herein, the plaintiffs are not entitled to the relief sought and the action will be dismissed as to all defendants.

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EXHIBIT 24

United States District Court,
D. Oregon.

JC2, ME, FH, PM, BO, BS and TS, Plaintiffs,
v.
Maurice GRAMMOND; the Archdiocese of Portland in Oregon, an Oregon corporation; the Roman Catholic Archbishop of Portland in Oregon, and successors, a corporation solo, dba the Archdiocese of Portland in Oregon,
Defendants.

No. CIV.01-1111-AS.

March 18, 2002.

Former altar boys brought state court action against church and priest alleging that they had been sexually abused by priest. After removal to federal court, plaintiffs moved to remand to state court. The District Court, Robert E. Jones, J., adopted findings and recommendation of Ashmanskas, United States Magistrate Judge, which held that plaintiffs' claims against church did not implicate First Amendment.

Motion granted.

West Headnotes

[1] **Constitutional Law** **84.5(7.1)**
92k84.5(7.1) Most Cited Cases

First Amendment generally precludes courts from interpreting church laws, policies or practices in manner that will limit church's ability to fully practice its religion or be guided by its religious principles, but does not prevent courts from addressing church-related disputes, provided court refrains from considering doctrinal matters and resolves dispute solely on neutral principles. U.S.C.A. Const.Amend. 1.

[2] **Constitutional Law** **84.5(7.1)**
92k84.5(7.1) Most Cited Cases

Under First Amendment, courts may not, without justification, force religious bodies to abandon their religious beliefs or doctrines in favor of purely secular rules or rule on appropriateness or correctness of those beliefs or doctrines. U.S.C.A. Const.Amend. 1.

[3] **Master and Servant** **307**
255k307 Most Cited Cases

Under Oregon law, employer will not be held liable for intentional criminal acts of its employees, as those acts are not committed for benefit of employer.

[4] **Master and Servant** **307**
255k307 Most Cited Cases

Under Oregon law, employer may be held liable for employee's intentional criminal acts under doctrine of respondeat superior if acts that led to criminal conduct were within scope of employment.

[5] **Constitutional Law** **84.5(10)**
92k84.5(10) Most Cited Cases

[5] **Religious Societies** **30**
332k30 Most Cited Cases

[5] **Removal of Cases** **101.1**
334k101.1 Most Cited Cases

State court's consideration of claim that church was liable under doctrine of respondeat superior for priest's abuse of his position as youth pastor to induce altar boys to engage in sexual acts with him would not infringe upon church's freedom of religion or implicate First Amendment, and thus remand of action to state court was required, despite church's contention that resolution of issue would require court to review, interpret and consider its religious rules and canons; parameters of priest's duties could be discerned by reviewing his "job description" and communications between church and priest, and court would not limit priest's duties or church's ability to supervise priest. U.S.C.A. Const.Amend. 1.

***1167** David L. Slader, David Slader Trial Lawyer, Portland, OR, for Plaintiffs.

Thomas E. Cooney, Cooney & Crew, L.L.C., Portland, OR, for Maurice Grammon, defendant.

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Karen O'Kasey, Thomas V. Dulcich, Schwabe Williamson & Wyatt, Portland, OR, for Archdiocese of portland, Roman Catholic Archbishop of Portland, defendants.

ORDER

ROBERT E. JONES, District Judge.

Magistrate Judge Donald C. Ashmanskas filed Findings and Recommendation (# 24) on December 14, 2001, in the above entitled case. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1)(B) and Fed.R.Civ.P. 72(b). When either party objects to any portion of a magistrate judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the magistrate judge's report. *See* 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir.1981), *cert. denied*, 455 U.S. 920, 102 S.Ct. 1277, 71 L.Ed.2d 461 (1982).

Defendants have timely filed objections. I have, therefore, given *de novo* review of Magistrate Judge Ashmanskas's rulings.

I find no error. Accordingly, I ADOPT Magistrate Judge Ashmanskas's Findings and Recommendation dated December 13, 2001, in its entirety. Plaintiffs' motion (# 9) to remand is GRANTED.

IT IS SO ORDERED.

FINDINGS AND RECOMMENDATION

ASHMANSKAS, United States Magistrate Judge.

The plaintiffs in this action, designated as JC2, ME, FH, PM, BO, BS and TS (collectively "Plaintiffs"), are all men who were once parishioners of defendants the Archdiocese of Portland in Oregon and the Roman Catholic Archbishop of Portland in Oregon, a corporation sole, doing business as the Archdiocese of Portland in Oregon (collectively "Defendants"). Plaintiffs allege that Maurice Grammond, a Roman Catholic priest who, at all relevant times, was employed as a priest by Defendants, sexually abused them during the period of time they served as Altar Boys. Plaintiffs filed this action for sexual battery against Grammond and the Defendants in the Circuit Court of the State of Oregon for the County of Multnomah. Defendants removed the action to this court asserting that Plaintiffs' complaint "creates crucial First Amendment issues arising from their allegations of a religious-based 'breach of trust.' " Presently before the court is Plaintiffs' motion for remand pursuant to Fed.R.Civ.P. § 1447(c).

LEGAL STANDARD

Section 1447(c) provides, in part: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c). Only cases that would have had original jurisdiction in a federal district court may be removed from state court. 28 U.S.C. § 1441(a). "Absent diversity of citizenship, federal- question jurisdiction is required." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 96 L.Ed.2d 318 (1987). There is no diversity jurisdiction in this matter. Thus, the court must determine whether there is federal question jurisdiction over the parties dispute.

Federal courts have original federal question jurisdiction in "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § § 1331, 1441(b). Normally, cases brought under the general federal question jurisdiction of the federal courts are those in which federal law creates the cause of action. ***1168***Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 808, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986). Federal courts have recognized, however, that a case may arise under federal law "where the vindication of a right under state law necessarily turned on some construction of federal law." *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 9, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983).

It is clear that the question whether a claim "arises under" federal law must be determined by reference to the "well-pleaded complaint." *Merrell Dow*, 478 U.S. at 808, 106 S.Ct. 3229. Federal question jurisdiction exists only if the federal question appears on the face of plaintiff's complaint; if not, original jurisdiction is lacking, even if the defense is based on federal law. *Id.*

DISCUSSION

Plaintiffs seek to establish vicarious liability against Defendants for Grammond's sexual abuse of Plaintiffs under the theory of *respondeat superior*. Defendants contend that the resolution of this issue requires the court to review, interpret and consider the religious rules and canons of the Roman Catholic Church, which is barred by the First Amendment. Accordingly, Defendants argue that Plaintiffs' complaint raises federal constitutional issues that

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must be addressed by a federal court.

Plaintiffs do not dispute that the First Amendment limits the review of internal policies of a church by a secular court, that a federal constitutional issue is raised when the First Amendment is at issue or that this court has federal question jurisdiction over federal constitutional issues. Rather, Plaintiffs contend that the issue of vicarious liability can be resolved without consideration of Defendants' canons or religious rules and that any federal question before the court is limited to Defendants' third affirmative defense.

[1] The First Amendment of the United States Constitution, provides that: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof* * *." Courts are similarly restricted in their consideration of issues involving religious organizations or doctrine. Generally, courts may not interpret church laws, policies or practices in a manner that will limit the churches ability to fully practice its religion or be guided by its religious principles. *Cantwell v. Connecticut*, 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). However, this does not prevent courts from addressing church-related disputes, provided the court refrains from considering doctrinal matters and resolves the dispute solely on neutral principles. *Jones v. Wolf*, 443 U.S. 595, 604, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979).

In an order granting a stay issued independently by him, Justice Rehnquist summarized the restriction imposed on courts by the First Amendment as follows:

> There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. But the Court never has suggested that those constraints similarly apply outside the context of such intraorganization disputes. * * * [Some] cases are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged.

***1169** *General Council v. Superior Court of California*, 439 U.S. 1355, 1372-3, 99 S.Ct. 35, 58 L.Ed.2d 63 (1978).

[2] Courts may not, without justification, [FN1] force religious bodies to abandon their religious beliefs or doctrines in favor of purely secular rules or rule on the appropriateness or correctness of those beliefs or doctrines. However, the mere consideration of religious authorities in an action involving the church and third parties does not necessarily amount to an infringement of the churches religious freedom. A court may look to such evidence to establish the basic purposes or policies of the religion as merely a guide to determining whether a plaintiff has a viable action against the church.

> FN1. Justification would include enforcement of criminal laws or statutes which are religiously neutral.

In order to resolve this controversy, the court must first examine the parameters of the ***respondeat superior*** liability alleged in Plaintiffs complaint. "Under the doctrine of ***respondeat superior***, an employer is liable for the torts of his employee when the employee is acting within the scope of his employment." *Stanfield v. Laccoarce*, 284 Or. 651, 654, 588 P.2d 1271 (1978). In determining whether an employee was acting within the course and scope of his employment, the court applies a three-part test:

> (1) [W]hether the act occurred substantially within the time and space limits authorized by the employment; (2) whether the employee was motivated, at least partially, by a purpose to serve the employer; and (3) whether the act is of a kind which the employee was hired to perform.

Chesterman v. Barmon, 305 Or. 439, 442, 753 P.2d 404 (1988).

[3][4] Generally, an employer will not be held liable for the intentional criminal acts of its employees as these acts are not committed for the benefit of the employer. However, the Oregon Supreme Court has expanded the doctrine of ***respondeat superior*** to include the intentional criminal acts of employees if the acts that lead to the criminal conduct were within the scope of employment. In *Chesterman*, an employee ingested a hallucinatory drug while on the job to enable him to better focus his attention on work. While under the influence of the drug, the employee broke into the plaintiff's house and sexually assaulted her. The court recognized that the sexual assault itself was outside the scope of employment but reasoned that the appropriate inquiry was whether acts which contributed to the sexual assault were for the benefit of the employer. *Id.* at 444, 753 P.2d 404.

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In *Fearing v. Bucher*, 328 Or. 367, 977 P.2d 1163 (1999), the Oregon Supreme Court applied this reasoning to an action similar to the one before the court. The plaintiff, a man who had been ministered to in his youth by the defendant, a catholic priest, was sexually abused by the defendant. The complaint alleged that the defendant used his position as a youth pastor, spiritual guide, confessor and priest to get close to plaintiff and his family allowing him to spend a lot of time alone with the plaintiff and that these activities were conducted in connection with his employment with the church. *Id.* at 374, 977 P.2d 1163. The court held that the allegations were sufficient to "infer that the sexual assaults were the culmination of a progressive series of actions that began with and continued to involve [defendant's] performance of the ordinary and authorized duties of a priest" and that "in cultivating a relationship with plaintiff and his family, [defendant], at least initially, was motivated ***1170** by a desire to fulfill his priestly duties and that, over time, his motives became mixed." *Id.* at 375, 977 P.2d 1163.

These cases make it clear that the court must know the limits of the employees job duties in order to determine whether he was acting in furtherance of those duties during the relevant period. Accordingly, the court will be required to learn the limits of Grammond's job duties as a priest for Defendants in order to determine whether the actions Plaintiffs allege he engaged in were within the parameters of his employment.

Plaintiffs allege that Grammond's assigned duties as a priest and youth pastor "included providing pastoral and religious ritual services, including, but not limited to, providing spiritual, moral and ethical guidance and religious instruction to the children-parishioners of Defendants." Plaintiffs then allege that, in furtherance of these duties:

> Grammond identified plaintiffs' families as ones with one or more adolescent or pre-adolescent male children; sought and gained the trust and confidence of the boys' parents as friend, spiritual guide, youth pastor, confessor and priest; sought and gained the parents' consent for each plaintiff to serve as an Altar Boy, participate in youth activities, and/or to otherwise spend considerable time alone with him; and sought and gained the parents' directive to the boys that they respect his authority and guidance and comply with his instruction.
>
> * * * * * *
>
> * * * Grammond also sought and gained the plaintiffs' trust, friendship, admiration, and obedience.

Finally, Plaintiffs allege that Grammond used "the power, authority and trust of his position as priest and youth pastor to the plaintiffs and to their parents" to entice, induce, direct and/or coerce each boy to engage in various sexual acts with him.

Plaintiffs claim that Defendants do not dispute Plaintiffs' allegation that a priest's authorized duties include gaining the trust of the children of his parish. In the Answer filed by Defendants on July 31, 2001, they deny Plaintiffs' allegations with regard to Grammond's authorized duties as a priest. In light of this denial, and the arguments made by Defendants in opposition to the motion to remand, it is clear that the extent of Grammond's authorized duties as a priest is an issue that will be contested.

The daily activities of a priest are generally known to his parishioners as a result of their relationship with him and with the church. However, it is impossible to know what acts the church has specifically authorized and directed the priest to engage in simply by watching the priest's routine. One must look more deeply into the relationship between the church and the priest to differentiate between those acts required by the job and those engaged in independently by the priest.

[5] As with any employer-employee relationship, the parameters of a priest's duties can be discerned by reviewing the "job description" of the priest, in addition to communications between the church and the priest. While this will require the court to consider a number of Defendants' canons delineating the duties of a priest, the court will not need to make any judgment on appropriateness, correctness or validity of any of the canons. The canons will merely define the duties of a priest and the court will then consider whether Grammond's acts of "grooming" fall within this definition. The court will not in any matter limit the priests duties or the ability of the church to supervise Grammond. Accordingly, the consideration by the court of Defendants' canons, or other religious rules, will not infringe in any way upon Defendants' freedom of religion and will not implicate the First Amendment. In ***1171** the absence of any constitutional issues, this court lacks jurisdiction over this action and it should be remanded to state court.

CONCLUSION

Plaintiffs' motion (# 9) to remand should be GRANTED.

SCHEDULING ORDER

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The above Findings and Recommendation will be referred to a United States District Judge for review. Objections, if any, are due **December 28, 2001.** If no objections are filed, review of the Findings and Recommendation will go under advisement on that date. If objections are filed, a response to the objections is due **January 11, 2002**, and the review of the Findings and Recommendation will go under advisement on that date.

Dec. 13, 2001.

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EXHIBIT 27

591 N.Y.S.2d 927
(Cite as: 153 Misc.2d 822, 591 N.Y.S.2d 927)

Supreme Court, Onondaga County, New York.

Martin JONES, [FN*] An Infant, by Betty JONES,* his mother and Natural Guardian, and Betty Jones,* Individually, Plaintiffs,

FN* The names used are fictitious to protect the infant.

v.

Father Thomas TRANE,* Saint Adam's Academy,* Saint Adam's Parish* and the Diocese of Syracuse of the Roman Catholic Church, Defendants.

Oct. 19, 1992.

Mother, individually and on behalf of son, brought actions against priest and church for damages arising out of priest's alleged molestation of her son. On motion to dismiss, the Supreme Court, Onondaga County, Roy, J., held that: (1) plaintiffs could not bring negligence and malpractice actions based on intentional misconduct; (2) First Amendment did not protect priest from claims for breach of trust and outrageous conduct or church from negligent hiring claim; and (3) church was not vicariously liable for priest's intentional sexual misconduct.

Ordered accordingly.

West Headnotes

[1] Religious Societies ⇦30
332k30 Most Cited Cases

Claims for negligence and malpractice could not be based on allegation that priest sexually assaulted an 11-year-old boy; wrongful conduct alleged was compensable, if at all, under causes of action for assault and battery and was, therefore, outside the ambit of negligence.

[2] Religious Societies ⇦30
332k30 Most Cited Cases

Priest was not negligent for disrobing in pool shower area, thereby exposing himself to 11-year-old boy; although priest's alleged subsequent actions of kissing and fondling the boy could be actionable as intentional torts, disrobing in shower was common practice incident to swimming in pool used by many persons.

[3] Religious Societies ⇦30
332k30 Most Cited Cases

Despite contention that court could not constitutionally set standard of conduct for clergy, priest was subject to civil actions for breach of trust and outrageous conduct arising out of priest's alleged molestation of young boy; restraint on such conduct by imposition of civil liability would not intrude on the free exercise of religion in any way. U.S.C.A. Const.Amend. 1.

[4] Religious Societies ⇦30
332k30 Most Cited Cases

Despite contention that court could not constitutionally set standard of conduct for clergy, church could be civilly liable for negligent hiring if it knew of perverted proclivities of priest who allegedly molested young boys. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7))

[5] Religious Societies ⇦30
332k30 Most Cited Cases

First Amendment does not protect religious organization's decision to hire someone it knows is likely to commit crimes or torts. U.S.C.A. Const.Amend. 1.

[6] Religious Societies ⇦30
332k30 Most Cited Cases

Church could not be vicariously liable for priest's intentional sexual misconduct.

***823 **927** Birnbaum, McDermott & Friedman, P.C., Irwin Birnbaum, Syracuse, for plaintiffs.

Mackenzie, Smith, Lewis, Michell & Hughes, Syracuse, for defendant Father Thomas Trane.

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**928 Hancock & Estabrook, Paul Hanrahan, Syracuse, for defendants St. Adam's Academy, St. Adam's Parish and the Diocese of Syracuse.

WILLIAM R. ROY, Justice.

This litigation by an infant and his mother was initiated by service of pleadings alleging that defendant Trane, while employed as parish priest at defendant St. Adam's Parish and as director of religious education for defendant St. Adam's Academy, improperly subjected the infant plaintiff to sexual and other conduct against the boy's will between August, 1988 and January, 1989. The first amended complaint set forth three causes of action against all defendants, the first of which combined a number of theories of liability predicated on the alleged misconduct of the priest; the second and third causes of action were a derivative action by the infant's mother and a claim for punitive damages.

Regarding the amended complaint as a pleading alleging clergy malpractice in a variety of forms, defendant Trane, joined by the institutional defendants, moved to dismiss on the ground that no such cause of action is recognized in this jurisdiction. Before that motion was argued however, plaintiffs made the present motion for leave to serve a second amended complaint, a copy of which is included in the moving papers. The proposed pleading states as separate causes of action the theories previously included in the first cause of action in the first amended complaint, adds two causes of action for outrageous conduct causing severe emotional distress to the infant, and expands claims that the institutional defendants not only were responsible for misconduct of the priest under the principal of *respondeat superior* but also were themselves at fault in *824 the hiring and the failure periodically to investigate and evaluate Trane in light of the priest's alleged known pedophilic disposition. Some of the fourteen causes of action now sought to be pleaded are against defendant Trane alone, some are against only the institutional defendants, and some are against all.

Of the causes of action against him in the proposed pleading, defendant Trane served objections to three of those actions: No. 3, alleging sexual misconduct and breach of trust; No. 5, alleging violation of trust; and No. 7, alleging clergy malpractice and negligence. The institutional defendants joined in those objections, identifying as "misplaced", "plaintiffs' claims that his pleadings could be interpreted to state causes of action other than clergy malpractice".

On argument of the motion to amend, the Court granted plaintiffs' motion, applying the principle of liberal allowance of amendment most recently articulated by the Appellate Division, Fourth Department, in *Agway, Inc. v. Williams,* 185 A.D.2d 636, 585 N.Y.S.2d 643. It then treated defendants' motions to dismiss as directed to the complaint as amended, and accepted the arguments tendered in objection to plaintiffs' motion to amend as arguments in support of motions to dismiss the clergy malpractice and negligence cause of action (No. 7) and the breach and violation of trust causes of action (Nos. 3 and 5), as well as the actions against the institutional defendants, in the second amended complaint. Additionally, with the consent of counsel, the Court anticipated motions by defendants to dismiss the causes of action for outrageous conduct causing severe emotional distress, now added by the second amended pleading, and indicated that it would also pass on such motions as though formally made on papers. The parties were given opportunity to tender additional submissions following argument of the motions, and each has done so, the most recent being received on August 6, 1992.

Turning first to the causes of action against the individual defendant Trane that are challenged: Because plaintiffs have alleged *respondeat superior* liability on the institutional defendants for the conduct of the priest, all the defendants have joined in seeking dismissal of the claims of clergy malpractice and negligence and of breach and violation of trust by him.

**929 The facts on which the challenged claims are based, as alleged in the amended complaint and amplified by documents *825 submitted by plaintiffs in support of their motion to amend, are these:

The infant plaintiff, Martin Jones, his parents and siblings resided in the City of Oswego where, as practicing Roman Catholics, they attended and supported defendant St. Adam's Church, a parish under the jurisdiction of defendant Roman Catholic Diocese of Syracuse, New York. Prior to the

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beginning of the 1988-1989 school year, Mr. and Mrs. Jones enrolled Martin, then 11, and a younger sister, in defendant St. Adam's Elementary School, a school operated by the parish and diocese, for the coming year, and paid fees for the children's attendance at school.

Defendant Trane was then employed as an associate pastor at the church and director of religious education for the school. Thereafter, on two occasions between August 1, 1988 and January 31, 1989, defendant Trane obtained permission from Martin's mother to take him with another boy to Laker Hall, an athletic facility at the SUNY Oswego Campus, in the evening to play racketball and basketball and to go swimming. Before entering the swimming pool, at the pass through showers at the pool Trane allegedly removed all his clothing and, against their will, made Martin and the other boy do the same; he then kissed and fondled them against their will. It is also alleged that, in addition to the actual physical contact, by the conduct of Trane, Martin was threatened with and placed in apprehension of imminent offensive sexual bodily contact. The complaint further alleges that defendant Trane's conduct arose out of and in the course of his employment by the institutional defendants and that a special relationship of trust existed between the Joneses and defendant Trane as a priest and educator of the Roman Catholic Church.

Plaintiffs contend that upon the foregoing alleged facts they may maintain actions to recover damages for substantial emotional, mental and physical injury, economic loss and expenses for care and treatment sustained and required by Martin.

Defendants jointly, in all motions directed to plaintiffs' complaints, have relied primarily and almost exclusively on the rationale of Chief Judge Charles L. Brieant of the United States District Court for the Southern District of New York in *Schmidt v. Bishop,* 779 F.Supp. 321, in which summary judgment on causes of action for clergy malpractice, negligence and breach of fiduciary duty was granted, both to a ***826** church pastor who had allegedly carried on long term sexual contact with the plaintiff in the course of "emotional, spiritual and familial counseling" initiated at the request of plaintiff's parents, and to his congregational and judicatory employers. The judge concluded that, in addition to being without precedent in New York law and on other grounds, the causes of action constitutionally could not be sustained because they would require the definition of a standard of care for the cleric, and that the defining of such a standard would, in his view, necessarily run afoul of the prohibition against excessive entanglement in religion inherent in the First Amendment to the United States Constitution under *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745.

All defendants argue strenuously for adoption by this Court of the result and conclusions reached by Judge Brieant, with which the Court concurs, but in part only.

[1] On the facts as alleged by plaintiffs the Court is satisfied that the seventh cause of action, purporting to state a claim for clergy malpractice and negligence, must be dismissed, for the reason that the alleged wrongful conduct of the priest Trane constituted intentional torts--assault and battery, which are independently pleaded as three causes of action of the second amended complaint. As Judge Brieant affirmed (*see, Schmidt v. Bishop, supra,* 779 F.Supp. at 325), "New York has adopted the prevailing modern view that, once intentional offensive contact has been established, the actor is liable for assault and not negligence, even when the physical injuries may have been inflicted inadvertently ****930**(*Trott v Merit Dept. Store,* 106 AD2d 158, 160 [484 N.Y.S.2d 827]; *Masters v Becker,* 22 AD2d 118, 120 [254 N.Y.S.2d 633]; Restatement [Second] of Torts § 16 [1977]). 'There is, properly speaking, no such thing as a negligent assault' (Prosser and Keeton, Torts § 10, at 46 [5th ed])." (*Mazzaferro v. Albany Motel Enters.,* 127 A.D.2d 374, 376, 515 N.Y.S.2d 631; see also *Rafferty v. Ogden Mem. Hosp.,* 140 A.D.2d 911, 528 N.Y.S.2d 729.) The principle applies with equal force to the claims of negligence and malpractice, which "in its strict sense * * * means the negligence of a member of a profession in his relations with his client or patient" (76 N.Y.Jur.2d, Malpractice, § 1).

In the case now under consideration nothing alleged in plaintiffs' pleading or set out in their documents contains any suggestion that defendant Trane's conduct was an oversight, an inadvertent failure to exercise an expected standard of care, or a neglect; the wrongs alleged were intentional and deliberate and allegedly in their nature offensive. They therefore***827** are outside the ambit of

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actionable negligence and will be compensable, if compensable, under one or more of the causes of action for assault and battery, as to which defendants have not sought dismissal.

[2] At oral argument plaintiffs' counsel suggested that a pure negligence claim could be made out based on what was asserted to be the failure of due care by Trane in disrobing in the pool shower area, thereby exposing himself to the boy Martin. The Court cannot perceive how such activity, which is a common and often expected practice incident to swimming in a pool used by many persons, could be regarded as negligence.

In view of the foregoing, the Court does not find it necessary to determine whether the seventh cause of action is constitutionally infirm under the rationale of the *Schmidt* case. Because defendants also attack the breach and violation of trust actions (Nos. 3 and 5), which in concept bear a similarity to the breach of fiduciary duty cause of action struck down in *Schmidt,* further consideration of the relevance of Judge Brieant's constitutional point is, however, appropriate.

[3] Such consideration immediately discloses a significant, and, to this Court's mind, controlling distinction between that case and the one at hand: in *Schmidt* the alleged clergy misconduct occurred in the context of an established and existing ongoing pastoral counseling relationship--a setting in which the functioning of the clergyperson might naturally be expected to implicate dogma and practice of the religious body to which the cleric belonged, and in which the specter of excessive entanglement looms large. It is when what is sought is an evaluation of a member of the clergy while acting as a spiritual counselor that courts have refrained from undertaking to define a standard of care, for the reason stated by Judge Brieant:

> "Any effort by this Court to instruct the trial jury as to the duty of care which a clergyman should exercise, would of necessity require the Court or jury to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community. This in turn would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion." (779 F.Supp. 321, 328)

Other cases rejecting recognition of a cause of action for *828 clergy malpractice on the excessive entanglement ground have similarly been instances in which the alleged clerical wrongdoing occurred within the counseling framework (*White v. Blackburn,* 787 P.2d 1315 [Utah]; *Nally v. Grace Community Church of the Valley,* 47 Cal.3d 278, 253 Cal.Rptr. 97, 763 P.2d 948, cert. den. 490 U.S. 1007, 109 S.Ct. 1644, 104 L.Ed.2d 159).

In the present case, however, the facts alleged clearly fail to indicate the existence of any counseling relationship between defendant Trane and Martin of which the misconduct alleged was a part, such as might preclude an inquiry into the propriety **931 of the priest's conduct as an excessive involvement in the philosophy of his religious community. In this circumstance, the constitutional obstacle described in *Schmidt v. Bishop,* 779 F.Supp. 321, *supra* should not, as defendants contend, foreclose these plaintiffs' third and fifth causes of action for breach or violation of trust.

It may also be noted in passing that, although defendants persistently assert First Amendment protection, none makes any suggestion that the alleged sexual misconduct of defendant Trane is a part of the tenets or practices of the Roman Catholic Church, or that restraint on it by the imposition of civil liability will in any way intrude on the free exercise of religion to an extent protected by the First Amendment. For a similar situation, see *Strock v. Pressnell,* 38 Ohio St.3d 207, 527 N.E.2d 1235. [FN1] Indeed, inasmuch as it is conduct, and not *829 creed, that underlies plaintiffs' actions, and that the potential for civil consequences exists equally as to religious and non- religious persons, and as to clergy and lay persons of all religions alike, the Free Exercise aspect of the First Amendment does not come into play to preclude plaintiffs' actions (*Employment Div., Department of Human Resources of Oregon v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 reh'g. denied 496 U.S. 913, 110 S.Ct. 2605, 110 L.Ed.2d 285).

> FN1. In this connection, the language of the Supreme Court of Colorado in *DeStefano v. Grabrian,* 763 P.2d 275, which involved a claim arising out of

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alleged sexual misconduct by a Roman Catholic priest, is instructive. At pages 283-284 that Court said:

"When the free exercise clause is raised as a defense, the threshold question is whether the conduct of the defendant is religious. *Wisconsin v. Yoder,* 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533-34, 32 L.Ed.2d 15 (1972) ('to have the protection of the [r]eligious [c]lauses the claims must be rooted in religious belief'); see Note, Intentional Infliction of Emotional Distress by Spiritual Counselors: Can Outrageous Conduct be 'Free Exercise'?, 84 Mich.L.Rev. 1269, 1302 (1986). 'In the spiritual counseling context, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact "part of the belief and practices" of the religious group.' Id. (citing *Christofferson v. Church of Scientology,* 57 Or.App. 203, 245, 644 P.2d 577, 604 (1982)). The alleged misconduct of Grabrian that is at the very heart of Edna's crossclaim is that he induced Edna to engage in a sexual relationship during the course, and as a result, of marital counseling. Edna alleged that her damages were a direct result of the sexual relationship. If the alleged conduct of Grabrian were dictated by his sincerely held religious beliefs or was consistent with the practice of his religion, we would have to resolve a difficult first amendment issue. This, however, is not the case. It has not been asserted that Grabrian's conduct falls within the practices or beliefs of the Catholic church."

Finally, when, as here, the misconduct charged is sexual abuse of an infant, even if defendant Trane's conduct had been within a counseling setting, this Court would not dismiss the three challenged actions (Nos. 3, 5 and 7) on the ground of excessive entanglement, as did Judge Brieant in the *Schmidt* case for fear of venturing on a slippery slope into questions of liability impossible and unconstitutional to determine. This Court does not share that apprehension, and is confident the judicial process can provide a brake to the slide when needed. In the words of Mr. Justice Harlan, "It is always possible to shrink from a first step lest the momentum will plunge the law into pitfalls that lie in the trail ahead. I, for one, however, do not believe that a 'slippery slope' is necessarily without a constitutional toehold" (*Walz v. Tax Commission of the City of New York,* 397 U.S. 664, 699-700, 90 S.Ct. 1409, 1427, 25 L.Ed.2d 697).

For the foregoing reasons, cause of action No. 7 is dismissed and the motions for dismissal of causes of action Nos. 3 and 5 are denied, as are the motions to dismiss cause of action No. 6 alleging outrageous conduct by defendant Trane causing severe emotional distress to Martin. As to the latter cause of action, defendants have tendered no ground for dismissal by post- argument submissions beyond their inclusion of this cause of action in those opposed on oral argument for the reasons discussed above.

There remain to be considered claims asserted against the institutional defendants in the second amended complaint. These defendants (the parish, school and diocese ****932** who were alleged employers of defendant Trane) do not identify specific causes of action that they seek to have dismissed or mount discrete attacks against particular claims; instead, they ask generally for dismissal of "all causes of action directed at the Diocesan defendants on alleged failure of supervision or *respondeat superior* theories". The gist of the various claims pleaded against the institutional defendants, in addition to an ***830** action for outrageous conduct causing severe emotional distress, is that these defendants are vicariously liable under the principle of *respondent superior* for the alleged misconduct of the priest, or are liable for their own negligence in hiring and placing the priest in contact with boys and failing periodically to evaluate his activities, with inadequate investigation of his background and with actual or constructive knowledge of his propensities.

With repeated reliance on Judge Brieant's decision in the *Schmidt* case, which they acknowledge is not binding but which they urge as compelling, they assert:

"Under Judge Brieant's analysis, the First Amendment precludes any intervention by this Court which would serve to define a clerical standard of care or involve sensitive judgments as to the internal affairs of clerical administration. Such activity, apart from creating a monumentally

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difficult task, would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination."

[4][5] Liability for negligent hiring or failing periodically to evaluate defendant Trane will of course be dependent upon a sufficient showing of notice of perverted proclivities--the nature and extent of which notice is not appropriately for decision on these motions to dismiss, in view of the allegations of both actual and constructive notice that are set out in the amended pleading. If, however, plaintiffs are successful in establishing that, with knowledge that the priest was likely to commit sexual abuse on youths with whom he was put in contact, his employers placed or continued him in a setting in which such abuse occurred, the fact that the placement occurred in the course of internal administration of the religious units does not preclude holding the institutions accountable to the victim of their neglect in administration. Indeed, a contrary holding--that a religious body must be held free from any responsibility for wholly predictable and foreseeable injurious consequences of personnel decisions, although such decisions incorporate no theological or dogmatic tenets--would go beyond First Amendment protection and cloak such bodies with an exclusive immunity greater than that required for the preservation of the principles constitutionally safeguarded. As the Supreme Court of Ohio has declared, "even the most liberal construction of the First Amendment will not protect a religious organization's decision to hire someone who it knows ***831** is likely to commit criminal or tortious acts" (*Byrd v. Faber,* 57 Ohio St.3d 56, 61, 565 N.E.2d 584, 590). [FN2]

FN2. Absent legislative prescription or an appellate court's directive, this Court will not reach out to impose the "higher standard of pleading" required by Ohio's Supreme Court in *Byrd* with respect to a claim brought against a religious institution for negligent hiring (57 Ohio St.3d at p. 61, 565 N.E.2d at p. 589).

The question whether the facts alleged, if proved, would support the imposition of liability on the institutional defendants for the alleged misconduct of defendant Trane under the principles of *respondeat superior* is a somewhat more difficult one. Plaintiffs argue that there has been an expansion of these principles, citing language of the Court of Appeals in *Riviello v. Waldron,* 47 N.Y.2d 297, 418 N.Y.S.2d 300, 391 N.E.2d 1278 in which the Court recognized that "where the element of general foreseeability exists, even intentional tort situations have been found to fall within the scope of employment". (p. 304, 418 N.Y.S.2d 300, 391 N.E.2d 1278) The two cases cited there were both instances of assaults committed by employees; both, however, were committed in what might be said to have been in furtherance of the employers' interests; in one case a bartender assaulted an unruly patron to protect ****933** the employer's property and to maintain order on the premises (*Sims v. Bergamo,* 3 N.Y.2d 531, 169 N.Y.S.2d 449, 147 N.E.2d 1); in the other a building superintendent assaulted a tenant while attempting to enforce occupancy rules (*De Wald v. Seidenberg,* 297 N.Y. 335, 79 N.E.2d 430). No New York case has been cited in which an employer has been held vicariously liable for intentional sexual misconduct by an employee; the contrary result was reached in *Noto v. St. Vincent's Hosp. & Med. Center of N.Y.,* 160 A.D.2d 656, 559 N.Y.S.2d 510 appeal denied 76 N.Y.2d 714, 564 N.Y.S.2d 718, 565 N.E.2d 1269 referring to opinion by Supreme Court Justice Dontzin reported at 142 Misc.2d 292, 537 N.Y.S.2d 446.

[6] In light of the foregoing, the Court declines to follow the lead of *Mary M. v. City of Los Angeles,* 54 Cal.3d 202, 285 Cal.Rptr. 99, 814 P.2d 1341, which plaintiffs ask be applied, in which the Supreme Court of California held that defendant City might be liable under *respondeat superior* for a rape by an on-duty policeman of a woman taken into custody by him. In reversing the vacatur of a jury verdict for plaintiff and remanding for further consideration, the Court placed great emphasis on the fact that police officers are vested by the public entity with authority to arrest and to use deadly force, and one resisting an officer's proper exercise of authority is subject to criminal prosecution. In that circumstance the Court held that "(w)hen police officers on duty misuse that formidable power to commit ***832** sexual assaults, the public employer must be held accountable for their actions. ' "It is, after all, the state which puts the officer in a position to employ force and which benefits from its use." ' " (54 Cal.3d at p. 221, 285 Cal.Rptr. at p. 110). The coercive authority possessed by the police officer in *Mary M.* serves to distinguish it

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from the present case. Inasmuch as plaintiffs have tendered no case in this jurisdiction imposing *respondeat superior* liability for intentional sexual misconduct by an employee, which on its face scarcely seems to fall within the scope of employment of a priest, the eighth cause of action will be dismissed.

As has been indicated, defendants raise no separate objections to the two causes of action added against all the defendants for outrageous conduct causing severe emotional distress, but have simply swept them in as variants of what they regard as unconstitutional claims against clergy or religious institutions. Inasmuch as these causes of action are recognized forms of litigation (*Freihofer v. Hearst Pub.*, 65 N.Y.2d 135, 490 N.Y.S.2d 735, 480 N.E.2d 349; Restatement [Second] of Torts § 46[1]), and are intentional torts, as distinguished from negligence, there is no reason why they should be dismissed at this stage.

Finally, defendant Trane asks that the derivative action by Martin's mother (the twelfth cause of action in the amended pleading) be dismissed as time- barred. He asserts that, of the primary causes of action pleaded on behalf of the infant, only the intentional tort claims are viable, and that the lapse of more than one year between Trane's alleged misconduct and the commencement of the litigation precludes the prosecution of the derivative action by the mother, who lacks the benefit of the tolling for infancy which Martin enjoys. The argument fails, however, in view of the fact that the breach and violation of trust actions, with 6-year statutes of limitation (CPLR 213[1]), have been sustained.

In sum, defendants' motions to dismiss are granted as to causes of action Nos. 7 and 8; as to the other causes of action to which motions have been addressed, the motions to dismiss are denied.

There remains the motion by the institutional defendants for a protective order against discovery sought by plaintiffs. By letter of August 6, defendants' counsel have withdrawn this motion "on the understanding that counsel's demands are limited to Father [Trane's] employment history prior to February 1, 1989 and to such communications made in the ordinary *833 course of Diocesan administrative activities", which appears to mirror the description set out in plaintiffs' attorney's letter of July 27 of the materials sought to be discovered. That **934 being so, and the Court having heard nothing by way of objection to the limitation contained in defendants' August 6 letter, the motion for a protective order is deemed withdrawn.

591 N.Y.S.2d 927, 153 Misc.2d 822

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EXHIBIT 28

99 S.Ct. 3020
61 L.Ed.2d 775
(Cite as: 443 U.S. 595, 99 S.Ct. 3020)

Briefs and Other Related Documents

Supreme Court of the United States

R. W. JONES, Sr., et al., Petitioners,
v.
Charles T. WOLF et al.

No. 78-91.

Argued Jan. 16, 1979.
Decided July 2, 1979.

In dispute over ownership of church property following schism in local church affiliated with a hierarchical church organization, the Superior Court, Bibb County, Georgia, granted judgment for majority of the local church, and appeal was taken. The Supreme Court of Georgia affirmed, 241 Ga. 208, 243 S.E.2d 860 and certiorari was granted. The Supreme Court, Mr. Justice Blackmun, held that: (1) a state is constitutionally entitled to adopt neutral principles of law as a means of adjudicating church property disputes; (2) if state has adopted a presumptive rule of majority representation, defeasible upon showing that identity of local church is to be determined by some other means, this would be consistent with both neutral principles analysis and the First Amendment, but (3) if state law provides that identity of local church is to be determined according to the "laws and regulations" of the general church, then the First Amendment requires that state courts give deference to determination of that church's identity by the authoritative ecclesiastical body.

Vacated and remanded.

Mr. Justice Powell, with whom Mr. Chief Justice Burger, Mr. Justice Stewart and Mr. Justice White joined, filed a dissenting opinion.

Opinion after remand, 244 Ga. 388, 260 S.E.2d 84.

West Headnotes

[1] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

[1] Religious Societies ⇐24
332k24 Most Cited Cases

Civil courts have general authority to resolve church property disputes, but the First Amendment severely circumscribes the role that such courts may play in resolving such disputes. U.S.C.A.Const. Amend. 1.

[2] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

[2] Religious Societies ⇐24
332k24 Most Cited Cases

The First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice, and requires the civil courts to defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization, but subject to these limitations the First Amendment does not dictate that a state must follow a particular method of resolving church property disputes. U.S.C.A.Const. Amend. 1.

[3] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

A state is constitutionally entitled to adopt neutral principles of law, such as examination of the language of deeds, local church charters, state statutes, and provisions of constitution of general church, as a means of adjudicating church property disputes, but in undertaking such an examination the civil court must take special care to scrutinize documents in purely secular terms, and if deed, corporate charter, or constitution of general church incorporates religious concepts in a provision relating to ownership of property, so that interpretation of instruments of ownership would require civil court to resolve a religious controversy, court must defer to resolution of the doctrinal issue by the authoritative ecclesiastical body. U.S.C.A.Const. Amend. 1.

[4] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases

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(Formerly 92k84)

The First Amendment does not require states to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

If, in resolving church property disputes, state has adopted a presumptive rule of majority representation, defeasible upon showing that identity of local church is to be determined by some other means, this will be consistent with neutral principles analysis and the First Amendment, but if state adopts rule of presumptive majority representation, it should specify how that presumption may be overcome. U.S.C.A.Const. Amend. 1.

[6] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

If state law provides that identity of local church is to be determined according to the "laws and regulations" of general hierarchical church, First Amendment requires that state courts give deference to determination of that church's identity by the authoritative ecclesiastical body. U.S.C.A.Const. Amend. 1.

****3021 *595 Syllabus*** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The property of the Vineville Presbyterian Church of Macon, Ga. (local church), is held in the names of the local church or of trustees for the local church. That church, however, was established as a member of the Augusta-Macon Presbytery of the Presbyterian Church in the United States (PCUS), which has a generally hierarchical form of government. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this "court" are subject to the review and control of the higher church courts (the Presbytery, Synod, and General Assembly). At a congregational meeting attended by a quorum of the local church's members, 164 of them voted to separate from the PCUS, while 94 opposed the resolution. The majority then united with another denomination and has retained possession of the local church property. The Augusta-Macon Presbytery appointed a commission to investigate the dispute, and the commission eventually issued a ruling declaring that the minority faction constituted the "true congregation" of the local church, and withdrawing from the majority faction "all authority to exercise office derived from the [PCUS]." Representatives of the minority faction brought this class action in state court, seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the local church's property as a member of the PCUS. The trial court, purporting to apply Georgia's "neutral principles of law" approach to church property disputes, granted judgment for the majority. The Georgia Supreme Court affirmed, holding that the trial court had correctly stated and applied Georgia law and rejecting the minority's challenge based on the First and Fourteenth Amendments.

Held:

1. As a means of adjudicating a church property dispute, a State is constitutionally entitled to adopt a "neutral principles of law" analysis involving consideration of the deeds, state statutes governing ****3022** the holding of church property, the local church's charter, and the general church's constitution. The First Amendment does not require the States to adopt a rule of compulsory deference to religious authority in ***596** resolving church property disputes, even where no issue of doctrinal controversy is involved. Pp. 3024-3027.

2. Here, the case must be remanded since the grounds for the Georgia courts' decision that the majority faction represents the local church were not articulated, both the trial court and the Georgia Supreme Court having applied Georgia's

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neutral-principles analysis as developed in cases involving church property disputes between general churches and entire local congregations, without alluding to the significant complicating factor in the present case that the local congregation was itself divided. If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, this would be consistent with both the neutral-principles analysis and the First Amendment. However, there are at least some indications that under Georgia law the process of identifying the faction that represents a local church involves considerations of religious doctrine and polity, and thus if Georgia law provides that the identity of the local church here is to be determined according to the laws and regulations of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination that the minority faction represents the "true congregation." Pp. 3027-3029.

241 Ga. 208, 243 S.E.2d 860, vacated and remanded.

E. Barrett Prettyman, Jr., Washington, D. C., for petitioners.

Frank C. Jones, Atlanta, Ga., for respondents.

*597 Mr. Justice BLACKMUN delivered the opinion of the Court.

This case involves a dispute over the ownership of church property following a schism in a local church affiliated with a hierarchical church organization. The question for decision is whether civil courts, consistent with the First and Fourteenth Amendments to the Constitution, may resolve the dispute on the basis of "neutral principles of law," or whether they must defer to the resolution of an authoritative tribunal of the hierarchical church.

I

The Vineville Presbyterian Church of Macon, Ga., was organized in 1904, and first incorporated in 1915. Its corporate charter lapsed in 1935, but was revived and renewed in 1939, and continues in effect at the present time.

The property at issue and on which the church is located was acquired in three transactions, and is evidenced by conveyances to the "Trustees of [or 'for'] Vineville Presbyterian Church and their successors in office," App. 251, 253, or simply to the "Vineville Presbyterian Church." *Id.*, at 249. The funds used to acquire the property were contributed entirely by local church members. Pursuant to resolutions adopted by the congregation, the church repeatedly has borrowed money on the property. This indebtedness is evidenced by security deeds variously issued in the name of the "Trustees of the Vineville Presbyterian Church," *e. g., id.*, at 278, or, again, simply the "Vineville Presbyterian Church." *Id.*, at 299.

In the same year it was organized, the Vineville church was established as a member church of the Augusta-Macon Presbytery of the Presbyterian Church in the United States (PCUS). The PCUS has a generally hierarchical or connectional *598 form of government, as contrasted with a congregational form. Under the polity of the PCUS, the government of the local church is committed to its Session in the first instance, but the actions of this assembly or "court" are subject to the review and control **3023 of the higher church courts, the Presbytery, Synod, and General Assembly, respectively. The powers and duties of each level of the hierarchy are set forth in the constitution of the PCUS, the Book of Church Order, which is part of the record in the present case.

On May 27, 1973, at a congregational meeting of the Vineville church attended by a quorum of its duly enrolled members, 164 of them, including the pastor, voted to separate from the PCUS. Ninety-four members opposed the resolution. The majority immediately informed the PCUS of the action, and then united with another denomination, the Presbyterian Church in America. Although the minority remained on the church rolls for three years, they ceased to participate in the affairs of the Vineville church and conducted their religious activities elsewhere.

In response to the schism within the Vineville congregation, the Augusta- Macon Presbytery

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appointed a commission to investigate the dispute and, if possible, to resolve it. The commission eventually issued a written ruling declaring that the minority faction constituted "the true congregation of Vineville Presbyterian Church," and withdrawing from the majority faction "all authority to exercise office derived from the [PCUS]." App. 235. The majority took no part in the commission's inquiry, and did not appeal its ruling to a higher PCUS tribunal.

Representatives of the minority faction sought relief in federal court, but their complaint was dismissed for want of jurisdiction. *Lucas v. Hope,* 515 F.2d 234 (CA5 1975), cert. denied, 424 U.S. 967, 96 S.Ct. 1464, 47 L.Ed.2d 734 (1976). They then brought this class action in state court, seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the ***599** Vineville church property as a member congregation of the PCUS. The trial court, purporting to apply Georgia's "neutral principles of law" approach to church property disputes, granted judgment for the majority. The Supreme Court of Georgia, holding that the trial court had correctly stated and applied Georgia law, and rejecting the minority's challenge based on the First and Fourteenth Amendments, affirmed. 241 Ga. 208, 243 S.E.2d 860 (1978). We granted certiorari. 439 U.S. 891, 99 S.Ct. 247, 58 L.Ed. 237 (1978).

II

Georgia's approach to church property litigation has evolved in response to *Presbyterian Church v. Hull Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) (*Presbyterian Church I*), rev'g *Presbyterian Church v. Eastern Heights Church,* 224 Ga. 61, 159 S.E.2d 690 (1968). That case was a property dispute between the PCUS and two local Georgia churches that had withdrawn from the PCUS. The Georgia Supreme Court resolved the controversy by applying a theory of implied trust, whereby the property of a local church affiliated with a hierarchical church organization was deemed to be held in trust for the general church, provided the general church had not "substantially abandoned" the tenets of faith and practice as they existed at the time of affiliation. [FN1] This Court reversed, holding that Georgia would have to find some other way of resolving church property disputes that did not draw the state courts into religious controversies. The Court did not specify what that method should be, although it noted in passing that "there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded." 393 U.S., at 449, 89 S.Ct., at 606.

> FN1. This is sometimes referred to as the "English approach" to resolving property disputes in hierarchical churches. See *Presbyterian Church I,* 393 U.S., at 443, and n. 2, 89 S.Ct., at 603; *Watson v. Jones,* 80 U.S. 679, 727-728, 13 Wall. 679, 727-728, 20 L.Ed. 666 (1872).

600** On remand, the Georgia Supreme Court concluded that, without the departure-from-doctrine element, the implied trust theory would have to be abandoned in its entirety. ****3024Presbyterian Church v. Eastern Heights Church,* 225 Ga. 259, 167 S.E.2d 658 (1969) (*Presbyterian Church II*). In its place, the court adopted what is now known as the "neutral principles of law" method for resolving church property disputes. The court examined the deeds to the properties, the state statutes dealing with implied trusts, Ga.Code §§ 108-106, 108-107 (1978), and the Book of Church Order to determine whether there was any basis for a trust in favor of the general church. Finding nothing that would give rise to a trust in any of these documents, the court awarded the property on the basis of legal title, which was in the local church, or in the names of trustees for the local church. 225 Ga., at 261, 167 S.E.2d, at 660. Review was again sought in this Court, but was denied. 396 U.S. 1041, 90 S.Ct. 680, 24 L.Ed.2d 685 (1970).

The neutral-principles analysis was further refined by the Georgia Supreme Court in *Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322, cert. denied, 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976). That case concerned a property dispute between The United Methodist Church and a local congregation that had withdrawn from that church. As in *Presbyterian Church II,* the court found no basis for a trust in favor of the general church in the deeds, the corporate charter, or the state statutes dealing with implied trusts. The court observed, however, that the constitution of The United Methodist

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Church, its Book of Discipline, contained an express trust provision in favor of the general church. [FN2] On this basis, the church property was ***601** awarded to the denominational church. 236 Ga., at 39, 222 S.E.2d, at 328.

> FN2. The Book of Discipline of the United Methodist Church ¶ 1537 (1968), requires that
> "title to all real property now owned or hereafter acquired by an unincorporated local church . . . shall be held by and/or conveyed and transferred to its duly elected trustees . . . and their successors in office . . . in trust, nevertheless, for the use and benefit of such local church *and of The United Methodist Church.* Every instrument of conveyance of real estate shall contain the appropriate trust clause as set forth in the Discipline (¶ 1503)" (emphasis added).
> Although in *Carnes* the deeds to the local church did not contain the required trust clause, The Book of Discipline provided that in the absence of a trust clause, a trust in favor of The United Methodist Church was to be implied if (a) the conveyance was to the trustees of a local church or agency of any predecessor to The United Methodist Church, or (b) the local church used the name of any predecessor to The United Methodist Church and was known to the community as a part of the denomination, or (c) the local church accepted the pastorate of ministers appointed by any predecessor to The United Methodist Church. The Book of Discipline ¶ 1503.5. The local church in *Carnes* satisfied all three of these conditions. 236 Ga., at 39, 222 S.E.2d, at 328.

In the present case, the Georgia courts sought to apply the neutral- principles analysis of *Presbyterian Church II* and *Carnes* to the facts presented by the Vineville church controversy. Here, as in those two earlier cases, the deeds conveyed the property to the local church. Here, as in the earlier cases, neither the state statutes dealing with implied trusts, nor the corporate charter of the Vineville church, indicated that the general church had any interest in the property. And here, as in *Presbyterian Church II,* but in contrast to *Carnes,* the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church. The courts accordingly held that legal title to the property of the Vineville church was vested in the local congregation. Without further analysis or elaboration, they further decreed that the local congregation was represented by the majority faction, respondents herein. App. to Pet. for Cert. 9a.; 241 Ga., at 212, 243 S.E.2d, at 864.

***602** III

[1][2] The only question presented by this case is which faction of the formerly united Vineville congregation is entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga. There can be little doubt about the general authority of civil courts to resolve this question. ****3025** The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively. *Presbyterian Church I,* 393 U.S., at 445, 89 S.Ct., at 604.

It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Id.,* at 449, 89 S.Ct., at 606. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L.Ed.2d 151 (1976); *Maryland & Va. Churches v. Sharpsburg Church,* 396 U.S. 367, 368, 90 S.Ct. 499, 500, 24 L.Ed.2d 582 (1970); *Presbyterian Church I,* 393 U.S., at 449, 89 S.Ct., at 606. As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese,* 426 U.S., at 724-725, 96 S.Ct., at 2387; cf. *Watson v. Jones,* 80 U.S. 679, 733-734, 13 Wall. 679, 733-734, 20 L.Ed. 666 (1872). Subject to these limitations, however, the First Amendment does not dictate that a State must follow a particular

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method of resolving church property disputes. Indeed, "a State may adopt *any* one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Maryland & Va. Churches,* 396 U.S., at 368, 90 S.Ct., at 500. (BRENNAN, J., concurring) (emphasis in original).

[3] At least in general outline, we think the "neutral principles of law" approach is consistent with the foregoing constitutional principles. The neutral-principles approach was approved ***603** in *Maryland & Va. Churches, supra,* an appeal from a judgment of the Court of Appeals of Maryland settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. Finding that this analysis entailed "no inquiry into religious doctrine," the Court dismissed the appeal for want of a substantial federal question. 396 U.S., at 368, 90 S.Ct., at 500. "Neutral principles of law" also received approving reference in *Presbyterian Church I,* 393 U.S., at 449, 89 S.Ct., at 606; in Mr. Justice BRENNAN's concurrence in *Maryland & Va. Churches,* 396 U.S., at 370, 90 S.Ct., at 501; and in *Serbian Orthodox Diocese,* 426 U.S., at 723 n. 15, 96 S.Ct., at 2387 [FN3].

> FN3. Indeed, even in *Watson v. Jones,* a common-law decision heavily relied upon by the dissent, Mr. Justice Miller, in speaking for the Court, stated that, regardless of the form of church government, it would be the "obvious duty" of a civil tribunal to enforce the "express terms" of a deed, will, or other instrument of church property ownership. 80 U.S., at 722-723, 13 Wall., at 722-723.

The primary advantages of the neutral-principles approach are that it is completely secular in operation, and yet flexible enough to accommodate all forms of religious organization and polity. The method relies exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity, and practice. Furthermore, the neutral-principles analysis shares the peculiar genius of private-law systems in general--flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization ***604** can ****3026** ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members.

This is not to say that the application of the neutral-principles approach is wholly free of difficulty. The neutral-principles method, at least as it has evolved in Georgia, requires a civil court to examine certain religious documents, such as a church constitution, for language of trust in favor of the general church. In undertaking such an examination, a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust. In addition, there may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. *Serbian Orthodox Diocese,* 426 U.S., at 709, 96 S.Ct., at 2380.

On balance, however, the promise of nonentanglement and neutrality inherent in the neutral-principles approach more than compensates for what will be occasional problems in application. These problems, in addition, should be gradually eliminated as recognition is given to the obligation of "States, religious organizations, and individuals [to] structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." *Presbyterian Church I,* 393 U.S., at 449, 89 S.Ct., at 606. We therefore hold that a State is constitutionally entitled to adopt neutral principles of law as a means of

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adjudicating a church property dispute.

[4] The dissent would require the States to abandon the neutral-principles method, and instead would insist as a matter of constitutional law that whenever a dispute arises over the ***605** ownership of church property, civil courts must defer to the "authoritative resolution of the dispute within the church itself." *Post,* at 3031. It would require, first, that civil courts review ecclesiastical doctrine and polity to determine where the church has "placed ultimate authority over the use of the church property." *Post,* at 3033. After answering this question, the courts would be required to "determine whether the dispute has been resolved within that structure of government and, if so, what decision has been made." *Post,* at 3033 n. 6. They would then be required to enforce that decision. We cannot agree, however, that the First Amendment requires the States to adopt a rule of compulsory deference to religious authority in resolving church property disputes, even where no issue of doctrinal controversy is involved.

The dissent suggests that a rule of compulsory deference would somehow involve less entanglement of civil courts in matters of religious doctrine, practice, and administration. Under its approach, however, civil courts would always be required to examine the polity and administration of a church to determine which unit of government has ultimate control over church property. In some cases, this task would not prove to be difficult. But in others, the locus of control would be ambiguous, and "[a] careful examination of the constitutions of the general and local church, as well as other relevant documents, [would] be necessary to ascertain the form of governance adopted by the members of the religious association." *Post,* at 3034. In such cases, the suggested rule would appear to require "a searching and therefore impermissible inquiry into church polity." *Serbian Orthodox Diocese,* 426 U.S., at 723, 96 S.Ct., at 2387. The neutral-principles approach, in contrast, obviates entirely the need for an analysis or examination of ecclesiastical polity or doctrine in settling church property disputes.

The dissent also argues that a rule of compulsory deference is necessary in order to protect the free exercise rights "of ***606** those who have formed the association and submitted ****3027** themselves to its authority." *Post,* at 3033. This argument assumes that the neutral-principles method would somehow frustrate the free-exercise rights of the members of a religious association. Nothing could be further from the truth. The neutral-principles approach cannot be said to "inhibit" the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods. Under the neutral-principles approach, the outcome of a church property dispute is not foreordained. At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form. [FN4]

> FN4. Given that the Georgia Supreme Court clearly enunciated its intent to follow the neutral-principles analysis in *Presbyterian Church II* and *Carnes*, this case does not involve a claim that retroactive application of a neutral-principles approach infringes free-exercise rights.

IV

It remains to be determined whether the Georgia neutral-principles analysis was constitutionally applied on the facts of this case. Although both the trial court and the Supreme Court of Georgia viewed the case as involving nothing more than an application of the principles developed in *Presbyterian Church II* and in *Carnes*, the present case contains a significant complicating factor absent in each of those earlier cases. *Presbyterian Church II* and *Carnes* each involved a ***607** church property dispute between the general church and the entire local congregation. Here, the local congregation was itself divided between a majority of 164 members who sought to withdraw from the PCUS, and a minority of 94 members who wished

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to maintain the affiliation. Neither of the state courts alluded to this problem, however; each concluded without discussion or analysis that the title to the property was in the local church and that the local church was represented by the majority rather than the minority.

Petitioners earnestly submit that the question of which faction is the true representative of the Vineville church is an ecclesiastical question that cannot be answered by a civil court. At least, it is said, it cannot be answered by a civil court in a case involving a hierarchical church, like the PCUS, where a duly appointed church commission has determined which of the two factions represents the "true congregation." Respondents, in opposition, argue in effect that the Georgia courts did no more than apply the ordinary presumption that, absent some indication to the contrary, a voluntary religious association is represented by a majority of its members.

[5] If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means, we think this would be consistent with both the neutral-principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. See *Bouldin v. Alexander*, 82 U.S. 131, 15 Wall. 131, 21 L.Ed. 69 (1872). Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity. Certainly, there was no dispute in the present case about the identity of the duly enrolled members of the Vineville church when the dispute arose, or about the fact that a quorum was present, or about the final vote. Most importantly, any rule of majority representation can always be overcome, under the neutral-principles approach, either by providing, in the corporate **608** charter or the constitution **3028** of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it. Indeed, the State may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy. [FN5]

FN5. If the Georgia Supreme Court adopts a rule of presumptive majority representation on remand, then it should also specify how, under Georgia law, that presumption may be overcome. Because these critical issues of state law remain undetermined, we, unlike the dissent, express no view as to the ultimate outcome of the controversy if the Georgia Supreme Court adopts a presumptive rule of majority representation.

[6] Neither the trial court nor the Supreme Court of Georgia, however, explicitly stated that it was adopting a presumptive rule of majority representation. [FN6] Moreover, there are at least some indications that under Georgia law the process of identifying the faction that represents the Vineville church involves considerations of religious doctrine and polity. Georgia law requires that "church property be held according to the terms of the church government," and provides that a local church affiliated with a hierarchical religious association "is part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulations." **609** *Carnes v. Smith*, 236 Ga., at 33, 38, 222 S.E.2d, at 325, 328; see Ga.Code §§ 22-5507, 22-5508 (1978). All this may suggest that the identity of the "Vineville Presbyterian Church" named in the deeds must be determined according to terms of the Book of Church Order, which sets out the laws and regulations of churches affiliated with the PCUS. Such a determination, however, would appear to require a civil court to pass on questions of religious doctrine, [FN7] and to usurp the function of the commission appointed by the Presbytery, which already has determined that petitioners represent the "true congregation" of the Vineville church. Therefore, if Georgia law provides that the identity of the Vineville church is to be determined according to the "laws and regulations" of the PCUS, then the First Amendment requires that the Georgia courts give deference to the presbyterial commission's determination of that church's identity. [FN8]

FN6. The Georgia Code contains the following provision dealing with the identity of a religious corporation:

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"The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned." Ga.Code § 22-5504 (1978).
The trial court noted that the defendants (respondents here) did not claim any right of possession of the Vineville church property under this section. App. to Pet. for Cert. 6a. The Georgia Supreme Court did not mention the provision.

FN7. Issues of church doctrine and polity pervade the provisions of the Book of Church Order of the Presbyterian Church (1972) dealing with the identity of the local congregation. The local church corporation consists of "all the communing members on the active roll" of the church. *Id.*, § 6-2; App. 35. The "active roll," in turn, is composed "of those admitted to the Lord's Table who are active in the church's life and work." § 8-7; App. 38. The Session is given the power "to suspend or exclude from the Lord's Supper those found delinquent, according to the Rules of Discipline." § 15-6(2); App. 51. See § 111-2; App. 124. The Session is subject to "the review and control" of the Presbytery, § 14-5; App. 49, as a part of the Presbytery's general authority to "order whatever pertains to the spiritual welfare of the churches under its care." § 16-7(19); App. 56.

FN8. There is no suggestion in this case that the decision of the commission was the product of "fraud" or "collusion." See *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S.Ct. 2372, 2382 (1976). In the absence of such circumstances, "the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them." *Id.*, 426 U.S., at 709, 96 S.Ct., at 2380.

This Court, of course, does not declare what the law of Georgia is. Since the **3029 grounds for the decision that respondents *610 represent the Vineville church remain unarticulated, the judgment of the Supreme Court of Georgia is vacated, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice POWELL, with whom THE CHIEF JUSTICE, Mr. Justice STEWART, and Mr. Justice WHITE join, dissenting.

This case presents again a dispute among church members over the control of a local church's property. Although the Court appears to accept established principles that I have thought would resolve this case, it superimposes on these principles a new structure of rules that will make the decision of these cases by civil courts more difficult. The new analysis also is more likely to invite intrusion into church polity forbidden by the First Amendment.

I

The Court begins by stating that "[t]his case involves a dispute over the ownership of church property," *ante*, at 3022, suggesting that the concern is with legal or equitable ownership in the real property sense. But the ownership of the property of the Vineville church is not at issue. The deeds place title in the Vineville Presbyterian Church, or in trustees of that church, and none of the parties has questioned the validity of those deeds. The question actually presented is which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property, as the Court later acknowledges. *Ante,*, at 3024.

Since 1872 disputes over control of church property usually have been resolved under principles established by *Watson v. Jones*, 80 U.S.

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679, 13 Wall. 679, 20 L.Ed. 666 (1872). Under the new and complex, two-stage analysis approved today, a court instead first must apply newly defined "neutral principles of law" to determine ***611** whether property titled to the local church is held in trust for the general church organization with which the local church is affiliated. If it is, then the court will grant control of the property to the councils of the general church. If not, then control by the local congregation will be recognized. In the latter situation, if there is a schism in the local congregation, as in this case, the second stage of the new analysis becomes applicable. Again, the Court fragments the analysis into two substeps for the purpose of determining which of the factions should control the property.

As this new approach inevitably will increase the involvement of civil courts in church controversies, and as it departs from long-established precedents, I dissent.

A

The first stage in the "neutral principles of law" approach operates as a restrictive rule of evidence. A court is required to examine the deeds to the church property, the charter of the local church (if there is one), the book of order or discipline of the general church organization, and the state statutes governing the holding of church property. The object of the inquiry, where the title to the property is in the local church, is "to determine whether there [is] any basis for a trust in favor of the general church." *Ante,* at 3024. The court's investigation is to be "completely secular," "rel[ying] exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges." *Ante,* at 3025. Thus, where religious documents such as church constitutions or books of order must be examined "for language of trust in favor of the general church," "a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." *Ante,* at 3026. It follows that the civil courts using this analysis may consider the form of religious government ***612** adopted by the church members for the resolution of intrachurch disputes *only* if ****3030** that polity has been stated, in express relation to church property, in the language of trust and property law. [FN1]

FN1. Despite the Court's assertion to the contrary, *ante,* at 3025, this "neutral principles" approach was not approved by the Court in dismissing the appeal, *Maryland & Va. Eldership v. Sharpsburg Church,* 254 Md. 162, 254 A.2d 162 (1969). 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970). The state court there examined the constitution of the general church, the charters of the local churches, the deeds to the property at issue, and the relevant state statutes. But it did not restrict its inquiry to a search for statements expressed in the language of trust and property law; see 254 Md., at 169-176, 254 A.2d, at 168- 170. Rather, the state court canvassed all of these sources, and others, see *Maryland & Va. Eldership v. Sharpsburg Church,* 249 Md. 650, 665-668, 241 A.2d 691, 700-701 (1968), for information about the basic polity of the Church of God. Having concluded that the local congregations retained final authority over their property, it awarded judgment accordingly. Contrary to the statement of the Court in the present case that such an inquiry into church polity requires analysis of "ecclesiastical . . . doctrine," *ante,* at 3026, "the Maryland court's resolution of the dispute involved no inquiry into religious doctrine." 396 U.S., at 368, 90 S.Ct., at 500.
In *Presbyterian Church v. Hull Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), "neutral principles" were referred to in passing, but were never described. *Id.,* at 449, 89 S.Ct., at 606. What the Court refers to as an "approving reference" to "neutral principles" in *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976), was only an acknowledgment in a footnote that "[n]o claim is made that the 'formal title' doctrine by which church property disputes may be decided in civil courts is to be applied in this case." *Id.,* at 723 n. 15, 96 S.Ct., at 2387. Nor can the Court find support for its position in *Watson v. Jones,* 80 U.S. 679, 724-729, 13

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Wall. 679, 724-729, 20 L.Ed. 666 (1872). [FN2]

One effect of the Court's evidentiary rule is to deny to the courts relevant evidence as to the religious polity--that is, the form of governance--adopted by the church members. The constitutional documents of churches tend to be drawn in terms of religious precepts. Attempting to read them "in purely secular terms" is more likely to promote confusion than understanding. Moreover, whenever religious polity has not been expressed in specific statements referring to the property ***613** of a church, there will be no evidence of that polity cognizable under the neutral-principles rule. Lacking such evidence, presumably a court will impose some rule of church government derived from state law. In the present case, for example, the general and unqualified authority of the Presbytery over the actions of the Vineville church had not been expressed in secular terms of control of its property. As a consequence, the Georgia courts could find no acceptable evidence of this authoritative relationship, and they imposed instead a congregational form of government determined from state law.

This limiting of the evidence relative to religious government cannot be justified on the ground that it "free[s] civil courts completely from entanglement in questions of religious doctrine, polity, and practice." *Ante*, at 3025. For unless the body identified as authoritative under state law resolves the underlying dispute in accord with the decision of the church's own authority, the state court effectively will have reversed the decisions of doctrine and practice made in accordance with church law. The schism in the Vineville church, for example, resulted from disagreements among the church members over questions of doctrine and practice. App. 233. Under the Book of Church Order, these questions were resolved authoritatively by the higher church courts, which then gave control of the local church to the faction loyal to that resolution. The Georgia courts, as a matter of state law, granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference by the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.

FN2. The neutral-principles approach appears to assume that the requirements of the Constitution will be satisfied if civil courts are forbidden to consider certain types of evidence. The First Amendment's Religion Clauses, however, are meant to protect churches and their members from civil law interference, not to protect the courts from having to decide difficult evidentiary questions. Thus, the evidentiary rules to be applied in cases involving intrachurch disputes over church property should be fashioned to avoid interference with the resolution of the dispute within the accepted church government. The neutral-principles approach consists instead of a rule of evidence that ensures that in some cases the courts will impose a form of church government and a doctrinal resolution at odds with that reached by the church's own authority.

The neutral-principles approach creates other difficulties. It imposes on the organization of churches additional legal requirements which in some cases might inhibit their formation by forcing the organizers to confront issues that otherwise might never arise. It also could precipitate church property disputes, for existing churches may deem it necessary, in light of today's decision, to revise their constitutional documents, charters, and deeds to include a specific statement of church polity in the language of property and trust law.

***614 **3031** When civil courts step in to resolve intrachurch disputes over control of church property, they will either support or overturn the authoritative resolution of the dispute within the church itself. The new analysis, under the attractive banner of "neutral principles," actually invites the civil courts to do the latter. The proper rule of decision, that I thought had been settled until today, requires a court to give effect in all cases to the decisions of the church government agreed upon by the members before the dispute arose.

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The Court's basic neutral-principles approach, as a means of isolating decisions concerning church property from other decisions made within the church, relies on the concept of a trust of local church property in favor of the general church. Because of this central premise, the neutral-principles rule suffices to settle only disputes between the central councils of a church organization and a unanimous local congregation. Where, as here, the neutral- principles inquiry reveals no trust in favor of the general church, and the local congregation is split into factions, the basic question remains unresolved: which faction should have control of the local church?

*615 The Court acknowledges that the church law of the Presbyterian Church in the United States (PCUS), of which the Vineville church is a part, provides for the authoritative resolution of this question by the Presbytery. *Ante*, at 3028, and n. 7. Indeed, the Court indicates that Georgia, consistently with the First Amendment, may adopt the *Watson v. Jones* rule of adherence to the resolution of the dispute according to church law--a rule that would necessitate reversal of the judgment for the respondents. *Ante,* at 3028. But instead of requiring the state courts to take this approach, the Court approves as well an alternative rule of state law: the Georgia courts are said to be free to "adop[t] a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means." *Ante,* at 3027. This showing may be made by proving that the church has "provid[ed], in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way." *Ante,* at 3028.

On its face, this rebuttable presumption also requires reversal of the state court's judgment in favor of the schismatic faction. The polity of the PCUS commits to the Presbytery the resolution of the dispute within the local church. Having shown this structure of church government for the determination of the identity of the local congregation, the petitioners have rebutted any presumption that this question has been left to a majority vote of the local congregation.

The Court nevertheless declines to order reversal. Rather than decide the case here in accordance with established First Amendment principles, the Court leaves open the possibility that the state courts might adopt some restrictive evidentiary rule that would render the petitioners' evidence**3032 inadequate to overcome the presumption of majority control. *Ante*, at 3028 n. 5. But, aside from a passing reference to the use of the neutral-principles approach developed earlier in its *616 opinion, [FN3] the Court affords no guidance as to the constitutional limitations on such an evidentiary rule; the state courts, it says, are free to adopt any rule that is constitutional.

> FN3. *Ante*, at 3027-3028. Such a use would be an extension of this restrictive rule of evidence, and one likely to exacerbate further the interference with free religious exercise. See *supra,* at 3030-3031. Not only will a local congregation of a general hierarchical church be treated as an independent congregational church *unless* the rules of church government have been expressed in specified documents with explicit reference to church property, in addition, all local congregations will be regarded as having a rule of majority control *unless* they have related their general voting rules explicitly to disputes about church property. As a consequence, the resolution of doctrinal disputes within the polity chosen by the church members often will be overturned by the civil courts, an interference with religious exercise that cannot be squared with the First Amendment.

> "Indeed, the state may adopt any method of overcoming the majoritarian presumption, so long as the use of that method does not impair free-exercise rights or entangle the civil courts in matters of religious controversy." *Ante*, at 3028.

In essence, the Court's instructions on remand therefore allow the state courts the choice of following the long-settled rule of *Watson v. Jones* or of adopting some other rule--unspecified by the Court--that the state courts view as consistent with the First Amendment. Not only questions of state law but also important issues of federal

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constitutional law thus are left to the state courts for their decision, and, if they depart from *Watson v. Jones*, they will travel a course left totally uncharted by this Court.

II

Disputes among church members over the control of church property arise almost invariably out of disagreements regarding doctrine and practice. Because of the religious nature of these disputes, civil courts should decide them according to principles that do not interfere with the free exercise of religion in accordance with church polity and doctrine. ***617***Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 720, 96 S.Ct. 2372, 2380-2385, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 445-446, 449, 89 S.Ct. 601, 604, 606, 21 L.Ed.2d 658 (1969); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 107, 73 S.Ct. 143, 149, 97 L.Ed. 120 (1952); *id.*, at 121-122, 73 S.Ct., at 157 (Frankfurter, J., concurring). See also *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960); *Maryland & Va. Eldership v. Sharpsburg Church*, 254 Md. 162, 254 A.2d 162 (1969), appeal dismissed for want of substantial federal question, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970). The only course that achieves this constitutional requirement is acceptance by civil courts of the decisions reached within the polity chosen by the church members themselves. The classic statement of this view is found in *Watson v. Jones*, 13 Wall., at 728-729: [FN4]

> "The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual ****3033** members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious ***618** unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

Accordingly, in each case involving an intrachurch dispute--including disputes over church property--the civil court must focus directly on ascertaining, and then following, the decision made within the structure of church governance. By doing so, the court avoids two equally unacceptable departures from the genuine neutrality mandated by the First Amendment. First, it refrains from direct review and revision of decisions of the church on matters of religious doctrine and practice that underlie the church's determination of intrachurch controversies, including those that relate to control of church property. [FN5] Equally important, by recognizing the authoritative resolution reached within the religious association, the civil court avoids interfering indirectly with the religious governance of those who have formed the association and submitted themselves to its authority. See *supra*, at 3030-3031; *Watson v. Jones, supra*, 80 U.S., at 728-729; *Kedroff v. Saint Nicholas Cathedral, supra*, 344 U.S., at 107-110, 73 S.Ct., at 149-151.

FN4. *Watson v. Jones* was decided at a time when the First Amendment was not considered to be applicable to the States through the Fourteenth Amendment, and before *Erie R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), made state law applicable in diversity cases. But beginning with *Kedroff v. Saint Nicholas Cathedral*, 344 U.S., at 116, 73 S.Ct., at 154, this Court has indicated repeatedly that the principles of general federal law announced in *Watson v. Jones* are now regarded as rooted in the First Amendment, and are applicable to the States through the Fourteenth Amendment. *Presbyterian Church v. Hull Church*, 393 U.S., at 447-448, 89 S.Ct., at 605; *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S., at 710-711, 96 S.Ct., at 2381.

FN5. Thus, in *Presbyterian Church v. Hull*

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Church, supra, the Court forbade the use of the "English approach" in the resolution of church property disputes because it requires the civil courts to determine whether authoritative decisions of doctrine and practice are consistent with the longstanding tenets of faith of a particular church. 393 U.S., at 449- 450, 89 S.Ct., at 606; accord, *Watson v. Jones, supra,* 13 Wall., at 727-729. Similarly, in *Serbian Orthodox Diocese v. Milivojevich, supra,* the control of church property turned on the resolution of questions of doctrine and practice, "which under our cases is [only] for ecclesiastical and not civil tribunals." 426 U.S., at 709, 96 S.Ct., at 2380; see *id* ., at 720, 96 S.Ct., at 2385.

III

Until today, and under the foregoing authorities, the first question presented in a case involving an intrachurch dispute over church property was where within the religious association ***619** the rules of polity, accepted by its members before the schism, had placed ultimate authority over the use of the church property. [FN6] The courts, in answering this question have recognized two broad categories of church government. One is congregational, in which authority over questions of church doctrine, practice, and administration rests entirely in the local congregation or some body within it. In disputes over the control and use of the property of such a church, the civil courts enforce the authoritative resolution of the controversy within the local church itself. *Watson v. Jones, supra,* 80 U.S., at 724-726. The second is hierarchical, in which the local church is but an integral and subordinate part of a larger church and is under the authority of the general church. Since the decisions of the local congregation are subject to review by the tribunals of the church hierarchy, this Court has held that the civil courts must give effect to the duly made decisions of the highest body within the hierarchy that has considered the dispute. As we stated in *Serbian Orthodox Diocese v. Milivojevich:*

FN6. After answering this question, of course, the civil court must determine whether the dispute has been resolved within that structure of government and, if so, what decision has been made.

"[T]he First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical ****3034** tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution *requires* that civil courts accept their decisions as binding upon them." 426 U.S., at 724-725, 96 S.Ct., at 2387, 2888 (emphasis added). [FN7]

FN7. Accord, *Kedroff v. Saint Nicholas Cathedral, supra,* 344 U.S., at 113-114, 73 S.Ct., at 153; *Watson v. Jones, supra,* 80 U.S., at 727.

A careful examination of the constitutions of the general ***620** and local church, as well as other relevant documents, may be necessary to ascertain the form of governance adopted by the members of the religious association. But there is no reason to restrict the courts to statements of polity related directly to church property. For the constitutionally necessary limitations are imposed not on the evidence to be considered but instead on the object of the inquiry, which is both limited and clear: the civil court must determine whether the local church remains autonomous, so that its members have unreviewable authority to withdraw it (and its property) from the general church, or whether the local church is inseparably integrated into and subordinate to the general church. [FN8]

FN8. See Kauper, Church Autonomy and the First Amendment: the Presbyterian Church Case, in Church and State: The Supreme Court and the First Amendment 90-92, 97-98 (P. Kurland ed. 1975). The Court suggests that the careful consideration of church constitutions and other relevant documents as a prerequisite to deciding basic questions of church polity may be impermissible if it requires a "searching . . . inquiry into church

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polity." *Ante*, at 3026, quoting *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S., at 723, 96 S.Ct., at 2387. The issue in *Serbian Orthodox Diocese*, however, was quite different. There, the hierarchical polity of the church was clear. *Id.*, at 715-717, 96 S.Ct., at 2383-2384. What the Court held impermissible was the state court's further inquiry into the faithfulness of the church hierarchy's decisions to the detailed provisions of church law. *Id.*, at 712-713, 718, 721-723, 96 S.Ct., at 2381-2382, 2386-2387; *id.*, at 725, 96 S.Ct., at 2387 (WHITE, J., concurring).

IV

The principles developed in prior decisions thus afford clear guidance in the case before us. The Vineville church is presbyterian, a part of the PCUS. The presbyterian form of church government, adopted by the PCUS, is "a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body." ***621***Presbyterian Church v. Hull Church*, 393 U.S., at 442, 89 S.Ct., at 602. The Book of Church Order subjects the Session to "review and control" by the Presbytery in all matters, even authorizing the Presbytery to replace the leadership of the local congregation, to winnow its membership, and to take control of it. No provision of the Book of Church Order gives the Session the authority to withdraw the local church from the PCUS; similarly, no section exempts such a decision by the local church from review by the Presbytery.

Thus, while many matters, including the management of the church property, are committed in the first instance to the Session and congregation of the local church, their actions are subject to review by the Presbytery. Here, the Presbytery exercised its authority over the local church, removing the dissidents from church office, asserting direct control over the government of the church, and recognizing the petitioners as the legitimate congregation and Session of the church. It is undisputed that under the established government of the Presbyterian Church--accepted by the members of the church before the schism--the use and control of the church property have been determined authoritatively to be in the petitioners. Accordingly, under the principles I have thought were settled, there is no occasion for the further examination of the law of Georgia that the Court directs. On remand, the Georgia courts should be directed to enter judgment for the petitioners.

99 S.Ct. 3020, 443 U.S. 595, 61 L.Ed.2d 775

Briefs and Other Related Documents (Back to top)

- 1979 WL 199554 (Appellate Brief) Petitioners' Reply Brief (Jan. 04, 1979)

- 1978 WL 206968 (Appellate Brief) Amicus Curiae Brief of the Anglican Catholic Church (Dec. 21, 1978)

- 1978 WL 206967 (Appellate Brief) Brief of United States Catholic Conference Amicus Curiae (Nov. 30, 1978)

- 1978 WL 206966 (Appellate Brief) Brief Amicus Curiae of the General Council on Finance and Administration of the United Methodist Church (Nov. 24, 1978)

- 1978 WL 206962 (Appellate Brief) Brief for the Petitioners (Nov. 22, 1978)

- 1978 WL 206965 (Appellate Brief) Brief for the Presbyterian Church in the United States as Amicus Curiae in Support of Petitioners (Nov. 22, 1978)

- 1978 WL 206964 (Appellate Brief) Brief of Amicus Curiae, William P. Thompson, Stated Clerk of the General Assembly of The United Presbyterian Church in the United States of America, in Which Officers of 8 other Denominations Join.%g*%g (Nov. 21, 1978)

- 1978 WL 206963 (Appellate Brief) Brief for Respondents (Oct. Term 1978)

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EXHIBIT 29

73 S.Ct. 143
97 L.Ed. 120
(Cite as: 344 U.S. 94, 73 S.Ct. 143)

Supreme Court of the United States

KEDROFF et al.
v.
ST. NICHOLAS CATHEDRAL OF RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA.

No. 3.

Reargued Oct. 14, 1952.
Decided Nov. 24, 1952.

Ejectment action. The Supreme Court of New York, Trial Term, 192 Misc. 327, 77 N.Y.S.2d 333, rendered judgment dismissing the complaint on the merits, and the plaintiff appealed. The Supreme Court of New York, Appellate Division, Callahan, J., 276 App.Div. 309, 94 N.Y.S.2d 453, affirmed, and the plaintiff appealed. The Court of Appeals of New York, 302 N.Y. 1, 96 N.E.2d 56, reversed the judgments and directed judgment for the plaintiff, and the defendants appealed. The Supreme Court, Mr. Justice Reed, held that Religious Corporations Law N.Y. s 105 et seq., undertaking to transfer control of New York churches of Russian Orthodox religion from central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to governing authorities of Russian Church in America, a church organization limited to the diocese of North America and the Aleutian Islands, is unconstitutional as prohibiting the free exercise of religion.

Reversed and remanded.

Mr. Justice Jackson, dissented.

West Headnotes

[1] Federal Courts ⇐505
170Bk505 Most Cited Cases
(Formerly 106k394(10))

Where New York Court of Appeals made its determination on authority of New York statute against appellants' contention that such statute, as construed, violated the Fourteenth Amendment to federal Constitution, the Supreme Court, on appeal to it, would determine the constitutional issue on the merits. U.S.C.A. Const.Amend. 14.

[2] Federal Courts ⇐386
170Bk386 Most Cited Cases
(Formerly 106k366(1))

The interpretation placed by New York Court of Appeals on New York statute was binding on Supreme Court.

[3] Constitutional Law ⇐36
92k36 Most Cited Cases

While Legislature is free to act upon such information as it may have as to the necessity for legislation, an enactment by the Legislature cannot validate action which Constitution prohibits.

[4] Religious Societies ⇐2
332k2 Most Cited Cases

[4] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k274)

The New York statute undertaking to transfer control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America, a church organization limited to the diocese of North America and the Aleutian Islands, is unconstitutional as prohibiting the free exercise of religion. Religious Corporations Law N.Y. §§ 105 et seq., 107; U.S.C.A.Const. Amends. 1, 14.

[5] Insurrection and Sedition ⇐2
218k2 Most Cited Cases

The Legislature has the power to punish subversive action.

[6] Insurrection and Sedition ⇐2
218k2 Most Cited Cases

If subversive action which has been made punishable by the Legislature should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense.

[7] Religious Societies ⇐1

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332k1 Most Cited Cases

"Hierarchical churches" are those organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head.

[8] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases
(Formerly 92k274)

Freedom to select the clergy, where there are no improper methods of choice, has federal constitutional protection as a part of the free exercise of religion against state interference. U.S.C.A. Const.Amends. 1, 14.

Federal Courts ⇐386
170Bk386 Most Cited Cases
(Formerly 106k366(1))

Interpretation of New York statute by Court of Appeals of New York is conclusive upon United States Supreme Court.

****143 *95** Mr. Philip Adler, New York City, for appellants.

Mr. Ralph Montgomery Arkush, New York City, for appellee.

Mr. Justice REED delivered the opinion of the Court.

****144** The right to the use and occupancy of a church in the city of New York is in dispute.

The right to such use is claimed by appellee, a corporation created in 1925 by an act of the Legislature of New York, Laws of New York 1925, c. 463, for the purpose of acquiring a cathedral for the Russian Orthodox Church in North America as a central place of worship and residence of the ruling archbishop 'in accordance with the doctrine, discipline and worship of the Holy Apostolic Catholic Church of Eastern Confession as taught by the holy scriptures, holy tradition, seven ecumenical councils and holy fathers of that church.'

The corporate right is sought to be enforced so that the head of the American churches, religiously affiliated with the Russian Orthodox Church, may occupy the ***96** Cathedral. At the present time that head is the Metropolitan of All America and Canada, the Archbishop of New York, Leonty, who like his predecessors was elected to his ecclesiastical office by a sobor of the American churches. [FN1]

FN1. A sobor is a convention of bishops, clergymen and laymen with superior powers, with the assistance of which the church officials rule their dioceses or districts.

There is no problem of title. It is in the appellee corporation. The issue is the right of use. St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 20, 96 N.E.2d 56, 66.

The deed to the Cathedral Corporation required the grantee to hold the property in accordance with the terms of the Act of 1925, set out at the opening of this opinion. As said by the Court of Appeals, 302 N.Y. at page 20, 96 N.E.2d at page 66 :

'Plaintiff does not dispute this trust theory, but on the contrary relies upon it. Plaintiff has endeavored to prove that the beneficial use of the property today rightfully belongs to the Russian church in America, Religious Corporations Law, s 105, which was forced to declare its administrative autonomy at the Detroit sobor of 1924 in order to preserve and adhere to those principles and practices fundamental to the Russian Orthodox faith, free from the influence of an atheistic and antireligious foreign civil government.'

See also Religious Corporations Law, McKinney's Consol.Laws, c. 51, s 5.

That claimed right of the corporation to use and occupancy for the archbishop chosen by the American churches is opposed by appellants who are in possession. Benjamin Fedchenkoff bases his right on an appointment in 1934 by the Supreme Church Authority of the Russian Orthodox Church, to wit, the Patriarch locum tenens of Moscow and all Russia and its Holy Synod, as Archbishop of the Archdiocese of North America and the Aleutian

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Islands. The other defendant-appellant is a priest of the Russian Orthodox Church, also acknowledging the spiritual and administrative control of the Moscow hierarchy.

Determination of the right to use and occupy Saint Nicholas depends upon whether the appointment of Benjamin *97 by the Patriarch or the election of the Archbishop for North America by the convention of the American churches validly selects the ruling hierarch for the American churches. The Court of Appeals of New York, reversing the lower court, determined that the prelate appointed by the Moscow ecclesiastical authorities was not entitled to the Cathedral and directed the entry of a judgment that appellee corporation be reinvested with the possession and administration of the temporalities of St. Nicholas Cathedral. St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 33, 96 N.E.2d 56, 74. This determination was made on the authority of Article 5--C of the Religious Corporations Law of New York, 302 N.Y. at page 24 et seq., 96 N.E.2d at page 68, against appellants' contention that this New York statute, as construed, violated the Fourteenth Amendment to the Constitution of the United States.

[1] Because of the constitutional questions thus generally involved, we noted probable jurisdiction, and, after argument **145 and submission of the case last term, ordered reargument and requested counsel to include a discussion of whether the judgment might be sustained on state grounds. 343 U.S. 972, 72 S.Ct. 1069. Both parties concluded that it could not, and the unequivocal remittitur of the New York Court of Appeals, 302 N.Y. 689, 98 N.E.2d 485, specifically stating the constitutionality of the statute as the necessary ground for decision, compels this view and precludes any doubt as to the propriety of our determination of the constitutional issue on the merits. Grayson v. Harris, 267 U.S. 352, 45 S.Ct. 317, 69 L.Ed. 652; State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 58 S.Ct. 443, 82 L.Ed. 685. The case now has been reargued and submitted.

[2] Article 5--C was added to the Religious Corporations Law of New York in 1945 and provided both for the incorporation and administration of Russian Orthodox churches. Clarifying amendments were added in 1948. *98 The purpose of the article was to bring all the New York churches, formerly subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow or the Patriarch of Moscow, into an administratively autonomous metropolitan district. That district was North American in area, created pursuant to resolutions adopted at a sobor held at Detroit in 1924. [FN2] This declared autonomy was made effective by a further legislative requirement that all the churches formerly administratively subject to the Moscow synod and patriarchate *99 should for the future be governed by the ecclesiastical body and hierarchy of the American metropolitan district. [FN3] The foregoing analysis follows the interpretation of this article by the **146 Court of Appeals of New York, an interpretation binding upon us. [FN4]

FN2. 50 McKinney's N.Y.Laws s 105:
'The 'Russian Church in America', as that term is used anywhere in this article, refers to that group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious organizations of the Eastern Confession (Eastern Orthodox or Greek Catholic Church) which were known as (a) Russian American Mission of the Russian Orthodox Church from in or about seventeen hundred ninety-three to in or about eighteen hundred seventy; (b) Diocese of Alaska and the Aleutian Islands of the Russian Orthodox Church from in or about eighteen hundred seventy to or in or about nineteen hundred four; (c) Diocese of North America and the Aleutian Islands (or Alaska) of the Russian Orthodox Church from in or about nineteen hundred four to in or about nineteen hundred twenty-four; and (d) Russian Orthodox Greek Catholic Church of North America since in or about nineteen hundred twenty-four; and were subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow until in or about nineteen hundred seventeen, later the Patria(r)chate of Moscow, but now constitute an administratively autonomous metropolitan district created pursuant to resolutions adopted at a general convention (sobor) of said district

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held at Detroit, Michigan, on or about or between April second to fourth, nineteen hundred twenty-four.
'A 'Russian Orthodox Church', as that term is used anywhere in this article, is a church, cathedral, chap(t)el, congregation, society, parish, committee or other religious organization founded and established for the purpose and with the intent of adhering to, and being subject to the administrative jurisdiction of said mission, diocese or autonomous metropolitan district hereinabove defined as the Russian Church in America.'

FN3. Id., s 107:
'1. Every Russian Orthodox church in this state, whether incorporated before or after the creation of said autonomous metropolitan district, and whether incorporated or reincorporated pursuant to this article or any other article of the religious corporations law, or any general or private law, shall recognize and be and remain subject to the jurisdiction and authority of the general convention (sobor), metropolitan archbishop or other primate or hierarch, the council of bishops, the metropolitan council and other governing bodies and authorities of the Russian Church in America, pursuant to the statutes for the government thereof adopted at a general convention (sobor) held in the city of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto and any other statutes or rules heretofore or hereafter adopted by a general convention (sobor) of the Russian Church in America and shall in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church).
'3. The trustees of every Russian Orthodox church shall have the custody and control of all temporalities and property, real and personal, belonging to such church and of the revenues therefrom and shall administer the same in accordance with the by-laws of such church, the normal statutes for parishes of the Russian Church in America approved at a general convention (sobor) thereof held at Cleveland, Ohio, on or about or between November twentieth or twenty-third, nineteen hundred thirty-four, and any amendments thereto and all other rules, statutes, regulations and usages of the Russian Church in America.'

FN4. Hebert v. State of Louisiana, 272 U.S. 312, 317, 47 S.Ct. 103, 104, 71 L.Ed. 270; Winters v. New York, 333 U.S. 507, 514, 68 S.Ct. 665, 669, 92 L.Ed. 840.
The court expressed its conclusion in reversing the judgment of the Appellate Division of the Supreme Court, St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 276 App.Div. 309, 94 N.Y.S.2d 453, which had affirmed the Trial Term. 192 Misc. 327, 77 N.Y.S.2d 333. The Court of Appeals held:
'The only construction which gives meaning to all the language in sections 105 and 107 is that the statute was intended to apply to those Russian Orthodox churches founded and established before 1924 for the purpose of adhering and being subject to the North American Mission or North American Diocese, and to those Russian Orthodox churches founded and established after 1924 for the purpose of adhering and being subject to the autonomous metropolitan district. The majority in the Appellate Division further intimated that to read the statute literally would result in an interference in ecclesiastical concerns not within the competency of the Legislature. The latter suggestion is the only one which requires discussion, for, as already indicated, the intent of the Legislature (as distinguished from its competency) is unmistakable.' 302 N.Y. at page 29, 96 N.E.2d at page 71.

***100** Article 5--C is challenged as invalid under the constitutional prohibition against interference with the exercise of religion. [FN5] The appellants'

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contention, of course, is based on the theory that the principles of the First Amendment are made applicable to the states by the Fourteenth. [FN6] See Stokes, Church and State in the United States (1950), vol. 1, c. VIII.

FN5. First Amendment to the Constitution: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *.'

FN6. Hamilton v. Regents of University of California, 293 U.S. 245, 262, 55 S.Ct. 197, 204, 79 L.Ed. 343; Cantwell v. State of Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213; Everson v. Board of Education of Ewing Tp., 330 U.S. 1, 14--15, 67 S.Ct. 504, 510, 511, 91 L.Ed. 711; People of State of Illinois ex rel. McCollum v. Board of Education of School Dist. No. 71, Champaign County, Ill., 333 U.S. 203, 210--211, 68 S.Ct. 461, 464, 465, 92 L.Ed. 648; Zorach v. Clauson, 343 U.S. 306, 310, 72 S.Ct. 679, 682.

The Russian Orthodox Church is an autocephalous member of the Eastern Orthodox Greek Catholic Church. It sprang from the Church of Constantinople in the Tenth Century. The schism of 1054 A.D. split the Universal Church into those of the East and the West. Gradually self-government was assumed by the Russian Church until in the Sixteenth Century its autonomy was recognized and a Patriarch of Moscow appeared. Fortescue, Orthodox Eastern Church, c. V. For the next one hundred *101 years the development of the church kept pace with the growth of power of the Czars but it increasingly became a part of the civil government--a state church. Throughout that period it also remained an hierarchical church with a Patriarch at its head, governed by the conventions or sobors called by him. However, from the time of Peter the Great until 1917 no sobor was held. No patriarch ruled or was chosen. During that time the church was governed **147 by a Holy Synod, a group of ecclesiastics with a Chief Procurator representative of the government as a member.

Late in the Eighteenth Century the Russian Church entered the missionary field in the Aleutian Islands and Alaska. From there churches spread slowly down the Pacific Coast and later with the Slavic immigration to our eastern cities, particularly to Detroit, Clevelant, Chicago, Pittsburgh and New York. The character of the administrative unit changed with the years as is indicated by the changes in its name. See note 2. In 1904 when a diocese of North America was created its first archbishop, Tikhon, shortly thereafter established himself in his seat at Saint Nicholas Cathedral. His appointment came from the Holy Synod of Russia as did those of his successors in order Platon and Evdokim. Under those appointments the successive archbishops occupied the Cathedral and residence of Saint Nicholas under the administrative authority of the Holy Synod.

In 1917 Archbishop Evdokim returned to Russia permanently. Early that year an All Russian Sobor was held, the first since Peter the Great. It occurred during the interlude of political freedom following the fall of the Czar. A patriarch was elected and installed--Tikhon who had been the first American Archbishp. Uncertainties as to the succession to and administration of the American archbishopric made their appearance following this sobor and were largely induced *102 by the almost contemporaneous political disturbances which culminated swiftly in the Bolshevik Revolution of 1917. The Russian Orthodox Church was drawn into this maelstrom. After a few years the Patriarch was imprisoned. There were suggestions of his counter-revolutionary activity. Church power was transferred, partly through a sobor considered by many as non- canonical to a Supreme Church Council. The declared reforms were said to have resulted in a 'Living Church' or sometimes in a 'Renovated Church.' Circumstances and pressures changed. Patriarch Tikhon was released from prison and died in 1925. He named three bishops as locum tenens for the patriarchal throne. It was one of these, Sergius, who in 1933 appointed the appellant Benjamin as Archbishop. The Church was registered as a religious organization under Soviet law in 1927. Thereafter the Russian Church and the Russian State approached if not a reconciliation at least an adjustment which eventuated by 1943 in the election of Sergius, one of the bishops named as locum tenens by Tikhon, to the Patriarchate. The Living or Renovated Church,

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whether deemed a reformed, a schismatic or a new church, apparently withered away. After Sergius' death a new patriarch of the Russian Orthodox Church, Alexi, was chosen Patriarch in 1945 at Moscow at a sobor recognized by all parties to this litigation as a true sobor held in accordance with the church canons. [FN7]

FN7. Fortescue, supra (1916); Brian-Chaninov, The Russian Church (1931), c. VIII; Zernov, The Russians and Their Church (1945); French, The Eastern Orthodox Church (1951), c. VII;Danzas, The Russian Church (1936); Anderson, People, Church and State in Modern Russia (1944), pp. 121--140; Bolshakoff, Foreign Missions of the Russian Orthdox Church (1943), c. IV.

The Russian upheaval caused repercussions in the North American diocese. That Diocese at the time of the Soviet Revolution recognized the spiritual and administrative ***103** control of Moscow. White Russians, both lay and clerical, found asylum in America from the revolutionary conflicts, strengthening the feeling of abhorrence of the secular attitude of the new Russian Government. The church members already here, immigrants and nativeborn, while habituated to look to Moscow for religious direction, were accustomed to our theory of separation between church and state. The Russian turmoil, the restraints on religious activites and the evolution of a new ecclesiastical hierarchy in the form of the 'Living Church,' deemed noncanonical or schismatic by most churchmen, made very difficult Russian administration of the American diocese. Furthermore, ****148** Patriarch Tikhon, on November 20, 1920, issued Decision No. 362 relating to church administration for troublesome times. This granted a large measure of autonomy, when the Russsian ruling authority was unable to function, subject to 'confirmation later to the Central Church Authority when it is reestablished.' Naturally the growing number of American-born members of the Russian Church did not cling to a hierarchy identified with their country of remote origin with the same national feeling that moved their immigrant ancestors. These facts and forces generated in America a separatist movement. That movement brought about the arrangemens at the Detroit Sobor of 1924 for a temporary American administration of the church on account of the disturbances in Russia. [FN8] This was followed by the declarations of autonomy of the successive sobors since that date, a spate of ***104** litigation concerning control of the various churches and occupancy of ecclesiastical positions, [FN9] the New York legislation (known as Article 5-C, notes 2 and 3, supra), and this controversy.

FN8. The attitude of the Russian Church in America will be made sufficiently plain by these extracts from their records of action taken at the Detroit Sobor, 1924:
'Point 1. Temporarily, until the convocation of the All Russian Sobor further indicated in Point 5, to declare the Russian Orthodox Diocese in America a self-governed Church so that it be governed by its own elected Archbishop by means of a Sobor of Bishops, a Council composed of those elected from the clergy and laity, and periodic Sobors of the entire American Church.
'Point 5. To leave the final regulation of questions arising from the relationship of the Russian and the American Churches to a future Sobor of the Russian Orthodox Church which will be legally convoked, legally elected, will sit with the participation of representatives of the American Church under conditions of political freedom, guaranteeing the fullness and authority of its decisions for the entire Church, and will be recognized by the entire Oecumenical Orthodox Church as a true Sobor of the Russian Orthodox Church.'

FN9. Nemolovsky v. Rykhloff, 187 App.Div. 290, 175 N.Y.S. 617; Kedrovsky v. Archbishop and Consistory of Russian Orthodox Greek Catholic Church, 195 App.Div. 127, 186 N.Y.S. 346; Kedrovsky v. Rojdesvensky, 214 App.Div. 483, 212 N.Y.S. 273; Id., 242 N.Y. 547, 152 N.E. 421; Kedrovsky v. Archbishop and Consistory of Russian Orthodox Greek Catholic Church, 218 App.Div. 121, 217

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N.Y.S. 873; Id., 218 App.Div. 124, 217 N.Y.S. 875; Id., 220 App.Div. 750, 222 N.Y.S. 831; Id., 249 N.Y. 75, 162 N.E. 588; Id., 249 N.Y. 516, 164 N.E. 566; Nikulnikoff v. Archbishop and Consistory of Russian Orthodox Greek Catholic Church, 142 Misc. 894, 255 N.Y.S. 653; Waipa v. Kushwara, 259 App.Div. 843, 20 N.Y.S.2d 174; Id., 283 N.Y. 781, 28 N.E.2d 417.

Delegates from the North American Diocese intended to be represented at an admittedly canonical Sobor of the Russian Orthodox Church held in 1945 at Moscow. They did not arrive in time on account of delays, responsibility for which has not been fixed. The following stipulation appears as to their later actions while at Moscow:

'It is stipulated that Bishop Alexi and Father Dzvonchik, representing the local group of American Churches under Bishop Theophilus, appeared before the Patriarch and the members of his Synod in Moscow, presented a written report on the condition of the American Church, with a request for autonomy and a few days later received from the Patriarch the Ukase * * *.'

***105** There came to the Russian Church in America this Ukase of the Moscow Patriarchy of February 14 or 16, 1945, covering Moscow's requirements for reunion of the American Orthodox Church with the Russian. It required for reunion that the Russian Church in America hold promptly an 'all American Orthodox Church Sobor'; that it express the decision of the dioceses to reunite with the Russian Mother Church, declare the agreement of the American Orthodox ****149** Church to abstain 'from political activities against the U.S.S.R.' and so direct its parishes, and elect a Metropolitan subject to confirmation by the Moscow Patriarchy. The decree said, 'In view of the distance of the American Metropolitan District from the Russian Mother Church * * * the Metropolitan-Exarch * * * may be given some extended powers by the Moscow Patriarchy * * *.'

The American congregations speaking through their Cleveland Sobor of 1946 refused the proffered arrangement and resolved in part:

'That any administrative recognition of the Synod of the Russian Orthodox Church Abroad is hereby terminated, retaining, however, out spiritual and brotherly relations with all parts of the Russian Orthodox Church abroad * * *.'

This ended the efforts to compose the differences between the Mother Church and its American offspring, and this litigation and the enactment of Article 5--C of the Religious Corporations Law of New York followed. We understand the above factual summary corresponds substantially with the factual basis for determination formulated by the Court of Appeals of New York. From those circumstances it seems clear that the Russian Orthodox Church was, until the Russian Revolution, an hierarchical church with unquestioned paramount jurisdiction in the governing body in Russia over the American Metropolitanate. Nothing indicates that either the Sacred Synod or the succeeding Patriarchs ***106** relinquished that authority or recognized the autonomy of the American church. The Court of Appeals decision proceeds, we understand, upon the same assumption. 302 N.Y. at pages 5, 23, 24, 96 N.E.2d at pages 57, 68, 69. That court did consider 'whether there exists in Moscow at the present time a true central organization of the Russian Orthodox Church capable of functioning as the head of a free international religious body.' It concluded that this aspect of the controversy had not been sufficiently developed to justify a judgment upon that ground. 302 N.Y. at pages 22--24, 96 N.E.2d at pages 67--69.

[3][4] The Religious Corporations Law.--The New York Court of Appeals depended for its judgment, refusing recognition to Archbishop Benjamin, the appointee of the Moscow Hierarchy of the Russian Orthodox Church, upon Article 5-C of the Religious Corporations Law, quoted and analyzed at notes 2 and 3, supra. [FN10] Certainly a legislature ***107** is free to act upon such ****150** information as it may have as to the necessity for legislation. But an enactment by a legislature cannot validate action which the Constitution prohibits, and we think that the statute here in question passes the constitutional limits. We conclude that Article 5--C undertook by its terms to transfer the control of the New York churches of the Russian Orthodox religion from the central governing hierarchy of the Russian Orthodox Church, the Patriarch of Moscow and the Holy Synod, to the governing authorities of the Russian Church in America, a church organization limited to the diocese of North America and the

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Aleutian Islands. This transfer takes place by virtue of the statute. Such a law violates the Fourteenth Amendment. It prohibits in this country the free exercise of religion. Legislation that regulates church administration, the operation of the churches, the appointment of clergy, by requiring conformity to church statutes 'adopted at a general convention (*108 sobor) held in the City of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto,' note 3, supra, prohibits the free exercise of religion. Although this statute requires the New York churches to 'in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline, canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church),' their conformity is by legislative fiat and subject to legislative will. Should the state assert power to change the statute requiring conformity to ancient faith and doctrine to one establishing a different doctrine, the invalidity would be unmistakable.

> FN10. The Court said, 302 N.Y. 1, 96 N.E.2d 56:
> 'The Legislature has made a determination that the 'Russian Church of America' was the one which, to use our words in 249 N.Y. at pages 77-- 78, 162 N.E. at page 589, was the trustee which 'may be relied upon to carry out more effectively and faithfully the purposes of this religious trust (Carrier v. Carrier, 226 N.Y. 114, 123 N.E. 135)' by reason of the changed situation of the patriarchate in Russia.' 302 N.Y. at page 30, 96 N.E.2d at page 72.
> 'The courts have always recognized that it is the province of the Legislature to make the underlying findings of fact which give meaning and substance to its ultimate directives. The courts have traditionally refused to consider the wisdom or technical validity of such findings of fact, ifthere be some reasonable basis upon which they may rest.' 302 N.Y. at page 31, 96 N.E.2d at page 72.
> 'The Legislature of the State of New York, like the Congress, must be deemed to have investigated the whole problem carefully before it acted. The Legislature knew that the central authorities of the Russian Orthodox Church in Russia had been suppressed after the 1917 revolution, and that the partriarchate was later resurrected by the Russian Government. The Legislature, like Congress, knew the character and method of operation of international communism and the Soviet attitude toward things religious. The Legislature was aware of the contemporary views of qualified observers who have visited Russia and who have had an opportunity to observe the present status of the patriarchate in the Soviet system. The Legislature realized that the North American church, in order to be free of Soviet interference in its affairs, had declared its temporary administrative autonomy in 1924, pursuant to the ukase of 1920, while retaining full spiritual communion with the patriarchate, and that there was a real danger that those properties and temporalities long enjoyed and used by the Russian Orthodox Church worshippers in this State would be taken from them by the representatives of the patriarchate. On the basis of these facts, and the facts stated (supra) and no doubt other facts we know not of, our Legislature concluded that the Moscow Patriarchate was no longer capable of functioning as a true religious body, but had become a tool of the Soviet Government primarily designed to implement its foreign policy. Whether we, as judges, would have reached the same conclusion is immaterial. It is sufficient that the Legislature reached it, after full consideration of all the facts.' 302 N.Y. at pages 32--33, 96 N.E.2d at page 73.

Although s 5 of the Religious Corporation Law [FN11] had long controlled religious corporations, the Court of Appeals held that its rule was not based on any constitutional requirement or prohibition. [FN12] Since certain events of which the Court took judicial notice indicated to it that the Russian Government exercised control over the central *109 church authorities and that the **151 American church acted to protect its pulpits and faith from such influences, the Court of Appeals felt that the Legislature's reasonable belief in such conditions

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justified the State in enacting a law to free the American group from infiltration of such atheistic or subversive influences. [FN13]

FN11. 'The trustees of every religious corporation shall have the custody and control of all the temporalities and property, real and personal, belonging to the corporation and of the revenues therefrom, and shall administer the same in accordance with the discipline, rules and usages of the corporation and of the ecclesiastical governing body, if any, to which the corporation is subject, * * *.'

FN12. 302 N.Y. at page 30, 96 N.E.2d at page 72:
'As a broad guide this rule undoubtedly has worked well, but it is by no means a constitutional doctrine not subject to change or modification by the same Legislature which announced it, in cases where literal enforcement would be unreasonable and opposed to the public interest. The Legislature, in the exercise of its extensive and acknowledged power to act for the common welfare, may find as a fact that a situation has arisen of such novelty and uniqueness that existing law is incapable of performing its avowed function--the preservation of religious temporalities for the use of their original and accustomed beneficiaries. If the Legislature find as a fact that, because of drastically changed circumstances, the accustomed beneficiaries of religious properties are thus threatened with their loss, and if there be a basis for such finding, we perceive no constitutional objection to a legislative attempt to trace and identify, as of today, the authentic group entitled to the administration of such properties.'

FN13. 302 N.Y. at page 13, 96 N.E.2d at page 62:
'The control of all phases of Russian life by the Government was not as apparent in 1924 as it is a quarter of a century later and on the surface, at least, the case appeared to be a proper one for the application of the rule that in an ecclesiastical dispute involving a denominational church, the decision of the highest church judicatories will be accepted as final and conclusive by the civil courts, Trustees of Presbytery of N(ew) Y(ork) v. Westminster Presbyterian Church, 222 N.Y. 305, 315, 118 N.E. 800, 802; Watson v. Jones, 13 Wall. 679, 724--727, 20 L.Ed. 666, Religious Corporations Law, ss 4, 5.' '* * * we feel we must accept the historical statements contained in the dissenting opinion of Mr. Justice Van Voorhis, below: '* * * In recent public pronouncements the State Department, and our representatives in the United Nations, have frequently recognized and denounced the suppression of human rights and basic liberties in religion as well as in other aspects of life, existing in Soviet Russia and in all of its satellite states. * * * " Id., 302 N.Y. at page 23, 96 N.E.2d at page 68.

[5][6] This legislation, Art. 5--C, in the view of the Court of Appeals, gave the use of the churches to the Russian Church in America on the theory that this church would most faithfully carry out the purposes of the religious trust. [FN14] Thus dangers of political use of church pulpits would be minimized. Legislative power to punish subversive action cannot be doubted. If such action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defense. But in this case no problem *110 of punishment for the violation of law arises. There is no charge of subversive or hostile action by any ecclesiastic Here there is a transfer by statute of control over churches. This violates our rule of separation between church and state. That conclusion results from the purpose, meaning and effect of the New York legislation stated above, considered in the light of the history and decisions considered below.

FN14. See note 10, supra.

[7] Hierarchical churches may be defined as those

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organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head. In Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666, they are spoken of in like terms. [FN15] That opinion has been given consideration in subsequent church litigation--state and national. [FN16] The opinion itself, however, did not turn on either the establishment or the prohibition of the free exercise of religion. It was a church controversy in the Third or Walnut Street Presbyterian Church of Louisville, Kentucky, arising out of the slavery conflict and was filled with the acrimony of that period. It was decided here at the 1871 Term. 'The government of the (Presbyterian) church is exercised by and through an ascending series of 'judicatories', known as Church Sessions, Presbyteries, *111 Synods and a General Assembly.' **152Id., 13 Wall. at page 681, 20 L.Ed. 666. The opinion of this Court assumed without question that the Louisville church, its property and its officers were originally and up to the beginning of the disagreements subjected to the operation of the laws of the General Assembly of the Presbyterian Church. Id., 13 Wall. at page 683, 20 L.Ed. 666. The actual possession of the church property was in trustees; its operation or use controlled by the Session composed of elders. [FN17] Both were groups elected at intervals by the members.

FN15. 'The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.' 13 Wall. 679, 722--723, 20 L.Ed. 666.

FN16. Zollman, American Church Law (1933), c. 9. E.g., Shepard v. Barkley, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939; Barkley v. Hayes, D.C., 208 F. 319, 326; McGinnis v. Watson, 41 Pa. 9; State of Missouri ex rel. Watson v. Farris, 45 Mo. 183, 197--198; First English Lutheran Church v. Evangelical Lutheran Synod of Kansas and Adjacent States, 10 Cir., 135 F.2d 701. Cf. Gibson v. Armstrong, 7 B. Mon., Ky., 481; German Reformed Church v. Commonwealth ex rel. Seibert, 3 Pa. 282 .

FN17. 'One or two propositions which seem to admit of no controversy are proper to be noticed in this connection. 1. Both by the act of the Kentucky legislature creating the trustees of the church a body corporate, and by the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title holders and custodians of the church property, and other trustees were, or could be elected by the congregation, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church session. 3. That by the constitution of all Presbyterian churches, the session, which is the governing body in each, is composed of the ruling elders and pastor, and in all business of the session the majority of its members govern, the number of elders for each congregation being variable.' Id., 13 Wall. at page 720, 20 L.Ed. 666.

In May of 1865 the General Assembly, the highest judicatory of the church, made a declaration of loyalty to the Federal Government denouncing slavery, and directed that new members with contrary views should not be received. The Louisville Presbytery, the immediate superior of the Walnut Street Church, promptly issued a Declaration and Testimony, refusing obedience and calling for resistance to the alleged usurpation of authority. The Louisville Presbytery divided as did the Walnut Street Church and the proslavery group obtained admission into the Presbyterian Church of the Confederate States. In June 1867 the Presbyterian General Assembly *112 for the United States declared the Presbytery and Synod recognized by the proslavery party were 'in no sense a true and lawful Synod and Presbytery in connection with and under the care and authority of the General Assembly of the Presbyterian Church in the United States of America.' They were

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"permanently excluded from connection with or representation in the Assembly.' By the same resolution the Synod and Presbytery adhered to by those whom (the proslavery party) opposed were declared to be the true and lawful Presbytery of Louisville, and Synod of Kentucky.' Id., 13 Wall. at page 692, 20 L.Ed. 666.

Litigation started in 1866 with a suit in the state court by certain of the antislavery group to have declared their right to act as duly elected additional elders 'in the management of church property for purposes of religious worship.' Id., 13 Wall. at page 685, 20 L.Ed. 666. As the Court of Appeals of Kentucky thought that certain acts of the Louisville Presbytery and the General Assembly of the United States, in pronouncing the additional elders duly elected, were void as beyond their functions, id., 13 Wall. at page 693, 20 L.Ed. 666, [FN18] it refused the plea of the antislavery group and left the proslavery elders and trustees in control of the Walnut Street Church.

> FN18. Watson v. Avery, 2 Bush, Ky., 332, 347, et seq. 'But we hold that the assembly, like other courts, is limited in its authority by the law under which it acts; and when rights of property, which are secured to congregations and individuals by the organic law of the church, are violated by unconstitutional acts of the higher (church) courts, the parties thus aggrieved are entitled to relief in the civil courts, as in ordinary cases of injury resulting from the violation of a contract, or the fundamental law of a voluntary association.' Id., 2 Bush at page 349.

Thereupon a new suit, Watson v. Jones, was begun by alleged members of the church to secure the use of the Walnut Street Church for the antislavery group. This suit was to decide not the validity of **153 an election of elders *113 fought out in Watson v. Avery, supra, but which one of two bodies should be recognized as entitled to the use of the Walnut Street Presbyterian Church. It was determined that plaintiffs had a beneficial interest in the church property and therefore a standing to sue for its proper use, if they were members. Id., 13 Wall. at pages 697, 714, 20 L.Ed. 666. A schism was recognized. Id., 13 Wall. at page 717, 20 L.Ed. 666. It was held:

> 'The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the Presbyterian body, are entitled to that use.' Id., 13 Wall. at page 720, 20 L.Ed. 666.

They were required to recognize 'the true uses of the trust.' Id., 13 Wall. at page 722, 20 L.Ed. 666. Then turning to the consideration of an hierarchical church, as defined in note 15, supra, and, as it found the Presbyterian church to be, this Court said:

> 'In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.' Id., 13 Wall. at page 727, 20 L.Ed. 666.

As the General Assembly of the Church had recognized the antislavery group 'as the regular and lawful Walnut Street Church and officers,' id., 13 Wall. at page 694, 20 L.Ed. 666, newly elected, and the trial court had found complainants members of that group, and had entered a decree adjudging that this group's duly chosen and elected pastor, ruling elders *114 and trustees 'respectively entitled to exercise whatever authority in the said church, or over its members or property, rightfully belonged to pastor, elders, and trustees, respectively, in churches in connection with 'The Presbyterian Church in the United States of America,' Old School, and according to the regulations and usages of that church,' id., 13 Wall. at page 698, 20 L.Ed. 666, this Court affirmed the decree.

In affirming, the Court recognized the contrariety of views between jurists as to civil jurisdiction over church adjudications having an effect upon property or its uses, when the civil courts determine the church judicatory has violated the church's organic law. [FN19] Its ruling is summed up in these words:

> FN19. Compare Watson v. Avery, note 27, supra, at page 349 of 2 Bush, with Watson

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v. Jones, supra, 13 Wall. at page 732 et seq., 20 L.Ed. 666.

'In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal **154 to the secular *115 courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.' Id., 13 Wall. at pages 728--729, 20 L.Ed. 666.

This is applicable to 'questions of discipline, or of faith, or of ecclesiastical rule, custom, or law,' id., 13 Wall. at page 727, 20 L.Ed. 666. [FN20] This controversy concerning the right to use St. Nicholas Cathedral is strictly a matter of ecclesiastical government, the power of the Supreme Church Authority of the Russian Orthodox Church to appoint the ruling hierarch of the archdiocese of North America. No one disputes that such power did lie in that Authority prior to the Russian Revolution.

FN20. The decision has encountered vivid and strong criticism for the breadth of its statement that where 'a subject-matter of dispute, strictly and purely ecclesiastical in its character,' is decided, the civil court may not examine the conclusion to see whether the decision exceeds the powers of the judicatory. Id., 13 Wall. at page 733, 20 L.Ed. 666. See Zollman, American Church Law (1933), c. 9, p. 291. The criticism does not go so far, however, as to condemn the nonreviewability of questions of faith, religious doctrine and ecclesiastical government, Watson v. Jones, 13 Wall. at pages 729, 732, 20 L.Ed. 666, when within the 'express or implied stipulations of the agreement of membership.' Zollman, supra, ss 310, 311, 315, 340.

[8] Watson v. Jones, although it contains a reference to the relations of church and state under our system of laws, [FN21] was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1872, before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedated the 1938 decisions of Erie R. *116 Co. v. Tompkins and Ruhlin v. New York Life Ins. Co., 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 and 304 U.S. 202, 58 S.Ct. 860, 82 L.Ed. 1290, and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was based on general law rather than Kentucky law. [FN22] The opinion radiates, however, a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice are proven, [FN23] we think, must now be said to **155 have federal constitutional protection as a part of the free exercise of religion against state interference.

FN21. Id., 13 Wall. at page 727, 20 L.Ed. 666. See, 344 U.S. 113, 73 S.Ct. 153, supra.

FN22. Barkley v. Hayes, D.C., 208 F. 319, 334; Sherard v. Walton, D.C., 206 F. 562, 564; Helm v. Zarecor, D.C., 213 F. 648, 657.

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FN23. Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 16--17, 50 S.Ct. 5, 7, 74 L.Ed. 131:
'Because the appointment is a cononical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established by clubs and civil associations.'
See Brundage v. Deardorf, C.C., 55 F. 839, where Taft, Circuit Judge, in overruling a demurrer, stated: 'Even if the supreme judicatory has the right to construe the limitations of its own power, and the civil courts may not interfere with such a construction, and must take it as conclusive, we do not understand the supreme court, in Watson v. Jones, to hold that an open and avowed defiance of the original compact, and an express violation of it, will be taken as a decision of the supreme judicatory which is binding on the civil courts.' 55 F. at page 847.
Later the case was considered on appeal by the Circuit Court of Appeals; Lurton, Circuit Judge, writing, thought that the facts proven showed conclusively that Watson v. Jones did control. 92 F. 214, 230

*117 Legislative Power.--The Court of Appeals of New York recognized, generally, the soundness of the philosophy of ecclesiastical control of church administration and polity but concluded that the exercise of that control was not free from legislative interference. [FN24] That Court presented forcefully the argument supporting legislative power to act on its own knowledge of 'the Soviet attitude toward things religious.' 302 N.Y. pages 32--33, 96 N.E.2d at page 74. It was said:

FN24. St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 30, 96 N.E.2d 56, 72, Note 12, supra.

'The Legislature realized that the North American church, in order to be free of Soviet interference in its affairs, had declared its temporary administrative autonomy in 1924, pursuant to the ukase of 1920, while retaining full spiritual communion with the patriarchate, and that there was a real danger that those properties and temporalities long enjoyed and used by the Russian Orthodox Church worshippers in this State would be taken from them by the representatives of the patriarchate.' 302 N.Y. at page 33, 96 N.E.2d at page 74.

It was thought that American Communications Ass'n v. Douds, 339 U.S. 382, 70 S.Ct. 674, 94 L.Ed. 925, supported the thesis that where there is some specific evil, found as a fact 'some infringement upon traditional liberties was justifiable' to effect a cure. 302 N.Y., at page 31, 96 N.E.2d at page 73. On that reasoning it was thought permissible, in view 'of the changed situation of the patriarchate in Russia', to replace it with the Russian Church in America as the ruling authority over the administration of the church. The legal basis for this legislative substitution was found in the theory that the Russian Church in America 'was the trustee which 'may be relied upon to carry out more *118 effectively and faithfully the purposes of this religious trust (Carrier v. Carrier, 226 N.Y. 114, 123 N.e. 135)". Id., 302 N.Y. at page 30, 96 N.E.2d at page 72. Mindful of the authority of the Court of Appeals in its interpretation of the powers of its own legislature and with respect for its standing and ability, we do not agree with its statement as to legislative power over religious organizations.

In our view the Douds case may not be interpreted to validate New York's Article 5--C. That case involved the validity of s 9(h) of the National Labor Relations Act as amended, 61 Stat. 136, 146, 29 U.S.C. s 159(h), 29 U.S.C.A. s 159(h). That section forbade the N.L.R.B. from acting at the suggestion of a labor organization unless affidavits of its officers were filed denying affiliation with subversive organizations or belief in the overthrow of this Government by force or other unconstitutional means. We upheld the enactment as a proper exercise of the power to protect

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commerce from the evil of disreption from strikes so politically inspired. In so doing we said, 'legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct, active conduct are not presumptively bad because they interfere with and, in some of its manifestations, restrain the exercise of First Amendment rights.' Id., 339 U.S. at page 399, 70 S.Ct. at page 684. And added, 'But insofar as the problem is one of drawing inferences concerning the need for regulation of particular forms of conduct from conflicting evidence, this Court is in no position to substitute its judgment as to the necessity or desirability of the statute for that of Congress.' Id., 339 U.S. at page 400, 70 S.Ct. at page 685. It is an exaggeration to say that those sound statements point to a ****156** legislative power to take away from a church's governing body and its duly ordained representative the possession and use of a building held in trust for the purposes for which it is being employed because of an apprehension, even though reasonable, ***119** that it may be employed for improper purposes. In Douds we saw nothing that was aimed at the free expression of views. Unions could have officers with such affiliations and political purposes as they might choose but the Government was not compelled to allow those officers an opportunity to disrupt commerce for their own political ends. We looked upon the affidavit requirement as an assurance that disruptive forces would not utilize a government agency to accomplish their purposes. Id., 339 U.S. at page 403, 70 S.Ct. at page 686.

In upholding the validity of Article 5--C, the New York Court of Appeals apparently assumes Article 5--C does nothing more than permit the trustees of the Cathedral to use it for services consistent with the desires of the members of the Russian Church in America. Its reach goes far beyond that point. By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment. Such prohibition differs from the restriction of a right to deal with Government allowed in Douds, in that the Union in the Douds case had no such constitutionally protected right. New York's Article 5--C directly prohibits the free exercise of an ecclesiastical right, the Church's choice of its hierarchy.

We do not think that New York's legislative application of a cy-pres doctrine to this trust avoids the constitutional rule against prohibition of the free exercise of religion. Late Corporation of Church of Jesus Christ of Latter- Day Saints v. United States, 136 U.S. 1, 10 S.Ct. 792, 34 L.Ed. 478, relied upon by the appellee, does not support its argument. There the Church of Jesus Christ of Latter Day Saints had been incorporated as a religious corporation by the State of Deseret, with subsequent confirmation by the Territory of Utah. Its property was held ***120** for religious and charitable purposes. That charter was revoked by Congress and some of the property of the church was escheated to the United States for the use of the common schools of Utah. This Court upheld the revocation of the charter, relying on the reserved power of the Congress over the acts of territories, 136 U.S. at pages 45--46, 10 S.Ct. at pages 803--804. The seizure of the property was bottomed on the general rule that where a charitable corporation is dissolved for unlawful practices, id., 136 U.S. at pages 49--50, 10 S.Ct. at page 805, the sovereign takes and distributes the property according to the cy-pres doctrine to objects of charity and usefulness, e.g., schools. Id., 136 U.S. at pages 47, 50--51, 10 S.Ct. at pages 804, 805--806. A failure of the charitable purpose could have the same effect. Id., 136 U.S. at page 59, 10 S.Ct. at page 808. None of these elements exist to support the validity of the New York statute putting the Russian Orthodox churches of New York under the administration of the Russian Church in America. See notes 2 and 3, supra.

The record before us shows no schism over faith or doctrine between the Russian Church in America and the Russian Orthodox Church. It shows administrative control of the North American Diocese by the Supreme Church Authority of the Russian Orthodox Church, including the appointment of the ruling hierarch in North America from the foundation of the diocese until the Russian Revolution. We find nothing that indicates a relinquishment of this power by the Russian Orthodox Church.

Ours is a government which by the 'law of its being' allows no statute, state or national, that prohibits the free exercise of religion. There are occasions when

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civil courts must draw lines between the responsibilities **157 of church and state for the disposition or use of property. [FN25] Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical *121 issues, the church rule controls. [FN26] This under our Constitution necessarily follows in order that there may be free exercise of religion.

FN25. Ponce v. Roman Catholic Apostolic Church in Porto Rico, 210 U.S. 296, 322, 28 S.Ct. 737, 747, 52 L.Ed. 1068.

FN26. Watson v. Jones, supra; Barkley v. Hayes, D.C., 208 F. 319, 327, affirmed on appeal, Duvall v. Synod of Kansas of Presbyterian Church, 8 Cir., 222 F. 669; Shepard v. Barkley, 247 U.S. 1, 38 S.Ct. 422, 62 L.Ed. 939.

The decree of the Court of Appeals of New York must be reversed, and the case remanded to that court for such further action as it deems proper and not in contravention of this opinion. It is so ordered.

Reversed and remanded.

Mr. Justice FRANKFURTER, concurring.

Let me put to one side the question whether in our day a legislature could, consistently with due process, displace the judicial process and decide a particular controversy affecting property so as to decree that A not B owns it or is entitled to its possession. Obviously a legislature would not have that power merely because the property belongs to a church.

In any event, this proceeding rests on a claim which cannot be determined without intervention by the State in a religious conflict. St. Nicholas Cathedral is not just a piece of real estate. It is no more that than is St. Patrick's Cathedral or the Cathedral of St. John the Divine. A cathedral is the seat and center of ecclesiastical authority. St. Nicholas Cathedral is an archiepiscopal see of one of the great religious organizations. What is at stake here is the power to exercise religious authority. That is the essence of this controversy. It is that even though the religious authority becomes manifest and is exerted through authority over the Cathedral as the outward symbol of a religious faith.

*122 The judiciary has heeded, naturally enough, the menace to a society like ours of attempting to settle such religious struggles by state action. And so, when courts are called upon to adjudicate disputes which, though generated by conflicts of faith, may fairly be isolated as controversies over property and therefore within judicial competence, the authority of courts is in strict subordination to the ecclesiastical law of a particular church prior to a schism. Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666. This very limited right of resort to courts for determination of claims, civil in their nature, between rival parties among the communicants of a religious faith is merely one aspect of the duty of courts to enforce the rights of members in an association, temporal or religious, according to the laws of that association. See Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 16--17, 50 S.Ct. 5, 7--8, 74 L.Ed. 131.

Legislatures have no such obligation to adjudicate and no such power. Assuredly they have none to settle conflicts of religious authority and none to define religious obedience. These aspects of spiritual differences constitute the heart of this controversy. The New York legislature decreed that one party to the dispute and not the other should control the common center of devotion. In doing so the legislature effectively authorized one party to give religious direction not only to its adherents but also to its opponents. See St. Nicholas Cathedral of Russian Orthodox Church in North America v. Kedroff, 302 N.Y. 1, 24--29, 96 N.E.2d 56, 68--72.

The arguments by which New York seeks to justify this inroad into the realm of faith are echoes of past attempts at secular intervention in religious conflicts. It is said that an impressive majority both of the laity and of the priesthood of the old local church now adhere to the party whose **158 candidate New York enthroned, as it were, as Archbishop. Be that as it may, it is not a function of civil government under our constitutional system to assure rule to any religious body by a counting of

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heads. *123 Our Constitution does assure that anyone is free to worship according to his conscience. A legislature is not free to vest in a schismatic head the means of acting under the authority of his old church, by affording him the religious power which the use and occupancy of St. Nicholas Cathedral make possible.

Again, it is argued that New York may protect itself from dangers attributed to submission by the mother church in Moscow to political authority To reject this claim one does not have to indulge in the tendency of lawyers to carry arguments to the extreme of empty formal logic. Scattered throughout the country there are religious bodies with ties to various countries of a world in tension--tension due in part to shifting political affiliation and orientation. The consideration which permeates the court's opinion below would give each State the right to assess the circumstances in the foreign political entanglements of its religious bodies that make for danger to the State, and the power, resting on plausible legislative findings, to divest such bodies of spiritual authority and of the temporal property which symbolizes it.

Memory is short but it cannot be forgotten that in the State of New York there was strong feeling against the Tsarist regime at a time when the Russian Church was governed by a Procurator of the Tsar. And when Mussolini exacted the Lateran Agreement, argument was not wanting by those friendly to her claims that the Church of Rome was subjecting herself to political authority. [FN1] The fear, perhaps not wholly groundless, that the loyalty of its citizens might be diluted by their adherence to a *124 church entangled in antagonistic political interests, reappears in history as the ground for interference by civil government with religious attachments. [FN2] Such fear readily leads to persecution of religious beliefs deemed dangerous to ruling political authority. It was on this basis, after all, that Bismarck sought to detach German Catholics from Rome by a series of laws not too different in purport from that before us today. [FN3] The long, unedifying history of the contest between the secular state and **159 the church is replete with instances of attempts by civil government *125 to exert pressure upon religious authority. Religious leaders have often made gestures of accommodation to such pressures. History also indicates that the vitality of great world religions survived such efforts. In any event, under our Constitution it is not open to the governments of this Union to reinforce the loyalty of their citizens by deciding who is the true exponent of their religion.

FN1. The Encyclopedia Britannica recounts that under the agreement between the Papal See and Mussolini, 'The supremacy of the state was recognized by compelling bishops and archbishops to swear loyalty to the government.' Encyclopedia Britannica: 'Anticlericalism,' 62, 62A (1948 ed.).

FN2. Such apprehension, at least in part, seems to have underlain two important religious controversies in a nation as devoted to freedom as Great Britain and as recently as a century ago. Both the dispute giving rise to the Free Church of Scotland Appeals and the brief but vigorous anti-Catholic outburst of 1850 are not unfairly attributable to a claim by the State of comprehensive loyalty, undeflected by the competing claims of religious faith. See Laski, The Problem of Sovereignty, 27--68, 121--210. See also Buchanan, The Ten Years' Conflict (Edinburgh 1849); Free Church of Scotland v. Overtown, (1904) A.C. 515; Free Church of Scotland Appeals (Orr. ed., Edinburgh, 1904).

FN3. Reichs-Gesetzblatt, 1871, p. 442; Reichs-Gesetzblatt, 1872, p. 253; Reichs-Gesetzblatt, 1874, p. 43; Reichs-Gesetzblatt, 1876, p. 28; 5 Gesetz-Sammlung fu r die Ko niglich Preussischen Staaten, 154, 221, 223, 225, 228, 337, 342; 6 id., at 30, 38, 40, 75, 170; 7 id., at 291. These laws have been thus summarized: 'The Falk Laws are an attempt to insist on the universal paramountcy of German influences. The expulsion of the Jesuits removed an order which he (Bismarck) believed to be concerned with the promotion of Polish interests. The refusal of bishoprics to any save a German who has followed a course

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> of study approved by the government has a clear purport * * * of purging the Catholic episcopate of men not likely to be in sympathy with German ideals. * * * The twenty-fourth article went even further and gave the State the right of interference with ecclesiastical functions where it deemed them improperly performed. * ** The law of the twentieth of May, 1874, virtually handed over the control of vacant bishoprics to the State. * * * Catholic Churches on Prussian soil were handed over to the old Catholics (those refusing to adhere to the newly-promulgated dogma of papal infallibility) in such parishes as those in which the majority consisted of their sympathisers, for certain hours of the day * * *.' Laski, op. cit. supra, note 2, at 256--258. Bismarck's Culturkampf, of which these laws were a part, is fully discussed in Goyau, Bismarck et l'Eglise. A full text of the laws may be found in the appendix to that work.

Finally, we are told that the present Moscow Patriarchate is not the true superior church of the American communicants. The vicissitudes of war and revolution which have beset the Moscow Patriarchate since 1917 are said to have resulted in a discontinuity which divests the present Patriarch of his authority over the American church. Both parties to the present controversy agree that the present Patriarch is the legitimately chosen holder of his office, and the account of the proceedings and pronouncements of the American schismatic group so indicate. Even were there doubt about this it is hard to see by what warrant the New York Legislature is free to substitute its own judgment as to the validity of Patriarch Alexy's claim and to disregard acknowledgment of the present Patriarch by his co-equals in the Eastern Confession, the Patriarchs of Constantinople, Alexandria, Antioch, and Jerusalem, and by religious leaders throughout the world, including the present Archbishop of York. [FN4]

> FN4. See Garbett, In an Age of Revolution, 207--213; Niemo ller, Why I Went to Moscow, The Christian Century, March 19, 1952, p. 338.

*126 These considerations undermine the validity of the New York legislation in that it enters the domain of religious control barred to the States by the Fourteenth Amendment.

Mr. Justice BLACK agrees with this opinion on the basis of his view that the Fourteenth Amendment makes the First Amendment applicable to the States.

Mr. Justice DOUGLAS, while concurring in the opinion of the Court, also joins this opinion.

Mr. Justice JACKSON, dissenting.

New York courts have decided an ordinary ejectment action involving possession of New York real estate in favor of the plaintiff, a corporation organized under the Religious Corporations Law of New York under the name 'Saint Nicholas Cathedral of the Russian Orthodox Church in North America.' Admittedly, it holds, and since 1925 has held, legal title to the Cathedral property. The New York Court of Appeals decided that it also has the legal right to its possession and control.

The appellant Benjamin's defense against this owner's demand for possession and the basis of his claimed right to enjoy possession of property he admittedly does not own is set forth in his answer to the ejectment suit in these words: 'Said premises pursuant to the above rules of the Russian Orthodox Church are held in trust for the benefit of the accredited Archbishop of said Archdiocese, to be possessed, occupied and used by said Archbishop as his residence, as a place for holding religious services, and other purposes related to his office and as the seat and headquarters for the administration, by him, of the affairs of the Archdiocese both temporal and spiritual.' And, says the appellant Benjamin, he is that Archbishop. These allegations are denied, and they define the issues as tendered to the state courts.

**160 *127 I greatly oversimplify the history of this controversy to indicate its nature rather than to prove its merits. This Cathedral was incorporated and built in the era of the Czar, under the regime of a state-ridden church in a church-ridden state. The

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Bolshevik did not free the church from the grip of state from the grip of the church, but it did nto free the church from the grip of the state. It only brought to the top a new master for a captive and submissive ecclesiastical establishment. By 1945, the Moscow patriarchy had been reformed and manned under the Soviet regime and it sought to re-establish in other countries its prerevolutionary control of church property and its sway over the minds of the religious. As the Court's opinion points out, it demanded of the Russian Church in America, among other things, that it abstain 'from political activities against the U.S.S.R.' The American Cathedral group, along with others, refused submission to the representative of the Moscow Patriarch, whom it regarded as an arm of the Soviet Government. Thus, we have an ostensible religious schism with decided political overtones.

If the Fourteenth Amendment is to be interpreted to leave anything to the courts of a state to decide without our interference, I should suppose it would be claims to ownership or possession of real estate within its borders and the vexing technical questions pertaining to the creation, interpretation, termination, and enforcement of uses and trusts, even though they are for religious and charitable purposes. This controversy, I believe, is a matter for settlement by state law and not within the proper province of this Court.

I.

As I read the prevailing opinions, the Court assumes that some transfer of control has been accomplished by legislation which results in a denial of due process. This, *128 of course, would raise a question of deprivation of property, not of liberty, while only the latter issue is raised by the parties. And it could be sustained only by a finding by us that the legislation worked a transfer rather than a confirmation of property rights. The Court of Appeals seems to have regarded the statute merely as a legislative reaffirmation of principle the Court would find to be controlling in its absence.

But this Court apparently thinks that by mere enactment of the statute the legislature invaded a field of action reserved to the judiciary. However desirable we may think a rigid separation of powers to be (and I, for one, think it is basic in the Federal Government), I do not think the Fourteenth Amendment undertakes to control distribution of powers within the states. At all events, I do not think we are warranted in holding that New York may not enact this legislation in question, which is in form and in substance an amendment of its Religious Corporations Law.

Nothing in New York law required this denomination to incorporate its Cathedral. The Religious Corporations Law of the State expressly recognizes unincorporated churches (s 2) and undertakes no regulation of them or their affairs. But this denomination wanted the advantages of a corporate charter for its Cathedral, to obtain immunity from personal liability and other benefits. This statute does not interfere with religious freedom but furthers it. If they elect to come under it, the statute makes separate provision for each of many denominations with corporate controls appropriate to its own ecclesiastical order. When it sought the privilege of incorporation under the New York law applicable to its denomination, it seems to me that this Cathedral and all connected with its temporal affairs were submitted to New York law.

As a consequence of this Court's decision in Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 L.Ed. 629, the Constitution of *129 New York since 1846 has authorized the legislature to create corporations by general laws and special acts, subject, however, to a reservation that all such acts 'may be altered from time to time or **161 repealed.' New York Const., Art. X, s 1. That condition becomes a part of every corporate charter subsequently granted by New York. Lord v. Equitable Life Assurance Society of United States, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A.,N.S., 420; People ex rel. Cooper Union for Advancement of Science & Art v. Gass, 190 N.Y. 323, 83 N.E. 64; Pratt Institute v. City of New York, 183 N.Y. 151, 75 N.E. 1119.

What has been done here, as I see it, is to exercise this reserved power which permits the State to alter corporate controls in response to the lessons of experience. Of course, the power is not unlimited and could be so exercised as to deprive one of property without due process of law. But, I do not think we can say that a legislative application of a principle so well established in our common law as the cy-pres doctrine is beyond the powers reserved

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by the New York Constitution.

II.

The Court holds, however, that the State cannot exercise its reserved power to control this property without invading religious freedom, because it is a Cathedral and devoted to religious uses. I forbear discussion of the extent to which restraints imposed upon Congress by the First Amendment are transferred against the State by the Fourteenth Amendment beyond saying that I consider that the same differences which apply to freedom of speech and press, see dissenting opinion in Beauharnais v. Illinois, 343 U.S. 250, 287, 72 S.Ct. 725, 746, are applicable to questions of freedom of religion and of separation of church and state.

It is important to observe what New York has not done in this case. It has not held that Benjamin may not act as Archbishop or be revered as such by all who will follow him. It has not held that he may not have a Cathedral. *130 Indeed, I think New York would agree that no one is more in need of spiritual guidance than the Soviet faction. It has only held that this cleric may not have a particular Cathedral which, under New York law, belongs to others. It has not interfered with his or anyone's exercise of his religion. New York has not outlawed the Soviet-controlled sect nor forbidden it to exercise its authority or teach its dogma in any place whatsoever except on this piece of property owned and rightfully possessed by the Cathedral Corporation.

The fact that property is dedicated to a religious use cannot, in my opinion, justify the Court in sublimating an issue over property rights into one of deprivation of religious liberty which alone would bring in the religious guaranties of the First Amendment. I assume no one would pretend that the State cannot decide a claim of trespass, larceny, conversion, bailment or contract, where the property involved is that of a religious corporation or is put to religious use, without invading the principle of religious liberty.

Of course, possession of the property will help either side that obtains it to maintain its prestige and to continue or extend its sway over the minds and souls of the devout. So would possession of a bank account, an income- producing office building, or any other valuable property. But if both claimants are religious corporations or personalities, can not the State decide the issues that arise over ownership and possession without invading the religious freedom of one or the other of the parties?

Thus, if the American group, which owns the title to the Cathedral, had by force barred Benjamin from entering it physically, would the Court say it was an interference with religious freedom to entertain and decide his ejectment action? If state courts are to decide such controversies at all instead of leaving them to be settled by a show of force, is it constitutional to decide for only *131 one side of the controversy and unconstitutional to decide for the other? In either case, the religious freedom of one side or the other is impaired if the temporal goods they need are withheld or taken from them.

As I have earlier pointed out, the Soviet Ecclesiast's claim, denial of which is said **162 to be constitutional error, is not that this New York property is impressed with a trust by virtue of New York law. The claim is that it is impressed with a trust by virtue of the rules of the Russian Orthodox Church. This Court so holds.

I shall not undertake to wallow through the complex, obscure and fragmentary details of secular and ecclesiastical history, theology, and canon law in which this case is smothered. To me, whatever the canon law is found to be and whoever is the rightful head of the Moscow patriarchate, I do not think New York law must yield to the authority of a foreign and unfriendly state masquerading as a spiritual institution. See 'The Soviet Propaganda Program,' Staff Study No. 3, Subcommittee on Overseas Information Programs of the United States, 82d Cong., 2d Sess.

I have supposed that a State of this Union was entirely free to make its own law, independently of any foreign-made law, except as the Full Faith and Credit Clause of the Constitution might require deference to the law of a sister state or the Supremacy Clause require submission to federal law. I do not see how one can spell out of the principles of separation of church and state a doctrine that a state submit property rights to settlement by canon law. If there is any relevant inference to be drawn, I should think it would be to the contrary, though I see no obstacle to the state

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allowing ecclesiastical law to govern in such a situation if it sees fit. I should infer that from the trend of such decisions as Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188; Klaxon Co. v. Stentor Electric Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477; Griffin v. McCoach, 313 U.S. 498, 61 S.Ct. 1023, 85 L.Ed. 1481.

***132** The only ground pressed upon this appeal is that the judgment below violates the religious freedom guaranteed by the Fourteenth Amendment. I find this contention so insubstantial that I would dismiss the appeal. Whether New York has arrived at the correct solution of this question is a matter on which its own judges have disagreed. But they have disagreed within the area which is committed to them for agreement or disagreement and I find nothing which warrants our invading their jurisdiction.

73 S.Ct. 143, 344 U.S. 94, 97 L.Ed. 120

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EXHIBIT 30

654 N.Y.S.2d 791
1997 N.Y. Slip Op. 01949
(Cite as: 229 A.D.2d 159, 654 N.Y.S.2d 791)

Supreme Court, Appellate Division, Second Department, New York.

KENNETH R. (Anonymous), et al., Respondents,
v.
ROMAN CATHOLIC DIOCESE OF BROOKLYN, Appellant, et al., Defendant.

March 3, 1997.
Certiorari Denied Nov. 10, 1997. See 118 S.Ct. 413.

Plaintiffs sued diocese for negligent hiring, supervision, and retention of priest. The Supreme Court, Kings County, Shaw, J., entered order denying cross-motion to dismiss filed by diocese, and diocese appealed. The Supreme Court, Appellate Division, Goldstein, J., held that: (1) plaintiffs failed to state negligent hiring claim based on allegations that diocese failed to screen or determine priest's fitness for priesthood; (2) diocese could not be charged with negligence for failing to investigate further prior to hiring priest, thus defeating plaintiffs' claim alleging failure to establish proper guidelines and procedures and negligent hiring; (3) allegations that diocese had notice of priest's propensity to sexually abuse children stated claims for negligent supervision and retention; and (4) negligent supervision and retention claims were not barred by First Amendment or by Religious Freedom Restoration Act (RFRA).

Modified, and affirmed as modified.

West Headnotes

[1] Religious Societies ⇐30
332k30 Most Cited Cases

Sexual abuse by priest did not fall within scope of priest's employment, and thus diocese was not vicariously liable for his conduct under theory of respondeat superior.

[2] Master and Servant ⇐303
255k303 Most Cited Cases

In instances where employer cannot be held vicariously liable for its employee's torts, employer can still be held liable under theories of negligent hiring, negligent retention, and negligent supervision. Restatement (Second) of Torts § 317; Restatement (Second) of Agency § 213 comment.

[3] Master and Servant ⇐303
255k303 Most Cited Cases

Necessary element for claims of negligent hiring, negligent retention, and negligent supervision is that employer knew or should have known of employee's propensity for conduct which caused injury. Restatement (Second) of Torts § 317; Restatement (Second) of Agency § 213 comment.

[4] Pretrial Procedure ⇐622
307Ak622 Most Cited Cases

When considering application to dismiss, criterion is whether proponent of pleading has cause of action, not whether he has stated one. McKinney's CPLR 3211(a), par. 7.

[5] Pleading ⇐48
302k48 Most Cited Cases

Generally, determination as to whether proponent of pleading has cause of action can be made from factual allegations in four corners of complaint. McKinney's CPLR 3211(a), par. 7.

[6] Pretrial Procedure ⇐682.1
307Ak682.1 Most Cited Cases

Evidentiary material may be considered to remedy defects in complaint, and, unless it can be shown that material fact as claimed by pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal may not be predicated on such evidentiary material. McKinney's CPLR 3211(a), par. 7.

[7] Master and Servant ⇐329
255k329 Most Cited Cases

[7] Pretrial Procedure ⇐649
307Ak649 Most Cited Cases

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There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity, but complaint which contains bare legal conclusions and/or factual claims which are flatly contradicted by documentary evidence should be dismissed for failure to state claim. McKinney's CPLR 3211(a), par. 7.

[8] Religious Societies ⚿30
332k30 Most Cited Cases

Plaintiffs asserted no facts from which one could infer that diocese in New York was responsible for priest's status as Roman Catholic priest, since priest was ordained in Venezuela by officials of diocese there, and thus plaintiffs failed to state negligent hiring claim based on allegations that New York diocese failed to screen or determine priest's fitness for priesthood.

[9] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

[9] Religious Societies ⚿30
332k30 Most Cited Cases

Ordination to priesthood confers religious, not legal status, and may be characterized as "quintessentially religious" matter, and imposing liability for conferring that status would create serious concerns of excessive entanglement in religious affairs, in violation of First Amendment. U.S.C.A. Const.Amend. 1.

[10] Religious Societies ⚿30
332k30 Most Cited Cases

Because priest came to diocese in New York with letter of reference from his Archbishop, which gave New York diocese no reason to believe there was any problem, diocese could not be charged with negligence for failing to investigate further prior to hiring him, thus defeating plaintiffs' claim alleging failure to establish proper guidelines and procedures and negligent hiring; diocese did not and could not have known of priest's sexually deviant propensities when he arrived in New York from Venezuela with letter of reference.

[11] Master and Servant ⚿332(1.1)
255k332(1.1) Most Cited Cases

Question of whether employer had common-law duty to investigate potential hire is question of law for courts.

[12] Master and Servant ⚿303
255k303 Most Cited Cases

There is no common-law duty to institute specific procedures for hiring employees unless employer knows of facts that would lead reasonably prudent person to investigate prospective employee.

[13] Religious Societies ⚿31(4)
332k31(4) Most Cited Cases

Allegations that diocese acquired actual or constructive notice of codefendant priest's propensity to sexually abuse children from statements made by infant plaintiffs to priests at two churches and from codefendant himself stated claims of negligent supervision and retention. Restatement (Second) of Torts § 317; Restatement (Second) of Agency § 213 comment.

[14] Pretrial Procedure ⚿681
307Ak681 Most Cited Cases

Allegations in bill of particulars are to be taken into account in considering sufficiency of challenged cause of action. McKinney's CPLR 3211(a), par. 7.

[15] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

[15] Religious Societies ⚿30
332k30 Most Cited Cases

Generally, imposing liability against church for negligent retention and negligent supervision of priest would not violate constitutional and statutory guarantees of free exercise of religion and separation of church and state. U.S.C.A. Const.Amend. 1; Restatement (Second) of Torts § 317.

[16] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases

Generally, law that is neutral and of general applicability need not be justified by compelling governmental interest even if law has incidental effect of burdening particular religious practice.

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U.S.C.A. Const.Amend. 1.

[17] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[17] Religious Societies ⇐30
332k30 Most Cited Cases

First Amendment did not prevent negligent supervision and retention claims based on allegations that diocese had notice of codefendant priest's propensity to sexually abuse children from statements made by infant plaintiffs to priests at two churches and from codefendant himself, absent any indication that requiring increased supervision of priest or termination of his employment by diocese based upon priest's conduct would violate any religious doctrine or inhibit any religious practice. U.S.C.A. Const.Amend. 1; Restatement (Second) of Torts § 317.

[18] 78k1035 Most Cited Cases
(Formerly 78k113)

[18] Religious Societies ⇐30
332k30 Most Cited Cases

Religious Freedom Restoration Act (RFRA) did not prevent negligent supervision and retention claims based on allegations that diocese had notice of codefendant priest's propensity to sexually abuse children from statements made by infant plaintiffs to priests at two churches and from codefendant himself, absent any indication that level of supervision exercised over priest, or his retention in employ of diocese, was dictated by any religious doctrine. Religious Freedom Restoration Act of 1993, § 2 et seq., 42 U.S.C.A. § 2000bb et seq.

[19] 78k1032 Most Cited Cases
(Formerly 78k110.1)

Religious Freedom Restoration Act (RFRA) only applies if free exercise of religion is "substantially burdened" because activities in question are motivated by religious beliefs. Religious Freedom Restoration Act of 1993, § 2 et seq., 42 U.S.C.A. § 2000bb et seq.

[20] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

While First Amendment prohibits regulation of religious beliefs, conduct by religious entity remains subject to regulation for protection of society. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[21] Religious Societies ⇐30
332k30 Most Cited Cases

First Amendment does not grant religious organizations absolute immunity from tort liability, and thus religious entities must be held accountable for their actions, even if that conduct is carried out as part of church's religious practices. U.S.C.A. Const.Amend. 1.

[22] Religious Societies ⇐30
332k30 Most Cited Cases

Religious entities have some duty to prevent injuries incurred by persons in their employ whom they have reason to believe will engage in injurious conduct.

****793 *160** Conway, Farrell, Curtin & Kelly, P.C., New York City, (Jonathan Uejio, of counsel), for appellant.

Kenneth Litwack, Bayside, NY, (Robert Litwack of counsel), for respondents.

Before MILLER, J.P., and JOY, ALTMAN and GOLDSTEIN, JJ.

GOLDSTEIN, Justice.

Appeal by the defendant Roman Catholic Diocese of Brooklyn, as limited by its brief, from so much of an order of the Supreme Court (James H. Shaw, J.), dated December 11, 1995, and entered in Kings County, as, in an action to recover damages, inter alia, for the negligent hiring, supervision, and retention of Enrique Diaz Jimenez, a priest who was employed by the appellant, denied those branches of its cross motion pursuant to CPLR 3211(a)(7) which were to dismiss the fourth, fifth, sixth, seventh, eighth, ninth, and eleventh causes of action of the plaintiffs' amended complaint sounding, inter

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alia, in negligent hiring, negligent retention, and negligent supervision.

At issue here is whether the plaintiffs have stated causes of action against the appellant Roman Catholic Diocese of Brooklyn sounding in negligent hiring, negligent retention, and negligent supervision. We find that their allegations with *161 respect to negligent retention and negligent supervision are sufficient to withstand the appellant's cross motion to dismiss the complaint pursuant to CPLR 3211(a)(7), but that they do not have a cause of action to recover damages for negligent hiring.

[1] The plaintiffs' amended complaint alleges that, "on or about or between July 13, 1983, and August 31, 1989", the appellant's codefendant, Enrique Diaz Jimenez, an ordained Roman Catholic priest, sexually abused the infant plaintiffs. Enrique Diaz Jimenez pleaded guilty to sexual abuse in the third degree based upon this conduct. However, as noted by the Supreme Court, that conduct did not fall within the scope of his employment and therefore the appellant is not vicariously liable for his conduct under the theory of respondeat superior (see, *Cornell v. State of New York,* 46 N.Y.2d 1032, 416 N.Y.S.2d 542, 389 N.E.2d 1064; *Mercer v. State of New York,* 125 A.D.2d 376, 509 N.Y.S.2d 103). Consequently, the Supreme Court granted those branches of the appellant's cross motion which were to dismiss the first and second causes of action insofar as asserted against it. The Supreme Court also dismissed the plaintiffs' third cause of action sounding in clergy malpractice, and their tenth cause of action alleging that the appellant created a "climate and custom" of indifference to sexual abuse. Those rulings are not before us on this appeal.

[2][3] In instances where an employer cannot be held vicariously liable for its employee's torts, the employer can still be held liable under theories of negligent hiring, negligent retention, and negligent supervision (see, *Hall v. Smathers,* 240 N.Y. 486, 148 N.E. 654; Restatement [Second] of Torts § 317). However, a necessary element of such causes of action is that the employer knew or should have known of the employee's propensity for the conduct which caused the injury (see, e.g., *Park v. N.Y.C. & H.R.R. Co.,* 155 N.Y. 215, 49 N.E. 674; **794 *Gallo v. Dugan,* 228 A.D.2d 376, 645 N.Y.S.2d 7; *Mataxas v. North Shore Univ. Hosp.,* 211 A.D.2d 762, 621 N.Y.S.2d 683; *Detone v. Bullit Courier Serv.,* 140 A.D.2d 278, 528 N.Y.S.2d 575; *Di Cosala v. Kay,* 91 N.J. 159, 450 A.2d 508; Restatement [Second] of Agency § 213, comment d).

[4][5][6] When considering an application to dismiss a cause of action pursuant to CPLR 3211(a)(7), "the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one" (*Guggenheimer v. Ginzburg,* 43 N.Y.2d 268, 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; see, *Leon v. Martinez,* 84 N.Y.2d 83, 614 N.Y.S.2d 972, 638 N.E.2d 511; *Rovello v. Orofino Realty Co.,* 40 N.Y.2d 633, 636, 389 N.Y.S.2d 314, 357 N.E.2d 970). Generally, such a determination can be made from the factual allegations in the four corners of the complaint (see, *Guggenheimer v. Ginzburg, supra,* at 275, 401 N.Y.S.2d 182, 372 N.E.2d 17; *162*Foley v. D'Agostino,* 21 A.D.2d 60, 64-65, 248 N.Y.S.2d 121). Evidentiary material may be considered to "remedy defects in the complaint" (*Rovello v. Orofino Realty Co., supra,* at 636, 389 N.Y.S.2d 314, 357 N.E.2d 970), "and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it", dismissal may not be predicated on such evidentiary material (*Guggenheimer v. Ginzburg, supra,* at 275, 401 N.Y.S.2d 182, 372 N.E.2d 17).

[7] There is no statutory requirement that causes of action sounding in negligent hiring, negligent retention, or negligent supervision be pleaded with specificity (see, *Jones v. Trane,* 153 Misc.2d 822, 831, 591 N.Y.S.2d 927; cf., CPLR 3016; *Byrd v. Faber,* 57 Ohio St.3d 56, 61, 565 N.E.2d 584, 589). However, a complaint which contains bare legal conclusions and/or factual claims which are "flatly contradicted by documentary evidence" should be dismissed pursuant to CPLR 3211(a)(7) (*Corporate National Realty v. Philson, Ltd.,* 232 A.D.2d 518, 648 N.Y.S.2d 974; see, e.g., *Doria v. Masucci,* 230 A.D.2d 764, 646 N.Y.S.2d 363; *Lovisa Constr. Co. v. Metropolitan Transp. Auth.,* 198 A.D.2d 333, 603 N.Y.S.2d 886).

[8] The plaintiffs' amended complaint alleges that the appellant "had prior knowledge or should have known that the defendant Jimenez was a sexual

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deviant" and therefore was negligent in hiring, supervising, and retaining him. The plaintiffs further contend that the appellant failed to "establish proper guidelines and procedures", failed to "properly screen and hire applicants to the priesthood", and "failed to have Defendant Jimenez examined psychiatrically and/or psychologically to determine his fitness for serving in the capacity as a Roman Catholic priest".

Certain undisputed facts emerge from the documentary evidence in the record. The codefendant Jimenez was ordained a Roman Catholic priest in 1977, in Venezuela. He came to the Roman Catholic Diocese of Brooklyn in 1983, with a letter of reference from the Archbishop of Merida, Venezuela, and was assigned to work in St. Leo's Church.

[9] Ordination to the priesthood confers a religious, not legal status, and may be characterized as a "quintessentially religious" matter (*Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 720, 96 S.Ct. 2372, 2385, 49 L.Ed.2d 151). Imposing liability for conferring that status would create serious concerns of excessive entanglement in religious affairs, in violation of the First Amendment of the United States Constitution (see, *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 327, 533 N.W.2d 780, 790, cert. ***163** denied 516 U.S. 1116, 116 S.Ct. 920, 133 L.Ed.2d 849; see also, *Rayburn v. General Conference of Seventh-day Adventists,* 772 F.2d 1164, cert. denied 478 U.S. 1020, 106 S.Ct. 3333, 92 L.Ed.2d 739; *Downs v. Roman Catholic Archbishop of Baltimore,* 111 Md.App. 616, 683 A.2d 808).

However, the question of whether liability could ever be imposed for ordination to the priesthood need not be determined here since the only entity of the Roman Catholic Church sued by the plaintiffs is the appellant Roman Catholic Diocese of Brooklyn which the amended complaint alleges "is a corporation duly licensed to do business in the State of New York". Thus, pursuant to the allegations in the amended complaint, the appellant ****795** is a separate entity (see generally, *Heenan v. Roman Catholic Diocese of Rockville Centre,* 158 A.D.2d 587, 551 N.Y.S.2d 555). The plaintiffs assert no facts from which one could infer that the appellant was responsible for Jimenez's status as a Roman Catholic priest, since he was ordained in Venezuela by officials of the diocese there. Accordingly, the fifth and eighth causes of action, alleging that the appellant failed to screen or determine Jimenez's fitness for the priesthood, must be dismissed.

[10][11] With respect to negligent hiring, the documentary evidence in the record establishes that the appellant did not and could not have known of Jimenez's propensities when he arrived here from Venezuela with a letter of reference. The plaintiffs allege that the appellant should have initiated some investigations of Jimenez before hiring him to work in a church under its control. The question of whether there is such a common-law duty is a question of law for the courts (see, *D'Amico v. Christie,* 71 N.Y.2d 76, 524 N.Y.S.2d 1, 518 N.E.2d 896; *Eiseman v. State of New York,* 70 N.Y.2d 175, 190, 518 N.Y.S.2d 608, 511 N.E.2d 1128).

[12] There is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to investigate the prospective employee (see, *Ford v. Gildin,* 200 A.D.2d 224, 226-227, 613 N.Y.S.2d 139; *Stevens v. Lankard,* 31 A.D.2d 602, 297 N.Y.S.2d 686, affd. 25 N.Y.2d 640, 306 N.Y.S.2d 257, 254 N.E.2d 339; *Amendolara v. Macy's N.Y.,* 19 A.D.2d 702, 241 N.Y.S.2d 39; cf., *Rhames v. Supermarkets Gen. Corp.,* 230 A.D.2d 780, 646 N.Y.S.2d 622). Since Jimenez came to the appellant with a letter of reference from his Archbishop, which gave the appellant no reason to believe there was any problem, the appellant cannot be charged with negligence for failing to investigate further (see, *Lopez v. William J. Burns Int. Detective Agency,* 48 A.D.2d 645, 368 N.Y.S.2d 221; *Roman Catholic Bishop of San Diego v. Superior Ct.,* 42 Cal.App.4th 1556, 50 Cal.Rptr.2d 399; ***164** *Kennedy v. Roman Catholic Diocese of Burlington, Vermont, Inc.,* 921 F.Supp. 231). [FN*] Accordingly, the plaintiffs' sixth cause of action, alleging "failure to establish proper guidelines and procedures", and the plaintiffs' seventh cause of action, alleging that the appellant "was negligent in hiring Jimenez", must be dismissed.

FN* The plaintiffs allege in their bill of particulars that certain unspecified "studies" have been published "showing

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> the existence of ongoing problems in the priesthood relating to sexual activity with children thereby raising a duty to inquire". However, imposing a special duty to inquire as to backgrounds of priests as a class has no legal basis, and carries with it discriminatory overtones against individuals merely because they have been ordained to the priesthood (see generally, *McDaniel v. Paty,* 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593).

[13][14][15] In their bill of particulars, the plaintiffs allege that the appellant acquired actual or constructive notice of the codefendant Jimenez's propensity to sexually abuse children from "statements made by the infant plaintiffs to priests at St. Leo's Church and Our Lady of Sorrows Church", and from the codefendant Jimenez himself. Allegations in a "bill of particulars are to be taken into account in considering the sufficiency of the challenged causes of action" (*Moore v. Johnson,* 147 A.D.2d 621, 538 N.Y.S.2d 28; see, *Nader v. General Motors Corp.,* 25 N.Y.2d 560, 565, 307 N.Y.S.2d 647, 255 N.E.2d 765). If, as the plaintiffs allege in their bill of particulars, the infant plaintiffs and/or Jimenez himself made statements to other priests at St. Leo's Church or Our Lady of Sorrows Church giving them notice of Jimenez's conduct, the plaintiffs may have causes of action sounding in negligent retention and negligent supervision. Pursuant to prevailing case law, as a general rule, imposition of such liability would not violate constitutional and statutory guarantees of free exercise of religion and separation of church and State.

[16][17] It is well settled that generally, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice" (*Church of Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 531, 113 S.Ct. 2217, 2226, 124 L.Ed.2d 472; see, **796*Employment Division, Dept. of Human Resources of Ore. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876). Some cases have indicated that the First Amendment to the United States Constitution may be asserted as a defense if the defendant's conduct that caused the plaintiff's injury finds its basis in religious beliefs and practices (see, *Wisconsin v. Yoder,* 406 U.S. 205, 215-216, 92 S.Ct. 1526, 1533-1534, 32 L.Ed.2d 15; *Konkle v. Henson,* 672 N.E.2d 450 [Ind App]; *Destefano v. Grabrian,* 763 P.2d 275, 283 [Colo]). Here, however, there is no indication that requiring increased supervision of Jimenez or the termination of his employment by the appellant *165 based upon Jimenez's conduct would violate any religious doctrine or inhibit any religious practice (see, *Jimmy Swaggart Ministries v. Board of Equalization of Cal.,* 493 U.S. 378, 110 S.Ct. 688, 107 L.Ed.2d 796; *L.L.N. v. Clauder,* 203 Wis.2d 570, 552 N.W.2d 879).

[18][19] The enactment of the Religious Freedom Restoration Act of 1993 (42 U.S.C. § 2000bb, et seq.) does not alter this analysis. That statute provides that if a law of general applicability substantially burdens the exercise of religion, such application must be in furtherance of a compelling state interest and must constitute "the least restrictive means of furthering that compelling governmental interest" (42 U.S.C. § 2000bb-1[b][2]). However, that statute only applies if the free exercise of religion is " 'substantially' burdened" (*Geisinsky v. Village of Kings Point,* 226 A.D.2d 340, 341, 640 N.Y.S.2d 212) because the activities in question are motivated by religious beliefs (see, *Mack v. O'Leary,* 7th Cir., 80 F.3d 1175, 1178; *Bryant v. Gomez,* 9th Cir., 46 F.3d 948, 949; *Matter of Salahuddin v. Coughlin,* 222 A.D.2d 950, 636 N.Y.S.2d 145, cert. denied 519 U.S. 937, 117 S.Ct. 317, 136 L.Ed.2d 232). As previously noted, there is no indication that the level of supervision exercised over Jimenez, or his retention in the appellant's employ, was dictated by any religious doctrine. Indeed, it appears from the record that Jimenez's employment relationship with the appellant was ultimately terminated, and his requests for additional employment were denied (cf., *Schmidt v. Bishop,* 779 F.Supp. 321, 331).

[20][21][22] Moreover, while the First Amendment to the United States Constitution prohibits regulation of religious beliefs, *conduct* by a religious entity "remains subject to regulation for the protection of society" (*Cantwell v. State of Connecticut,* 310 U.S. 296, 304, 60 S.Ct. 900, 903, 84 L.Ed. 1213; see, *Employment Division Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, *supra; Destefano v. Grabrian,* 763 P.2d 275, 283, *supra).* The First Amendment

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does not grant religious organizations absolute immunity from tort liability (see, *Konkle v. Henson,* 672 N.E.2d 450, 456, *supra; Moses v. Diocese of Colorado,* 863 P.2d 310, 319). Therefore, religious entities must be held accountable for their actions, "even if that conduct is carried out as part of the church's religious practices" (*Meroni v. Holy Spirit Assn. for Unification of World Christianity,* 119 A.D.2d 200, 203, 506 N.Y.S.2d 174). Religious entities have some duty to prevent injuries inflicted by persons in their employ whom they have reason to believe will engage in injurious conduct (see, *Konkle v. Henson, supra,* at 456; *L.L.N. v. Clauder,* 203 Wis.2d 570, 552 N.W.2d 879, *supra; Erickson v. Christenson,* 99 Or.App. 104, 109, 781 P.2d 383, 386-387; *Gallas v. Greek Orthodox Archdiocese of N & S Am.,* 154 Misc.2d 494, 499-500, 587 N.Y.S.2d 82; *Jones v. Trane,* 153 Misc.2d 822, 830-831, 591 N.Y.S.2d 927, *supra).*

***166** Therefore, the plaintiffs' fourth and ninth causes of action, sounding in negligent supervision and retention, and the eleventh cause of action, asserting a derivative claim, are sufficient to withstand a motion to dismiss the complaint pursuant to CPLR 3211.

Accordingly, the order should be modified, on the law, by deleting the provisions thereof which denied those branches of the appellant's cross motion which were to dismiss the fifth, sixth, seventh, and eighth causes of action, and substituting therefor provisions granting those branches of the cross motion.

ORDERED that the order is modified, on the law, by deleting the provisions thereof which denied those branches of the appellant's cross motion which were to dismiss the fifth, sixth, seventh, and eighth causes of action, and substituting therefor provisions granting those branches of the cross motion; as so modified, the order is affirmed insofar ****797** as appealed from, without costs or disbursements.

MILLER, J.P., and JOY, and ALTMAN, JJ., concur.

654 N.Y.S.2d 791, 229 A.D.2d 159, 1997 N.Y. Slip Op. 01949

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EXHIBIT 31

672 N.E.2d 450
(Cite as: 672 N.E.2d 450)

Court of Appeals of Indiana.

Katherine A. KONKLE, Appellant-Plaintiff,
v.
Floyd B. HENSON; The United Pentecostal Church located in Warsaw, Indiana; Indiana District Board of the United Pentecostal Church International (incorporated); and The United Pentecostal Church International (incorporated), Appellees-Defendants.

No. 43A03-9507-CV-250.

Oct. 28, 1996.

Victim of sexual molestation by minister brought negligence action premised on doctrine of respondeat superior and negligent hiring and retention against church and church associations. The Circuit Court, Kosciusko County, Daniel J. Vanderpool, Special Judge, granted summary judgment for defendants. Plaintiff appealed. The Court of Appeals, Staton, J., held that: (1) First Amendment did not bar claims; but (2) minister was not acting in scope of his employment, such that plaintiff could not maintain claim under respondeat superior doctrine; (3) limitations period began to run each time minister touched plaintiff; (4) fact question as to whether plaintiff was member of church precluded summary judgment; and (5) plaintiff failed to establish that associations knew about minister's misconduct, as required to maintain claim for negligent hiring and retention.

Affirmed in part, reversed in part and remanded.

West Headnotes

[1] Appeal and Error ⇐934(1)
30k934(1) Most Cited Cases

On review of entry of summary judgment, Court of Appeals does not weigh evidence, but considers facts in light most favorable to nonmoving party. Trial Procedure Rule 56(c).

[2] Master and Servant ⇐303
255k303 Most Cited Cases

Indiana recognizes tort of negligent hiring and retention of employee. Restatement (Second) of Torts § 317.

[3] Master and Servant ⇐303
255k303 Most Cited Cases

In order to determine if employer was liable for negligent hiring or retention of employee, court must determine if employer exercised reasonable care. Restatement (Second) of Torts § 317.

[4] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

First Amendment does not bar negligence claims against churches for actions of ministers. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[5] Religious Societies ⇐30
332k30 Most Cited Cases

First Amendment did not bar action against church and church associations for negligent hiring and retention of minister by victim of minister's sexual molestation; review of victim's claims involved applying secular standards to secular conduct. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[6] Religious Societies ⇐30
332k30 Most Cited Cases

First Amendment did not bar sexual molestation victim's claim against church and church association under doctrine of respondeat superior, for actions of minister; review of claim involved applying traditional tort law to claims in determining whether minister was acting within course and scope of his employment when tort occurred. U.S.C.A. Const.Amend. 1.

[7] Master and Servant ⇐302(2)
255k302(2) Most Cited Cases

Under doctrine of respondeat superior, employer is liable for acts of its employees which are committed within course and scope of their employment;

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diligence, could have discovered that injury had been sustained as result of tortious act of another.

[20] Limitation of Actions ⇐55(6)
241k55(6) Most Cited Cases

Sexual molestation victim's claim against church and church associations for negligent hiring, supervision, and retention of minister who committed acts of molestation was not continuing tort, but rather, accrued, such that limitations period began to run, each time minister touched victim inappropriately. West's A.I.C. 34-1-2-2(1).

[21] Associations ⇐20(1)
41k20(1) Most Cited Cases

Generally, member of unincorporated association is precluded from bringing suit against association.

[22] Judgment ⇐185.2(8)
228k185.2(8) Most Cited Cases

Party cannot create issue of material fact to prevent grant of summary judgment by submitting affidavit which directly contradicts prior, sworn deposition testimony. Trial Procedure Rule 56(C).

[23] Judgment ⇐181(21)
228k181(21) Most Cited Cases

Fact question as to whether victim of sexual molestation was member of church precluded summary judgment in victim's action against church and church associations for negligent hiring and retention of minister who committed molestations. Trial Procedure Rule 56(C).

[24] Religious Societies ⇐30
332k30 Most Cited Cases

Victim of sexual molestation by minister failed to establish that church association knew about minister's misconduct when he was hired, as required to maintain cause of action for negligent hiring and retention against associations.

*452 Kirk A. Weikart, Harrington Maley Gardner & Sayre, Richmond, Thomas R. Lemon, Jane L. Kauffman, Lemon Arney Hearn & Leininger, Warsaw, for appellant-plaintiff.

Arthur G. Surguine, Jr., Craig J. Bobay, Hunt, Suedhoff, Borror & Eilbacher, Fort Wayne, Frank J. Gray, Travis S. Friend, Beckman, Lawson, Sandler, Snyder & Federoff, Fort Wayne, for United Pentecostal Church International.

Richard K. Helm, Rockhill, Pinnick, Pequignot, Helm & Landis, Warsaw, for United Pentecostal Church Located in Warsaw, Indiana.

OPINION

STATON, Judge.

Katherine A. Konkle ("Konkle") had been sexually molested by Floyd Henson, a minister of her church, since she was seven years old. The minister, Floyd Henson, is not a party to this appeal. After a grant of summary *453 judgment in favor of the United Pentecostal Church located in Warsaw, Indiana (the "Local Church"); the Indiana District Board of the United Pentecostal Church International (the "District Board"); and the United Pentecostal Church International (the "International Church") (collectively referred to as the "Church Defendants"), Konkle appeals and presents three issues for our review which we restate as follows:

I. Whether the trial court erred in granting summary judgment because the First Amendment bars judicial intervention in ecclesiastical affairs.

II. Whether the trial court erred in determining that the acts committed by Floyd Henson were committed outside the scope of his employment.

III. Whether the trial court erred in determining that Konkle's claims were barred by the statute of limitations.

On cross-appeal, the Church Defendants raise several issues which we consolidate and restate as follows:

IV. Whether the trial court erred in denying summary judgment to the Local Church because a member of an unincorporated association cannot sue an association of which she is a member.

V. Whether any of the claims made by Konkle are causes of action recognized in the State of Indiana.

We affirm in part, reverse in part, and remand.

The facts most favorable to the nonmovant, Konkle, reveal that she was molested by Floyd Henson ("Henson"), a minister at the Local Church, from the time she was seven. Konkle began

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experiencing emotional problems and entered counseling in middle school. The counseling continued for seven or eight years, but Konkle never told her counselor about the on-going molestation. When Konkle was about fifteen or sixteen, she realized that Henson's behavior was wrong. Approximately one year later, she also realized that she could control and prevent some of Henson's behavior. She was able to limit his actions to occasionally touching her breast or other parts of her body through her clothes. When Konkle was approximately seventeen or eighteen, she and her mother discussed the possibility of filing criminal charges against Henson but decided against it. The last touching occurred in November or December 1990, when Konkle was twenty, shortly before Henson resigned.

Konkle filed her complaint on October 2, 1992, four years after she reached the age of majority, but less than two years after the final touching occurred. She alleged various causes of action against Henson and the Church Defendants. [FN1] Through her various allegations of misconduct by the Church Defendants, Konkle states claims for negligent hiring, supervision and retention of an employee and respondeat superior liability.

> FN1. Her claims against Henson included breach of fiduciary duty, intentional infliction of emotional distress, assault and battery, sexual battery, molestation of a child, false imprisonment and "other intentional acts." They are not at issue in this appeal except to the extent the Church Defendants might be liable under the doctrine of respondeat superior.

The Church Defendants filed motions for summary judgment on Konkle's claims. [FN2] The trial court granted summary judgment in favor of the Church Defendants on the basis that the First Amendment bars judicial intervention in ecclesiastical affairs. In its order, the trial court recognized that the issue of intervention was an issue of first impression in Indiana and that a higher court might disagree with that determination. To aid the reviewing court, the trial court also ruled on additional grounds for summary judgment which might become relevant if judicial intervention is proper. Thus, the trial court: (1) granted summary judgment to the Church Defendants upon the issue of respondeat superior because the acts were outside the scope of the minister's employment; (2) denied summary judgment to the Local Church on the issue of claims by a member of an unincorporated association; (3) denied summary judgment to the Church Defendants upon the issues of negligence against the Church Defendants; and (4) * 454 found that the statute of limitations would bar recovery against the Church Defendants with the exception of acts committed after August 4, 1990. Konkle now appeals.

> FN2. Henson did not take part in the motions for summary judgment and is not a party to this appeal.

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). The burden is on the moving party to prove there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Once the moving party has sustained this burden, the non-moving party must respond by setting forth specific facts showing a genuine issue for trial; he may not simply rest on the allegations of his pleadings. *Stephenson v. Ledbetter,* 596 N.E.2d 1369, 1371 (Ind.1992). At the time of filing the motion or a response to the motion, a moving party or non-moving party shall designate to the court all parts of pleadings, depositions, answers to interrogatories, admissions, matters of judicial notice, and any other matters on which it relies for purposes of the motion. T.R. 56(C).

[1] When reviewing an entry of summary judgment, we stand in the shoes of the trial court. We do not weigh the evidence but will consider the facts in the light most favorable to the non-moving party. *Reed v. Luzny,* 627 N.E.2d 1362, 1363 (Ind.Ct.App.1994), *reh. denied, trans. denied.* We may sustain a summary judgment upon any theory supported by the designated materials. T.R. 56(C).

I.
The First Amendment

Konkle first argues that the trial court erred in determining that the First Amendment barred

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judicial intervention in her claims. The First Amendment, applicable to the states through the Fourteenth Amendment, contains two freedoms with respect to religion: the freedom to believe and the freedom to act. *Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213(1940). The freedom to believe is absolute, while the freedom to act is subject to regulation for the protection of society. *Id.* at 303-04, 60 S.Ct. at 903-04. However, any regulation must meet a three-part test:

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'

Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745 (1970) (citations omitted). [FN3] Our review focuses on part three, "excessive government entanglement" in addressing the tort liability of churches for acts committed by ministers.

> FN3. Although *Lemon* has been criticized and not always applied by the U.S. Supreme Court in freedom of religion cases, it has not been overruled and is still a viable doctrine. *See Lamb's Chapel v. Center Moriches Union Free School District,* 508 U.S. 384, 394-400, 113 S.Ct. 2141, 2148-50, 124 L.Ed.2d 352 (1993).

Excessive entanglement occurs when the courts begin to review and interpret a church's constitution, laws, and regulations. *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 709-10, 96 S.Ct. 2372, 2380-81, 49 L.Ed.2d 151 (1976), *reh. denied,* 429 U.S. 873, 97 S.Ct. 191, 50 L.Ed.2d 155 (1976). The First Amendment prohibits courts from resolving doctrinal disputes or determining whether a religious organization acted in accordance with its canons and bylaws. *Id.* at 713, 96 S.Ct. at 2382. As a result, to determine whether Konkle can be permitted to proceed on her claims of negligent hiring and respondeat superior liability, each of these causes of action must be analyzed in light of the First Amendment.

[2][3] First, we address whether Konkle's claim for negligent hiring may be curtailed by the First Amendment. Indiana recognizes a tort of negligent hiring and retention of an employee. *See Levinson v. Citizens Nat. Bank of Evansville,* 644 N.E.2d 1264, 1269 (Ind.Ct.App.1994). Indiana has adopted the Restatement (Second) of Torts § 317 as the standard with regard to this tort. *Frye v. American Painting,* 642 N.E.2d 995, 998 (Ind.Ct.App.1994). [FN4] In order to determine *455 if an employer is liable for negligent hiring or retention of an employee, the court must determine if the employer exercised reasonable care. *Id.*

> FN4. Section 317 states: A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if
> (a) the servant
> (I) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
> (ii) is using a chattel of the master, and
> (b) the master
> (I) knows or has reason to know that he has the ability to control his servant, and
> (ii) knows or should know of the necessity and opportunity for exercising such control.
> COMMENT:
>
> * * * * * *
>
> c. *Retention in employment of servants known to misconduct themselves.* There may be circumstances in which the only effective control which the master can exercise over the conduct of his servant is to discharge the servant. Therefore the master may subject himself to liability under the rule stated in this Section by retaining in his employment servants who, to his knowledge, are in the habit of misconducting themselves in a manner dangerous to others. This is true although he has without success made every other effort to prevent their misconduct by the exercise of his authority as master. Thus a railroad company which knows that the

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> crews of its coal trains are in the habit of throwing coal from the cars as they pass along tracks laid through a city street, to the danger of travelers, is subject to liability if it retains the delinquents in its employment, although it has promulgated rules strictly forbidding such practices. Restatement (Second) of Torts, § 317 (emphasis in original).

The Church Defendants argue that in order to determine if their actions were reasonable, the court must judge the church's internal policies and procedures, which are based upon scripture. They argue that this would constitute excessive entanglement. Konkle counters that the First Amendment does not preclude review of a church's operational activities when they endanger public safety. This is an issue of first impression in Indiana and other courts are divided in their approach.

The United States Supreme Court has instructed that the First Amendment does not prohibit courts from opening their doors to religious organizations. [FN5] *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969). Instead, a court can apply neutral principles of law to churches without violating the First Amendment. *Id.* The First Amendment only prohibits the court from determining underlying questions of religious doctrine and practice. *Id.*

> FN5. Scott C. Idleman, "Liberty in the Balance: Religion, Politics, and American Constitutionalism," 71 Notre Dame L.Rev. 991, 1024-5, n. 150 (1996).

[4] Applying this analysis to tort claims against religious organizations, several courts have determined that when purely secular conduct is at issue, courts can apply secular standards and hold churches responsible for the effects of their conduct on third parties. *See Moses v. Diocese of Colorado,* 863 P.2d 310, 320 (Colo.1993), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994) (claims for breach of fiduciary duty, negligent hiring and supervision, and vicarious liability are not based solely on ecclesiastical or disciplinary matters which would raise First Amendment concerns); *Erickson v. Christenson,* 99 Or.App. 104, 781 P.2d 383 (1989) (claims for breach of fiduciary duty and intentional infliction of emotional distress do not violate First Amendment); *Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988) (no First Amendment protection when claims are not rooted in religious belief). Thus, the First Amendment does not bar negligence claims against churches for actions of ministers. [FN6] *Moses, supra,* at 321.

> FN6. Chief Justice Rehnquist has previously indicated that the cases involving the court's power to act in internal church disputes are not applicable to cases involving harm to third persons. The limits on the court's power are confined to intra-church disputes. *See General Council on Finance & Administration, United Methodist Church v. California Superior Court, San Diego County,* 439 U.S. 1369, 1372, 99 S.Ct. 35, 37-38, 58 L.Ed.2d 77 (1978) (Rehnquist, Circuit Justice 1978).

Other courts, however, have rejected this conclusion, holding that the First Amendment bars a claim against a church for negligent hiring, supervision, and retention of a ***456** minister. *See Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991) ; *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780 (1995). These courts hold that even though religious conduct per se is not at issue, the court would have to determine if the Church's conduct was reasonable, requiring "interpretation of church canons and internal church policies and practices." *Pritzlaff, supra,* 533 N.W.2d at 790.

[5] Here, review of Konkle's claims does not require any inquiry into religious doctrine or practice. Henson's actions were not religiously motivated. Instead, review only requires the court to determine if the Church Defendants knew of Henson's inappropriate conduct, yet failed to protect third parties from him. The court is simply applying secular standards to secular conduct which is permissible under First Amendment standards. *Moses, supra.*

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The First Amendment does not provide an absolute freedom to act with regard to religious beliefs. *Cantwell, supra* at 303, 60 S.Ct. at 903. Instead, that freedom can be regulated for the protection of society. *Id.* The protection of society requires that religious organizations be held accountable for injuries they cause to third persons. Accordingly, we conclude that Konkle's claim is not barred by the First Amendment. To hold otherwise would be to extend the protections beyond that included within the First Amendment and cloak churches with an absolute and exclusive immunity for their actions.

[6] Second, with regard to Konkle's claim under the doctrine of respondeat superior, the Church Defendants cite no authority to support their contention that the First Amendment prohibits such claims nor does our research reveal such authority. Instead, courts apply traditional tort law to the claims and determine whether the minister was acting within the course and scope of his employment when the tort occurred. *See Tichenor v. Roman Catholic Church of New Orleans,* 32 F.3d 953, 959-60 (5th Cir.1994); *Moses, supra,* at 329-31; *Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584, 588 (1991); *Destefano, supra,* at 286-87. Thus, we conclude that Konkle's respondeat superior claims are not barred by the First Amendment.

Because the Church Defendants are not afforded First Amendment protection from Konkle's claims, we conclude that the trial court erred in granting summary judgment in their favor. However, our review is not complete because the trial court made alternate findings which can serve as the basis for summary judgment. Because we may affirm a grant of summary judgment on any theory supported by the designated evidence, we must review the other issues raised on appeal in conjunction with these alternative findings.

II.

Respondeat Superior Liability

[7][8][9] Konkle next alleges that the trial court erred in determining that the acts committed by Henson were outside the scope of his employment and thus, the Church Defendants were not vicariously liable for his actions. [FN7] Under the doctrine of respondeat superior, an employer is liable for the acts of its employees which were committed within the course and scope of their employment. *Stropes v. Heritage House Childrens Center of Shelbyville,* 547 N.E.2d 244, 247 (Ind.1989), *reh. denied.* An employee is acting within the scope of his employment when he is acting, at least in part, to further the interests of his employer. *Gomez v. Adams,* 462 N.E.2d 212, 223 (Ind.Ct.App.1984), *reh. denied, trans. denied.* Even if an employee is primarily motivated by self-serving purposes, if he was at least partially serving his *457 employer's interests, liability will accrue. *Id.* However, simply because an act could not have occurred without access to the employer's facilities does not bring it within the scope of employment. *Id.*

> FN7. Konkle also raises the issue of whether the Church Defendants' owed a non-delegable duty, under the common carrier exception to respondeat superior liability, to protect her from harm. *Stropes v. Heritage House Childrens Center of Shelbyville,* 547 N.E.2d 244, 250 (Ind.1989). However, this is a separate and distinct theory of liability from respondeat superior because it is not dependant on whether Henson was acting within the course and scope of his employment. *Id.* at 251. In her complaint, Konkle made no allegations that the Church Defendants owed her a non- delegable duty of care. Thus, the allegations of her complaint do not support this theory of liability.

[10][11][12][13] The determination of whether an employee was acting within the scope of his employment does not turn on the type of act committed. *Stropes, supra,* at 249. An employer can be vicariously liable for the criminal acts of an employee. *See id.; Gomez, supra.* The test is whether the employee's actions were at least for a time authorized. *Stropes, supra,* at 250. If there is a sufficient association between the authorized and unauthorized acts, then the unauthorized acts can be within the scope of employment. *Id.* at 249-50. If some of the employee's actions were authorized, the question of whether the unauthorized acts were within the scope of employment is one for the jury. *Id.* However, if none of the employee's acts were authorized, there is no respondeat superior liability and summary judgment is proper. *Id.; Gomez,*

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supra, at 224-25.

In *Stropes*, a hospital aide sexually assaulted a mentally retarded individual left in the hospital's care. He began by bathing the boy and changing his bedding which was in furtherance of his employer's business. However, he then sexually molested the boy, an act not authorized by his employer. The unauthorized acts were not drastically different from the authorized acts. Both involved touching the unclothed body of the patient. *Id.* at 249. The court determined that because both authorized and unauthorized acts were at issue and they were of similar character, there was a question of fact for the jury and summary judgment was not proper. *Id.* at 250.

The *Stropes* Court contrasted these facts with the situation in *Eagle Mach. Co. v. Am. Dist. Tel. Co.*, 127 Ind.App. 403, 140 N.E.2d 756 (1957), *trans. denied.* In *Eagle Machine*, two employees of a security company stole car parts from a repair shop while they were responding to an alarm. *Id.*, 140 N.E.2d at 758. The employees were not performing authorized acts when they took the car parts because they were not authorized to touch or move the inventory of the repair shop while responding to the alarm. Thus, they did not begin by performing authorized acts which melted into unauthorized acts, so the employer was not vicariously liable. *Id.* at 759.

[14][15] Here, the acts of molestation perpetrated by Henson were not acts authorized by the Pentecostal Church. Although many of the acts took place in the church building, that is not enough to create liability. *Gomez, supra,* at 223. The church constitution specifically states that acts of sexual deviance are grounds for dismissal from the ministry. In addition, there is no evidence that at the time Henson molested Konkle he was engaging in authorized acts. Konkle testified that on one occasion, Henson gave her a bible to read as he began to attempt to engage in intercourse with her. However, there is no showing that he was teaching Konkle or performing any other pastoral acts at the time. The unauthorized acts committed by Henson are not similar to his duties as a minister. Henson may have had access to Konkle because of his position as pastor, but he was not engaging in authorized acts or serving the interests of his employer at the time he molested Konkle. Thus, we conclude that summary judgment in favor of the Church Defendants on the issue of respondeat superior liability was proper. [FN8]

FN8. The Church Defendants also dispute whether Henson was an employee of the District Board or the International Church. The trial court did not make a finding concerning the employment relationship. Normally, the question of whether a master-servant relationship exists is a question of fact making summary judgment inappropriate. *Daugherty v. Fuller Engineering,* 615 N.E.2d 476, 480 (Ind.Ct.App.1993), *trans. denied.* However, because we determine that Henson's acts were outside the scope of his employment, summary judgment in favor of the Church Defendants was appropriate.

III.
Statute of Limitations

Konkle further argues that the trial court erred when it determined that the statute of limitations bars recovery against the Church Defendants with the exception of acts occurring ***458** after August 4, 1990. Konkle's only claim remaining against the Church Defendants is her claim for negligent hiring, supervision and retention of Henson. The parties agree that the applicable statute of limitations for such claims is two years. Ind.Code § 34-1-2- 2(1) (1988). The parties disagree, however, concerning when the statute of limitations began to run for Konkle's claims.

Konkle argues that the acts constitute a continuing wrong so the statute of limitations did not begin to run until November or December 1990, the date of the final incident; therefore, her action filed on October 2, 1992, was timely. The Church Defendants, on the other hand, argue that each act was a separate tort and the statute of limitations began to run when each act was committed. [FN9]

FN9. Because Konkle was less than eighteen years old when most of the conduct at issue occurred, she had until two years after her eighteenth birthday, August 2, 1990, to bring any claims for acts occurring before her eighteenth

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discovered that an injury had been sustained as a result of the tortious act of another." *Wehling, supra,* at 843. Here, the basis for Konkle's remaining claim against the Church Defendants is because of their supervision and retention of Henson. As a result, she was injured. Thus, each time Henson touched Konkle inappropriately, she was injured by the Church Defendants' breach of duty, and a new cause of action arose. Thus, the statute of limitations would begin to run once Konkle "discovered" the wrongdoing and the resulting injury.

Konkle admits that she knew the sexual molestation was occurring and that it was wrong when she was fifteen or sixteen years old. She also had been receiving counseling for her behavioral problems which were attributable to Henson's actions. Thus, she had "discovered" that the tort had occurred and the statute of limitations began running at that time for prior acts committed by Henson. Each subsequent time Henson touched Konkle inappropriately, the discovery was simultaneous to the injury and a new statute of limitations began running for that claim.

Konkle's complaint was filed on October 2, 1992. Because the applicable statute of limitations is two years, Konkle's claim against the Church Defendants for Henson's actions which occurred prior to October 2, 1990, is barred. Thus, we conclude that partial summary judgment in favor of the Church Defendants was proper and the only viable claims remaining are for acts which occurred after October 2, 1990. [FN11]

> FN11. The trial court erroneously used the date August 4, 1990, in its order rather than October 2, 1990. August 4, 1990, is the date when claims from Konkle's minority expired.

IV.

Suit by a Member of an Unincorporated Association

On cross-appeal, the Local Church argues that the trial court erred by not granting summary judgment in its favor because Konkle, as a member of an unincorporated association, is precluded from suing the association. Konkle counters that there is a genuine issue of material fact concerning whether she was a member of the Local Church which precludes summary judgment. In support of her argument, she points to her affidavit in which she stated that she did not consider herself to be a member of the Local Church or any other Pentecostal church.

[21] The general rule in Indiana is that a member of an unincorporated association is precluded from bringing suit against the association. *Calvary Baptist Church of Marion, Indiana v. Joseph,* 522 N.E.2d 371, 374 (Ind.1988).

> The theory of the general rule is that the members of an unincorporated association are engaged in a joint enterprise. The negligence of each member in the prosecution of that enterprise is imputed to each and every other member so that the member who has suffered damages through the tortious conduct of another member of the association may not recover from the association for such damage. It would be akin to the person suing himself as each member becomes both a principal and an agent as to all other members for the actions of the group itself.

Id. at 374-75.

[22] Furthermore, a party cannot create an issue of material fact by submitting an affidavit which directly contradicts prior, sworn deposition testimony. *Keesling v. Baker & Daniels,* 571 N.E.2d 562, 568 (Ind.Ct.App.1991), *trans. denied* (citing *Gaboury v. Ireland Road Grace Brethren, Inc.,* 446 N.E.2d 1310 (Ind.1983), *reh. denied*). If this were allowed, it would " 'greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.' " *Gaboury, supra,* at 1314 (quoting *Perma Research & Development Co. v. Singer Co.,* 410 F.2d 572, 578 (2d Cir.1969)).

***460** [23] Here, Konkle attempts to create a material issue of fact in her affidavit by stating that "she does not now consider herself ever to have been a member of the United Pentecostal Church in Warsaw, Indiana, nor of any other United Pentecostal churches." Record at 335. In support of her statement, she contends that she did not have the requisite understanding to fulfill her membership nor did she contribute financially to the Local Church. In addition, she states that her attendance at services and church activities declined as she grew older. The Local Church points to

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EXHIBIT 32

91 S.Ct. 2105
29 L.Ed.2d 745
(Cite as: 403 U.S. 602, 91 S.Ct. 2105)

Briefs and Other Related Documents

Supreme Court of the United States

Alton J. LEMON et al., Appellants,
v.
David H. KURTZMAN, as Superintendent as Public Instruction of the Commonwealth of Pennsylvania, et al.
John R. EARLEY et al., Appellants,
v.
John DiCENSO et al.
William P. ROBINSON, Jr., Commissioner of Education of the State of Rhode Island, et al., Appellants,
v.
John DiCENSO et al.

Nos. 89, 569, 570.

Argued March 3, 1971.
Decided June 28, 1971.

Actions challenging constitutionality of state aid to, or for the benefit of, nonpublic schools. A three-judge United States District Court for the District of Rhode Island, 316 F.Supp. 112, held the Rhode Island statute unconstitutional, while a three-judge United States District Court for the Eastern District of Pennsylvania, 310 F.Supp. 35, dismissed the complaint challenging the Pennsylvania statute, and appeals were taken. The Supreme Court, Mr. Chief Justice Burger, held that both statutes were unconstitutional under the religion clauses of the First Amendment, though promoting secular legislative purposes, since both involved excessive entanglement of state with church, where the Rhode Island program, consisting of salary supplements paid to teachers of secular subjects in nonpublic schools, operated to the benefit of parochial schools constituting integral part of the religious mission of the church and in which the recipient teachers were under religious control and discipline, and involved necessity of comprehensive and continuing state surveillance to insure obedience to restrictions as to the courses which could be taught, the materials which could be used, where the Pennsylvania program, involving reimbursement of nonpublic schools for teachers' salaries, taxtbooks, and instructional materials used in the teaching of specific secular subjects, provided direct aid to church schools and intimate and continuing relationship arising from state's postaudit power to inspect and evaluate schools' financial records and to determine which expenditures were religious and which were secular, and where both posed danger of divisive political activity and possibility of progression leading toward the establishment of state churches and state religion.

Judgment in Rhode Island cases affirmed; judgment in Pennsylvania case reversed and case remanded.

Mr. Justice Douglas filed concurring opinion in which Mr. Justice Black joined and in which Mr. Justice Marshall joined as to the Rhode Island cases; Mr. Justice Brennan filed a concurring opinion and would reverse outright the judgment in the Pennsylvania case; Mr. Justice White filed an opinion concurring in the judgment in the Pennsylvania case and dissenting in the Rhode Island cases; Mr. Justice Marshall took no part in the consideration or decision of the Pennsylvania case.

For the concurring opinion of Mr. Justice Brennan see 91 S.Ct. 2125.

For the concurring and dissenting opinion of Mr. Justice White see 91 S.Ct. 2135.

West Headnotes

[1] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Establishment clause of the First Amendment was intended to afford protection against sponsorship, financial support, and active involvement of the sovereign in religious activity. U.S.C.A.Const. Amend. 1.

[2] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

To avoid conflict with the religion clauses of the First Amendment, statute must have secular

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legislative purpose, its principal or primary effect must be one that neither advances nor inhibits religion, and it must not foster excessive government entanglement with religion. U.S.C.A.Const. Amend. 1.

[3] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[3] Schools ⇐7
345k7 Most Cited Cases

[3] Constitutional Law ⇐84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4), 92k84)

Rhode Island statutes providing salary supplement to teachers of secular subjects in nonpublic, elementary schools, though derived from a secular legislative purpose, involved impermissible degree of entanglement of the state with religion, since, inter alia, the church schools benefited by the program constituted an integral part of the religious mission of the church, since teachers under religious control and discipline, even acting with good faith, would inevitably experience great difficulty in remaining religiously neutral, and since, to avoid impermissible fostering of religion and to secure compliance with statutory requirements, comprehensive, discriminating and continuing state surveillance would be required. Gen.Laws R.I.1956, § 16- 51-1 et seq.; U.S.C.A.Const. Amend. 1.

[4] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[4] Constitutional Law ⇐84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4))

[4] Schools ⇐8
345k8 Most Cited Cases

[4] Schools ⇐7
345k7 Most Cited Cases

Pennsylvania statutes providing direct aid to nonpublic elementary and secondary schools in the form of reimbursement to those schools for teachers' salaries, textbooks, and instructional materials in connection with the teaching of specific secular subjects involved, despite the secular legislative purpose therein, excessive entanglement of the state with religion where, inter alia, recipient schools were controlled by religious organizations having the purpose of promulgating and promoting particular religious faith and conducting their operations to fulfill that purpose, and state had postaudit power to inspect and evaluate church-related schools' financial records to determine which expenditures were religious and which were secular. 24 P.S.Pa. §§ 5601- 5609; U.S.C.A.Const. Amend. 1.

[5] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[5] Schools ⇐3
345k3 Most Cited Cases

[5] Constitutional Law ⇐84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4), 92k84)

Both Pennsylvania and Rhode Island statutory programs of aid for nonpublic schools involved impermissible entanglement of church and state in that both involved need for continuing annual appropriations and likelihood of larger and larger demands, presenting hazard of divisive political activity. Gen.Laws R.I.1956, § 16-51-1 et seq.; 24 P.S.Pa. §§ 5601-5609; U.S.C.A.Const. Amend. 1.

[6] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. U.S.C.A.Const. Amend. 1.

[7] Constitutional Law ⇐84.5(4.1)
92k84.5(4.1) Most Cited Cases
(Formerly 92k84.5(4), 92k84)

Innovative programs of state aid to nonpublic schools, having self-perpetuating and self-expanding propensities, present more danger that they will, contrary to the First Amendment, lead

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to the establishment of state churches and state religion than do the long established benefits involved in tax exemption for places of religious worship. U.S.C.A.Const. Amend. 1.
**2107 *602 Syllabus [FN*]

FN* NOTE: The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Rhode Island's 1969 Salary Supplement Act provides for a 15% salary supplement to be paid to teachers in nonpublic schools at which the average perpupil expenditure on secular education is below the average in public schools. Eligible teachers must teach only courses offered in the public schools, using only materials used in the public schools, and must agree not to teach courses in religion. A three-judge court found that about 25% of the State's elementary students attended nonpublic schools, about 95% of whom attended Roman Catholic affiliated schools, and that to date about 250 teachers at Roman Catholic schools are the sole beneficiaries under the Act. The court found that the parochial school system was 'an integral part of the religious mission of the Catholic Church,' and held that the Act fostered 'excessive entanglement' between government and religion, thus violating the Establishment Clause. Pennsylvania's Nonpublic Elementary and Secondary Education Act, passed in 1968, authorizes the state Superintendent of Public Instruction to 'purpose' certain 'secular educational services' from nonpublic schools, directly reimbursing those schools solely for teachers' salaries, textbooks, and instructional materials. Reimbursement is restricted to courses in specific secular subjects, the textbooks and materials must be approved by the Superintendent, and no payment is to be made for any course containing 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' Contracts were made with schools that have more than 20% of all the students in the State, most of which were affiliated with the Roman Catholic Church. The complaint challenging the constitutionality of *603 the Act alleged that the church-affiliated schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. A three-judge court granted the State's motion to dismiss the complaint for failure to state a claim for relief, finding no violation of the Establishment or Free Exercise Clause. Held: Both statutes are unconstitutional under the Religion Clauses of the First Amendment, as the cumulative impact of the entire relationship arising under the statutes involves excessive entanglement between government and religion. Pp. 2110--2117.

(a) The entanglement in the Rhode Island program arises because of the religious activity, and purpose of the church-affiliated schools, especially with respect to children of impressionable age in the primary grades, and the dangers that a teacher under religious control and discipline poses to the separation of religious from purely secular aspect of elementary education in such schools. These factors require continuing state surveillance to ensure that the statutory restrictions are obeyed and the First Amendment otherwise respected. Furthermore, under the Act the government must inspect school records to determine what part of the expenditures is attributable to secular education as opposed to religious activity, in the event a nonpublic school's expenditures per pupil exceed the comparable figures for public schools. Pp. 2112--2115.

(b) The entanglement in the Pennsylvania program also arises from the restrictions and surveillance necessary to ensure that teachers play a strictly nonideological role and the state supervision of nonpublic school accounting procedures required to establish the cost of secular as distinguished from religious education. In addition, the Pennsylvania statute has the further defect of providing continuing financial aid directly to the church-related schools. Historically **2108 governmental control and surveillance measures tend to follow cash grant programs, and here the government's post-audit power to inspect the financial records of church-related schools creates an intimate and continuing relationship between church and state. P. 2115.

(c) Political division along religious lines was one of the evils at which the First Amendment aimed,

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and in these programs, where successive and probably permanent annual appropriations that benefit relatively few religious groups are involved, political ***604** fragmentation and divisiveness on religious lines are likely to be intensified. Pp. 2115--2116.

(d) Unlike the tax exemption for places of religious worship, upheld in Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697, which was based on a practice of 200 years, these innovative programs have self- perpetuating and self-expanding propensities which provide a warning signal against entanglement between government and religion. Pp. 2116--2117.

No. 89, 310 F.Supp. 35, reversed and remanded; Nos. 569 and 570, 316 F.Supp. 112, affirmed.

Henry W. Sawyer, III, Philadelphia, Pa., for appellants.

J. Shane Creamer, Philadelphia, Pa., for appellees Kurtzman and Sloan.

William B. Ball, Harrisburg, Pa., for appellee Schools.

***605** Charles F. Cottam, Providence, R.I., for appellants Robinson and others.

Edward Bennett Williams, Washington, D.C., for appellants Earley and others.

Leo Pfeffer, New York City, and Milton Stanzler, Providence, R.I., for appellees Joan DiCenso and others.

***606** Mr. Chief Justice BURGER delivered the opinion of the Court.

These two appeals raise questions as to Pennsylvania and Rhode Island statutes providing state aid to church-related elementary and secondary schools. Both statutes are challenged as violative of the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fourteenth Amendment.

Pennsylvania has adopted a statutory program that provides financial support to nonpublic elementary and ***607** secondary schools by way of reimbursement for the cost of teachers' salaries, textbooks, and instructional materials in specified secular subjects. Rhode Island has adopted a statute under which the State pays directly to teachers in nonpublic elementary schools a supplement of 15% of their annual salary. Under each statute state aid has been given to church-related educational institutions. We hold that both statutes are unconstitutional.

I
The Rhode Island Statute

The Rhode Island Salary Supplement Act [FN1] was enacted in 1969. It rests on the legislative finding that the quality of education available in nonpublic elementary schools has been jeopardized by the rapidly rising salaries needed to attract competent and dedicated teachers. The Act authorizes state officials to supplement the salaries of teachers of secular subjects in nonpublic elementary schools by paying directly to a teacher an amount not in excess of 15% of his current annual salary. As supplemented, however, a nonpublic school teacher's salary cannot exceed the maximum paid to teachers in the State's public schools, and the recipient must be certified by the state board of education in substantially the same manner as public school teachers.

FN1. R.I.Pen.Laws Ann. s 16--51--1 et seq. (Supp.1970).

In order to be eligible for the Rhode Island salary supplement, the recipient must teach in a nonpublic school at which ****2109** the average per-pupil expenditure on secular education is less than the average in the State's public schools during a specified period. Appellant State Commissioner of Education also requires eligible schools to submit financial data. If this information indicates a per-pupil expenditure in excess of the statutory limitation, ***608** the records of the school in question must be examined in order to assess how much of the expenditure is attributable to secular education and how much to religious activity. [FN2]

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FN2. The District Court found only one instance in which this breakdown between religious and secular expenses was necessary. The school in question was not affiliated with the Catholic church. The court found it unlikely that such determinations would be necessary with respect to Catholic schools because their heavy reliance on nuns kept their wage costs substantially below those of the public schools.

The Act also requires that teachers eligible for salary supplements must teach only those subjects that are offered in the State's public schools. They must use 'only teaching materials which are used in the public schools.' Finally, any teacher applying for a salary supplement must first agree in writing 'not to teach a course in religion for so long as or during such time as he or she receives any salary supplements' under the Act.

Appellees are citizens and taxpayers of Rhode Island. They brought this suit to have the Rhode Island Salary Supplement Act declared unconstitutional and its operation enjoined on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment. Appellants are state officials charged with administration of the Act, teachers eligible for salary supplements under the Act, and parents of children in church-related elementary schools whose teachers would receive state salary assistance.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. It found that Rhode Island's nonpublic elementary schools accommodated approximately 25% of the State's pupils. About 95% of these pupils attended schools affiliated with the Roman Catholic church. To date some 250 teachers have applied for benefits under the Act. All of them are employed by Roman Catholic schools.

*609 The court held a hearing at which extensive evidence was introduced concerning the nature of the secular instruction offered in the Roman Catholic schools whose teachers would be eligible for salary assistance under the Act. Although the court found that concern for religious values does not necessarily affect the content of secular subjects, it also found that the parochial school system was 'an integral part of the religious mission of the Catholic Church.'

The District Court concluded that the Act violated the Establishment Clause, holding that it fostered 'excessive entanglement' between government and religion. In addition two judges thought that the Act had the impermissible effect of giving 'significant aid to a religious enterprise.' 316 F.Supp. 112. We affirm.

The Pennsylvania Statute

Pennsylvania has adopted a program that has some but not all of the features of the Rhode Island program. The Pennsylvania Nonpublic Elementary and Secondary Education Act [FN3] was passed in 1968 in response to a crisis that the Pennsylvania Legislature found existed in the State's nonpublic schools due to rapidly rising costs. The statute affirmatively reflects the legislative conclusion that the State's educational goals could appropriately be fulfilled by government support of 'those purely secular educational objectives achieved through nonpublic education * * *.'

FN3. Pa.Stat.Ann., Tit. 24, ss 5601--5609 (Supp.1971).

The statute authorizes appellee state Superintendent of Public Instruction to 'purchase' specified 'secular educational services' from nonpublic schools. Under the 'contracts' authorized by the statute,**2110 the State directly reimburses nonpublic schools solely for their actual expenditures for teachers' salaries, textbooks, and instructional materials. A school seeking reimbursement must *610 maintain prescribed accounting procedures that identify the 'separate' cost of the 'secular educational service.' These accounts are subject to state audit. The funds for this program were originally derived from a new tax on horse and harness racing, but the Act is now financed by a portion of the state tax on cigarettes.

There are several significant statutory restrictions on state aid. Reimbursement is limited to courses 'presented in the curricula of the public schools.' It is further limited 'solely' to courses in the following

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'secular' subjects: mathematics, modern foreign languages, [FN4] physical science, and physical education. Textbooks and instructional materials included in the program must be approved by the state Superintendent of Public Instruction. Finally, the statute prohibits reimbursement for any course that contains 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

FN4. Latin, Hebrew, and classical Greek are excluded.

The Act went into effect on July 1, 1968, and the first reimbursement payments to schools were made on September 2, 1969. It appears that some $5 million has been expended annually under the Act. The State has now entered into contracts with some 1,181 nonpublic elementary and secondary schools with a student population of some 535,215 pupils--more than 20% of the total number of students in the State. More than 96% of these pupils attend church-related schools, and most of these schools are affiliated with the Roman Catholic church.

Appellants brought this action in the District Court to challenge the constitutionality of the Pennsylvania statute. The organizational plaintiffs-appellants are associations of persons resident in Pennsylvania declaring ***611** belief in the separation of church and state; individual plaintiffs-appellants are citizens and taxpayers of Pennsylvania. Appellant Lemon, in addition to being a citizen and a taxpayer, is a parent of a child attending public school in Pennsylvania. Lemon also alleges that he purchased a ticket at a race track and thus had paid the specific tax that supports the expenditures under the Act. Appellees are state officials who have the responsibility for administering the Act. In addition seven church-related schools are defendants-appellees.

A three-judge federal court was convened pursuant to 28 U.S.C. ss 2281, 2284. The District Court held that the individual plaintiffs-appellants had standing to challenge the Act, 310 F.Supp. 42. The organizational plaintiffs-appellants were denied standing under Flast v. Cohen, 392 U.S. 83, 99, 101, 88 S.Ct. 1942, 1952, 1953, 20 L.Ed.2d 947 (1968).

The court granted appellees' motion to dismiss the complaint for failure to state a claim for relief. [FN5] 310 F.Supp. 35. It held that the Act violated neither the Establishment nor the Free Exercise Clause, Chief Judge Hastie dissenting. We reverse.

FN5. Plaintiffs-appellants also claimed that the Act violated the Equal Protection Clause of the Fourteenth Amendment by providing state assistance to private institutions that discriminated on racial and religious grounds in their admissions and hiring policies. The court unanimously held that no plaintiff had standing to raise this claim because the complaint did not allege that the child of any plaintiff had been denied admission to any nonpublic school on racial or religious grounds. Our decision makes it unnecessary for us to reach this issue.

II

In Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), this Court upheld a state statute that reimbursed the parents of parochial school children for bus transportation ****2111 *612** expenses. There Mr. Justice Black, writing for the majority, suggested that the decision carried to 'the verge' of forbidden territory under the Religion Clauses. Id., at 16, 67 S.Ct., at 511. Candor compels acknowledgment, moreover, that we can only dimly perceive the lines of demarcation in this extraordinarily sensitive area of constitutional law.

[1] The language of the Religion Clauses of the First Amendment is at best opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be 'no law respecting an establishment of religion.' A law may be one 'respecting' the forbidden objective while falling short of its total realization. A law 'respecting' the proscribed result, that is, the establishment of religion, is not always easily

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identifiable as one violative of the Clause. A given law might not establish a state religion but nevertheless be one 'respecting' that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' Walz v. Tax Commission, 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970).

[2] Every analysis in this area must begin with consideration of the cumulative criteria developed by the Court over many years. Three such tests may be gleaned from our cases. First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, Board of Education v. Allen, 392 U.S. 236, 243, 88 S.Ct. 1923, 1926, 20 L.Ed.2d 1060 (1968); *613 finally, the statute must not foster 'an excessive government entanglement with religion.' Walz, supra, at 674, 90 S.Ct., at 1414.

Inquiry into the legislative purposes of the Pennsylvania and Rhode Island statutes affords no basis for a conclusion that the legislative intent was to advance religion. On the contrary, the statutes themselves clearly state that they are intended to enhance the quality of the secular education in all schools covered by the compulsory attendance laws. There is no reason to believe the legislatures meant anything else. A State always has a legitimate concern for maintaining minimum standards in all schools it allows to operate. As in Allen, we find nothing here that undermines the stated legislative intent; it must therefore be accorded appropriate deference.

In Allen the Court acknowledged that secular and religious teachings were not necessarily so intertwined that secular textbooks furnished to students by the State were in fact instrumental in the teaching of religion. 392 U.S., at 248, 88 S.Ct., at 1929. The legislatures of Rhode Island and Pennsylvania have concluded that secular and religious education are identifiable and separable. In the abstract we have no quarrel with this conclusion.

The two legislatures, however, have also recognized that church-related elementary and secondary schools have a significant religious mission and that a substantial portion of their activities is religiously oriented. They have therefore sought to create statutory restrictions designed to guarantee the separation between secular and religious educational functions and to ensure that State financial aid supports only the former. All these provisions are precautions taken in candid recognition that these programs approached, even if they did not intrude upon, the forbidden areas under the Religion Clauses. We need not decide whether these legislative precautions restrict the principal or primary effect of the programs to the point where they **2112 do not offend the Religion *614 Clauses, for we conclude that the cumulative impact of the entire relationship arising under the statutes in each State involves excessive entanglement between government and religion.

III

In Walz v. Tax Commission, supra, the Court upheld state tax exemptions for real property owned by religious organizations and used for religious worship. That holding, however, tended to confine rather than enlarge the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship. The objective is to prevent, as far as possible, the intrusion of either into the precincts of the other.

Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. Zorach v. Clauson, 343 U.S. 306, 312, 72 S.Ct. 679, 683, 96 L.Ed. 954 (1952); Sherbert v. Verner, 374 U.S. 398, 422, 83 S.Ct. 1790, 1803, 10 L.Ed.2d 965 (1963) (Harlan, J., dissenting). Fire inspections, building and zoning regulations, and state requirements under compulsory school-attendance laws are examples of necessary and permissible contacts. Indeed, under the statutory exemption before us in Walz, the State had a continuing burden to ascertain that the exempt property was in fact being used for religious

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worship. Judicial caveats against entanglement must recognize that the line of separation, far from being a 'wall,' is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.

This is not to suggest, however, that we are to engage in a legalistic minuet in which precise rules and forms must govern. A true minuet is a matter of pure form and style, the observance of which is itself the substantive end. Here we examine the form of the relationship for the light that it casts on the substance.

*615 In order to determine whether the government entanglement with religion is excessive, we must examine the character and purposes of the institutions that are benefited, the nature of the aid that the State provides, and the resulting relationship between the government and the religious authority. Mr. Justice Harlan, in a separate opinion in Walz, supra, echoed the classic warning as to 'programs, whose very nature is apt to entangle the state in details of administration. * * *' Id., at 695, 90 S.Ct., at 1425. Here we find that both statutes foster an impermissible degree of entanglement.

(a) Rhode Island program

[3] The District Court made extensive findings on the grave potential for excessive entanglement that inheres in the religious character and purpose of the Roman Catholic elementary schools of Rhode Island, to date the sole beneficiaries of the Rhode Island Salary Supplement Act.

The church schools involved in the program are located close to parish churches. This understandably permits convenient access for religious exercises since instruction in faith and morals is part of the total educational process. The school buildings contain identifying religious symbols such as crosses on the exterior and crucifixes, and religious paintings and statutes either in the classrooms or hallways. Although only approximately 30 minutes a day are devoted to direct religious instruction, there are religiously oriented extracurricular activities. Approximately two-thirds of the teachers in these schools are nuns of various religious orders. Their dedicated efforts provide an atmosphere in which religious instruction and religious vocations are natural and proper parts of life in such schools. Indeed, as the District Court found, the role of teaching nuns in enhancing the religious atmosphere has led the parochial school authorities*616 **2113 to attempt to maintain a one-to-one ratio between nuns and lay teachers in all schools rather than to permit some to be staffed almost entirely by lay teachers.

On the basis of these findings the District Court concluded that the parochial schools constituted 'an integral part of the religious mission of the Catholic Church.' The various characteristics of the schools make them 'a powerful vehicle for transmitting the Catholic faith to the next generation.' This process of inculcating religious doctrine is, of course, enhanced by the impressionable age of the pupils, in primary schools particularly. In short, parochial schools involve substantial religious activity and purpose. [FN6]

> FN6. See, e.g., J. Fichter, Parochial School: A Sociological Study 77--108 (1958); Giannella, Religious Liberty, Nonestablishment, and Doctrinal Development, pt. II, The Nonestablishment Principle, 81 Harv.L.Rev. 513, 574 (1968).

The substantial religious character of these church-related schools gives rise to entangling church-state relationships of the kind the Religion Clauses sought to avoid. Although the District Court found that concern for religious values did not inevitably or necessarily intrude into the content of secular subjects, the considerable religious activities of these schools led the legislature to provide for careful governmental controls and surveillance by state authorities in order to ensure that state aid supports only secular education.

The dangers and corresponding entanglements are enhanced by the particular form of aid that the Rhode Island Act provides. Our decisions from Everson to Allen have permitted the States to provide church-related schools with secular, neutral, or nonideological services, facilities, or materials. Bus transportation, school lunches, public health services, and secular textbooks supplied in common to all students were not *617 thought to offend the

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Establishment Clause. We note that the dissenters in Allen seemed chiefly concerned with the pragmatic difficulties involved in ensuring the truly secular content of the textbooks provided at state expense.

In Allen the Court refused to make assumptions, on a meager record, about the religious content of the textbooks that the State would be asked to provide. We cannot, however, refuse here to recognize that teachers have a substantially different ideological character from books. In terms of potential for involving some aspect of faith or morals in secular subjects, a textbook's content is ascertainable, but a teacher's handling of a subject is not. We cannot ignore the danger that a teacher under religious control and discipline poses to the separation of the religious from the purely secular aspects of precollege education. The conflict of functions inheres in the situation.

In our view the record shows these dangers are present to a substantial degree. The Rhode Island Roman Catholic elementary schools are under the general supervision of the Bishop of Providence and his appointed representative, the Diocesan Superintendent of Schools. In most cases, each individual parish, however, assumes the ultimate financial responsibility for the school, with the parish priest authorizing the allocation of parish funds. With only two exceptions, school principals are nuns appointed either by the Superintendent or the Mother Provincial of the order whose members staff the school. By 1969 lay teachers constituted more than a third of all teachers in the parochial elementary schools, and their number is growing. They are first interviewed by the superintendent's office and then by the school principal. The contracts are signed by the parish priest, and he retains some discretion in negotiating salary levels. Religious authority necessarily pervades the school system.

***618** The schools are governed by the standards set forth in a 'Handbook of School Regulations,' which has the force of ****2114** synodal law in the diocese. It emphasizes the role and importance of the teacher in parochial schools: 'The prime factor for the success or the failure of the school is the spirit and personality, as well as the professional competency, of the teacher * * *.' The Handbook also states that: 'Religious formation is not confined to formal courses; nor is it restricted to a single subject area.' Finally, the Handbook advises teachers to stimulate interest in religious vocations and missionary work. Given the mission of the church school, these instructions are consistent and logical.

Several teachers testified, however, that they did not inject religion into their secular classes. And the District Court found that religious values did not necessarily affect the content of the secular instruction. But what has been recounted suggests the potential if not actual hazards of this form of state aid. The teacher is employed by a religious organization, subject to the direction and discipline of religious authorities, and works in a system dedicated to rearing children in a particular faith. These controls are not lessened by the fact that most of the lay teachers are of the Catholic faith. Inevitably some of a teacher's responsibilities hover on the border between secular and religious orientation.

We need not and do not assume that teachers in parochial schools will be guilty of bad faith or any conscious design to evade the limitations imposed by the statute and the First Amendment. We simply recognize that a dedicated religious person, teaching in a school affiliated with his or her faith and operated to inculcate its tenets, will inevitably experience great difficulty in remaining religiously neutral. Doctrines and faith are not inculcated or advanced by neutrals. With the best of intentions such a teacher would find it hard to make ***619** a total separation between secular teaching and religious doctrine. What would appear to some to be essential to good citizenship might well for others border on or constitute instruction in religion. Further difficulties are inherent in the combination of religious discipline and the possibility of disagreement between teacher and religious authorities over the meaning of the statutory restrictions.

We do not assume, however, that parochial school teachers will be unsuccessful in their attempts to segregate their religious beliefs from their secular educational responsibilities. But the potential for impermissible fostering of religion is present. The Rhode Island Legislature has not, and could not, provide state aid on the basis of a mere assumption that secular teachers under religious discipline can avoid conflicts. The State must be certain, given

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the Religion Clauses, that subsidized teachers do not inculcate religion--indeed the State here has undertaken to do so. To ensure that no trespass occurs, the State has therefore carefully conditioned its aid with pervasive restrictions. An eligible recipient must teach only those courses that are offered in the public schools and use only those texts and materials that are found in the public schools. In addition the teacher must not engage in teaching any course in religion.

A comprehensive, discriminating, and continuing state surveillance will inevitably be required to ensure that these restrictions are obeyed and the First Amendment otherwise respected. Unlike a book, a teacher cannot be inspected once so as to determine the extent and intent of his or her personal beliefs and subjective acceptance of the limitations imposed by the First Amendment. These prophylactic contacts will involve excessive and enduring entanglement between state and church.

***620** There is another area of entanglement in the Rhode Island program that gives concern. The statute excludes teachers employed by nonpublic schools whose average per-pupil expenditures on secular education equal or exceed the comparable figures for public schools. In the event that the total expenditures of an otherwise eligible school exceed this norm, the program requires the government to examine ****2115** the school's records in order to determine how much of the total expenditures is attributable to secular education and how much to religious activity. This kind of state inspection and evaluation of the religious content of a religious organization is fraught with the sort of entanglement that the Constitution forbids. It is a relationship pregnant with dangers of excessive government direction of church schools and hence of churches. The Court noted 'the hazards of government supporting churches' in Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, and we cannot ignore here the danger that pervasive modern governmental power will ultimately intrude on religion and thus conflict with the Religion Clauses.

(b) Pennsylvania program

[4] The Pennsylvania statute also provides state aid to church-related schools for teachers' salaries. The complaint describes an educational system that is very similar to the one existing in Rhode Island. According to the allegations, the church-related elementary and secondary schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose. Since this complaint was dismissed for failure to state a claim for relief, we must accept these allegations as true for purposes of our review.

As we noted earlier, the very restrictions and surveillance necessary to ensure that teachers play a strictly non-ideological role give rise to entanglements between ***621** church and state. The Pennsylvania statute, like that of Rhode Island, fosters this kind of relationship. Reimbursement is not only limited to courses offered in the public schools and materials approved by state officials, but the statute excludes 'any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' In addition, schools seeking reimbursement must maintain accounting procedures that require the State to establish the cost of the secular as distinguished from the religious instruction.

The Pennsylvania statute, moreover, has the further defect of providing state financial aid directly to the church-related schools. This factor distinguishes both Everson and Allen, for in both those cases the Court was careful to point out that state aid was provided to the student and his parents--not to the church-related school. Board of Education v. Allen, supra, 392 U.S., at 243--244, 88 S.Ct., at 1926--1927; Everson v. Board of Education, supra, 330 U.S., at 18, 67 S.Ct., at 512. In Walz v. Tax Commission, supra, 397 U.S., at 675, 90 S.Ct., at 1414, the Court warned of the dangers of direct payments to religious organizations:

> 'Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards * * *.'

The history of government grants of a continuing cash subsidy indicates that such programs have almost always been accompanied by varying measures of control and surveillance. The government cash grants before us now provide no basis for predicting that comprehensive measures of

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surveillance and controls will not follow. In particular the government's post-audit power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and *622 which are secular creates an intimate and continuing relationship between church and state.

IV

[5] A broader base of entanglement of yet a different character is presented by the devisive political potential of these state programs. In a community where such a large number of pupils are served by church-related schools, it can be assumed **2116 that state assistance will entail considerable political activity. Partisans of parochial schools, understandably concerned with rising costs and sincerely dedicated to both the religious and secular educational missions of their schools, will inevitably champion this cause and promote political action to achieve their goals. Those who oppose state aid, whether for constitutional, religious, or fiscal reasons, will inevitably respond and employ all of the usual political campaign techniques to prevail. Candidates will be forced to declare and voters to choose. It would be unrealistic to ignore the fact that many people confronted with issues of this kind will find their votes aligned with their faith.

[6] Ordinarily political debate and division, however vigorous or even partisan, are normal and healthy manifestations of our democratic system of government, but political division along religious lines was one of the principal evils against which the First Amendment was intended to protect. Freund, Comment, Public Aid to Parochial Schools, 82 Harv.L.Rev. 1680, 1692 (1969). The potential divisiveness of such conflict is a threat to the normal political process. Walz v. Tax Commission, supra, at 695, 90 S.Ct., at 1424. (separate opinion of Harlan, J.). See also Board of Education v. Allen, 392 U.S., at 249, 88 S.Ct., at 1929 (Harlan, J., concurring); Abington School District v. Schempp, 374 U.S. 203, 307, 83 S.Ct. 1560, 1616, 10 L.Ed.2d 844 (1963) (Goldberg, J., concurring). To have States or communities divide on the issues presented by state aid to parochial schools would tend to confuse *623 and obscure other issues of great urgency. We have an expanding array of vexing issues, local and national, domestic and international, to debate and divide on. It conflicts with our whole history and tradition to permit questions of the Religion Clauses to assume such importance in our legislatures and in our elections that they could divert attention from the myriad issues and problems that confront every level of government. The highways of church and state relationships are not likely to be one-way streets, and the Constitution's authors sought to protect religious worship from the pervasive power of government. The history of many countries attests to the hazards of religion's intruding into the political arena or of political power intruding into the legitimate and free exercise of religious belief.

Of course, as the Court noted in Walz, '(a)dherents of particular faiths and individual churches frequently take strong positions on public issues.' Walz v. Tax Commission, supra, at 670, 90 S.Ct., at 1412. We could not expect otherwise, for religious values pervade the fabric of our national life. But in Walz we dealt with a status under state tax laws for the benefit of all religious groups. Here we are confronted with successive and very likely permanent annual appropriations that benefit relatively few religious groups. Political fragmentation and divisiveness on religious lines are thus likely to be intensified.

The potential for political divisiveness related to religious belief and practice is aggravated in these two statutory programs by the need for continuing annual appropriations and the likelihood of larger and larger demands as costs and populations grow. The Rhode Island District Court found that the parochial school system's 'monumental and deepening financial crisis' would 'inescapably' require larger annual appropriations subsidizing greater percentages of the salaries of lay teachers. Although no facts have been developed in this respect *624 in the Pennsylvania case, it appears that such pressures for expanding aid have already required the state legislature to include a portion of the state revenues from cigarette taxes in the program.

V

[7] In Walz it was argued that a tax exemption for places of religious worship would prove to be the first step in an inevitable progression leading to the **2117 establishment of state churches and state

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religion. That claim could not stand up against more than 200 years of virtually universal practice imbedded in our colonial experience and continuing into the present.

The progression argument, however, is more persuasive here. We have no long history of state aid to church-related educational institutions comparable to 200 years of tax exemption for churches. Indeed, the state programs before us today represent something of an innovation. We have already noted that modern governmental programs have self-perpetuating and self-expanding propensities. These internal pressures are only enhanced when the schemes involve institutions whose legitimate needs are growing and whose interests have substantial political support. Nor can we fail to see that in constitutional adjudication some steps, which when taken were thought to approach 'the verge,' have become the platform for yet further steps. A certain momentum develops in constitutional theory and it can be a 'downhill thrust' easily set in motion but difficult to retard or stop. Development by momentum is not invariably bad; indeed, it is the way the common law has grown, but it is a force to be recognized and reckoned with. The dangers are increased by the difficulty of perceiving in advance exactly where the 'verge' of the precipice lies. As well as constituting an independent evil against which the Religion Clauses were intended to protect, involvement ***625** or entanglement between government and religion serves as a warning signal.

Finally, nothing we have said can be construed to disparage the role of church-related elementary and secondary schools in our national life. Their contribution has been and is enormous. Nor do we ignore their economic plight in a period of rising costs and expanding need. Taxpayers generally have been spared vast sums by the maintenance of these educational institutions by religious organizations, largely by the gifts of faithful adherents.

The merit and benefits of these schools, however, are not the issue before us in these cases. The sole question is whether state aid to these schools can be squared with the dictates of the Religion Clauses. Under our system the choice has been made that government is to be entirely excluded from the area of religious instruction and churches excluded from the affairs of government. The Constitution decrees that religion must be a private matter for the individual, the family, and the institutions of private choice, and that while some involvement and entanglement are inevitable, lines must be drawn.

The judgment of the Rhode Island District Court in No. 569 and No. 570 is affirmed. The judgment of the Pennsylvania District Court in No. 89 is reversed, and the case is remanded for further proceedings consistent with this opinion.

Mr. Justice MARSHALL took no part in the consideration or decision of No. 89.

Mr. Justice DOUGLAS, whom Mr. Justice BLACK joins, concurring.

While I join the opinion of the Court, I have expressed at some length my views as to the rationale of today's decision in these three cases.

***626** They involve two different statutory schemes for providing aid to parochial schools. Lemon deals with the Pennsylvania Nonpublic Elementary and Secondary Education Act, Laws 1968, Act No. 109. By its terms the Pennsylvania Act allows the State to provide funds directly to private schools to purchase 'secular educational service' such as teachers' salaries, textbooks, and educational materials. Pa.Stat.Ann., Tit. 24, s 5604 (Supp.1971). Reimbursement for these services may be made only for courses in mathematics, modern foreign languages, physical science, and physical education. Reimbursement is prohibited for any course containing subject matter 'expressing religious teaching, or the morals or forms of worship of any sect.' s 5603 (Supp.1971). To qualify, a school must demonstrate that its pupils achieve a satisfactory level of performance in standardized tests approved by the Superintendent of Public Instruction, ****2118** and that the textbooks and other instructional materials used in these courses have been approved by the Superintendent of Public Instruction. The three-judge District Court below upheld this statute against the argument that it violates the Establishment Clause. We noted probable jurisdiction. 397 U.S. 1034, 91 S.Ct. 1354, 25 L.Ed.2d 646.

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**2120 While the evolution of the public school system in this country marked an escape from denominational control and was therefore admirable as seen through the eyes of those who think like Madison and Jefferson, it has disadvantages. The main one is that a state system may attempt to mold all students alike according to the views of the dominant group and to discourage the emergence of individual idiosyncrasies.

Sectarian education, however, does not remedy that condition. The advantages of sectarian education relate solely to religious or doctrinal matters. They give the *631 church the opportunity to indoctrinate its creed delicately and indirectly, or massively through doctrinal courses.

Many nations follow that course: Moslem nations teach the Koran in their schools; Sweden vests its elementary education in the parish; Newfoundland puts its school system under three superintendents--one from the Church of England, one from the Catholic church, one from the United Church. In Ireland the public schools are under denominational managership--Catholic, Episcopalian, Presbyterian, and Hebrew.

England puts sectarian schools under the umbrella of its school system. It finances sectarian education; it exerts control by prescribing standards; it requires some free scholarships; it provides nondenominational membership on the board of directors. [FN15]

FN15. S. Curtis, History of Education in Great Britain 316--383 (5th ed. 1963); W. Alexander, Education in England, c II (2d ed. 1964).

The British system is, in other words, one of surveillance over sectarian schools. We too have surveillance over sectarian schools but only to the extent of making sure that minimum educational standards are met, viz., competent teachers, accreditation of the school for diplomas, the number of hours of work and credits allowed, and so on.

But we have never faced, until recently, the problem of policing sectarian schools. Any surveillance to date has been minor and has related only to the consistently unchallenged matters of accreditation of the sectarian school in the State's school system. [FN16]

FN16. See Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070; Meyer v. Nebraska, 262 U.S. 390, 402, 43 S.Ct. 625, 627, 67 L.Ed. 1042.

The Rhode Island Act allows a supplementary salary to a teacher in a sectarian school if he or she 'does not teach a course in religion.'

*632 The Pennsylvania Act provides for state financing of instruction in mathematics, modern foreign languages, physical science, and physical education, provided that the instruction in those courses 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.'

Public financial support of parochial schools puts those schools under disabilities with which they were not previously burdened. For, as we held in Cooper v. Aaron, 358 U.S. 1, 19, 78 S.Ct. 1401, 1410, 3 L.Ed.2d 5, governmental activities relating to schools 'must be exercised consistently with federal constitutional requirements.' There we were concerned with equal protection; here we are faced with issues of Establishment of religion and its Free Exercise as those concepts are used in the First Amendment.

Where the governmental activity is the financing of the private school, the various limitations or restraints imposed by the Constitution on state governments come into play. Thus, Arkansas, as part of its attempt to avoid the consequences of Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, withdrew its financial support from some public schools and sent the funds instead to private schools. That state action was held to violate the Equal Protection Clause. Aaron v. McKinley, D.C., 173 F.Supp. 944, 952. We affirmed, sub nom. **2121Faubus v. Aaron, 361 U.S. 197, 80 S.Ct. 291, 4 L.Ed.2d 237. Louisiana tried a like tactic and it too was invalidated. Poindexter v. Louisiana Financial Assistance Commission, D.C., 296 F.Supp. 686. Again we

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affirmed. Louisiana Ed. Commission for Needy Children v. Poindexter, 393 U.S. 17, 89 S.Ct. 48, 21 L.Ed.2d 16. Whatever might be the result in case of grants to students, [FN17] it is clear that once *633 one of the States finances a private school, it is duty-bound to make certain that the school stays within secular bounds and does not use the public funds to promote sectarian causes.

FN17. Grants to students in the context of the problems of desegregated public schools have without exception been stricken down as tools of the forbidden discrimination. See Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256; Hall v. St. Helena Parish School Bd., D.C., 197 F.Supp. 649, aff'd, 368 U.S. 515, 82 S.Ct. 529, 7 L.Ed.2d 521; Lee v. Macon County Bd., D.C., 267 F.Supp. 458, aff'd sub nom. Wallace v. United States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed.2d 422; Poindexter v. Louisiana Financial Assistance Commission, D.C., 275 F.Supp. 833, aff'd, 389 U.S. 571, 88 S.Ct. 693, 19 L.Ed.2d 780; Brown v. South Carolina State Bd., 296 F.Supp. 199, aff'd, 393 U.S. 222, 89 S.Ct. 449, 21 L.Ed.2d 391; Coffey v. State Educ. Finance Commission, D.C., 296 F.Supp. 1389; Lee v. Macon County Bd., D.C., 231 F.Supp. 743.

The government may, of course, finance a hospital though it is run by a religious order, provided it is open to people of all races and creeds. Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168. The government itself could enter the hospital business; and it would, of course, make no difference if its agents who ran its hospitals were Catholics, Methodists, agnostics, or whatnot. For the hospital is not indulging in religious instruction or guidance or indoctrination. As Mr. Justice Jackson said in Everson v. Board of Education, 330 U.S. 1, 26, 67 S.Ct. 504, 516, 91 L.Ed. 711 (dissenting):

'(Each State has) great latitude in deciding for itself, in the light of its own conditions, what shall be public purposes in its scheme of things. It may socialize utilities and economic enterprises and make taxpayers' business out of what conventionally had been private business. It may make public business of individual welfare, health, education, entertainment or security. But it cannot make public business of religious worship or instruction, or of attendance at religious institutions of any character.'

The reason is that given by Madison in his Remonstrance: [FN18]

FN18. Remonstrance 3. The Memorial and Remonstrance Against Religious Assessments has been reproduced in appendices to the opinion of Rutledge, J., in Everson, 330 U.S., at 63, 67 S.Ct., at 534, and to that of Douglas, J., in Walz, 397 U.S., at 719, 90 S.Ct., at 1437.

'(T)he same authority which can force a citizen to contribute three pence only of his property for *634 the support of any one establishment, may force him to conform to any other establishment * * *.'

When Madison in his Remonstrance attacked a taxing measure to support religious activities, he advanced a series of reasons for opposing it. One that is extremely relevant here was phrased as follows: [FN19] '(I)t will destroy that moderation and harmony which the forbearance of our laws to intermeddle with Religion, has produced amongst its several sects.' Intermeddling, to use Madison's word, or 'entanglement,' to use what was said in Watz, has two aspects. The intrusion of government into religious schools through grants, supervision, or surveillance may result in establishment of religion in the constitutional sense when what the State does enthrones a particular sect for overt or subtle propagation of its faith. Those activities of the State may also intrude on the Free Exercise Clause by depriving a teacher, under threats of reprisals, **2122 of the right to give sectarian construction or interpretation of, say, history and literature, or to use the teaching of such subjects to inculcate a religious creed or dogma.

FN19. Remonstrance 11.

Under these laws there will be vast governmental

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suppression, surveillance, or meddling in church affairs. As I indicated in Tilton v. Richardson, 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790, decided this day, school prayers, the daily routine of parochial schools, must go if our decision in Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601, is honored. If it is not honored, then the state has established a religious sect. Elimination of prayers is only part of the problem. The curriculum presents subtle and difficult problems. The constitutional mandate can in part be carried out by censoring the curricula. What is palpably a sectarian course can be marked for *635 deletion. But the problem only starts there. Sectarian instruction, in which, of course, a State may not indulge, can take place in a course on Shakespeare or in one on mathematics. No matters what the curriculum offers, the question is, what is taught? We deal not with evil teachers but with zealous ones who may use any opportunity to indoctrinate a class. [FN20]

> FN20. 'In the parochial schools Roman Catholic indoctrination is included in every subject. History, literature, geography, civics, and science are given a Roman Catholic slant. The whole education of the child is filled with propaganda. That, of course, is the very purpose of such schools, the very reason for going to all of the work and expense of maintaining a dual school system. Their purpose is not so much to educate, but to indoctrinate and train, not to teach Scripture truths and Americanism, but to make loyal Roman Catholics. The children are regimented, and are told what to wear, what to do, and what to think.' L. Boettner, Roman Catholicism 360 (1962).

It is well known that everything taught in most parochial schools is taught with the ultimate goal of religious education in mind. Rev. Joseph H. Fichter, S.J., stated in Parochial School: A Sociological Study 86 (1958):

> 'It is a commonplace observation that in the parochial school religion permeates the whole curriculum, and is not confined to a single half-hour period of the day. Even arithmetic can be used as an instrument of pious thoughts, as in the case of the teacher who gave this problem to her class: 'If it takes forty thousand priests and a hundred and forty thousand sisters to care for forty million Catholics in the United States, how many more priests and sisters will be needed to convert and care for the hundred million non-Catholics in the United States?"

One can imagine what a religious zealot, as contrasted to a civil libertarian, can do with the Reformation *636 or with the Inquisition. Much history can be given the gloss of a particular religion. I would think that policing these grants to detect sectarian instruction would be insufferable to religious partisans and would breed division and dissension between church and state.

This problem looms large where the church controls the hiring and firing of teachers:

> '(I)n the public school the selection of a faculty and the administration of the school usually rests with a school board which is subject to election and recall by the voters, but in the parochial school the selection of a faculty and the administration of the school is in the hands of the bishop alone, and usually is administered through the local priest. If a faculty member in the public school believes that he has been treated unjustly in being disciplined or dismissed, he can seek redress through the civil court and he is guaranteed a hearing. But if a faculty member in a parochial school is disciplined or dismissed he has no recourse whatsoever. The word of the bishop or priest is final, even without explanation if he so chooses. The tax payers have a voice in the way their money is used in the **2123 public school, but the people who support a parochial school have no voice at all in such affairs.' L. Boettner, Roman Catholicism 375 (1962).

Board of Education v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060, dealt only with textbooks. Even so, some had difficulty giving approval. Yet books can be easily examined independently of other aspects of the teaching process. In the present cases we deal with the totality of instruction destined to be sectarian, at least in part, if the religious character of the school is to be maintained. A school which operates to commingle religion with other instruction plainly cannot completely secularize its instruction. *637 Parochial schools, in large measure, do not accept the assumption that secular subjects should be

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unrelated to religious teaching.

Lemon involves a state statute that prescribes that courses in mathematics, modern foreign languages, physical science, and physical education 'shall not include any subject matter expressing religious teaching, or the morals or forms of worship of any sect.' The subtleties involved in applying this standard are obvious. It places the State astride a sectarian school and gives it power to dictate what is or is not secular, what is or is not religious. I can think of no more disrupting influence apt to promote rancor and ill-will between church and state than this kind of surveillance and control. They are the very opposite of the 'moderation and harmony' between church and state which Madison thought was the aim and purpose of the Establishment Clause.

The DiCenso cases have all the vices which are in Lemon, because the supplementary salary payable to the teacher is conditioned on his or her not teaching 'a course in religion.'

Moreover the DiCenso cases reveal another, but related, knotty problem presented when church and state launch one of these educational programs. The Bishop of Rhode Island has a Handbook of School Regulations for the Diocese of Providence. [FN21]

> FN21. It was said on oral argument that the handbook shown as an exhibit in the record had been superseded. The provisions hereinafter quoted are from the handbook as it reads after all the deletions to which we were referred.

The school board supervises 'the education, both spiritual and secular, in the parochial schools and diocesan high schools.'

The superintendent is an agent of the bishop and he interprets and makes 'effective state and diocesan educational directives.'

*638 The pastors visit the schools and 'give their assistance in promoting spiritual and intellectual discipline.'

Community supervisors 'assist the teacher in the problems of instruction' and these duties are:

'I. To become well enough acquainted with the teachers of their communities so as to be able to advise the community superiors on matters of placement and reassignment.

II. To act as liaison between the provincialate and the religious teacher in the school.

'III. To cooperate with the superintendent by studying the diocesan school regulations and to encourage the teachers of their community to observe these regulations. 'IV. To avoid giving any orders or directions to the teachers of their community that may be in conflict with diocesan regulations or policy regarding curriculum, testing, textbooks, method, or administrative matters.

'V. To refer questions concerning school administration beyond the scope of their own authority to the proper diocesan school authorities, namely, the superintendent of schools or the pastor.'

**2124 The length of the school day includes Mass:

'A full day session for Catholic schools at the elementary level consists of five and one-half hours, exclusive of lunch and Mass, [FN22] but inclusive of recess for pupils in grades 1--3.'

> FN22. 'The use of school time to participate in the Holy Sacrifice of the Mass on the feasts of All Saints, Ascension, and the patronal saint of the parish or school, as well as during the 40 Hours Devotion, is proper and commendable.'

A course of study or syllabus prescribed for an elementary or secondary school is 'mandatory.'

*639 Religious instruction is provided as follows:

'A. Systematic religious instructions must be provided in all schools of the diocese.

'B. Modern catechetics requires a teacher with unusual aptitudes, specialized training, and such unction of the spirit that his words possess the force of a personal call. He should be so filled with his subject that he can freely improvize in discussion, dramatization, drawing, song, and

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prayer. A teacher so gifted and so permeated by the message of the Gospel is rare. Perhaps no teacher in a given school attains that ideal. But some teachers come nearer it than others. If our pupils are to hear the Good News so that their minds are enlightened and their hearts respond to the love of God and His Christ, if they are to be formed into vital, twentieth-century Christians, they should receive their religious instructions only from the very best teachers.

'C. Inasmuch as the textbooks employed in religious instruction above the fifth grade require a high degree of catechetical preparation, religion should be a departmentalized subject in grade six through twelve.'

Religious activities are provided, through observance of specified holy days and participation in Mass.

'Religious formation' is not restricted to courses but is achieved 'through the example of the faculty, the tone of the school * * * and religious activities.'

No unauthorized priest may address the students. 'Retreats and days of recollection form an integral part of our religious program in the Catholic schools.'

Religious factors are used in the selection of students:

'Although wealth should never serve as a criterion for accepting a pupil into a Catholic school, all other ***640** things being equal, it would seem fair to give preference to a child whose parents support the parish. Regular use of the budget, rather than the size of the contributions, would appear equitable. It indicates whether parents regularly attend Mass.'

These are only highlights of the handbook. But they indicate how pervasive is the religious control over the school and how remote this type of school is from the secular school. Public funds supporting that structure are used to perpetuate a doctrine and creed in innumerable and in pervasive ways. Those who man these schools are good people, zealous people, dedicated people. But they are dedicated to ideas that the Framers of our Constitution placed beyond the reach of government.

If the government closed its eyes to the manner in which these grants are actually used it would be allowing public funds to promote sectarian education. If it did not close its eyes but undertook the surveillance needed, it would, I fear, intermeddle in parochial affairs in a way that would breed only rancor and dissension.

We have announced over and over again that the use of taxpayers' money to support parochial schools violates the First Amendment, applicable to the States by virtue of the Fourteenth.

****2125** We said in unequivocal words in Everson v. Board of Education, 330 U.S. 1, 16, 67 S.Ct. 504, 511, 91 L.Ed. 711, 'No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion.' We reiterated the same idea in Zorach v. Clauson, 343 U.S. 306, 314, 72 S.Ct. 679, 684, 96 L.Ed. 954, and in McGowan v. Maryland, 366 U.S. 420, 443, 81 S.Ct. 1101, 1114, 6 L.Ed.2d 393, and in Torcaso v. Watkins, 367 U.S. 488, 493, 81 S.Ct. 1680, 1682, 6 L.Ed.2d 982. We repeated the same idea in McCollum v. Board of Education, 333 U.S. 203, 210, 68 S.Ct. 461, 464, 92 L.Ed. 648, and added that a State's ***641** tax-supported public schools could not be used 'for the dissemination of religious doctrines' nor could a State provide the church 'pupils for their religious classes through use of the state's compulsory public school machinery.' Id., at 212, 68 S.Ct., at 466.

Yet in spite of this long and consistent history there are those who have the courage to announce that a State may nonetheless finance the secular part of a sectarian school's educational program. That, however, makes a grave constitutional decision turn merely on cost accounting and bookkeeping entries. A history class, a literature class, or a science class in a parochial school is not a separate institute; it is part of the organic whole which the State subsidizes. The funds are used in these cases to pay or help pay the salaries of teachers in parochial schools; and the presence of teachers is critical to the essential purpose of the parochial school, viz., to advance the religious endeavors of the particular church. It matters not that the teacher receiving taxpayers' money only teaches religion a fraction of the time. Nor does it matter that he or she teaches no religion. The school is an organism living on one budget. What the taxpayers give for salaries of

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those who teach only the humanities or science without any trace of proseletyzing enables the school to use all of its own funds for religious training. As Judge Coffin said, 316 F.Supp. 112, 120, we would be blind to realities if we let 'sophisticated bookkeeping' sanction 'almost total subsidy of a religious institution by assigning the bulk of the institution's expenses to 'secular' activities.' And sophisticated attempts to avoid the Constitution are just as invalid as simple-minded ones. Lane v. Wilson, 307 U.S. 268, 275, 59 S.Ct. 872, 876, 83 L.Ed. 1281.

In my view the taxpayers' forced contribution to the ***642** parochial schools in the present cases violates the First Amendment.

Mr. Justice MARSHALL, who took no part in the consideration or decision of No. 89, see ante, p. 2117, while intimating no view as to the continuing vitality of Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), concurs in MR. JUSTICE DOUGLAS' opinion covering Nos. 569 and 570.

91 S.Ct. 2105, 403 U.S. 602, 29 L.Ed.2d 745

Briefs and Other Related Documents (Back to top)

• 1971 WL 126395 (Appellate Brief) Motion for Leave to File Brief Amicus Curiae and Brief for Amicus Curiae National Association of Laymen (Jan. 1971)

• 1970 WL 116878 (Appellate Brief) Reply Brief for Appellants (Nov. 06, 1970)

• 1970 WL 116843 (Appellate Brief) Brief for the United States as Amicus Curiae (Oct. 30, 1970)

• 1970 WL 116845 (Appellate Brief) Brief of Polish American Congress, Inc., Order of Sons of Italy in America, Ukrainian National Association, Inc., League of United Latin American Citizens, Slovak Catholic Federation of America, Croatian Catholic Union of U.S.A., American Slovenian Catholic Union, Lithuanian Roman Catholic Alliance of America, Hungarian Catholic League of America, Inc., Ancient Order of Hibernians in America, Inc., Greek Catholic Union of the U.S.A., Union Saint-Jean-Baptiste, Catholic Central Union of America, (Aug. 24, 1970)

• 1970 WL 116844 (Appellate Brief) Brief of the City of Pittsburgh, Amicus Curiae (Aug. 22, 1970)

• 1970 WL 116846 (Appellate Brief) Brief of National Association of Independent Schools, Inc., Amicus Curiae (Aug. 18, 1970)

• 1970 WL 116838 (Appellate Brief) Brief for the National Catholic Educational Association, the National Association of Episcopal Schools, the National Union of Christian Schools, the National Conference of Yeshiva Principals, and the Lutheran Education Association, Amici Curiae (Aug. 14, 1970)

• 1970 WL 116841 (Appellate Brief) Brief of City of Philadelphia, Amicus Curiae (Aug. 14, 1970)

• 1970 WL 116847 (Appellate Brief) Brief for Amicus Curiae Citizens for Educational Freedom (Aug. 14, 1970)

• 1970 WL 116849 (Appellate Brief) Brief of Amicus Curiae City of Erie, Pennsylvania (Aug. 14, 1970)

• 1970 WL 116837 (Appellate Brief) Brief of the Pennsylvania State AFL-CIO, as Amicus Curiae (Aug. 10, 1970)

• 1970 WL 116839 (Appellate Brief) Brief of the Long Island Conference of Religious Elementary and Secondary School Administrators (Licressa), Amicus Curiae in Support of Defendants-Appellees and Intervener Defendant-Appellee (Aug. 10, 1970)

• 1970 WL 116850 (Appellate Brief) Brief for Amicus Curiae Attorney General of Ohio Cleveland, Ohio Public School District Cincinnati, Ohio Public School District Youngstown, Ohio Public School District (Aug. 10, 1970)

• 1970 WL 116851 (Appellate Brief) Brief of the School District of Philadelphia, Amicus Curiae (Aug. 10, 1970)

• 1970 WL 116870 (Appellate Brief) Brief for Appellee Pennsylvania Association of Independent Schools (Aug. 10, 1970)

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• 1970 WL 116928 (Appellate Brief) Brief for Appellee Schools (Aug. 10, 1970)

• 1970 WL 116852 (Appellate Brief) Brief for Appellees, Kurtzman and Sloan (Aug. 05, 1970)

• 1970 WL 116848 (Appellate Brief) Brief of American Association of School Administrators, American Vocational Association, Association for Supervision and Curriculum Development, Horace Mann League of the United States, National Association of Elementary School Principals, National E ducation Association, National School Boards Association, and Rural Education Association, Amici Curiae (Jul. 10, 1970)

• 1970 WL 116840 (Appellate Brief) Brief of American Jewish Committee, American Jewish Congress, Anti-Defamation League of B'Nai B'rith, Central Conference of American Rabbis, National Council of Jewish Women and Union of American Hebrew Congregations, Amici Curiae (Jun. 27, 1970)

• 1970 WL 116836 (Appellate Brief) Brief of Protestants and Other Americans United for Separation of Church and State as Amicus Curiae (Jun. 04, 1970)

• 1970 WL 116871 (Appellate Brief) Brief for Appellants (Jun. 04, 1970)

END OF DOCUMENT

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91 S.Ct. 2125 (Mem)
29 L.Ed.2d 745
(Cite as: 403 U.S. 602, 91 S.Ct. 2125)

Supreme Court of the United States

Alton J. LEMON et al., Appellants,
v.
David H. KURTZMAN, as Superintendent of Public Instruction of the Commonwealth of Pennsylvania, et al.
John R. EARLEY et al., Appellants,
v.
Joan DiCENSO et al.
William P. ROBINSON, Jr., Commissioner of Education of the State of Rhode Island, et al., Appellants,
v.
Joan DiCENSO et al.

Nos. 89, 569, 570. [FN*]

FN* This opinion also applies to No. 153, Tilton et al. v. Richardson, Secretary of Health, Education, and Welfare, et al., 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed. 790.

June 28, 1971

For opinions of the Court see 91 S.Ct. 2091, 2105.

****2126 *642** Mr. Justice BRENNAN.

I agree that the judgments in Nos. 569 and 570 must be affirmed. In my view the judgment in No. 89 must be reversed outright. I dissent in No. 153 insofar as the plurality opinion and the opinion of my Brother WHITE sustain the constitutionality, as applied to sectarian institutions, of the Federal Higher Education Facilities Act of 1963, as amended, 77 Stat. 363, 20 U.S.C. s 711 et seq. (1964 ed. and Supp. V). In my view that Act is unconstitutional insofar as it authorizes grants of federal tax monies to sectarian institutions, but is unconstitutional only to that extent. I therefore think that our remand of the case should be limited to the direction of a hearing to determine whether the four institutional appellees here are sectarian institutions.

I continue to adhere to the view that to give concrete meaning to the Establishment lishment Clause

> 'the line we must draw between the permissible and the impermissible is one which accords with history and faithfully reflects the understanding of the Founding Fathers. It is a line which the Court has consistently sought to mark in its decisions expounding the religious guarantees of the First ***643** Amendment. What the Framers meant to foreclose, and what our decisions under the Establishment Clause have forbidden, are those involvements of religious with secular institutions which (a) serve the essentially religious activities of religious institutions; (b) employ the organs of government for essentially religious purposes; or (c) use essentially religious means to serve governmental ends, where secular means would suffice. When the secular and religious institutions become involved in such a manner, there inhere in the relationship precisely those dangers--as much to church as to state--which the Framers feared would subvert religious liberty and the strength of a system of secular government.' Abington School District v. Schempp, 374 U.S. 203, 294--295, 83 S.Ct. 1560, 1609--1610, 10 L.Ed.2d 844 (1963) (concurring opinion); Walz v. Tax Commission, 397 U.S. 664, 680--681, 90 S.Ct. 1409, 1417--1418, 25 L.Ed.2d 697 (1970) (concurring opinion).

The common feature of all three statutes before us is the provision of a direct subsidy from public funds for activities carried on by sectarian educational institutions. We have sustained the reimbursement of parents for bus fares of students under a scheme applicable to both public and nonpublic schools, Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947). We have also sustained the loan of textbooks in secular subjects to students of both public and nonpublic schools, Board of Education of Central School Dist. No. 1 v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060 (1968). See also Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168 (1899).

The statutory schemes before us, however, have features not present in either the Everson or Allen schemes. For example, the reimbursement or the loan of books ended government involvement in Everson and Annen. In contrast each of the schemes here exacts a promise in some form that the subsidy will not be used to finance ***644** courses in religious

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subjects--promises that must be and are policed to assure compliance. Again, although the federal subsidy, similar to the Everson and Allen subsidies, is available to both public and nonpublic colleges and universities, the Rhode Island and Pennsylvania subsidies are restricted to nonpublic schools, and for practical purposes to Roman Catholic parochial schools. [FN1] **2127 These and other features I shall mention mean for me that Everson and Allen do not control these cases. Rather, the history of public subsidy of sectarian schools, and the purposes and operation of these particular statutes must be examined to determine whether the statutes breach the Establishment Clause. Walz v. Tax Commission, supra, 397 U.S., at 681, 90 S.Ct., at 1417 (concurring opinion).

FN1. At the time of trial, 95% of the elementary school children in private schools in Rhode Island attended Roman Catholic schools. Only nonpublic school teachers could receive the subsidy and then only if they taught in schools in which the average per pupil expenditure on secular education did not equal or exceed the average for the State's public schools. Some 250 of the 342 lay teachers employed in Rhode Island Roman Catholic schools had applied for and been declared eligible for the subsidy. To receive it the teacher must (1) have a state teaching certificate; (2) teach exclusively secular subjects taught in the State's public schools; (3) use only teaching materials approved for use in the public schools; (4) not teach religion; and (5) promise in writing not to teach a course in religion while receiving the salary supplement.
Unlike the Rhode Island case, the Pennsylvania case lacks a factual record since the complaint was dismissed on motion. We must therefore decide the constitutional challenge as addressed to the face of the Pennsylvania statute. Appellants allege that the nonpublic schools are segregated in Pennsylvania by race and religion and that the Act perpetrates and promotes the segregation of races 'with the ultimate result of promoting two school systems in Pennsylvania--a public school system predominantly black, poor and inferior and a private, subsidized school system predominantly white, affluent and superior.' Brief for Appellants Lemon et al. 9. The District Court held that appellants lacked standing to assert this equal protection claim. In my view this was plain error.

*645 I

In sharp contrast to the 'undeviating acceptance given religious tax exemptions from our earliest days as a Nation,' ibid., subsidy of sectarian educational institutions became embroiled in bitter controversies very soon after the Nation was formed. Public education was, of course, virtually nonexistent when the Constitution was adopted. Colonial Massachusetts in 1647 had directed towns to establish schools, Benjamin Franklin in 1749 proposed a Philadelphia Academy, and Jefferson labored to establish a public school system in Virginia. [FN2] But these were the exceptions. Education in the Colonies was overwhelmingly a private enterprise, usually carried on as a denominational activity by the dominant Protestant sects. In point of fact, government generally looked to the church to provide education, and often contributed support through donations of land and money. E. Cubberley, Public Education in the United States 171 (1919).

FN2. E. Cubberley, Public Education in the United States 17 (1919); Abington School District v. Schempp, 374 U.S. 203, 238 n. 7, 83 S.Ct. 1560, 1580, 10 L.Ed.2d 844 and authorities cited therein (Brennan, J., concurring).

Nor was there substantial change in the years immediately following ratification of the Constitution and the Bill of Rights. Schools continued to be local and, in the main, denominational institutions. [FN3] But the demand for public education soon emerged. The evolution of the struggle in New York City is illustrative. [FN4] In 1786, the first New York State Legislature ordered that one section in each township be set aside for the 'gospel and schools.'

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With no public schools, various private agencies and churches operated 'charity schools' for the poor of New *646 York City and received money from the state common school fund. The forerunner of the city's public schools was organized in 1805 when DeWitt Clinton founded 'The Society for Establishment of a Free School in the City of New York for the Education of such poor Children as do not belong to or are not provided for by any Religious Society.' The State and city aided the society, and it built many schools. Gradually, however, competition and bickering among the Free School Society and the various church schools developed over the apportionment of state school funds. As a result, in 1825, the legislature transferred to the city council the responsibility for distributing New York City's share **2128 of the state funds. The council stopped funding religious societies which operated 16 sectarian schools but continued supporting schools connected with the Protestant Orphan Asylum Society. Thereafter, in 1831, the Catholic Orphan Asylum Society demanded and received public funds to operate its schools but a request of Methodists for funds for the same purpose was denied. Nine years later, the Catholics enlarged their request for public monies to include all parochial schools, contending that the council was subsidizing sectarian books and instruction of the Public School Society, which Clinton's Free School Society had become. The city's Scotch Presbyterian and Jewish communities immediately followed with requests for funds to finance their schools. Although the Public School Society undertook to revise its texts to meet the objections, in 1842, the state legislature closed the bitter controversy by enacting a law that established a City Board of Education to set up free public schools, prohibited the distribution of public funds to sectarian schools, and prohibited the teaching of sectarian doctrine in any public school.

FN3. C. Antieau, A. Downey, E. Roberts, Freedom from Federal Establishment 174 (1964).

FN4. B. Confrey, Secularism in American Education: Its History 127-- 129 (1931).

The Nation's rapidly developing religious heterogeneity, the tide of Jacksonian democracy, and growing *647 urbanization soon led to widespread demands throughout the States for secular public education. At the same time strong opposition developed to use of the States' taxing powers to support private sectarian schools. [FN5] Although the controversy over religious exercises in the public schools continued into this century, Schempp, 374 U.S., at 268--277, 83 S.Ct., at 1596--1601 (Brennan, J., concurring), the opponents of subsidy to sectarian schools had largely won their fight by 1900. In fact, after 1840, no efforts of sectarian schools to obtain a share of public school funds succeeded. Cubberley, supra, at 179. Between 1840 and 1875, 19 States added provisions to their constitutions iprohibiting the use of public school funds to aid sectarian schools, id., at 180, and by 1900, 16 more States had added similar provisions. In fact, no State admitted to the Union after 1858, except West Virginia, omitted such provision from its first constitution. Ibid. Today fewer than a half-dozen States omit such provisions from their constitutions. [FN6] *648 And in 1897, **2129 Congress included in its appropriation act for the District of Columbia a statement declaring it

FN5. See generally R. Butts, The American Tradition in Religion and Education 111--145 (1950); 2 A. Stokes, Church and State in the United States 47--72 (1950); Cubberley, supra n. 2, at 155--181.

FN6. See Ala.Const., Art. XIV, s 263; Alaska Const., Art. VII, s 1; Ariz.Const., Art. II, s 12, Art. XI, ss 7, 8, A.R.S.; Ark. Const., Art. XIV, s 2; Calif.Const., Art. IX, s 8; Colo.Const., Art. IX, s 7; Conn.Const., Art. VIII s 4; Del.Const., Art. X, s 3; Fla.Const., Decl. of Rights, Art. I, s 3, F.S.A.; Ga.Const., Art. VIII, s 12, par. 1; Hawaii Const., Art. IX, s 1; Idaho Const., Art. IX, s 5; Ill.Const., Art. VIII, s 3; Ind.Const., Art. 8, s 3; Kan.Const., Art. 6, s 6(c); Ky.Const., s 189; La.Const., Art. XII, s 13; Mass.Const., Amend. Art. XLVI, s 2; Mich.Const., Art. I, s 4; Minn.Const., Art. VIII, s 2; Miss.Const., Art. 8, s 208; Mo.Const., Art. IX, s 8;

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Mont.Const., Art. XI, s 8; Neb.Const., Art. VII, s 11; Nev.Const., Art. 11, s 10; N.H.Const., Pt. II, Art. 83; N.J.Const., Art. VIII, s 4, par. 2; N.Mex.Const., Art. XII, s 3; N.Y.Const., Art. XI, s 3; N.Car.Const., Art. IX, ss 4, 12; N.Dak.Const., Art. VIII, s 152; Ohio Const., Art. VI, s 2; Okla.Const., Art. II, s 5; Ore.Const., Art. VII, s 2; Penn.Const., Art. 3, s 15; R.I.Const., Art. XII, s 4; S.C.Const., Art. XI, s 9; S.Dak.Const., Art. VIII, s 16; Tenn.Const., Art. XI, s 12; Tex.Const., Art. VII, s 5; Utah Const., Art. X, s 13; Va.Const., Art. IX, s 141; Wash.Const., Art. IX, s 4; W.Va.Const., Art. XII, s 4; Wis.Const., Art. I, s 18, Art. X, s 2; Wyo.Const., Art. 7, s 8.

The overwhelming majority of these constitutional provisions either prohibit expenditures of public funds on sectarian schools, or prohibit the expenditure of public school funds for any purpose other than support of public schools. For a discussion and categorization of the various constitutional formulations, see Note, Catholic Schools and Public Money, 50 Yale L.J. 917 (1941). Many of the constitutional provisions are collected in B. Confrey, Secularism in American Education: Its History 47-- 125 (1931).

Many state constitutions explicitly apply the prohibition to aid to sectarian colleges and universities. See, e.g., Colo. Const., Art. IX, s 7; Idaho Const., Art. IX, s 5; Ill.Const., Art. VIII, s 3; Kan.Const., Art. 6, s 6(c); Mass.Const., Amend. Art. XLVI, s 2; Mo.Const., Art. IX, s 8; Mont.Const., Art. XI, s 8; Neb.Const., Art. VII, s 11; N.Mex.Const., Art. XII, s 3; S.C.Const., Art. XI, s 9; Utah Const., Art. X, s 13; Wyo.Const., Art. 7, s 8. At least one judicial decision construing the word 'schools' held that the word does not include colleges and universities, Opinion of the Justices, 214 Mass. 599, 102 N.E. 464 (1913), but that decision was overruled by constitutional amendment. Mass.Const., Amend. Art. XLVI, s 2.

'to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for service, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control.' 29 Stat. 411.

Thus for more than a century, the consensus, enforced by legislatures and courts with substantial consistency, has been that public subsidy of sectarian schools constitutes an impermissible involvement of secular with ***649** religious institutions. [FN7] If this history is not itself compelling against the validity of the three subsidy statutes, in the sense we found in Walz that 'undeviating acceptance' was highly significant in favor of the validity of religious tax exemption, other forms of governmental involvement that each of the three statutes requires tips the scales in my view against the validity of each of them. These are involvements that threaten 'dangers--as much to church as to state--which the Framers feared would subvert religious liberty and the strength of a system of secular government.' Schempp, 374 U.S., at 295, 83 S.Ct., at 1610. (Brennan, J., concurring). '(G)overnment and religion have discrete interests which are mutually best served when each avoids too close a proximity to the other. It is not only the nonbeliever who fears the injection of sectarian doctrines and controversies into the civil polity, but in as high degree it is the devout believer who fears the secularization of a creed which becomes too deeply involved with and dependent upon the government.' Id., at 259, 83 S.Ct., at 1591 (Brennan, J., concurring). All three of these statutes require 'too close a proximity' of government to the subsidized sectarian institutions and in my view create real dangers of 'the secularization of a creed.'

FN7. See, e.g., Wright v. School Dist., 151 Kan. 485, 99 P.2d 737 (1940); Atchison, T. & S.F.R. Co. v. City of Atchison, 47 Kan. 712, 28 P. 1000 (1892); Williams v. Board of Trustees, 173 Ky. 708, 191 S.W. 507 (1917); Opinion of the Justices, 214 Mass. 599, 102 N.E. 464 (1913); Jenkins v. Inhabitants of Andover, 103 Mass. 94 (1869); Otken v. Lamkin, 56 Miss. 758 (1879); Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d 609 (1942); State ex rel. Public School Dist., etc. v. Taylor, 122 Neb. 454, 240 N.W. 573 (1932); State ex

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rel. Nevada Orphan Asylum v. Hallock, 16 Nev. 373 (1882); Synod of Dakota v. State, 2 S.D. 366, 50 N.W. 632 (1891).

*650 II

The Rhode Island statute requires Roman Catholic teachers to surrender their right to teach religion courses and to promise not to 'inject' religious teaching into their secular courses. This has led at least one teacher to stop praying with his classes, [FN8] a concrete testimonial to the self-censorship that inevitably accompanies state regulation of delicate First Amendment freedoms. Cf. Smith v. California, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205 (1959); Speiser v. Randall, 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958). Both the Rhode **2130 Island and Pennsylvania statutes prescribe extensive standardization of the content of secular courses, and of the teaching materials and textbooks to be used in teaching the courses. And the regulations to implement those requirements necessarily require policing of instruction in the schools. The picture of state inspectors prowling the halls of parochial schools and auditing classroom instruction surely raises more than an imagined specter of governmental 'secularization of a creed.'

FN8. 'Already the Act has restricted the role of teachers. The evidence before us indicates that some otherwise qualified teachers have stopped teaching courses in religion in order to qualify for aid under the Act. One teacher, in fact, testified that he no longer prays with his class lest he endanger his subsidy.' 316 F.Supp., at 121.

The same dangers attend the federal subsidy even if less obviously. The Federal Government exacts a promise that no 'sectarian instruction' or 'religious worship' will take place in a subsidized building. The Office of Education polices the promise. [FN9] In one instance federal *651 officials demanded that a college cease teaching a course entitled 'The History of Methodism' in a federally assisted building, although the Establishment Clause 'plainly does not foreclose teaching about the Holy Scriptures or about the differences between religious sects in classes in literature or history.' Schempp, 374 U.S., at 300, 83 S.Ct., at 1612 (Brennan, J., concurring). These examples illustrate the complete incompatibility of such surveillance with the restraints barring interference with religious freedom. [FN10]

FN9. The Office of Education stipulated as follows:
'The Office of Education is now engaged in making a series of on-site reviews of completed projects to verify that conditions under which Federal assistance was provided are being implemented. During these visits, class schedules and course descriptions contained in the school catalog are analyzed to ascertain that nothing in the nature of sectarian instruction is scheduled in any area constructed with the use of Federal funds. If there is found to be an indication that a portion of academic facilities constructed with Federal assistance is used in any way for sectarian purposes, either the questionable practice must be terminated or the institution must assume full responsibility for the cost of constructing the area involved.' App. in No. 153, p. 82 (emphasis added).

FN10. The plurality opinion in No. 153 would strike down the 20-year 'period of Federal interest,' 20 U.S.C. s 754(a), upon the ground that '(t)he restrictive obligations of a recipient institution under s 751(a)(2) cannot, compatibly with the Religion Clauses, expire while the building has substantial value.' 403 U.S., at 683, 91 S.Ct., at 2098. Thus the surveillance constituting the 'too close a proximity' which for me offends the Establishment Clause continues for the life of the building.

Policing the content of courses, the specific textbooks used, and indeed the words of teachers is far different from the legitimate policing carried on under state compulsory attendance laws or laws regulating minimum levels of educational

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achievement. Government's legitimate interest in ensuring certain minimum skill levels and the acquisition of certain knowledge does not carry with it power to prescribe what shall not be taught, or what methods of instruction shall be used, or what opinions the teacher may offer in the course of teaching.

Moreover, when a sectarian institution accepts state financial aid it becomes obligated under the Equal Protection Clause of the Fourteenth Amendment not to discriminate in admissions policies and faculty selection. *652 The District Court in the Rhode Island case pinpointed the dilemma:

> 'Applying these standards to parochial schools might well restrict their ability to discriminate in admissions policies, and in the hiring and firing of teachers. At some point the school becomes 'public' for more purposes than the Church could wish. At that point, the Church may justifiably feel that its victory on the Establishment Clause has meant abandonment of the Free Exercise Clause.' 316 F.Supp. at 121--122 (citations omitted).

III

In any event, I do not believe that elimination of these aspects of 'too close a proximity' would save these three statutes. I expressed the view in Walz that '(g)eneral subsidies of religious activities would, of course, constitute impermissible state involvement with religion.' **2131 397 U.S., at 690, 90 S.Ct., at 1422 (concurring opinion). I do not think the subsidies under these statutes fall outside '(g)eneral subsidies of religious activities' merely because they are restricted to support of the teaching of secular subjects. In Walz, the passive aspect of the benefits conferred by a tax exemption, particularly since cessation of the exemptions might easily lead to impermissible involvements and conflicts, led me to conclude that exemptions were consistent with the First Amendment values. However, I contrasted direct government subsidies:

> 'Tax exemptions and general subsidies, however, are qualitatively different. Though both provide economic assistance, they do so in fundamentally different ways. A subsidy involves the direct transfer of public monies to the subsidized enterprise and uses resources exacted from taxpayers as a whole. An exemption, on the other hand, involves no such *653 transfer. It assists the exempted enterprise only passively, by relieving a privately funded venture of the burden of paying taxes. In other words, '(i)n the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches,' while '(i)n the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.' Thus, 'the symbolism of tax exemption is significant as a manifestation that organized religion is not expected to support the state; by the same token the state is not expected to support the church." 397 U.S., at 690--691, 90 S.Ct., at 1423 (footnotes and citations omitted) (concurring opinion).

Pennsylvania, Rhode Island, and the Federal Government argue strenuously that the government monies in all these cases are not '(g)eneral subsidies of religious activities' because they are paid specifically and solely for the secular education that the sectarian institutions provide. [FN11]

> FN11. The Pennsylvania statute. differs from Rhode Island's in providing the subsidy without regard to whether the sectarian school's average per-pupil expenditure on secular education equals or exceeds the average of the State's public schools. Nor is there any limitation of the subsidy to nonpublic schools that are financially embarrassed. Thus the statute on its face permits use of the state subsidy for the purpose of maintaining or attracting an audience for religious education, and also permits sectarian schools not needing the aid to apply it to exceed the quality of secular education provided in public schools. These features of the Pennsylvania scheme seem to me to invalidate it under the Establishment Clause as granting preferences to sectarian schools.

Before turning to the decisions of this Court on which this argument is based, it is important to recall again the history of subsidies to sectarian schools. See Part *654 I, supra. The universality of state constitutional provisions forbidding such

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grants, as well as the weight of judicial authority disapproving such aid as a violation of our tradition of separation of church and state, reflects a time-tested judgment that such grants do indeed constitute impermissible aid to religion. See nn. 6 and 7, supra. The recurrent argument, consistently rejected in the past, has been that government grants to sectarian schools ought not be viewed as impermissible subsidies 'because (the schools) relieve the State of a burden, which it would otherwise be itself required to bear * * * they will render a service to the state by performing for it its duty of educating the children of the people.' Cook County v. Chicago Industrial School, 125 Ill. 540, 571, 18 N.E. 183, 197 (1888).

Nonetheless, it is argued once again in these cases that sectarian schools and universities perform two separable functions. First, they provide secular education, and second, they teach the tenets of a particular sect. Since the State has determined that the secular education provided in sectarian schools serves the legitimate state interest in the education of its citizens, it is contended that state **2132 aid solely to the secular education function does not involve the State in aid to religion. Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), and Board of Education of Central School Dist. No. 1 v. Allen, supra, are relied on as support for the argument.

Our opinion in Allen recognized that sectarian schools provide both a secular and a sectarian education:

> '(T)his Court has long recognized that religious schools pursue two goals, religious instruction and secular education. In the leading case of Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), the Court held that * * * Oregon had not shown that its interest in secular education required that all children attend publicly operated schools. A premise of this *655 holding was the view that the State's interest in education would be served sufficiently by reliance on the secular teaching that accompanied religious training in the schools maintained by the Society of Sisters.
>
> '(T)he continued willingness to rely on private school systems, including parochial systems, strongly suggests that a wide segment of informed opinion, legislative and otherwise, has found that those schools do an acceptable job of providing secular education to their students. This judgment is further evidence that parochial schools are performing, in addition to their sectarian function, the task of secular education.' Board of Education of Central School Dist. No. 1 v. Allen, 392 U.S., at 245, 247--248, 88 S.Ct., at 1929 (footnote omitted).

But I do not read Pierce or Allen as supporting the proposition that public subsidy of a sectarian institution's secular training is permissible state involvement. I read them as supporting the proposition that as an identifiable set of skills and an identifiable quantum of knowledge, secular education may be effectively provided either in the religious context of parochial schools, or outside the context of religion in public schools. The State's interest in secular education may be defined broadly as an interest in ensuring that all children within its boundaries acquire a minimum level of competency in certain skills, such as reading, writing, and arithmetic, as well as a minimum amount of information and knowledge in certain subjects such as history, geography, science, literature, and law. Without such skills and knowledge, an individual will be at a severe disadvantage both in participating in democratic self- government and in earning a living in a modern industrial economy. But the State has no proper interest in prescribing the precise forum in which such skills and knowledge are learned since acquisition of this *656 secular education is neither incompatible with religious learning, nor is it inconsistent with or inimical to religious precepts.

When the same secular educational process occurs in both public and sectarian schools, Allen held that the State could provide secular textbooks for use in that process to students in both public and sectarian schools. Of course, the State could not provide textbooks giving religious instruction. But since the textbooks involved in Allen would, at least in theory, be limited to secular education, no aid to sectarian instruction was involved.

More important, since the textbooks in Allen had been previously provided by the parents, and not the schools, 392 U.S., at 244 n. 6, 88 S.Ct., at 1926, no aid to the institution was involved. Rather, as in the case of the bus transportation in Everson, the general program of providing all children in the State with free secular textbooks assisted all parents

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in schooling their children. And as in Everson, there was undoubtedly the possibility that some parents might not have been able to exercise their constitutional right to send their children to parochial school if the parents were compelled themselves to pay for textbooks. However, as my Brother Black wrote for the Court in Everson,

> **2133 '(C)utting off church schools from these (general) services, so separate and so indisputably marked off from the religious function, would make it far more difficult for the schools to operate. But such is obviously not the purpose of the First Amendment. That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.' 330 U.S., at 18, 67 S.Ct., at 512.

*657 Allen, in my view, simply sustained a statute in which the State was 'neutral in its relations with groups of religious believers and non- believers.' The only context in which the Court in Allen employed the distinction between secular and religious in a parochial school was to reach its conclusion that the textbooks that the State was providing could and would be secular. [FN12] The present cases, however, involve direct subsidies of tax monies to the schools themselves and we cannot blink the fact that the secular education those schools provide goes hand in hand with the religious mission that' is the only reason for the schools' existence. Within the institution, the two are inextricably intertwined.

> FN12. The three dissenters in Allen focused primarily on their disagreement with the Court that the textbooks provided would be secular. See 392 U.S., at 252--253, 88 S.Ct., at 1931--1932 (Black, J., dissenting); id., at 257, 88 S.Ct., at 1933 (Douglas, J., dissenting); id., at 270, 88 S.Ct. at 1940 (Fortas, J., dissenting).

The District Court, in the DiCenso case found that all the varied aspects of the parochial school's program--the nature of its faculty, its supervision, decor, program, extracurricular activities, assemblies, courses, etc.--produced an 'intangible 'religious atmosphere," since the 'diocesan school system is an integral part of the religious mission of the Catholic Church' and 'a powerful vehicle for transmitting the Catholic faith to the next generation.' 316 F.Supp., at 117. Quality teaching in secular subjects is an integral part of this religious enterprise. 'Good secular teaching is as essential to the religious mission of the parochial schools as a roof for the school or desks for the classrooms.' 316 F.Supp., at 117--118. That teaching cannot be separated from the environment in which it occurs, for its integration with the religious mission is both the theory and the strength of the religious school.

The common ingredient of the three prongs of the test *658 set forth at the outset of this opinion is whether the statutes involve government in the 'essentially religious activities' of religious institutions. My analysis of the operation, purposes, and effects of these statutes leads me inescapably to the conclusion that they do impermissibly involve the States and the Federal Government with the 'essentially religious activities' of sectarian educational institutions. More specifically, for the reasons stated, I think each government uses 'essentially religious means to serve governmental ends, where secular means would suffice.' This Nation long ago committed itself to primary reliance upon publicly supported public education to serve its important goals in secular education. Our religious diversity gave strong impetus to that commitment.

> '(T)he American experiment in free public education available to all children has been guided in large measure by the dramatic evolution of the religious diversity among the population which our public schools serve. * * * The public schools are supported entirely, in most communities, by public funds--funds exacted not only from parents, nor alone from those who hold particular religious views, nor indeed from those who subscribe to any creed at all. It is implicit in the history and character of American public education that the public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial **2134 divisive, or separatist influences of any sort--an atmosphere in which children may assimilate a heritage common to all American groups and religions. This is a heritage neither theistic nor atheistic, but simply civic and patriotic.'

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Schempp, 374 U.S., at 241--242, 83 S.Ct., at 1581--1582 (citation omitted) (Brennan, J., concurring).

*659 I conclude that, in using sectarian institutions to further goals in secular education, the three statutes do violence to the principle that 'government may not employ religious means to serve secular interests, however legitimate they may be, at least without the clearest demonstration that nonreligious means will not suffice.' Schempp, supra, at 265, 83 S.Ct., at 1594 (Brennan, J., concurring).

IV

The plurality's treatment of the issues in Tilton, No. 153, diverges so substantially from my own that I add these further comments. I believe that the Establishment Clause forbids the Federal Government to provide funds to sectarian universities in which the propagation and advancement of a particular religion are a function or purpose of the institution. Since the District Court made no findings whether the four institutional appellees here are sectarian, I would remand the case to the District Court with directions to determine whether the institutional appellees are 'sectarian' institutions.

I reach this conclusion for the reasons I have stated: the necessarily deep involvement of government in the religious activities of such an institution through the policing of restrictions, and the fact that subsidies of tax monies directly to a sectarian institution necessarily aid the proselytizing function of the institution. The plurality argues that neither of these dangers is present. [FN13]

> FN13. Much of the plurality's argument is directed at establishing that the specific institutional appellees here, as well as most church- related colleges, are not sectarian in that they do not have a purpose or function to advance or propagate a specific religion. Those questions must await hearings and findings by the District Court.

At the risk of repetition, I emphasize that a sectarian university is the equivalent in the realm of higher education of the Catholic elementary schools in Rhode Island; it is an educational institution in which the propagation *660 and advancement of a particular religion are a primary function of the institution. I do not believe that construction grants to such a sectarian institution are permissible. The reason is not that religion 'permeates' the secular education that is provided. Rather, it is that the secular education is provided within the environment of religion; the institution is dedicated to two goals, secular education and religious instruction. When aid flows directly to the institution, both functions benefit. The plurality would examine only the activities that occur within the federally assisted building and ignore the religious nature of the school of which it is a part. The 'religious enterprise' aided by the construction grants involves the maintenance of an educational environment--which includes high-quality, purely secular educational courses--within which religious instruction occurs in a variety of ways.

The plurality also argues that no impermissible entanglement exists here. My Brother WHITE cogently comments upon that argument: 'Why the federal program in the Tilton case is not embroiled with the same difficulties (as the Rhode Island program) is never adequately explained.' Post, at 2138. I do not see any significant difference in the Federal Government's telling the sectarian university not to teach any nonsecular subjects in a certain building, and Rhode Island's telling the Catholic school teacher not to teach religion. The vice is the **2135 creation through subsidy of a relationship in which the government policies the teaching practices of a religious school or university. The plurality suggests that the facts that college students are less impressionable and that college courses are less susceptible to religious permeation may lessen the need for federal policing. But the record shows that such policing has occurred and occurred in a heavy-handed way. Given the dangers of self-censorship in such a situation, I cannot agree that the dangers of *661 entanglement are insubstantial. Finally, the plurality suggests that the 'nonideological' nature of a building, as contrasted with a teacher, reduces the need for policing. But the Federal Government imposes restrictions on every class taught in the federally assisted building. It is therefore not the 'nonideological' building that is policed; rather, it is the courses given there and the teachers who teach

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them. Thus, the policing is precisely the same as under the state statutes, and that is what offends the Constitution.

V

I, therefore, agree that the two state statutes that focus primarily on providing public funds to sectarian schools are unconstitutional. However, the federal statute in No. 153 is a general program of construction grants to all colleges and universities, including sectarian institutions. Since I believe the statute's extension of eligibility to sectarian institutions is severable from the broad general program authorized, I would hold the Higher Education Facilities Act unconstitutional only insofar as it authorized grants of federal tax monies to sectarian institutions--institutions that have a purpose or function to propagate or advance a particular religion. Therefore, if the District Court determines that any of the four institutional appellees here are 'sectarian,' that court, in my view, should enjoin the other appellees from making grants to it.

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91 S.Ct. 2135 (Mem)
29 L.Ed.2d 745
(Cite as: 403 U.S. 602, 91 S.Ct. 2135)

H

Supreme Court of the United States

Alton J. LEMON et al., Appellants,
v.
David H. KURTZMAN, as Superintendent of Public Instruction of the Commonwealth of Pennsylvania, et al.

No. 89.

June 28, 1971

For opinions of the Court see 91 S.Ct. 2091, 2105.

***661 **2135** Mr. Justice WHITE, concurring in the judgment in 89 and 153 and dissenting in Nos. 569 and 570.

It is our good fortune that the States of this country long ago recognized that instruction of the young and old ranks high on the scale of proper governmental functions ***662** and not only undertook secular education as a public responsibility but also required compulsory attendance at school by their young. Having recognized the value of educated citizens and assumed the task of educating them, the States now before us assert a right to provide for the secular education of children whether they attend public schools or chose to enter private institutions, even when those institutions are church- related. The Federal Government also asserts that it is entitled, where requested, to contribute to the cost of secular education by furnishing buildings and facilities to all institutions of higher learning, public and private alike. Both the United States and the States urge that if parents choose to have their children receive instruction in the required secular subjects in a school where religion is also taught and a religious atmosphere may prevail, part or all of the cost of such secular instruction may be paid for by governmental grants to the religious institution conducting the school and seeking the grant. Those who challenge this position would bar official contributions to secular education where the family prefers the parochial ****2136** to both the public and nonsectarian private school.

The issue is fairly joined. It is precisely the kind of issue the Constitution contemplates this Court must ultimately decide. This is true although neither affirmance nor reversal of any of these cases follows automatically from the spare language of the First Amendment, from its history, or from the cases of this Court construing it and even though reasonable men can very easily and sensibly differ over the import of that language.

But, while the decision of the Court is legitimate, it is surely quite wrong in overturning the Pennsylvania and Rhode Island statutes on the ground that they amount to an establishment of religion forbidden by the First Amendment.

***663** No one in these cases questions the constitutional right of parents to satisfy their state-imposed obligation to educate their children by sending them to private schools, sectarian or otherwise, as long as those schools meet minimum standards established for secular instruction. The States are not only permitted, but required by the Constitution, to free students attending private schools from any public school attendance obligation. Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). The States may also furnish transportation for students, Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947), and books for teaching secular subjects to students attending parochial and other private as well as public schools, Board of Education of Central School Dist. No. 1 v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060 (1968); we have also upheld arrangements whereby students are released from public school classes so that they may attend religious instruction. Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952). Outside the field of education, we have upheld Sunday closing laws, McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393 (1961), state and federal laws exempting church property and church activity from taxation, Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970) , and governmental grants to religious organizations for the purpose of financing improvements in the facilities of hospitals managed and controlled by religious orders. Bradfield v. Roberts, 175 U.S. 291, 20 S.Ct. 121, 44 L.Ed. 168 (1899).

Our prior cases have recognized the dual role of

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parochial schools in American society: they perform both religious and secular functions. See Board of Education v. Allen, supra, 392 U.S., at 248, 88 S.Ct., at 1929. Our cases also recognize that legislation having a secular purpose and extending governmental assistance to sectarian schools in the performance of their secular functions does not constitute 'law(s) respecting an establishment of religion' forbidden by the First Amendment merely because a secular program may incidentally benefit a church in fulfilling its religious mission. ***664** That religion may indirectly benefit from governmental aid to the secular activities of churches does not convert that aid into an impermissible establishment of religion.

This much the Court squarely holds in the Tilton case, where it also expressly rejects the notion that payments made directly to a religious institution are, without more, forbidden by the First Amendment. In Tilton, the Court decides that the Federal Government may finance the separate function of secular education carried on in a parochial setting. It reaches this result although sectarian institutions undeniably will obtain substantial benefit from federal aid; without federal funding to provide adequate facilities for secular education, the student bodies of those institutions might remain stationary or even decrease in size and the institutions might ultimately have to close their doors.

It is enough for me that the States and the Federal Government are financing a separable secular function of overriding importance in order to sustain the legislation here challenged. That ****2137** religion and private interests other than education may substantially benefit does not convert these laws into impermissible establishments of religion.

It is unnecessary, therefore, to urge that the Free Exercise Clause of the First Amendment at least permits government in some respects to modify and mold its secular programs out of express concern for free-exercise values. See Walz v. Tax Commission, supra, 397 U.S., at 673, 90 S.Ct., at 1413 (tax exemption for religious properties; '(t)he limits of permissible state accommodation to religion are by no means coextensive with the noninterference mandated by the Free Exercise Clause. To equate the two would be to deny a national heritage with roots in the Revolution itself'); Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (exemption of Seventh Day Adventist from eligibility requirements for ***665** unemployment insurance not only permitted but required by the Free Exercise Clause); Zorach v. Clauson, supra, 343 U.S., at 313--314, 72 S.Ct., at 683--684 (students excused from regular public school routine to obtain religious instruction; '(w)hen the state encourages religious instruction * * * it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs'). See also Abington School District v. Schempp, 374 U.S. 203, 308, 83 S.Ct. 1560, 1616, 10 L.Ed.2d 844 (1963) (Stewart, J., dissenting); Welsh v. United States, 398 U.S. 333, 367, 90 S.Ct. 1792, 1810, 26 L.Ed.2d 308 (1970) (White, J., dissenting). The Establishment Clause, however, coexists in the First Amendment with the Free Exercise Clause and the latter is surely relevant in cases such as these. Where a state program seeks to ensure the proper education of its young, in private as well as public schools, free exercise considerations at least counsel against refusing support for students attending parochial schools simply because in that setting they are also being instructed in the tenets of the faith they are constitutionally free to practice.

I would sustain both the federal and the Rhode Island programs at issue in these cases, and I therefore concur in the judgment in No. 153 [FN1] and dissent from the judgments in Nos. 569 and 570. Although I would also reject the facial challenge to the Pennsylvania statute, I concur in the judgment in No. 89 for the reasons given below.

FN1. I accept the Court's invalidation of the provision in the federal legislation whereby the restriction on the use of buildings constructed with federal funds terminates after 20 years.

The Court strikes down the Rhode Island statute on its face. No fault is found with the secular purpose of the program; there is no suggestion that the purpose of the program was aid to religion disguised in secular attire. Nor does the Court find that the primary effect of the program is to aid

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religion rather than to implement secular goals. The Court nevertheless finds *666 that impermissible 'entanglement' will result from administration of the program. The reasoning is a curious and mystifying blend, but a critical factor appears to be an unwillingness to accept the District Court's express findings that on the evidence before it none of the teachers here involved mixed religious and secular instruction. Rather, the District Court struck down the Rhode Island statute because it concluded that activities outside the secular classroom would probably have a religious content and that support for religious education therefore necessarily resulted from the financial aid to the secular programs, since that aid generally strengthened the parochial schools and increased the number of their students.

In view of the decision in Tilton, however, where these same factors were found insufficient to invalidate the federal plan, the Court is forced to other considerations. Accepting the District Court's observation in DiCenso that education **2138 is an integral part of the religious mission of the Catholic church--an observation that should neither surprise nor alarm anyone, especially judges who have already approved substantial aid to parochial schools in various forms--the majority then interposes findings and conclusions that the District Court expressly abjured, namely, that nuns, clerics, and dedicated Catholic laymen unavoidably pose a grave risk in that they might not be able to put aside their religion in the secular classroom. Although stopping short of considering them untrustworthy, the Court concludes that for them the difficulties of avoiding teaching religion along with secular subjects would pose intolerable risks and would in any event entail an unacceptable enforcement regime. Thus, the potential for impermissible fostering of religion in secular classrooms--an untested assumption of the Court-- paradoxically renders unacceptable the State's efforts at insuring that secular teachers under religious discipline successfully avoid conflicts between the religious mission *667 of the school and the secular purpose of the State's education program.

The difficulty with this is twofold. In the first place, it is contrary to the evidence and the District Court's findings in DiCenso. The Court points to nothing in this record indicating that any participating teacher had inserted religion into his secular teaching or had had any difficulty in avoiding doing so. The testimony of the teachers was quite the contrary. The District Court expressly found that '(t)his concern for religious values does not necessarily affect the content of secular subjects in diocesan schools. On the contrary, several teachers testified at trial that they did not inject religion into their secular classes, and one teacher deposed that he taught exactly as he had while employed in a public school. This testimony gains added credibility from the fact that several of the teachers were non- Catholics. Moreover, because of the restrictions of Rhode Island's textbook loan law * * * and the explicit requirement of the Salary Supplement Act, teaching materials used by applicants for aid must be approved for use in the public schools.' DiCenso v. Robinson, 316 F.Supp. 112, 117 (RI 1970). Elsewhere, the District Court reiterated that the defect of the Rhode Island statute was 'not that religious doctrine overtly intrudes into all instruction,' ibid., but factors aside from secular courses plus the fact that good secular teaching was itself essential for implementing the religious mission of the parochial school.

Secondly, the Court accepts the model for the Catholic elementary and secondary schools that it was rejected for the Catholic universities or colleges in the Tilton case. There it was urged that the Catholic condition of higher learning was an integral part of the religious mission of the church and that these institutions did everything they could to foster the faith. The Court's response was that on the record before it none of *668 the involved institutions was shown to have complied with the model and that it would not purport to pass on cases not before it. Here, however, the Court strikes down this Rhode Island statute based primarily on its own model and its own suppositions and unsupported views of what is likely to happen in Rhode Island parochial school classrooms, although on this record there is no indication that entanglement difficulties will accompany the salary supplement program.

The Court thus creates an insoluble paradox for the State and the parochial schools. The State cannot finance secular instruction if it permits religion to be taught in the same classroom; but if it exacts a promise that religion not be so taught--a promise the school and its teachers are quite willing and on this record able to give--and enforces it, it is then

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entangled in the 'no entanglement' aspect of the Court's Establishment Clause jurisprudence.

Why the federal program in the Tilton case is not embroiled in the same difficulties is never adequately explained. Surely the notion that college students **2139 are more mature and resistant to indoctrination is a make- weight, for in Tilton there is careful note of the federal condition on funding and the enforcement mechanism available. If religious teaching in federally financed buildings was permitted, the powers of resistance of college students would in no way save the federal scheme. Nor can I imagine the basis for finding college clerics more reliable in keeping promises than their counterparts in elementary and secondary schools--particularly those in the Rhode Island case, since within five years the majority of teachers in Rhode Island parochial schools will be lay persons, many of them non-Catholic.

Both the District Court and this Court in DiCenso have seized on the Rhode Island formula for supplementing *669 teachers' salaries since it requires the State to verify the amount of school money spent for secular as distinguished from religious purposes. Only teachers in those schools having per-pupil expenditures for secular subjects below the state average qualify under the system, an aspect of the state scheme which is said to provoke serious 'entanglement.' But this is also a slender reed on which to strike down this law, for as the District Court found, only once since the inception of the program has it been necessary to segregate expenditures in this manner.

The District Court also focused on the recurring nature of payments by the State of Rhode Island; salaries must be supplemented and money appropriated every year and hence the opportunity for controversy and friction over state aid to religious schools will constantly remain before the State. The Court adopts this theme in DiCenso and makes much of the fact that under the federal scheme the grant to a religious institution is a one-time matter. But this argument is without real force. It is apparent that federal interest in any grant will be a continuing one since the conditions attached to the grant must be enforced. More important, the federal grant program is an ongoing one. The same grant will not be repeated, but new ones to the same or different schools will be made year after year. Thus the same potential for recurring political controversy accompanies the federal program. Rhode Island may have the problem of appropriating money each year to supplement the salaries of teachers, but the United States must each year seek financing for the new grants it desires to make and must supervise the ones already on the record.

With respect to Pennsylvania, the Court, accepting as true the factual allegations of the complaint, as it must for purposes of a motion to dismiss, would reverse the dismissal of the complaint and invalidate the legislation. *670 The critical allegations, as paraphrased by the Court, are that 'the church-related elementary and secondary schools are controlled by religious organizations, have the purpose of propagating and promoting a particular religious faith, and conduct their operations to fulfill that purpose.' 403 U.S., at 620, 91 S.Ct., at 2115. From these allegations the Court concludes that forbidden entanglements would follow from enforcing compliance with the secular purpose for which the state money is being paid.

I disagree. There is no specific allegation in the complaint that sectarian teaching does or would invade secular classes supported by state funds. That the schools are operated to promote a particular religion is quite consistent with the view that secular teaching devoid of religious instruction can successfully be maintained, for good secular instruction is, as Judge Coffin wrote for the District Court in the Rhode Island case, essential to the success of the religious mission of the parochial school. I would no more here than in the Rhode Island case substitute presumption for proof that religion is or would be taught in state-financed secular courses or assume that enforcement measures would be so extensive as to border on a free exercise violation. We should not forget that the Pennsylvania statute does not **2140 compel church schools to accept state funds. I cannot hold that the First Amendment forbids an agreement between the school and the State that the state funds would be used only to teach secular subjects.

I do agree, however, that the complaint should not have been dismissed for failure to state a cause of action. Although it did not specifically allege that the schools involved mixed religious teaching with secular subjects, the complaint did allege that the

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schools were operated to fulfill religious purposes and one of the legal theories stated in the complaint was that the Pennsylvania Act 'finances and participates in the blending of sectarian *671 and secular instruction.' At trial under this complaint, evidence showing such a blend in a course supported by state funds would appear to be admissible and, if credited, would establish financing of religious instruction by the State. Hence, I would reverse the judgment of the District Court and remand the case for trial, thereby holding the Pennsylvania legislation valid on its face but leaving open the question of its validity as applied to the particular facts of this case.

I find it very difficult to follow the distinction between the federal and state programs in terms of their First Amendment acceptability. My difficulty is not surprising, since there is frank acknowledgment that 'we can only dimly perceive the boundaries of permissible government activity in this sensitive area of constitutional adjudication,' Tilton v. Richardson, 403 U.S., at 678, 91 S.Ct., at 2095, and that '(j)udicial caveats against entanglement' are a 'blurred, indistinct and variable barrier.' Lemon v. Kurtzman, 403 U.S., at 614, 91 S.Ct. at 2112. I find it even more difficult, with these acknowledgments in mind, to understand how the Court can accept the considered judgment of Congress that its program is constitutional and yet reject the equally considered decisions of the Rhode Island and Pennsylvania legislatures that their programs represent a constitutionally acceptable accommodation between church and state. [FN2]

> FN2. As a postscript I should note that both the federal and state cases are decided on specified Establishment Clause considerations, without reaching the questions that would be presented if the evidence in any of these cases showed that any of the involved schools restricted entry on racial or religious grounds or required all students gaining admission to receive instruction in the tents of a particular faith. For myself, if such proof were made, the legislation would to that extent be unconstitutional.

91 S.Ct. 2135 (Mem), 403 U.S. 602, 29 L.Ed.2d 745

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EXHIBIT 33

814 So.2d 347
27 Fla. L. Weekly S234, 101 A.L.R.5th 655
(Cite as: 814 So.2d 347)

H
Briefs and Other Related Documents

Supreme Court of Florida.

Jan MALICKI, St. David Catholic Church, and the Archdiocese of Miami,
Petitioners,
v.
Jane DOE, et al., Respondents.

No. SC01-179.

March 14, 2002.

Parishioners sued church and archdiocese for negligent hiring and supervision in connection with alleged sexual assaults by priest during the time parishioners were working at church. The Circuit Court, Dade County, David L. Tobin, J., dismissed those claims. Parishioners appealed. The District Court of Appeal, Fletcher, J., reversed and remanded, 771 So.2d 545. Granting review, the Supreme Court, Pariente, J., held that First Amendment cannot be used at initial pleading stage to bar claims founded on a religious institution's alleged negligence in failing to prevent harm from sexual assault on a minor or adult parishioner by one of its clergy, disapproving *Doe v. Evans,* 718 So.2d 286; abrogating *Doe v. Dorsey,* 683 So.2d 614.

Decision of District Court of Appeal approved and case remanded.

Wells, C.J., concurred in result only with an opinion.

Quince, J., concurred specially with an opinion.

Harding, J., dissented with an opinion.

West Headnotes

[1] **Appeal and Error** ⇐919
30k919 Most Cited Cases

In reviewing dismissal of a complaint, appellate court must accept all well- pled allegations of the complaint as true.

[2] **Constitutional Law** ⇐274(3.1)
92k274(3.1) Most Cited Cases

Constitutional guarantees regarding religion, as contained in Free Exercise Clause and Establishment Clause of First Amendment, are made applicable to the states through the Fourteenth Amendment. U.S.C.A. Const.Amends. 1, 14.

[3] **Constitutional Law** ⇐84.1
92k84.1 Most Cited Cases

Free Exercise Clause guarantees first and foremost the right to believe and profess whatever religious doctrine one desires. U.S.C.A. Const.Amend. 1.

[4] **Constitutional Law** ⇐84.1
92k84.1 Most Cited Cases

At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons. U.S.C.A. Const.Amend. 1.

[5] **Constitutional Law** ⇐84.5(1)
92k84.5(1) Most Cited Cases

In context of Free Exercise Clause, permissible government regulation of otherwise prohibitable conduct that is accompanied by religious convictions includes both statutory law and court action through civil lawsuits. U.S.C.A. Const.Amend. 1.

[6] **Constitutional Law** ⇐84.2
92k84.2 Most Cited Cases

Before the constitutional right to free exercise of religion is implicated, the threshold inquiry is whether the conduct sought to be regulated was rooted in religious belief. U.S.C.A. Const.Amend. 1

[7] **Constitutional Law** ⇐84.1
92k84.1 Most Cited Cases

In order to launch a free exercise challenge, it is necessary to show the coercive effect of the enactment as it operates against the individual in the

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practice of his religion. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases

In context of free exercise challenge, if it is demonstrated that conduct subjected to government regulation was rooted in religious beliefs, then the court must determine whether the law regulating that conduct is neutral both on its face and in its purpose. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

If the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid under Free Exercise Clause unless it is justified by a compelling interest and is narrowly tailored to advance that interest. U.S.C.A. Const.Amend. 1.

[10] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

[10] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases

Notwithstanding protections of Free Exercise Clause, state may regulate conduct rooted in religious beliefs through neutral laws of general applicability; thus, a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. U.S.C.A. Const.Amend. 1.

[11] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

Establishment Clause involves the separation of church and state and prevents the government from passing laws that aid one religion, aid all religions, or prefer one religion over the other. U.S.C.A. Const.Amend. 1.

[12] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Under First Amendment, civil courts must defer to the interpretations of religious doctrine made by the highest ecclesiastical tribunal. U.S.C.A. Const.Amend. 1.

[13] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

First Amendment provides churches with the power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. U.S.C.A. Const.Amend. 1.

[14] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

In determining whether it may exercise jurisdiction over dispute allegedly implicating Free Exercise or Establishment Clause, a court must determine whether the dispute is an ecclesiastical one about discipline, faith, internal organization, or ecclesiastical rule, custom, or law, or whether case is one in which courts should hold a religious organization liable for purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization. U.S.C.A. Const.Amend. 1.

[15] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

Although the Free Exercise and Establishment Clauses protect different interests, the analysis under the two clauses is intertwined. U.S.C.A. Const.Amend. 1.

[16] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Both the Free Exercise and Establishment Clauses of First Amendment must be analyzed in determining whether the reach of the constitutional protection extends to what amounts to an immunity from a tort claim where the religious institution is a defendant. U.S.C.A. Const.Amend. 1.

[17] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

A law establishing standards of conduct does not implicate the Free Exercise Clause unless adherence to those standards interferes with religious belief or activity. U.S.C.A. Const.Amend. 1.

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First Amendment cannot be used at the initial pleading stage to shut the courthouse door on a plaintiff's claims which are founded on a religious institution's alleged negligence arising from failure to prevent harm resulting from one of its clergy who sexually assaults and batters a minor or adult parishioner; disapproving *Doe v. Evans,* 718 So.2d 286; abrogating *Doe v. Dorsey,* 683 So.2d 614. U.S.C.A. Const.Amend. 1.

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Peter A. Miller of Conroy, Simberg & Ganon, Coral Gables, Florida; and Law Offices of Robert S. Glazier, Miami, FL, for Miami Shores Presbyterian Church, Amicus Curiae.

Philip M. Burlington of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, FL, for Academy of Florida Trial Lawyers, Amicus Curiae.

PARIENTE, J.

We have for review the Third District Court of Appeal's decision in *351*Doe v. Malicki,* 771 So.2d 545 (Fla. 3d DCA 2000), which expressly construes the First Amendment of the United States Constitution. We have jurisdiction. *See* art. V, § 3(b)(3), Fla. Const. [FN1] The issue presented in this case is whether the First Amendment bars a third-party tort action against a religious institution grounded on the alleged tortious act by one of its clergy. We conclude that the First Amendment does not provide a shield behind which a church may avoid liability for harm caused to an adult and a child parishioner arising from the alleged sexual assault or battery by one of its clergy, and accordingly approve the Third District's decision. We thus join the majority of both state and federal jurisdictions that have found no First Amendment bar under similar circumstances. [FN2]

FN1. Petitioners also invoke our jurisdiction based on express and direct conflict with the Fourth District Court of Appeal's decision in *Doe v. Evans,* 718 So.2d 286 (Fla. 4th DCA 1998), *review granted,* 735 So.2d 1284 (Fla.1999), which we also have pending on review. *See* art. V, § 3(b)(3), Fla. Const.

FN2. **State cases: Colorado:** *Bear Valley Church of Christ v. DeBose,* 928 P.2d 1315, 1323 (Colo.1996) (holding the First Amendment not a bar to child's various tort claims against pastor and church for "pattern of inappropriate touching" that arose during counseling relationship); *Moses v. Diocese of Colorado,* 863 P.2d 310, 314-15 (Colo.1993) (holding First Amendment no bar to adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on sexual relationship between parishioner and priest during the course of counseling); *Destefano v. Grabrian,* 763 P.2d 275, 283-88 (Colo.1988) (same); **Illinois:** *Amato v. Greenquist,* 287 Ill.App.3d 921, 223 Ill.Dec. 261, 679 N.E.2d 446, 450, 454 (1997) (Illinois does not recognize claim of breach of fiduciary duty based upon relationship between cleric and parishioner because religion is the foundation of the claim, but recognizing that negligent supervision claim may not be barred by First Amendment); *Bivin v. Wright,* 275 Ill.App.3d 899, 212 Ill.Dec. 287, 656 N.E.2d 1121, 1124-25 (1995) (recognizing that claim brought by husband and wife against church alleging negligent supervision of minister who engaged in sexual relationship with wife during the course of marital counseling is not barred by First Amendment); **Indiana:** *Konkle v. Henson,* 672 N.E.2d 450, 456 (Ind.Ct.App.1996) (holding that child victim of sexual molestation could bring claim of negligent hiring and supervision against church); **Minnesota:** *Mrozka v. Archdiocese of St. Paul and Minneapolis,* 482 N.W.2d 806, 812 (Minn.Ct.App.1992) (holding that First Amendment is not violated by the imposition of punitive damages a gainst c hurch based u pon p riest's

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sexual abuse of child); **New Jersey:** *F.G. v. MacDonell,* 150 N.J. 550, 696 A.2d 697, 702-03 (1997) (holding that First Amendment does not bar breach of fiduciary duty claim against priest who engaged in sexual relationship with adult parishioner during counseling); **New York:** *Kenneth R. v. Roman Catholic Diocese,* 229 A.D.2d 159, 654 N.Y.S.2d 791, 795-96 (1997) (holding that child's negligent supervision and retention claims against diocese not barred by First Amendment); *but see Langford v. Roman Catholic Diocese,* 271 A.D.2d 494, 705 N.Y.S.2d 661, 662 (N.Y.App.Div.2000) (holding that parishioner's breach of fiduciary duty claim against member of the clergy in connection with sexual relationship during the course of spiritual counseling was tantamount to impermissible clergy malpractice claim); **North Carolina:** *Smith v. Privette,* 128 N.C.App. 490, 495 S.E.2d 395, 398 (1998) (holding adult's claim of negligent retention and supervision against church arising out of alleged "inappropriate, unwelcome, offensive and nonconsensual acts of a sexual nature" by minister not barred by First Amendment); **Ohio:** *Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584, 589 (1991) (recognizing that negligent hiring claim may not violate First Amendment, but that complaint must plead the operative facts with particularity); **Oregon:** *Erickson v. Christenson,* 99 Or.App. 104, 781 P.2d 383, 386 (1989) (holding that First Amendment did not bar tort claims against church for actions of pastor who engaged in sexual relations with plaintiff during course of counseling relationship when plaintiff was a minor); **Texas:** *Martinez v. Primera Asemblea de Dios, Inc.,* No. 05-96-01458, 1998 WL 242412, at *3 (Tex.Ct.App. May 15, 1998) (holding that First Amendment did not bar parishioner's negligence claims against church based upon allegations that church elder sexually assaulted her); *but see Hawkins v. Trinity Baptist Church,* 30 S.W.3d 446, 453 (Texas Ct.App.2000) (declining to recognize breach of fiduciary duty claim against pastor for sexual relationship with adult parishioner during the course of marital counseling because of "concerns towards treading upon the Free Exercise Clause"); **Washington:** *C.J.C. v. Corporation of the Catholic Bishop of Yakima,* 138 Wash.2d 699, 985 P.2d 262, 277 (1999) (holding that First Amendment did not bar minor sexual abuse victim from bringing tort claims against priest and church).

Federal cases: *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.,* 196 F.3d 409 (2d Cir.1999) (holding Free Exercise Clause did not bar finding of fiduciary relationship between diocese and parishioner for child sexual abuse by priest); *Smith v. O'Connell,* 986 F.Supp. 73, 80 (D.R.I.1997) (holding First Amendment did not bar minor's claim of sexual molestation against priest and church for negligent supervision); *Doe v. Hartz,* 970 F.Supp. 1375, 1431-32 (N.D.Iowa 1997) (holding negligent supervision claim brought by adult who claimed improper sexual contact by priest not barred by First Amendment; however, First Amendment did bar negligent hiring claim), *rev'd on other grounds,* 134 F.3d 1339 (8th Cir.1998); *Sanders v. Casa View Baptist Church,* 898 F.Supp. 1169, 1175 (N.D.Tex.1995) (holding First Amendment no bar to claims of professional negligence and breach of fiduciary duty brought by church employee who had counseling relationship with minister), *aff'd,* 134 F.3d 331 (5th Cir.1998); *Nutt v. Norwich Roman Catholic Diocese,* 921 F.Supp. 66 (D.Conn.1995) (holding Free Exercise Clause does not bar claim for negligent employment based upon alleged sexual abuse of altar boys by priest); *Isely v. Capuchin Province,* 880 F.Supp. 1138, 1151 (E.D.Mich.1995) (holding no First Amendment bar to claim of negligent supervision by student sexual abuse victim, but First Amendment does bar claim of negligent hiring).

*352 BACKGROUND

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814 So.2d 347
27 Fla. L. Weekly S234, 101 A.L.R.5th 655
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Jane Doe I and Jane Doe II ("parishioners") jointly brought an eight-count lawsuit against Father Jan Malicki ("Malicki"), St. David Catholic Church, and the Archdiocese of Miami (the second two defendants are referred to collectively as "Church Defendants"). The parishioners alleged in their complaint that, at the time of the incident, Jane Doe I was a minor parishioner who worked at St. David in exchange for her tuition to attend St. Thomas Catholic High School, [FN3] and that Jane Doe II was an adult parishioner who worked at St. David and was under the direct control and supervision of Malicki and the Church Defendants.

FN3. The Archdiocese of Miami, in conjunction with St. Thomas Catholic High School, owns and manages St. Thomas.

[1] The complaint alleges that on numerous occasions, Malicki "fondled, molested, touched, abused, sexually assaulted and/or battered" the parishioners on the premises of St. David. Moreover, Count I also alleges that on numerous occasions, Malicki unlawfully served alcohol to Jane Doe I. Counts I and II set forth claims of negligent hiring, retention, and supervision against the Church Defendants based upon Malicki's conduct. In particular, the complaint alleges that the Church Defendants "knew, or in the exercise of reasonable care, should have known, [that Malicki] was unsuited for teaching, counseling, spiritually guiding, supervising and leading employees and parishioners." Moreover, the parishioners assert that the Church Defendants negligently failed "to make inquiries into Malicki's background, qualifications, reputation, work history, and/or criminal history prior to employing him in the capacity of Associate Pastor." Finally, the parishioners contend that the Church Defendants negligently placed them under the supervision of Malicki, when the Church Defendants either knew or should have known that Malicki had the propensity to commit sexual assaults and molestations. [FN4]

FN4. Because this case is before us on the dismissal of a complaint, we must accept all well-pled allegations of the complaint as true. *See Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So.2d 306, 309 n. 3 (Fla.2000); *Stone v. Wall*, 734 So.2d 1038, 1039 (Fla.1999).

*353 The Church Defendants moved to dismiss the complaint, arguing, among other claims, that the resolution of these issues would "involve the internal ecclesiastical decisions of the Roman Catholic Church required by Canon Law" and therefore are barred by the First Amendment. Moreover, the Church Defendants argued that the parishioners' negligence claim was improper because the parishioners failed to establish a secular duty and the parishioners failed to establish a sufficient physical injury to establish their emotional damages.

The trial court reached only the First Amendment argument and entered an order granting the Church Defendants' motion to dismiss with prejudice, concluding that the First Amendment barred consideration of the parishioners' claims. On appeal, the Third District reversed and remanded. The Third District framed the issue as whether the Church Defendants had reason to know of Malicki's misconduct and did nothing to prevent reasonably foreseeable harm from being inflicted on the parishioners. *See Malicki*, 771 So.2d at 548. Because this determination "is one governed by tort law and does not require inquiry into the religious doctrines and practices of the Catholic Church," the Third District concluded that the First Amendment did not bar consideration of the parishioners' claims. *Id.*

Chief Judge Schwartz wrote a dissenting opinion, in which he took issue with the majority's premise that the resolution of these issues turned on neutral principles of tort law. *See id.* at 548 (Schwartz, C.J., dissenting). Chief Judge Schwartz stated that it was erroneous to equate "the relationships between the church, its bishops and its priests--and any consequent tort responsibility for hiring, firing, retention and assignment ... to those involving, say, a landlord and the custodian to whom it entrusts the keys to the tenants' apartments." *Id.* Chief Judge Schwartz reasoned that it would be inconceivable to hold the Church Defendants to the secular standard of a reasonable businessman, and that it would be unconstitutional to hold the Church Defendants to

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the standard of a reasonable church. *See id.* at 550. Therefore, Chief Judge Schwartz concluded that the First Amendment barred consideration of the parishioners' claims in this case.

LAW AND ANALYSIS
I. OVERVIEW OF THE FIRST AMENDMENT

The general issue presented in this case is whether, in the name of the First Amendment, religious institutions can be shielded from otherwise cognizable tort claims caused by their agents and employees. In the context of this case, the specific question is whether the First Amendment bars a secular court's consideration of the parishioners' claims of negligent hiring and supervision against the Church Defendants based upon the claim that Malicki "fondled, molested, touched, abused, sexually assaulted and/or battered" the minor and adult parishioners.

[2] The First Amendment to the United States Constitution provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const. amend. I. The First Amendment, which is one of the hallmarks of our Bill of Rights, contains two clauses regarding religion--the Free Exercise Clause and the Establishment Clause. This constitutional guarantee ***354** is made applicable to the states through the Fourteenth Amendment. *See Santa Fe Indep. Sch. Dist. v. Doe,* 530 U.S. 290, 301, 120 S.Ct. 2266, 147 L.Ed.2d 295 (2000); *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753, 757, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995).

[3][4] The Free Exercise Clause guarantees "first and foremost, the right to believe and profess whatever religious doctrine one desires." *Employment Div. v. Smith,* 494 U.S. 872, 877, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990). Moreover, "[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of the Lukumi Babalu Aye v. City of Hialeah,* 508 U.S. 520, 532, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).

[5] The United States Supreme Court has explained that the Free Exercise Clause "embraces two concepts--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut,* 310 U.S. 296, 303-04, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). Thus, the First Amendment has never been interpreted to mean that "when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from government regulation." *Smith,* 494 U.S. at 882, 110 S.Ct. 1595. Government regulation includes both statutory law and court action through civil lawsuits. *See Kreshik v. Saint Nicholas Cathedral,* 363 U.S. 190, 191, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960).

[6][7] Importantly, before the constitutional right to free exercise of religion is implicated, the threshold inquiry is whether the conduct sought to be regulated was "rooted in religious belief." *Wisconsin v. Yoder,* 406 U.S. 205, 215, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *see Sanders v. Casa View Baptist Church,* 134 F.3d 331, 337-38 (5th Cir.1998); *Destefano v. Grabrian,* 763 P.2d 275, 283-84 (Colo.1988). Further, in order to launch a free exercise challenge, it is necessary "to show the coercive effect of the enactment as it operates against [the individual] in the practice of his religion." *School Dist. v. Schempp,* 374 U.S. 203, 223, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963).

[8][9] If it is demonstrated that the conduct at issue was rooted in religious beliefs, then the court must determine whether the law regulating that conduct is neutral both on its face and in its purpose. *See Lukumi Babalu,* 508 U.S. at 531, 113 S.Ct. 2217. "[I]f the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral, and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest." *Id.* at 533, 113 S.Ct. 2217 (citation omitted).

[10] The State may, however, regulate conduct through neutral laws of general applicability. *See id.* at 531, 113 S.Ct. 2217. Thus, "a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Id.* at 531, 113 S.Ct. 2217.

[11] The second aspect of the First Amendment

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religion clause, the Establishment Clause, states that government "shall make no law respecting an establishment of religion." U.S. Const. amend. I. This aspect of the First Amendment involves the separation of church and state and prevents the government from passing laws that "aid one religion, aid all religions,*355 or prefer one religion over the other." *Schempp,* 374 U.S. at 216, 83 S.Ct. 1560.

The United States Supreme Court has explained that there are "three main evils against which the Establishment Clause was intended to afford protection: 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' " *Lemon v. Kurtzman,* 403 U.S. 602, 612, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) (quoting *Walz v. Tax Comm'n,* 397 U.S. 664, 668, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970)). In *Lemon,* the Court provided a three-part test to determine whether a neutral law violates the Establishment Clause: (1) the law must have a secular legislative purpose; (2) the primary or principal effect of the law must neither advance nor inhibit religion; and (3) the law must not foster an excessive government entanglement with religion. 403 U.S. at 612-13, 91 S.Ct. 2105. More recent cases examining the Establishment Clause have clarified that excessive government entanglement is merely a factor to consider in evaluating the second prong; that is, whether the principal effect of the statute is to advance or inhibit religion. *See Mitchell v. Helms,* 530 U.S. 793, 120 S.Ct. 2530, 147 L.Ed.2d 660 (2000); *Agostini v. Felton,* 521 U.S. 203, 233, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997). [FN5]

FN5. We note that several U.S. Supreme Court Justices have expressed dissatisfaction with the *Lemon* test, advocating an alternative analytical framework for evaluating First Amendment claims. *See, e.g., Lee v. Weisman,* 505 U.S. 577, 112 S.Ct. 2649, 120 L.Ed.2d 467 (1992) (advocating and applying a coercion-accommodation test); *Lynch v. Donnelly,* 465 U.S. 668, 691, 104 S.Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring) (advocating adoption of an endorsement test). *But see Capitol Square Review and Advisory Bd. v. Pinette,* 515 U.S. 753, 766-67, 115 S.Ct. 2440, 132 L.Ed.2d 650 (1995), plurality opinion by Scalia, J., joined by Rehnquist, C.J., and Kennedy and Thomas, JJ., (rejecting endorsement test because it "exiles private religious speech to a realm of less-protected expression.... [T]he Establishment Clause ... was never meant ... to serve as an impediment to purely *private* religious speech connected to the State only through its occurrence in a public forum."). However, we must continue to apply the *Lemon* test until the U.S. Supreme Court reaches a consensus on the successor to the *Lemon* test.

[12][13] As particularly relevant to the analysis of the First Amendment challenge in this case, the Supreme Court has also held that the First Amendment prevents courts from resolving internal church disputes that would require adjudication of questions of religious doctrine. [FN6] *See Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708-09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969); *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 107-08, 73 S.Ct. 143, 97 L.Ed. 120 (1952). For example, the Supreme Court has stated that "it is not within 'the judicial function and judicial competence' " of civil courts to determine which of two competing *356 interpretations of scripture are correct. *United States v. Lee,* 455 U.S. 252, 256, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982). Instead, civil courts must defer to the interpretations of religious doctrine made by the "highest ecclesiastical tribunal." *Serbian E. Orthodox Diocese,* 426 U.S. at 709, 96 S.Ct. 2372. Thus, the First Amendment provides churches with the "power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." *Kedroff,* 344 U.S. at 116, 73 S.Ct. 143; *see Serbian E. Orthodox Diocese,* 426 U.S. at 724-25, 96 S.Ct. 2372.

FN6. This protection has been referred to as the religious autonomy principle. *See Smith v. O'Connell,* 986 F.Supp. 73, 76 (D.R.I.1997). Although the United States Supreme Court has often discussed this

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> principle in the context of the Free Exercise Clause, *see United States v. Lee,* 455 U.S. 252, 256, 102 S.Ct. 1051, 71 L.Ed.2d 127 (1982); *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 107-08, 73 S.Ct. 143, 97 L.Ed. 120 (1952), the United States Supreme Court has also referred to this principle in the context of the Establishment Clause. *See Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). It is apparent that the religious autonomy principle articulated by the United States Supreme Court may implicate both the Free Exercise Clause and the Establishment Clause.

In *Kedroff,* the Supreme Court held unconstitutional a New York state statute passed specifically to address an intrachurch property dispute. 344 U.S. at 121, 73 S.Ct. 143. Moreover, in *Serbian E. Orthodox Diocese,* the Supreme Court held that the Illinois Supreme Court had no authority, consistent with the First Amendment, to adjudicate a dispute concerning a priest's defrockment by the mother church. 426 U.S. at 724-25, 96 S.Ct. 2372. In reversing the judgment of the state court, the Supreme Court explained:

> The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes.... "To permit civil courts to probe deeply enough into the allocation of power within a [hierarchical] church so as to decide ... religious law [governing church polity] ... would violate the First Amendment in much the same manner as civil determination of religious doctrine." *For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity,* but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

Id. at 708-09, 96 S.Ct. 2372 (emphasis added) (citations omitted) (quoting *Maryland & Va. Eldership v. Church of God,* 396 U.S. 367, 369, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring)).

Intrachurch disputes, however, must be distinguished from disputes between churches and third parties. As then Justice Rehnquist observed, in rejecting the argument by the United Methodist Church that the Free Exercise Clause barred the Court's exercise of jurisdiction in a civil dispute involving a third party:

> In my view, applicant plainly is wrong when it asserts that the First and Fourteenth Amendments prevent a civil court from independently examining, and making the ultimate decision regarding, the structure and actual operation of a hierarchical church and its constituent units in an action such as this. There are constitutional limitations on the extent to which a civil court may inquire into and determine matters of ecclesiastical cognizance and polity in adjudicating intrachurch disputes. *See Serbian Eastern Orthodox Diocese* .... But this Court has never suggested that those constraints similarly apply outside the context of such intraorganization disputes.... [*Serbian Eastern Orthodox Diocese* and other related cases] are premised on a perceived danger that in resolving intrachurch disputes the State will become entangled in essentially religious controversies or intervene on behalf*357 of groups espousing particular doctrinal beliefs. *Such considerations are not applicable to purely secular disputes between third parties and a particular defendant, albeit a religious affiliated organization, in which fraud, breach of contract, and statutory violations are alleged.*

General Council on Fin. & Admin. v. California Superior Court, 439 U.S. 1355, 1372-73, 99 S.Ct. 35, 58 L.Ed.2d 63 (Rehnquist, Circuit Justice 1978) (emphasis added).

[14] A court thus must determine whether the dispute "is an ecclesiastical one about 'discipline, faith, internal organization, or ecclesiastical rule, custom or law,' or whether it is a case in which [it] should hold religious organizations liable in civil courts for 'purely secular disputes between third parties and a particular defendant, albeit a religiously affiliated organization.' " *Bell v.*

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Presbyterian Church, 126 F.3d 328, 331 (4th Cir.1997) (quoting *Serbian E. Orthodox Diocese,* 426 U.S. at 713, 96 S.Ct. 2372; and *General Council,* 439 U.S. at 1373, 99 S.Ct. 35). *See also Mary Elizabeth Blue Hull Mem. Presbyterian Church,* 393 U.S. at 449, 89 S.Ct. 601 ("[T]here are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which the property is awarded.")

[15][16] From this overview of the applicable United States Supreme Court precedent, it is clear that although the Free Exercise and Establishment Clauses protect different interests, the analysis under the two clauses is intertwined. Thus, both clauses of the First Amendment must be analyzed in determining whether the reach of the constitutional protection extends to what amounts to an immunity from a tort claim where the religious institution is a defendant. Although an entanglement inquiry is associated with the adjudication of an Establishment Clause claim, the extent to which the courts will be called upon to determine matters of church practice also implicates the Free Exercise Clause. With this framework in mind, we turn to the split of authority among the jurisdictions that have considered the issue presented in this case.

II. SPLIT OF AUTHORITY

The United States Supreme Court has not yet resolved the issue of whether the First Amendment protects a religious institution from liability when a church employee engages in tortious conduct against a third-party, whether it arises from sexual assault and battery of a minor and an adult--as in this case--or whether it arises in the context of adult counseling, as in many other cases. [FN7] The question unanswered thus far by the United States Supreme Court is how far the religious autonomy principle of *Kedroff* and *Serbian E. Orthodox Diocese* may be extended to bar the adjudication of a third-party tort claim that calls into question a religious institution's acts or omissions.

> FN7. The difference in the result reached by courts engaged in the analysis of whether the First Amendment would bar a negligence claim against a religious institution may stem in part from the fact that "[i]t is generally acknowledged that this area of the First Amendment law is in flux and the United States Supreme Court cases offer very limited guidance." *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 794 (1995) (Abrahamson, J., dissenting). *See also Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441, 446-47 (Me.1997) (Lipez, J., dissenting) (explaining that this is "an area of the law in which the U.S. Supreme Court cases offer limited guidance and there remains significant doctrinal uncertainty").

Courts that have addressed this issue are divided. As the Third District observed in this case:

> ***358** In recent years courts throughout the nation have confronted the issue of a religious institution's liability in response to increased litigation arising from allegations of sexual misconduct by members of the clergy. Various theories of liability have been used in an attempt to resolve any First Amendment entanglement problem. And, not surprisingly given the delicate balance between religious freedom and the protection of the public safety, there is considerable diversity in the judicial analysis employed by the different courts. *See* Joseph B. Conder, *Liability of Church or Religious Society for Sexual Misconduct of Clergy,* 5 A.L.R. 5th 530 (1993).

Malicki, 771 So.2d at 546.

Substantial authority in both the state and federal courts concludes that the right to religious freedom and autonomy protected by the First Amendment is not violated by permitting the courts to adjudicate tort liability against a religious institution based on a claim that a clergy member engaged in tortious conduct such as sexual assault and battery in the course of his or her relationship with a parishioner. [FN8] These courts conclude that there is no impermissible interpretation of religious doctrine because the courts are applying a neutral principle of generally applicable tort law. [FN9] This is especially so where the religious institution does not allege that the conduct was undertaken in furtherance of a sincerely held religious belief. *See Sanders,* 134 F.3d at 338 n. 7; *Destefano,* 763 P.2d at 284. Thus, the Colorado Supreme Court has

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reasoned that "[i]n the spiritual counseling context, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact 'part of the belief and practices' of the religious group." *Destefano,* 763 P.2d at 283-84; *see Sanders,* 134 F.3d at 337-38; *MacDonell,* 696 A.2d at 702. Moreover, it has been asserted that a contrary holding actually places a church or its clergy in a preferred position of being immune from tort liability solely because of religion, which in itself would have the impermissible effect of recognizing a religion in violation of the Establishment Clause. *See Smith v. O'Connell,* 986 F.Supp. 73, 80 (D.R.I.1997) (citing *City of Boerne v. Flores,* 521 U.S. 507, 537, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (Stevens, J., concurring)); *Smith v. Raleigh Dist.,* 63 F.Supp.2d 694, 716 n. 18 (E.D.N.C.1999).

FN8. *See supra* note 2.

FN9. *See id.*

On the other hand, there is contrary authority from some state and federal courts that concludes that any tort claim against a religious institution founded on negligent hiring or supervision or breach of fiduciary duty is barred because the adjudication of the tort dispute would necessarily involve an examination of the religious institution's method of hiring, supervising, and disciplining its clergy, thus interfering with its religious autonomy. [FN10] These courts reason that the evaluation *359 of these claims would impermissibly interfere with the right of the church to determine standards governing the relationship between the church and its clergy.

FN10. **State courts: Louisiana:** *Roppolo v. Moore,* 644 So.2d 206, 207 (La.Ct.App.1994) (holding that negligence claims against clergy member and religious organization for alleged sexual relationship during the course of a counseling relationship were tantamount to impermissible clergy malpractice claim); **Maine:** *Bryan R. v. Watchtower Bible & Tract Soc'y,* 738 A.2d 839, 848 (Me.1999) (stating in dicta that "[a]llowing a secular court or jury to determine whether a church and its clergy have sufficiently disciplined, sanctioned, or counseled a church member would insert the State into church matters in a fashion wholly forbidden by the Free Exercise Clause of the First Amendment"); *Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441, 444 (Me.1997) (holding that First Amendment barred negligent supervision claim against a church regarding sexual relationship between adult parishioner and priest during the course of a marital counseling); **Michigan:** *Teadt v. Lutheran Church Missouri Synod,* 237 Mich.App. 567, 603 N.W.2d 816, 822-23 (1999) (holding that claim of breach of fiduciary duty against pastor for sexual relationship with parishioner during the course of pastoral counseling was tantamount to impermissible clergy malpractice claim); **Minnesota:** *Mulinix v. Mulinix,* No. C2-97-297, 1997 WL 585775, *6 (Minn.Ct.App. Sept.22, 1997) (holding that negligent retention and supervision claims based upon a pastor's sexual contact with parishioners was barred by the First Amendment); **Missouri:** *Gibson v. Brewer,* 952 S.W.2d 239, 246-48 (Mo.1997) (holding that First Amendment barred child victim of sexual abuse by priest from bringing negligent hiring and supervision claims, but that First Amendment would not be violated by adjudication of claim of intentional failure to supervise priest); *H.R.B. v. J.L.G.,* 913 S.W.2d 92, 98-99 (Mo.Ct.App.1995) (holding that First Amendment barred child victim of sexual abuse by priest from bringing breach of fiduciary duty claim against priest, church official, and church); **Nebraska:** *Schieffer v. Catholic Archdiocese of Omaha,* 244 Neb. 715, 508 N.W.2d 907, 911-13 (1993) (holding that First Amendment barred adult parishioner who engaged in sexual relationship with priest during the course of pastoral counseling from bringing intentional infliction of emotional distress, negligence, and breach of fiduciary duty claims); **Wisconsin:** *L.L.N. v. Clauder,* 209

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> *Wis.2d 674, 563 N.W.2d 434, 445 (1997)* (holding that First Amendment barred consideration of negligent supervision claim against diocese for sexual relationship between adult parishioner and priest while the priest was counseling the parishioner in his position as a hospital chaplain); *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 790 (1995) (same).
> **Federal courts:** *Dausch v. Rykse,* 52 F.3d 1425, 1429 (7th Cir.1994) (holding that First Amendment barred parishioner's negligent hiring and supervision and breach of fiduciary duty claims against pastor and church for sexual contact that occurred between pastor and parishioner during the course of a counseling relationship); *Ayon v. Gourley,* 47 F.Supp.2d 1246, 1250 (D.Colo.1998) (holding that First Amendment barred negligent hiring and supervision claim against archdiocese for alleged sexual abuse of minor by priest), *aff'd on other grounds* 185 F.3d 873 (10th Cir.1999) (unpublished decision); *Schmidt v. Bishop,* 779 F.Supp. 321, 325-26 (S.D.N.Y.1991) (holding that First Amendment barred adult's breach of fiduciary duty claim against pastor for actions that occurred when parishioner was a minor).

III. *DOE V. EVANS*

In contrast to the Third District's broad holding that an inquiry into the negligent hiring decision "is one governed by tort law," *Malicki,* 771 So.2d at 548, the Fourth District has held that the First Amendment bars consideration of claims for negligent hiring and supervision and breach of fiduciary duty against a church and a diocese where a pastor allegedly engaged in a sexual relationship with a parishioner during the course of a marital counseling relationship. *See Doe v. Evans,* 718 So.2d 286, 289-92 (Fla. 4th DCA 1998). In *Evans,* the Fourth District, in interpreting the First Amendment, appears to have adopted an approach based on the criminality of the underlying conduct of the clergy member. Under the Fourth District's analysis, a tort claim for negligent hiring and supervision and breach of fiduciary duty against a religious institution would be allowed only if the underlying conduct of the clergy involved criminal behavior. [FN11] As the Fourth District explained:

> FN11. In *Gibson v. Brewer,* 952 S.W.2d 239 (Mo.1997), the Missouri Supreme Court made a somewhat similar distinction between negligent conduct and the imposition of liability for an intentional tort. The court held that a claim for negligent supervision would result in excessive entanglement with religion and in the endorsement of one model of supervision. *See id.* at 247-48. However, in contrast, that court also decided that a claim for an intentional failure to supervise clergy would not offend the First Amendment because "[r]eligious conduct intended or certain to cause harm need not be tolerated under the First Amendment" just as "generally applicable criminal law" does not offend the First Amendment. *Gibson,* 952 S.W.2d at 248-49.

***360** In any event, we are persuaded that just as the State may prevent a church from offering human sacrifices, it may protect its children against injuries caused by pedophiles by authorizing civil damages against a church that knowingly (including should know) creates a situation in which such injuries are likely to occur. *We recognize that the State's interest must be compelling indeed in order to interfere in the church's selection, training and assignment of its clerics. We would draw the line at criminal conduct.*

Id. at 289 (quoting the Fifth District's dicta in *Doe v. Dorsey,* 683 So.2d 614, 617 (Fla. 5th DCA 1996)). In affirming the dismissal of the complaint based on First Amendment principles, the Fourth District expressed its view that a relationship between parishioner and pastor in which the allegations fall short of alleging criminal conduct presented a "less compelling factual scenario" than cases involving criminal assaults, especially against children. 718 So.2d at 289-90.

IV. NEGLIGENT HIRING AND SUPERVISION

The Church Defendants in this case assert that despite the fact that one of the plaintiffs is alleged

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to be a child victim of criminal sexual assault and battery, the First Amendment shields the church from tort liability because the inquiry for negligent hiring and supervision necessarily implicates church practices and doctrine. In other words, they assert that the First Amendment bars the tort claims at issue here because evaluating the "reasonableness" of their decisions regarding the hiring or supervision of Malicki would excessively entangle the civil courts in the internal workings of the church.

The Miami Shores Presbyterian Church, in an amicus brief filed in this case, urges that we reject the analytical framework of *Evans* and *Dorsey,* which would allow negligent hiring and supervision cases to proceed only if the underlying conduct of the clergy member was criminal. The Miami Shores Presbyterian Church asserts, and our research confirms, that this "criminality distinction" appears in practically no law outside of Florida." Rather, the position of amicus is that every negligent hiring and supervision lawsuit intrudes into core constitutionally protected areas and the "proposed exception is undefined and will be difficult to apply."

We reject the contention that the First Amendment may be invoked to bar the adjudication of this dispute because this case is not an internal church matter. Rather, this is a dispute between church officials and two parishioners who allege that they were injured as a result of the negligence of the church officials.

[17][18] A law establishing standards of conduct does not implicate the Free Exercise Clause unless adherence to those standards interferes with religious belief or activity. *See Lukumi Babalu Aye,* 508 U.S. at 532, 113 S.Ct. 2217. Thus, the "threshold inquiry is whether there is a conflict between conduct that is required by law and conduct that is prohibited by religious principles." *Smith v. O'Connell,* 986 F.Supp. at 78.

[19] In this case, the Church Defendants do not claim that the underlying acts of its priest in committing sexual assault ***361** and battery was governed by sincerely held religious beliefs or practices. Nor do they claim that the reason they failed to exercise control over Malicki was because of sincerely held religious beliefs or practices. Therefore, it appears that the Free Exercise Clause is not implicated in this case because the conduct sought to be regulated; that is, the Church Defendants' alleged negligence in hiring and supervision is not rooted in religious belief. Moreover, even assuming an "incidental effect of burdening a particular religious practice," the parishioners' cause of action for negligent hiring and supervision is not barred because it is based on neutral application of principles of tort law. *See Lukumi Babalu Aye,* 508 U.S. at 531, 113 S.Ct. 2217.

Through neutral application of principles of tort law, we thus give no greater or lesser deference to tortious conduct committed on third parties by religious organizations than we do to tortious conduct committed on third parties by non-religious entities. [FN12] For example, Florida courts, as well as courts in other jurisdictions, have applied neutral principles of tort law to religious institutions in premises liability cases. [FN13]

FN12. Moreover, it is noteworthy that the common law of this State never embraced the charitable immunity doctrine, which arguably may have provided charitable institutions, including the Church Defendants in this case, immunity from respondeat superior liability for the tortious acts of their employees. *See Community Blood Bank, Inc. v. Russell,* 196 So.2d 115, 120-21 (Fla.1967) (Roberts, J., concurring specially) (citing *Nicholson v. Good Samaritan Hosp.,* 145 Fla. 360, 199 So. 344 (1940)). As has been explained: "the public policy of this state, as declared by Section 4 of the Declaration of Rights of our Florida Constitution, 'is to put justice "by due course of law" above or before charity.' " *Russell,* 196 So.2d at 121 (Roberts, J., concurring). Likewise, most jurisdictions have rejected this doctrine, recognizing that it is inappropriate that a charity should be held to a lesser standard of reasonable care than that required of any other person or entity. *See generally* John H. Arnold, *Clergy Sexual Malpractice,* 8 U. Fla. J.L. & Pub. Pol'y 25, 36 (1996).

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FN13. *See Cutler v. St. John's United Methodist Church,* 489 So.2d 123, 125 (Fla. 1st DCA 1986) (finding that church could be sued for negligent supervision of a seventeen-year old girl, who drowned at Jacksonville Beach during a church-sponsored trip to Florida); *Heath v. First Baptist Church,* 341 So.2d 265 (Fla. 2d DCA 1977) (ruling that church may be liable for slip and fall based on traditional premises liability theories); *see also Laake v. Our Lady of Lourdes Church,* Nos. 9-261, 98-959, 1999 WL 975751, at *4 (Iowa Ct.App. Oct.27, 1999) (holding that church had legal duty to prevent personal injuries sustained by referee during collision with spectator at church basketball game); *Bass v. Aetna Ins. Co.,* 370 So.2d 511 (La.1979) (finding church responsible for negligence of pastor who created an unreasonable risk of injury by not clearing aisles to make way for the "running of the spirit," a common form of religious expression in that church); *Stitt v. Holland Abundant Life Fellowship,* 462 Mich. 591, 614 N.W.2d 88, 95 (2000) (holding that person attending bible study on church premises who injured herself after falling over a concrete tire stop in church parking lot was licensee for purposes of church's duty of care); *Castronovo v. Doe,* 274 A.D.2d 442, 711 N.Y.S.2d 27 (N.Y.App.Div.2000) (ruling that issues of fact precluded summary judgment for church when artist was injured after falling from scaffold).

[20][21][22] With regard to the tort of negligent supervision, this Court recognized the viability of the common law cause of action for the negligent supervision of an employee more than forty-five years ago. *See Mallory v. O'Neil,* 69 So.2d 313, 315 (Fla.1954). [FN14] The rule articulated in *Mallory* ***362** has evolved to encompass the tort of negligent hiring as well as negligent supervision. [FN15] *See Garcia v. Duffy,* 492 So.2d 435, 438 (Fla. 2d DCA 1986). To bring a prima facie case for negligent hiring, a plaintiff must demonstrate that:

FN14. In *Mallory,* this Court adopted section 317 of the Restatement of Torts. Section 317 of the Restatement (Second) of Torts (1965), which is identical to its predecessor, provides:

Duty of Master to Control Conduct of Servant.

A master is under a *duty to exercise reasonable care so to control his servant while acting outside the course of his employment* as to *prevent him from intentionally harming others* or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in the possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) *the master*

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) *knows or should know of the necessity and opportunity for exercising such control.*

(Emphasis added.)

FN15. The primary distinction between a claim for negligent hiring and a claim for negligent supervision or retention concerns the time at which the employer is charged with knowledge of the employee's unfitness. *See Garcia v. Duffy,* 492 So.2d 435, 438 (Fla. 2d DCA 1986). A claim for negligent hiring arises when, before the time the employee is hired, the employer knew or should have known that the employee was unfit. *See id.* Liability in these cases focuses on the adequacy of the employer's pre-employment investigation into the employee's background. *See id.* Liability for negligent supervision or retention, however, occurs after employment begins, where the employer knows or should know of an employee's unfitness and fails to take further action such as "investigating, discharge or reassignment." *Id.* at 438-39.

(1) the employer was required to make an

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> appropriate investigation of the employee and failed to do so; (2) an appropriate investigation would have revealed the unsuitability of the employee for the particular duty to be performed or for employment in general; and (3) it was unreasonable for the employer to hire the employee in light of the information he knew or should have known.

Id. at 440.

These are the primary factual inquiries of the negligent hiring count in this case. For example, the parishioners assert that the Church Defendants negligently failed "to make inquiries into Malicki's background, qualifications, reputation, work history, and/or criminal history prior to employing him in the capacity of Associate Pastor." As to the negligent supervision claim, the parishioners contend that the Church Defendants negligently placed them under the supervision of Malicki, when the Church Defendants either knew or should have known that Malicki had the propensity to commit sexual assaults and molestations. These allegations are the classic elements of negligent hiring and negligent supervision claims.

[23][24] The core predicate for imposing liability is one of reasonable foreseeability--the cornerstone of our tort law. *See generally McCain v. Florida Power Corp.*, 593 So.2d 500, 503 (Fla.1992). With regard to the claim for negligent hiring, the inquiry is focused on whether the specific danger that ultimately manifested itself (e.g., sexual assault and battery) reasonably could have been foreseen at the time of hiring. *See Van Osdol v. Vogt*, 908 P.2d 1122, 1132-33 (Colo.1996).

In rejecting a similar First Amendment challenge [FN16] to a claim for negligent hiring of a clergy member, the Colorado Supreme Court explained:

> FN16. Although the Colorado Supreme Court did not specify which of the religion clauses it was discussing, the court's inquiry appears to have focused on the Free Exercise Clause.

> *363 While claims for illegal hiring or discharge of a minister inevitably involve religious doctrine, that is not the case for a claim of negligent hiring of a minister. The claim of negligent hiring is brought after an employee has harmed a third party through his or her office of employment. An employer is found liable for negligent hiring if, at the time of hiring, the employer had reason to believe that hiring this person would create an undue risk of harm to others. Hence, *the court does not inquire into the employer's broad reasons for choosing this particular employee for the position, but instead looks to whether the specific danger which ultimately manifested itself could have reasonably been foreseen at the time of hiring.*

Bear Valley Church, 928 P.2d at 1323 (citations omitted) (quoting *Van Osdol*, 908 P.2d at 1132 n. 17) (emphasis added).

Similarly, in finding that the Free Exercise Clause does not bar a claim for negligent supervision against a church for the sexual misconduct of its priest, the United States District Court for the District of Connecticut stated:

> The court's determination of an action against the defendants based upon their alleged negligent supervision of [the priest] would not prejudice or impose upon any of the religious tenets or practices of Catholicism. Rather, such a determination would involve an examination of the defendants' possible role in allowing one of its employees to engage in conduct which they, as employers, as well as society in general expressly prohibit. Since the Supreme Court has consistently failed to allow the Free Exercise Clause to "relieve [ ][an] individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs," the defendants cannot appropriately implicate the First Amendment as a defense to their alleged negligent conduct.

Nutt v. Norwich Roman Catholic Diocese, 921 F.Supp. 66, 74 (D.Conn.1995) (quoting *Minersville School Dist. v. Gobitis*, 310 U.S. 586, 594, 60 S.Ct. 1010, 84 L.Ed. 1375 (1940)).

In its reasoning in *Evans*, the Fourth District appears to have assumed that a First Amendment violation will occur any time a court may be required to either review or interpret church doctrine and that the only basis for a court to interfere in a church-related dispute is if the State's interest is compelling. However, the United States Supreme Court has not extended the religious autonomy principle as articulated in *Kedroff* and

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Serbian E. Orthodox Diocese to disputes beyond strictly ecclesiastical intrachurch disputes that have been resolved through an ecclesiastical tribunal. In addition, resolution of the dispute would have to involve "extensive inquiry" into religious law and polity before the First Amendment would bar a secular court from adjudicating a civil dispute. *Serbian E. Orthodox Diocese,* 426 U.S. at 709, 96 S.Ct. 2372.

The religious autonomy principle is further inapplicable in a case such as this, where "the court does not run the risk of displacing the free religious choices of defendants by placing its weight behind a particular religious belief." *Raleigh Dist.,* 63 F.Supp.2d at 709. As the United States Court of Appeal for the Fifth Circuit succinctly explained:

> The First Amendment does not categorically insulate religious relationships from judicial scrutiny, for to do so would necessarily extend constitutional protection to the secular components of these relationships....
>
> Instead, the Free Exercise Clause protects religious relationships ... by preventing the judicial resolution of ecclesiastical ***364** disputes turning on matters of "religious doctrine or practice."

Sanders, 134 F.3d at 335-36. Therefore, for all these reasons, we conclude that the Free Exercise Clause does not bar consideration of the parishioners' claims for negligent hiring and supervision as alleged in their complaint.

[25] Moreover, the Establishment Clause does not bar these causes of action because the imposition of tort liability in this case has a secular purpose and the primary effect of imposing tort liability based on the allegations of the complaint neither advances nor inhibits religion. The core inquiry in determining whether the Church Defendants are liable will focus on whether they reasonably should have foreseen the risk of harm to third parties. This is a neutral principle of tort law. Therefore, based on the allegations in the complaint, we do not foresee "excessive" entanglement in internal church matters or in interpretation of religious doctrine or ecclesiastical law.

[26] Finally, we reject the distinction that the Fourth District drew in *Evans,* 718 So.2d at 289-90, that would apparently allow a negligent supervision claim against a church defendant only if the underlying sexual misconduct involved criminal activity (e.g., sexual assault and battery, as in this case). As the United States Supreme Court explained in *Lukumi Babalu Aye* and *Smith,* strict scrutiny will not be triggered by neutral laws of general applicability that are not intended to "infringe upon or restrict practices because of their religious motivation." *Lukumi Babalu Aye,* 508 U.S. at 533, 113 S.Ct. 2217; *see Smith,* 494 U.S. at 884-85, 110 S.Ct. 1595. Moreover, this "neutral principles of law" doctrine applies in both the criminal and the civil context. [FN17]

> FN17. *See Miller v. Reed,* 176 F.3d 1202, 1207 (9th Cir.1999) (applicant challenged denial of driver's license renewal because of applicant's refusal, on religious grounds, to supply his social security number); *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark,* 170 F.3d 359, 363 (3d Cir.1999) (police officers challenged police department policy of requiring officers to shave their beards in violation of their Sunni Muslim religious beliefs); *Vandiver v. Hardin County Bd. of Educ.,* 925 F.2d 927, 932 (6th Cir.1991) (challenge to requirement that student pass equivalency exam in order to gain credit for his religious home study program); *Rector, Wardens, and Members of the Vestry of St. Bartholomew's Church v. City of New York,* 914 F.2d 348, 354 (2d Cir.1990) (church challenge to Landmark Preservation Law as violative of Free Exercise Clause). *Cf. City of Boerne v. Flores,* 521 U.S. 507, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (assuming that *Smith* would apply in the context of local zoning ordinances in the absence of the Religious Freedom Restoration Act).

Whether the priest's tortious conduct in this case involved improper sexual relations with an adult parishioner he was counseling or sexual assault and battery of a minor, the necessary inquiry in the claim against the Church Defendants is similarly framed: whether the Church Defendants had reason to know of the tortious conduct and did nothing to prevent reasonably foreseeable harm from being inflicted upon the plaintiffs. Because the

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underlying claim arises from the alleged sexual assault and battery of a minor and adult parishioner by a priest, and because the claim for negligence involves whether the Church Defendants knew or should have known of the tortious conduct, we conclude that the First Amendment may not be invoked to bar the parishioners from seeking redress for the alleged tortious conduct of the Church Defendants. [FN18]

FN18. We have addressed only Counts I and II in this opinion. Counts VII and VIII of the complaint are assault and battery charges against Malicki. These counts remain pending in the trial court and are not before this Court. As to the claim for respondeat superior set forth in Counts III and IV, although not addressing the viability of the cause of action in this case, the Third District in a subsequent opinion has explained that

[a]s a matter of common sense, having sexual relations with a counselee is not part of the job responsibilities of a minister. *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So.2d 353, 356-57 (Fla. 3d DCA 2001). Plainly the sexual conduct alleged by plaintiffs was for the personal motives of the pastor, and not designed to further the interests of the church.

See Elders v. United Methodist Church, 793 So.2d 1038, 1041 (Fla. 3d DCA 2001); *see also Iglesia Cristiana La Casa Del Senor*, 783 So.2d at 357 (explaining that vicarious liability was inapplicable where "the sexual assault did not occur on Church property, and the record does not support a finding that [the pastor's] criminal act against L.M. constituted the kind of conduct he was employed to perform, or that he was in any way motivated by his desire to serve the Church"). Further, with regard to Counts V and VI, we do not reach the issue of whether the allegations of the complaint set forth a cause of action for breach of implied contract because that question was neither reached by the trial court nor addressed by the Third District.

*365 CONCLUSION

We recognize that the Free Exercise Clause and the Establishment Clause require constant vigilance to prevent the government from either stifling the free exercise of religion or excessively and impermissibly entangling itself with interpreting religious doctrine on matters solely within the purview of religious institutions. However, with regard to a third party tort claim against a religious institution, we conclude that the First Amendment does not provide a shield behind which a church may avoid liability for harm arising from an alleged sexual assault and battery by one of its clergy members.

[27] By holding that the First Amendment does not bar the court's consideration of the parishioners' allegations, we expressly do not pass on the merits of the underlying case. Our holding today is only that the First Amendment cannot be used at the initial pleading stage to shut the courthouse door on a plaintiff's claims, which are founded on a religious institution's alleged negligence arising from the institution's failure to prevent harm resulting from one of its clergy who sexually assaults and batters a minor or adult parishioner. [FN19] To hold otherwise and immunize the Church Defendants from suit could risk placing religious institutions in a preferred position over secular institutions, a concept both foreign and hostile to the First Amendment. Accordingly, we approve the decision below, disapprove of the Fourth District's decision in *Evans*, and remand for further proceedings consistent with this opinion.

FN19. We note that many of the decisions holding that the First Amendment bars tort claims based on similar allegations in a complaint arise at the motion to dismiss stage and appear to be grounded in theoretical speculation that an inquiry into a religious institution's conduct would result in excessive entanglement. *See, e.g., Watchtower Bible*, 738 A.2d at 845; *Swanson*, 692 A.2d at 444-45; *Gibson*, 952 S.W.2d at 246-47. In contrast, many courts that have actually adjudicated these claims, or have at least reached the summary judgment phase, have done so based on a concrete record revealing little,

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> if any, doctrinal entanglement and certainly not excessive entanglement. *See, e.g., Bear Valley Church,* 928 P.2d at 1322-23; *Konkle,* 672 N.E.2d at 456; *C.J.C.,* 985 P.2d at 262; *Martinelli,* 196 F.3d at 430-32.

It is so ordered.

SHAW, ANSTEAD, LEWIS, and QUINCE, JJ., concur.

WELLS, C.J., concurs in result only with an opinion.

QUINCE, J., concurs specially with an opinion.

HARDING, J., dissents with an opinion.

***366** WELLS, C.J., concurring in result only.

I concur in result only in this decision which, when stripped of substantial dicta, is stated in the opinion's third from final sentence:

> Our holding today is *only* that the First Amendment cannot be used at the initial pleading stage to shut the courthouse door on a plaintiff's claims, which are founded on a religious institution's alleged negligence arising from the institution's failure to prevent harm resulting from one of its clergy who sexually assaults and batters a minor or adult parishioner. Majority op. at 365 (emphasis added). I expressly do not join in what I conclude is overly broad and imprecise language in the opinion, such as use of the term "tortious conduct," which is otherwise undefined and ambiguous as to tort law meaning.

I would limit the liability of the religious organization by finding a specific bright-line exception to the First Amendment bar of secular court involvement to allegations and proof of criminal sexual assault and battery. *See Doe v. Dorsey,* 683 So.2d 614 (Fla. 5th DCA 1996). I am in agreement with much of the well-reasoned opinion of Judge Polen in *Doe v. Evans,* 718 So.2d 286 (Fla. 4th DCA 1998), although I question whether the allegations of the operative complaint in that case even state a cause of action to be evaluated for a First Amendment bar. I would also adopt the exception as stated in *Dorsey.*

I do have a very real concern about the breadth and imprecise language of the majority opinion. My concern is that the religious organizations in this state are going to be severely financially burdened by having to defend claims for undefined and unlimited "tortious conduct" which claim to be grounded upon the majority opinion. The problem I foresee is that the vagueness of this language, which does not define the elements of any torts or draw lines for which conduct is actionable, will particularly burden religious organizations because these are the organizations that provide these counseling services on an affordable basis.

Certainly, I in no way condone abusive sexual conduct, whether it takes place in a religious organization or elsewhere. However, I believe that this Court should recognize that by its opinion in this case and by quashing *Doe v. Evans,* 718 So.2d 286 (Fla. 4th DCA 1998), it is placing in severe jeopardy these counseling programs provided by religious organizations in this state. These organizations provide real, beneficial, and needed services that the citizens using these services will not otherwise find available. The costs of defending claims founded upon the language of this opinion will simply make the financial burden of providing the services too great.

With the express limited exception stated in this opinion, I concur with the reasoning of Justice Harding.

QUINCE, J., specially concurring.

While I fully agree with the majority opinion in this case, I write to address the concerns articulated by Chief Justice Wells in his concurring in result only opinion. He opines that the majority's decision may result in religious institutions becoming "severely financially burdened" by being forced to defend tort claims brought against them based on the actions of their employees against third party plaintiffs. Concurring in result only op. of Wells,

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C.J., at 366. Furthermore, he contends that our decision makes the risk of defending these types of claims too great to continue to offer counseling services.

I agree with Chief Justice Wells that religious organizations provide beneficial services to the citizens of Florida. However, ***367** I fail to see how placing religious organizations on the same playing field as secular institutions for the purposes of tort liability will result in a severe financial burden for these organizations. Today's opinion simply holds that when religious organizations undertake to provide services to the public, they have a duty to protect the citizens who use those services from the tortious conduct of their employees.

Additionally, Chief Justice Wells' assertion that religious organizations will be severely financially burdened by subjecting them to tort liability does not take into account the fact that religious organizations, like secular organizations, carry insurance policies to protect against the expense of defending claims based upon the acts of their employees. *See, e.g., Evangelical Lutheran Church in America v. Atlantic Mut. Ins. Co.,* 169 F.3d 947, 951 (5th Cir.1999) (holding that church synod's allegedly negligent training, supervision, and placement of minister who allegedly committed sexual assault constituted an "occurrence" within the meaning of synod's CGL and umbrella insurance policies); *Melendez v. Commercial Union Ins. Co.,* No. 3:94CV00776(AVC), 2000 WL 303434 (D.Conn. Feb.8, 2000) (recognizing insurance policy covering church for sexual misconduct of its priest); *Bohrer v. Church Mut. Ins. Co.,* 965 P.2d 1258 (Colo.1998) (holding that religious organization's insurance policy covered a minister's alleged sexual misconduct).

In essence, one of Chief Justice Wells' assertions is that religious organizations, based on that status alone and without any demonstration that these tort claims unduly infringe on the religious tenets of the organizations, should be given preferential legal treatment. However, as the majority points out, shielding religious organizations from tort liability solely because of their status would have the impermissible effect of recognizing a religion in violation of the Establishment Clause. *Smith v. O'Connell,* 986 F.Supp. 73, 80 (D.R.I.1997) (citing *City of Boerne v. Flores,* 521 U.S. 507, 537, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) (Stevens, J., concurring)). [FN20] Such a recognition of religion would, in my opinion, violate the principles of the First Amendment of the United States Constitution and article I, section 3 of the Florida Constitution.

> FN20. The First Amendment to the United States Constitution provides in pertinent part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." *See also* art. I, § 3, Fla. Const.

HARDING, J., dissenting.

While I recognize that the First Amendment does not shield a religious institution against all vicarious liability arising from the tortious actions of its employees, I dissent because allowing a tort claim for negligent hiring and supervision against the hierarchy of a religious institution would necessarily require a secular court to impermissibly interpret the religious institution's law, policies, and practices. Such intrusion into the internal affairs of the church--or any other religious institution--would amount to excessive entanglement of religion by the state and, therefore, such a claim is barred by the First Amendment.

In reaching its conclusion, the majority generally undervalues the First Amendment concerns at stake and specifically overlooks the undeniable, and constitutionally violative, result that secular standards of care and duties will be unilaterally imposed upon the ecclesiastical hierarchy. "Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable ***368** clerics in the performance of their ecclesiastical counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs." *Franco v. Church of Jesus Christ of Latter-Day Saints,* 21 P.3d 198, 206 (Utah 2001).

To determine that a church negligently installed or transferred a particular pastor is effectively to

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override the church's prior decision in this regard and to impermissibly dictate the church's or its congregation's decision-making in the future, and it interferes with a church's freedom to interact with its own clergy. Moreover, "judicial inquiry into the hiring, ordaining, and retaining of clergy would result in an endorsement of religion 'by approving one model for church hiring, ordination, and retention of clergy.' " *Doe v. Evans,* 718 So.2d 286, 290 (Fla. 4th DCA 1998) (quoting *Gibson v. Brewer,* 952 S.W.2d 239, 247 (Mo.1997)). [FN21]

> FN21. The majority's decision today is directly at odds with the recognition by our United States Supreme Court that the First Amendment provides churches with the " *power to decide for themselves, free from state interference, matters of church government,* as well as those of faith and doctrine." *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 116, 73 S.Ct. 143, 97 L.Ed. 120 (1952) (emphasis added).

While I recognize that, arguably, two of the most authoritarian structures of human existence--religion and state--are not static structures, a closer examination into the *nature of the dispute* is required before eviscerating the independent significance of religion in our Constitution. As such, I find the majority's conclusion is falsely premised on the notion that the instant case is a "purely secular" dispute "between church officials and a third person" and, therefore, not violative of the First Amendment. While it is true that the pleading caption in the instant case does identify a dispute between church officials and a third a party, a closer inquiry reveals that the *nature of the dispute* in this instance, i.e., negligent hiring and supervision, implicates a secular examination into "*intra*-church" process and procedure; an action proscribed by our Constitution.

> In rejecting a claim similar to the one posed here against a Presbyterian church for the negligent placement, retention, or supervision of one of its pastors for the alleged sexual misconduct against a twelve-year-old, then Chief Judge Brieant of the Southern District of New York noted: [A]ny inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement ... [and] might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. He may not demit his charge nor be removed by the session, without the consent of the presbytery, functioning essentially as an ecclesiastical court. The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millenia. As the Supreme Court stated long before the *Lemon* formulation was developed:
>
> It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as *369 the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.
>
> It would therefore also be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant Bishop. Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause.
>
> *Schmidt v. Bishop,* 779 F.Supp. 321, 332 (S.D.N.Y.1991) (citations omitted) (quoting *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 729, 20 L.Ed. 666 (1871)).

Furthermore, the majority's reliance on statements by then Justice Rehnquist in *General Council on Fin. & Admin. v. California Superior Court,* 439 U.S. 1369, 1372-73, 99 S.Ct. 35, 58 L.Ed.2d 63 (Rehnquist, Circuit Justice 1978) is also misplaced. In *General Council,* then Justice Rehnquist said the Free Exercise Clause does not bar the Court's exercise of jurisdiction in a civil dispute between churches and third parties. *See General Council,* 439 U.S. at 1372-73, 99 S.Ct. 35. His conclusion, however, is expressly limited to "purely secular disputes between third parties ... [and religious organizations] ... in which *fraud, breach of*

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contract, and statutory violations are alleged." *Id.* at 1373, 99 S.Ct. 35. Such an inquiry would be primarily concerned with the *inter*-relationship between the third party and the church, and allegations of fraud, breach of contract, or statutory violations would not necessarily require a secular examination of *intra*-church policy and practice. Those circumstances are not present here.

To support its assertion that the instant claim is "based upon a neutral principles of law" and, therefore, not barred, the majority cites to *Presbyterian Church v. Mary Elizabeth Blue Hull Mem. Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). Reliance on this case, however, is also misplaced. In *Presbyterian Church,* the Court examined "whether the restraints of the First Amendment ... permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine." *Id.* at 441, 89 S.Ct. 601. Although the Supreme Court stated, and the majority in the instant case noted, "there are neutral principles of law ... which can be applied without 'establishing' churches to which property is awarded," *Id.* at 449, 89 S.Ct. 601, the Court also recognized that "[s]pecial problems arise ... when these disputes implicate controversies over church doctrine and practice." *Id.* at 445, 89 S.Ct. 601. Thus, when a Georgia court interpreted particular church doctrines and the importance of those doctrines to the religion, it "violated the command of the First Amendment." *Id.* at 449, 89 S.Ct. 601. The Court concluded that:

> First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concerns.

Id. at 449, 89 S.Ct. 601.

While I recognize there are some courts which have found no First Amendment bar to claims similar to the ones at issue here, ***370** I would instead, for the reasons mentioned above, join the large number of jurisdictions which have concluded that allowing a tort claim for negligent hiring and supervision against a religious organization violates the First Amendment of our Constitution. [FN22]

> FN22. See the cases cited in the majority opinion at footnote 10.

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Briefs and Other Related Documents (Back to top)

• 2001 WL 34114887 (Appellate Filing) Respondent's Brief on Jurisdiction (Feb. 05, 2001)

• 2001 WL 34114886 (Appellate Filing) Petitioners' Brief on Jurisdiction (Jan. 18, 2001)

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EXHIBIT 34

196 F.3d 409
(Cite as: 196 F.3d 409)

Briefs and Other Related Documents

United States Court of Appeals,
Second Circuit.

Frank MARTINELLI, Plaintiff-Appellee,
v.
BRIDGEPORT ROMAN CATHOLIC DIOCESAN CORPORATION, Defendant-Appellant.

Docket No. 98-7876.

Argued April 1, 1999.
Decided Nov. 10, 1999.

Former parishioner brought action against diocese, seeking compensation for child sexual abuse by priest. Following jury finding that diocese had breached fiduciary duty it owed to parishioner, diocese moved for judgment as a matter of law. The United States District Court for the District of Connecticut, Janet Bond Arterton, J., 10 F.Supp.2d 138, denied motion, and diocese appealed. The Court of Appeals, Sack, Circuit Judge held that: (1) Connecticut fraudulent concealment tolling statute applies to claims governed by the sexual assault statute of limitations; (2) when a defendant is sued by a person to whom it owes a fiduciary duty, the burden shift to the defendant to prove that one of the three *Bartone* elements for application of the tolling statute is not met; (3) burden of proof on the question of the plaintiff's own ignorance of the existence of the cause of action does not shift to the defendant; (4) *Bartone* requirement that defendant had actual knowledge of significant facts that it concealed from the plaintiff is not excused on ground that defendant's ignorance was the result of a failure to fulfill a duty to investigate and warn; (5) actual awareness factor did not require that diocese knew that plaintiff was one of priest's victims; (6) plaintiff's ignorance of the facts that the defendant has sought to conceal is a necessary element of tolling under the statute; (7) evidence was sufficient to support the jury's finding of a fiduciary relationship; (8) the Free Exercise Clause of the First Amendment did not prohibit court's finding of a fiduciary relationship; and (9) giving of missing witness charge was proper.

Affirmed in part, vacated, and remanded.

Moran, District Judge, filed a dissenting opinion.

West Headnotes

[1] Limitation of Actions ⇐104(1)
241k104(1) Most Cited Cases

Connecticut fraudulent concealment tolling statute applies to claims governed by the sexual assault statute of limitations. C.G.S.A. §§ 52-577d, 52- 595

[2] Federal Civil Procedure ⇐2173.1(1)
170Ak2173.1(1) Most Cited Cases

[2] Federal Courts ⇐908.1
170Bk908.1 Most Cited Cases

A jury charge is erroneous if it misleads the jury as to the correct legal standard, or if it does not adequately inform the jury of the law, and an erroneous instruction, unless harmless, requires a new trial.

[3] Federal Civil Procedure ⇐2182.1
170Ak2182.1 Most Cited Cases

A court's charge must be tested by viewing it as a whole and will not be disturbed on appeal if it is correct and sufficiently covers the case so that a jury can intelligently determine the questions presented to it.

[4] Limitation of Actions ⇐104(1)
241k104(1) Most Cited Cases

Under Connecticut law, in the ordinary case in which fraudulent concealment is asserted by a party attempting to extend the statute of limitations under tolling statute, the plaintiff is required to shoulder the burden with respect to all three parts of the *Bartone* test: (1) the defendant's actual, not imputed, awareness of the facts necessary to establish the plaintiff's cause of action; (2) its intentional concealment of such facts; and (3) that the concealment is for the purpose of obtaining delay, but when a defendant is sued by a person to whom it owes a fiduciary duty and that person is trying to extend the limitations period, the burden shifts to the defendant to prove that one of the three *Bartone* elements has not been met, and such proof must be by clear and convincing evidence.

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C.G.S.A. § 52-595.

[5] Fraud ⇐50
184k50 Most Cited Cases

Under Connecticut law, where an allegation of fraud, self-dealing, or conflict of interest is made against a fiduciary, the burden shifts to the fiduciary to prove that it acted fairly.

[6] Contracts ⇐96
95k96 Most Cited Cases

[6] Contracts ⇐99(1)
95k99(1) Most Cited Cases

Under Connecticut law, undue influence generally will not be presumed, but where one party has a dominant and controlling force or influence over the other and the superior party obtains a possible benefit, equity raises a presumption against the validity of the transaction or contract, but it is only when the confidential relationship is shown together with suspicious circumstances, or where there is a transaction, contract, or transfer between persons in a confidential or fiduciary relationship, and where the dominant party is the beneficiary of the transaction, contract, or transfer, that the burden shifts to the fiduciary to prove fair dealing.

[7] Fraud ⇐50
184k50 Most Cited Cases

Where the fiduciary has not received some kind of benefit that would engender suspicion and there is no other evidence of wrongdoing, the burden of proof on claim against the fiduciary remains on the plaintiff under Connecticut law, but Connecticut law routinely shifts the burden of proof, irrespective of circumstances, where a fiduciary appears to have obtained a benefit at the expense of a person to whom it owes a fiduciary duty.

[8] Limitation of Actions ⇐197(2)
241k197(2) Most Cited Cases

Under the Connecticut fraudulent concealment tolling statute, fraudulent concealment is treated as akin to other forms of fraud, with similar requirements of proof; thus, the evidence must be clear, precise, and unequivocal. C.G.S.A. § 52-595.

[9] Limitation of Actions ⇐104(1)
241k104(1) Most Cited Cases

For the Connecticut fraudulent concealment tolling statute to be applicable, defendant must have had actual knowledge of significant facts that it concealed from the plaintiff; knowledge imputed to it by law is not enough, and the requirement of actual knowledge is not excused on ground that defendant's ignorance was the result of a failure to fulfill a duty to investigate and warn. C.G.S.A. § 52-595.

[10] Federal Courts ⇐776
170Bk776 Most Cited Cases

[10] Federal Courts ⇐798
170Bk798 Most Cited Cases

[10] Federal Courts ⇐801
170Bk801 Most Cited Cases

Court of Appeals reviews de novo the district court's denial of a motion for judgment as a matter of law, and in so doing, the Court must view the evidence in the light most favorable to the party against which the motion was made, making all credibility assessments and drawing all inferences in favor of the non-movant. Fed.Rules Civ.Proc.Rule 50(b), 28 U.S.C.A.

[11] Limitation of Actions ⇐104(1)
241k104(1) Most Cited Cases

Requirement for application of the Connecticut fraudulent concealment tolling statute that defendant had actual awareness of the facts necessary to establish plaintiff's cause of action, in former parishioner's action against diocese for priest's sexual assault on him while he was a child, did not mean that diocese had to be aware that priest sexually assaulted plaintiff; if the diocese had a fiduciary duty toward plaintiff and knew that at least one other young person to whom it owed such a duty had been assaulted and that the diocese's failure to disclose priest's conduct or discover who the victim was would likely compound this victim's injury, a jury could conclude that the diocese was actually aware of the facts necessary to establish plaintiff's cause of action, sufficiently to satisfy the actual awareness factor under *Bartone*. C.G.S.A. § 52-595.

[12] Limitation of Actions ⇐104(1)

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241k104(1) Most Cited Cases

Connecticut Supreme Court would hold that to establish the first *Bartone* factor for application of the Connecticut fraudulent concealment tolling statute, actual awareness of the facts necessary to establish the plaintiff's cause of action, it is sufficient to show that the defendant had and concealed actual awareness of facts that created a likely potential for harm, even though it did not know the identity of the actual victim, especially if the defendant was a fiduciary for the likely victim. C.G.S.A. § 52-595.

[13] Limitation of Actions ⇐104(1)
241k104(1) Most Cited Cases

Plaintiff's ignorance of the facts that the defendant has sought to conceal is a necessary element of tolling under the Connecticut fraudulent concealment tolling statute. C.G.S.A. § 52-595.

[14] Limitation of Actions ⇐195(5)
241k195(5) Most Cited Cases

For application of the Connecticut fraudulent concealment tolling statute, though the burden of proof on the issue of the propriety of the defendant's conduct is shifted to the defendant when defendant owes a fiduciary duty to the plaintiff, the burden of proving plaintiff's ignorance of the facts that the defendant has sought to conceal remains with plaintiff. C.G.S.A. § 52-595.

[15] Evidence ⇐91
157k91 Most Cited Cases

In general, the law places the burden of proof on the party that asserts a contention and seeks to benefit from it.

[16] Federal Courts ⇐909
170Bk909 Most Cited Cases

In action in which plaintiff invoked the Connecticut fraudulent concealment tolling statute, erroneous instruction that, to avoid tolling the statute of limitations, the defendant had to prove that plaintiff had knowledge of his cause of action was not harmless.

[17] Fraud ⇐7
184k7 Most Cited Cases

Under Connecticut law, a "fiduciary relationship" is a relationship that is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.

[18] Limitation of Actions ⇐197(2)
241k197(2) Most Cited Cases
Action.

[18] Religious Societies ⇐31(5)
332k31(5) Most Cited Cases

Under Connecticut law, evidence was sufficient to support the jury's finding of a fiduciary relationship between the diocese and former parishioner, which was relevant both the substantive claim of breach of fiduciary duty and to application of the Connecticut fraudulent concealment tolling statute in suit seeking compensation for child sexual assault on parishioner by priest, irrespective of the duties of the diocese to its parishioners generally, where diocese knew that parishioner had a special and privileged relationship with priest as a member of a small group of boys interested in liturgical reform, priest, surely with the knowledge and approval of the diocese, also escorted boys on church field trips, and diocese was entrusted with reports from other young victims, including a member of the same group, that they had been abused by priest. C.G.S.A. § 52-595.

[19] Religious Societies ⇐30
332k30 Most Cited Cases

Under Connecticut law, finding of a fiduciary relationship between diocese and child parishioner, who was sexually assaulted by priest did not require that diocese had clearly undertaken to act as a fiduciary with respect to parishioner and had individual contact with him.

[20] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[20] Religious Societies ⇐30
332k30 Most Cited Cases

The Free Exercise Clause of the First Amendment did not prohibit court's finding of a fiduciary relationship between diocese and child parishioner claiming sexual abuse by priest, on theory that the

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finding was based on religious doctrine and practices, where claim was brought under state law, not church law, the jury's finding of a fiduciary duty was supported by ample evidence apart from the evidence of a religious nature, and to the extent that the jury did consider religious teachings and tenets, it did so to determine not their validity but whether, as a matter of fact, parishioner's following of the teachings and belief in the tenets gave rise to a fiduciary relationship between him and the diocese. U.S.C.A. Const.Amend. 1.

[21] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Although First Amendment values are jeopardized when litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice, the Free Exercise Clause does not prevent courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters. U.S.C.A. Const.Amend. 1.

[22] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Where a person's beliefs are alleged to give rise to a special legal relationship between him and his church, court may be required to consider with other relevant evidence the nature of that person's beliefs in order properly to determine whether the asserted relationship in fact exists, and this does not violate the Free Exercise clause of the First Amendment where court judges nothing to be heresy, supports no dogma, and acknowledges no beliefs or practices of any sect to be the law. U.S.C.A. Const.Amend. 1.

[23] Federal Courts ⇐822
170Bk822 Most Cited Cases

Giving of missing witness charge is reviewed only for abuse of discretion.

[24] Federal Civil Procedure ⇐2173
170Ak2173 Most Cited Cases

Giving of missing witness charge was proper under both federal and Connecticut law, based on failure of diocese to produce priest in action against diocese by former parishioner seeking compensation for child sexual abuse by priest, as evidence that priest was still incardinated to the diocese, that the diocese knew his address, telephone number, and place of employment after plaintiff brought his claim, and that person apparently acting on behalf of diocese had more recent contact with him sufficiently showed that priest was available to be produced at trial.

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Michael L. Costello, Tobin and Dempf, Albany, New York; Mark E. Chopko, Jeffrey Hunter Moon, Washington, D.C. (on the brief), for amici curiae United States Catholic Conference, the Church of Jesus Christ of Latter-Day Saints, the Rev. Clifton Kirkpatrick as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), the General Conference of Seventh-Day Adventists, the General Council on Finance and Administration of the United Methodist Church, the First Church of Christ, Scientist, and the Evangelical Lutheran Church in America.

Before: LEVAL and SACK, Circuit Judges, and MORAN, District Judge. [FN*]

FN* The Honorable James B. Moran, Senior United States District Judge for the Northern District of Illinois, sitting by designation.

SACK, Circuit Judge:

The Bridgeport Roman Catholic Diocesan Corporation (the "Diocese") appeals from the second amended judgment of the United States District Court for the District of Connecticut (Janet Bond Arterton, *Judge*) entered on June 11, 1998 in favor of the plaintiff Frank Martinelli following a

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jury verdict. The jury found the Diocese liable for breaching fiduciary duties it owed to Martinelli, a parishioner, who claimed that as a teenager he had been sexually assaulted on three occasions between 1961 and 1963 by Father Laurence Brett, one of the Diocese's priests. The jury awarded Martinelli $750,000 in compensatory damages and held the Diocese liable for punitive damages. The district court subsequently fixed Martinelli's punitive damages in the amount of $250,000, and denied the Diocese's Fed.R.Civ.P. 50(b) renewed motion for judgment as a matter of law.

We affirm the district court's ruling denying the Diocese's motion for judgment as a matter of law under Rule 50(b). We conclude, however, that the district court erred in two respects in instructing the jury on the Connecticut fraudulent concealment tolling statute, Conn. Gen.Stat. § 52- 595, which the plaintiff invoked to proceed with his otherwise untimely claim. First, the district court erred by failing to instruct the jury that the plaintiff had the burden to prove that he lacked knowledge of the existence of his cause of action during the time he claimed that it was fraudulently concealed from him. Second, the district court erroneously instructed the jury that the tolling statute did not require that the defendant have actual awareness of facts necessary to establish the plaintiff's cause of action if the defendant's lack of awareness resulted from a breach of fiduciary duties it owed to the plaintiff. We therefore vacate the judgment and remand for a new trial on at least the issues of (1) whether Martinelli, in invoking the tolling statute, has met his burden of proof as to his own lack of knowledge; and (2) whether the Diocese has demonstrated that it lacked knowledge of the plaintiff's cause of action such that the tolling statute does not apply.

BACKGROUND

In June 1962, Father Laurence Brett began his Catholic priesthood as assistant *414 to the pastor at St. Cecilia's Parish in Stamford, Connecticut, a church operating within the Bridgeport Diocese. Martinelli, then a fourteen- year-old student at Stamford Catholic High School, a school affiliated with the Bridgeport Diocese, was a parishioner at St. Cecilia's.

During Father Brett's tenure at St. Cecilia's, which lasted a little more than two years, he acted as a mentor and spiritual advisor to a small group of boys, including Martinelli, who were interested in liturgical reforms in the Catholic Church. Brett referred to the group as "Brett's Mavericks." [FN1]

> FN1. "Bret Maverick" (played by Jack Kelly), and his brother "Bart" (James Garner), were characters in a popular ABC television comedy-Western series that originally aired between 1957 and 1962. *See* Alan Morton, *Maverick: An Episode Guide*, www.xnet.com/djk/Maverick_2.shtml (1999). A motion picture based on the television series was released in 1994. *See id.*

Martinelli claims that Father Brett abused his position of trust and induced members of the group to engage in sexual relations with him. Martinelli testified to three occasions on which Brett sexually assaulted him as a minor. On the first, Brett performed fellatio on Martinelli in a walkway behind the grade school of the church after confession. On the second, Brett induced Martinelli to perform fellatio on him in Brett's car in St. Cecilia's parking lot by telling him that the act was a way to receive Holy Communion. The third incident of abuse allegedly occurred when Brett fondled Martinelli in a bathroom during a field trip the two made with another boy to Baltimore and Washington, D.C. Although Martinelli's recollection of the dates of these alleged incidents is not clear, he testified that they occurred sometime in 1962, 1963, or 1964. He further claims that his memory of the abuse he suffered was repressed and not recovered until after a conversation with a high-school friend in October 1991 and during subsequent therapy.

In September 1964, Father Brett left St. Cecilia's in Stamford to become a spiritual director at Sacred Heart University in nearby Bridgeport. On December 1 of that year, the Diocese received a complaint that Brett had sexually assaulted a 19-year-old Sacred Heart University student, "T.F.," the month before. A December 2, 1964 report of the incident prepared by Monsignor William A. Genuario, the Diocese's Vice Chancellor, indicated that Diocesan officials confronted Brett the day the complaint was lodged and that Brett admitted the truth of the student's

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allegations. The report added that the complaining student, "T.F.," "was worried about other boys who had gone to [a] New York Hotel with Father Brett" but that "Father Brett denies that anything happened on those occasions." The report also indicated, however, that Brett "admitted ... involvement with one other University boy," or perhaps, as Msgr. McGough, a second Diocesan official present at the meeting with Brett, recalled the conversation, "one or two other [boys] on one or two occasions." According to the Diocese's report, Brett stated that he "discovered his problem in Stamford, and had been involved there," and that his "problem" was known to a small number of people, including Brett's Stamford pastor, Father Stephen, to whom "[s]omeone from Stamford [had] reported an incident." The report concluded that the Diocese would relieve Father Brett of his local duties and that "[a] recurrence of hepatitis [for which Brett had been hospitalized in early 1964] was to be feigned should anyone ask."

Shortly thereafter, Father Brett was sent to New Mexico for several months' psychiatric treatment. Although the Diocese refused Brett's requests to resume his work as a priest in Connecticut, it continued to provide him with financial support. Brett served briefly as a parish priest in New Mexico, spent time in California, and eventually relocated to Maryland where, in addition to ecclesiastical ***415** appointments that included a summer position at the Parish of St. Patrick, Cumberland, and a stint as Chaplain at Calvert Hall College, Baltimore, he developed a career as a writer and editor.

In January 1966, while Father Brett was still in New Mexico, the Bridgeport Diocese learned of another allegation of Brett's misconduct that was said to have occurred in Connecticut prior to the "T.F." episode and Brett's transfer from St. Cecilia's. It involved a teenage boy identified as "M.F." In a letter written in April 1966 on the matter to the Apostolic Delegate to the United States, Bishop Walter W. Curtis explained that in late 1963 Brett had allegedly "said something which the boy interpreted as a solicitation to homosexual misconduct." "M.F.," whom plaintiff Martinelli has identified as one of "Brett's Mavericks," reportedly declined Brett's solicitation and terminated his relationship with the priest. The bishop goes on to state that

> ["M.F."] probably became aware of Father Brett's disappearance from the diocese because the high school is close to the university. However, I doubt that he knew the precise reason since the incident involving the university student did not become known, and the departure of Father Brett was accomplished very quietly.

By way of response to the letter, the Apostolic Delegate suggested that Bishop Curtis meet with "M.F." 's parents because "[s]uch an expression of pastoral concern may relieve them while an official attitude may leave them bitter." A May 1, 1967 memorandum prepared by Bishop Curtis after his meeting with the boy's parents reports that they believed that "the Church bears great responsibility in this whole matter toward their son ... and they expect that help will be given.... Both parents judge that the Church or someone in the Church was at fault in advising the boy not to report this incident, when it happened, to [his parents]." Bishop Curtis apparently disagreed with this assessment, however, writing that

> the boy himself ... said that he could not bring himself to tell [his parents] and I tried to indicate that this might have been the reason why the advice was given not to tell them, mainly that the boy did not feel up to it and it was judged there was no obligation under the circumstances to do so.

Accordingly, Bishop Curtis "made it clear" to the parents that the Diocese could not accept responsibility for Father Brett's conduct or for "the financial state of this young man for the rest of his life." But Bishop Curtis agreed that a Father Vaughan would remain in contact with the family and that the Diocese would consider providing whatever assistance he suggested was appropriate.

Martinelli claims that he had no recollection of the abuse he suffered from Father Brett until a conversation with a childhood friend in October 1991 sparked his memory of the events. Martinelli testified that as a result of the alleged abuse he has experienced long-term emotional difficulties, including depression, relationship difficulties, work problems, and a loss of religious faith, requiring ongoing counseling and psychotherapy. According to Martinelli, his therapy proved more successful once he discovered that he had been assaulted as a teenager.

In December 1992 or January 1993, Martinelli,

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had actual knowledge of the alleged incidents of his own individual *417 abuse if you find that the defendant Diocese breached a fiduciary duty to undertake additional investigation of Father Brett's alleged sexual misconduct that would have revealed Mr. Martinelli as a victim.

The court further instructed the jury that if Martinelli were to demonstrate that a fiduciary relationship existed between him and the Diocese the burden would shift to the Diocese to prove that it did not breach its fiduciary duty by intentionally concealing Martinelli's cause of action for the purpose of delaying his lawsuit. Otherwise, the statute of limitations would be tolled. The court also instructed the jury that while a plaintiff claiming fraudulent concealment normally needs to demonstrate his or her own lack of knowledge of the cause of action, if the Diocese owed Martinelli a fiduciary duty it also carried the burden to demonstrate that Martinelli knew about his cause of action in order to avoid application of the tolling provision on that basis. The court charged:

If you find that a fiduciary relationship existed between the defendant Diocese and the plaintiff, Frank Martinelli, and if you find that the defendant Diocese violated its duties in that relationship, then you must decide whether the defendant Diocese has met its burden of disproving ... at least one of the elements of fraudulent concealment by clear and convincing evidence.... These elements are as follows:

1) That the plaintiff, Frank Martinelli, was not aware of the essential alleged factual elements of his cause of action for breach of fiduciary duty and negligent infliction of emotional distress prior to July 27, 1990;

2) That the defendant intentionally concealed from the plaintiff facts necessary for the plaintiff to know that he had a cause of action against the Diocese, i.e. that he had a legally actionable injury; and

3) That the defendant concealed those facts for the purpose of obtaining delay on the plaintiff's part in filing a lawsuit on his cause of action.

By special verdict, the jury found that Martinelli had demonstrated that there existed a fiduciary relationship between him and the Diocese. The jury also found that the Diocese had failed to demonstrate by clear and convincing evidence that Martinelli was aware of his own cause of action or that the Diocese had not concealed the action from Martinelli for the purpose of delay. The statute of limitations was therefore tolled and the action timely.

As to the merits of the action, the jury rejected Martinelli's claim for negligent infliction of emotional distress, but found the Diocese liable for breach of its fiduciary duties. The jury awarded Martinelli compensatory damages of $750,000 and imposed punitive damages to be set by the court at a later date.

After trial, the Diocese renewed its motion for judgment as a matter of law pursuant to Fed.R.Civ.P. 50(b). The Diocese argued principally that Martinelli's claim was time-barred, that there was insufficient evidence to support the finding of a fiduciary relationship between the Diocese and Martinelli, and that the First Amendment precluded reliance on religious doctrine to support such a finding. The district court denied the motion in a ruling dated March 31, 1998. *Martinelli v. Bridgeport Roman Catholic Diocesan Corp.*, 10 F.Supp.2d 138 (D.Conn.1998).

On June 5, 1998, the district court entered the order awarding Martinelli $250,000 in punitive damages. Final judgment was entered on June 11, 1998.

The Diocese now appeals from the final judgment and from the denial of its Rule 50(b) motion. It argues principally that: (1) the district court erred in its application of the tolling statute, particularly with respect to its jury instructions on the allocation of the burden of proof as to fraudulent concealment and a fiduciary's knowledge of the cause of action, and that because the tolling statute does not apply *418 Martinelli's claims are time-barred as a matter of law; (2) there was insufficient evidence to support a finding of a fiduciary relationship between the Diocese and Martinelli and the lower court's reliance on religious teachings to support such a finding violated the First Amendment; and (3) the district court committed reversible error by instructing the jury that it could draw a negative inference from the Diocese's failure to produce Father Brett as a witness at trial. We disagree with these arguments save for two aspects of the first.

We agree with the Diocese that the district court erred by charging the jury that the Diocese had to prove that Martinelli possessed knowledge of the existence of his cause of action if the Diocese was

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to avoid application of the fraudulent concealment tolling statute on that basis. We agree with the district court that Connecticut law requires a defendant owing fiduciary duties to the plaintiff to prove under the tolling statute that it did not fraudulently conceal the plaintiff's cause of action. However, in order to invoke the tolling statute, it is the plaintiff who must demonstrate that he or she was ignorant of the existence of his or her cause of action. Martinelli must therefore carry the burden of proof in establishing that he was unaware of the existence of his claim against the Diocese until at least July 27, 1990, three years (the limitation period) or less before he brought suit.

We also agree with the Diocese that the district court erred by instructing the jury that under the fraudulent concealment tolling statute, the limitation period would be tolled, notwithstanding the Diocese's ignorance of the plaintiff's claim, if the Diocese's ignorance resulted from a breach of its fiduciary duties to the plaintiff. The Diocese's knowledge of Martinelli's cause of action remained an element of fraudulent concealment under the tolling statute even if the Diocese owed fiduciary duties to Martinelli. The jury should have considered this element. We disagree, however, with the Diocese's related claim that it was entitled to judgment as a matter of law because there was no evidence that it knew that Martinelli, specifically, had been molested. No such showing was required.

We therefore affirm the district court's ruling denying the Diocese's Rule 50(b) motion. In light of the two erroneous jury instructions, however, we vacate the judgment and remand for a new trial on at least the issues of (1) whether Martinelli has met his burden of proof as to his own lack of knowledge in order to invoke the fraudulent concealment tolling statute, and (2) whether the Diocese has demonstrated that it lacked knowledge of the plaintiff's cause of action, so as to prevent application of the tolling statute.

DISCUSSION

I. Statute of Limitations

A. Generally

Breach of fiduciary duty claims in Connecticut are ordinarily subject to a three-year statute of limitations under Conn. Gen.Stat. § 52-577. However, a different statute of limitations applies to Connecticut cases of alleged sexual abuse such as Martinelli's.

> [N]o action to recover damages for personal injury to a minor, including emotional distress, caused by sexual abuse, sexual exploitation or sexual assault may be brought by such person later than seventeen years from the date such person attains the age of majority.

Conn. Gen.Stat. § 52-577d. As the district court observed in its opinion denying the Diocese's Rule 50(b) renewed motion for judgment as a matter of law, until October 1972 the age of majority in Connecticut was twenty-one. *See* Conn. Gen.Stat. § 1-1d. Accordingly, Martinelli, who turned twenty-one on August 3, 1968, had until 1985 to bring this action; filed in July 1993, it was therefore eight years out of time unless the running of the limitations ***419** period was somehow suspended under Connecticut law.

[1] The provision of Connecticut law that Martinelli asserts tolled the statute of limitations applicable to his claims is Connecticut Gen.Stat. § 52-595, which may relieve a plaintiff from operation of the statute of limitations for a claim that has been fraudulently concealed from him by the person against whom the claim is to be made. It reads:

> If any person, liable to an action by another, fraudulently conceals from him the existence of the cause of such action, such cause of action shall be deemed to accrue against such person so liable therefor at the time when the person entitled to sue thereon first discovers its existence.

Because this statute "constitutes a clear and unambiguous general exception to any statute of limitations that does not specifically preclude its application," *Connell v. Colwell,* 214 Conn. 242, 246 n. 4, 571 A.2d 116, 118 n. 4 (1990), it applies to claims governed by § 52-577d, the sexual assault statute of limitations. [FN3]

> FN3. The dissent suggests that because "[t]he Connecticut legislature gave victims an extraordinary 17 year period after the age of majority in which to bring claims regarding sexual abuse," dissent, *post* at [----], we should be wary of concluding that Martinelli's time to bring suit was further extended by § 52-595. It seems to us that tolling has, if anything, a *greater*

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> impact on brief limitations periods where the legislature has determined that the plaintiff ordinarily must bring his or her action shortly after the events in issue have occurred than it does on long ones, such as that applicable here, where the legislature is content that many years may pass before litigation is begun and prosecuted. Be that as it may, § 52-595 by its terms applies to long and short limitations periods alike.

Once a tolling period has ended because of the plaintiff's discovery of his or her cause of action, the statute of limitations begins to run again. The district court instructed the jury that if the statute of limitations as to Martinelli's claims had been tolled by reason of the Diocese's fraudulent concealment, he had three years after his discovery of the facts underlying those claims to assert them in a lawsuit against the Diocese. [FN4]

> FN4. The court employed a three-year limitations period from the date of the plaintiff's discovery of the basis for his alleged causes of action. It is not clear whether the court adopted that period from the general breach of fiduciary duty statute of limitations, Conn. Gen.Stat. § 52-577, or elsewhere, but neither Martinelli nor the Diocese has challenged the court's ruling.

In arguing on appeal that § 52-595 does not save Martinelli's long-delayed claims, the Diocese directs our attention principally to *Bartone v. Robert L. Day Co.*, 232 Conn. 527, 656 A.2d 221 (1995). In *Bartone,* the Connecticut Supreme Court held that in order to benefit from the § 52-595 tolling provision, a plaintiff must demonstrate:

> (1) a defendant's actual awareness, rather than imputed knowledge, of the facts necessary to establish the plaintiffs' cause of action; (2) that [sic] defendant's intentional concealment of these facts from the plaintiffs; and (3) that [sic] defendant's concealment of the facts for the purpose of obtaining delay on the plaintiffs' part in filing a complaint on their cause of action.

Id. at 225 (citations omitted); *see also Lippitt v. Ashley,* 89 Conn. 451, 480, 94 A. 995, 1005 (1915) (actions of the defendant must be "directed to the very point of obtaining the delay, of which he afterwards seeks to take advantage by pleading the statute"). The *Bartone* court further held that a plaintiff seeking tolling under § 52-595 must demonstrate these elements by "clear, precise, and unequivocal evidence." 656 A.2d at 224.

B. Jury Instructions on the Burden of Proof.

[2][3] The Diocese argues that the district court erred in instructing the jury that the burden of proof as to fraudulent concealment under § 52- 595 shifts to the *420 defendant upon a finding that it is a fiduciary with respect to the plaintiff. [FN5] Our review of the instructions the district court gave the jury is governed by a well-established standard:

> FN5. It is unclear from the record whether the defendant objected to, failed to object to, or agreed with the district court's jury instructions as to who had the burden of proof on the second and third *Bartone* factors. Inasmuch as we agree with these portions of the district court's charge in any event and a discussion of our reasoning will help explain our views on the portions of the charge with which we disagree, we assume for purposes of this discussion that the Diocese's objection to these instructions was preserved. Were we to hold that the objections were forfeited or waived, the result would be the same.

> A jury charge is erroneous if it misleads the jury as to the correct legal standard, or if it does not adequately inform the jury of the law. A court's charge must be tested by viewing it as a whole and will not be disturbed if it is correct and sufficiently covers the case so that a jury can intelligently determine the questions presented to it. An erroneous instruction, unless harmless, requires a new trial.

Pahuta v. Massey-Ferguson, Inc., 170 F.3d 125, 135 (2d Cir.1999) (quotations and citation omitted).

[4] To be sure, under Connecticut law, in the ordinary case in which fraudulent concealment is asserted by a party attempting to extend the statute of limitations, the plaintiff is required to shoulder the burden with respect to all three parts of the *Bartone* test: [1] the defendant's actual, not imputed, awareness of the facts necessary to

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establish the plaintiff's cause of action; [2] its intentional concealment of such facts; and [3] that the concealment is for the purpose of obtaining delay. But when a defendant is sued by a person to whom it owes a fiduciary duty and that person is trying to extend the limitations period, Connecticut law requires that the burden shift to the defendant to prove that one of the three *Bartone* elements has not been met. The district court therefore did not err in allocating to the Diocese the burden of proof as to the *Bartone* elements.

We agree with the Diocese, however, that a plaintiff who invokes the tolling statute, even a plaintiff to whom the defendant owes fiduciary duties, carries the burden of proof on the question of the plaintiff's *own* ignorance of the existence of the cause of action. That burden does not shift to the defendant. The district court therefore erred in requiring the Diocese to prove that Martinelli was unaware of the existence of his claim. *See infra* Section I.F.

C. Elements of Fraudulent Concealment.

[5] The Connecticut Supreme Court has recently reiterated its rule that where an allegation of fraud, self-dealing, or conflict of interest is made against a fiduciary, the burden shifts to the fiduciary to prove that it acted fairly:

> Our law on the obligations of a fiduciary is well settled. A fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other. The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him. Once a fiduciary relationship is found to exist, the burden of proving fair dealing properly shifts to the fiduciary. Furthermore, the standard of proof for establishing fair dealing is not the ordinary standard of fair preponderance of the evidence, but requires proof either by clear and convincing evidence, clear and satisfactory evidence or clear, convincing and unequivocal evidence. Proof of a fiduciary relationship, therefore, generally imposes a twofold burden on the fiduciary. First, the burden of proof shifts to the fiduciary; and second, the *421 standard of proof is clear and convincing evidence.

Murphy v. Wakelee, 247 Conn. 396, 400, 721 A.2d 1181, 1183-84 (1998) (citation and quotation marks omitted).

[6] At issue in *Murphy* was whether a claim against a fiduciary based on negligence shifts the burden of proof to the fiduciary. The court held that it did not. "[I]n the absence of a claim of fraud, self-dealing or conflict of interest, the trial court was not required to charge the jury that the defendant had a duty to prove his fair dealing by clear and convincing evidence." *Id.* 721 A.2d at 1183 (footnotes omitted). But the court took the occasion to spell out why the burden of proof does shift to the fiduciary when fraud is alleged. When a fiduciary, who has superior knowledge and influence and who is accorded a significant measure of trust, benefits in its dealings with those to whom it owes duties of care and candor, a suspicion naturally arises that the fiduciary has gained by taking advantage of its special relationship. [FN6] The fiduciary is required to explain itself, to prove fair dealing and thus to dispel the suspicion. "The full knowledge of the transaction is within his possession; he can and he must assume the burden of its proof." *Id.* at 1184 (quoting *Jordan v. Jordan Co.*, 94 Conn. 384, 390, 109 A. 181, 184 (1920)).

> FN6. Although not always expressly stated, the basis upon which the aforementioned burden-shifting and enhanced burden of proof rests is, essentially, that undue influence will not be presumed; *Connell v. Colwell,* 214 Conn. 242, 252, 571 A.2d 116 (1990) (fraud is not presumed and burden of establishing fraud rests on party who alleges it); and that the presumption of fraud does not arise from the relationship itself. We note, however, that this rule is somewhat relaxed in cases where a fiduciary relation exists between the parties to a transaction or contract, and where one has a dominant and controlling force or influence over the other. In such cases, if the superior party obtains a possible benefit, equity raises a presumption against the validity of the transaction or contract, and casts upon such party the burden of proving fairness, honesty, and integrity in the transaction or contract.... Therefore, it is only when the confidential relationship is shown together with suspicious circumstances, or where

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> there is a transaction, contract, or transfer between persons in a confidential or fiduciary relationship, and where the dominant party is the beneficiary of the transaction, contract, or transfer, that the burden shifts to the fiduciary to prove fair dealing. A fiduciary seeking to profit by a transaction with the one who confided in him has the burden of showing that he has not taken advantage of his influence or knowledge and that the arrangement is fair and conscientious.
> *Id.* 721 A.2d at 1186 (additional quotations, citations and alterations omitted).

Shifting the burden of proof protects fiduciary relationships by helping to ensure that the fiduciary acts consistently with the responsibilities such relationships entail. "[A]ny one acting in a fiduciary relation shall not be permitted to make use of that relation to benefit his own personal interest. This rule is strict in its requirements and in its operation. It extends to all transactions where the individual's personal interests may be brought into conflict with his acts in the fiduciary capacity...." *Id.* 721 A.2d at 1184 (quoting *State v. Culhane,* 78 Conn. 622, 629, 63 A. 636, 638 (1906) (internal quotation marks and citation omitted)).

[7] To be sure, where the fiduciary has not received some kind of benefit that would engender suspicion and there is no other evidence of wrongdoing, the burden of proof remains on the plaintiff. *See id.* 721 A.2d at 1183 (no shift in burden of proof where sole claim is fiduciary's negligence in failing to preserve ward's assets and no allegation of fraud or a conflict of interest). But Connecticut law routinely shifts the burden of proof, irrespective of circumstances, where a fiduciary appears to have obtained a benefit at the expense of a person to whom it owes a fiduciary duty. *See, e.g., Konover Development Corp. v. Zeller,* 228 Conn. 206, 635 A.2d 798 (1994) (general partner who terminates agreement with limited partner on ground that project is no longer feasible has burden to show fair dealing); *422*Dunham v. Dunham,* 204 Conn. 303, 528 A.2d 1123 (1987) (executor of will who consolidates all property in his own name and leaves brother with virtually nothing has burden to prove fair dealing); *Alaimo v. Royer,* 188 Conn. 36, 448 A.2d 207 (1982) (real estate broker has burden to prove fair dealing where elderly disabled woman gives broker life savings for purposes of investment and broker instead spends money).

A fiduciary obtains an obvious benefit if the person to whom it owes a fiduciary duty delays bringing a cause of action against the fiduciary beyond the expiration of the statute of limitations: The claim against the fiduciary is forever barred. The benefit the fiduciary derives comes at the expense of the very party who has placed trust in the fiduciary and expects fair dealing. In this situation as in others involving a fiduciary's duty of fair dealing, we agree with the district court that Connecticut law requires the fiduciary to show that it has not abused its position of trust, knowledge and influence by concealing the claim from the would-be plaintiff. Indeed, the possible concealment of a fiduciary's own wrongdoing egregious enough to give rise to a legal claim seems particularly the type of behavior that the law requires the fiduciary to explain.

> [S]tatutes of limitation ... were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure.

Bailey v. Glover, 21 Wall. 342, 88 U.S. 342, 349, 22 L.Ed. 636 (1874).

Although there is no Connecticut decision specifically addressing whether the usual practice of shifting the burden of proof to a fiduciary to prove it has acted fairly extends to an allegation of fraudulent concealment under the tolling statute, we think that under Connecticut law such an allocation is compelled. As the Connecticut Supreme Court observed many years ago:

> *In all cases,* where by accident, mistake, fraud or otherwise, a party has an unfair advantage in proceeding in a court of law, which must necessarily make that court an instrument of injustice, and it is, therefore, against conscience that he should use that advantage, a court of equity will interfere, and restrain him from using the advantage which he has thus improperly

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gained.
Folwell v. Howell, 117 Conn. 565, 568-69, 169 A. 199, 200 (1933) (quoting *Tucker v. Baldwin,* 13 Conn. 136, 144 (1839)(emphasis added)). We have no reason to believe that Connecticut courts would make an exception from "all cases" where, as here, a plaintiff asserts that a person with a fiduciary duty toward him has taken unfair advantage of the plaintiff to deprive him of the timely assertion of a cause of action against the fiduciary. There is nothing about this circumstance that requires a special rule to the contrary.

[8] This conclusion is bolstered by our observation that under Connecticut law fraudulent concealment for purposes of the tolling statute is consistently treated as akin to other forms of fraud, with similar requirements of proof. *See, e.g., Puro v. Henry,* 188 Conn. 301, 308, 449 A.2d 176, 179 (1982) (observing, in a discussion of fraudulent concealment, the general rule that "[f]raud is not to be presumed, but must be strictly proven. The evidence must be clear, precise, and unequivocal."); *see also Bound Brook Assocs. v. City of Norwalk,* 198 Conn. 660, 664-66, 504 A.2d 1047, 1050-51 (1986); *Beckenstein v. Potter and Carrier, Inc.,* 191 Conn. 150, 162-63, 464 A.2d 18, 25 (1983); **423Armellino v. Dowling,* No. CV 92-0330634, 1995 WL 317098, at *4 (Conn.Super.Ct. May 16, 1995) (treating fraudulent concealment as a form of the fraud of misrepresentation); *Krupa v. Kelley,* 5 Conn. Cir. Ct. 127, 129-30, 245 A.2d 886, 888-89 (1968). *See generally* John P. Dawson, *Fraudulent Concealment and Statutes of Limitation,* 31 Mich. L.Rev. 875, 879 (1933) ("[A]ny circumstances, such as personal inequality or 'fiduciary' or confidential relationships, which would tend to explain credulity in actions based on fraud will have the same effect in claims that were fraudulently concealed.").

In arguing that the district court erred in instructing the jury that the burden of proof shifts to a fiduciary, the Diocese emphasizes the statement in *Bartone* that it is the "*plaintiffs* [who] ha[ve] to prove fraudulent concealment by ... clear, precise, and unequivocal evidence." *Bartone,* 656 A.2d at 224 (quoting *Bound Brook Assocs.,* 504 A.2d at 1051)(emphasis added). According to the Diocese, this language establishes that the burden of proof as to all the elements of fraudulent concealment is on the plaintiff who invokes the tolling statute, and that it may not be shifted to the defendant.

We disagree. We know of no Connecticut case that holds that the burden of proof is on the plaintiff to prove fraudulent concealment if the action is brought by a person against someone with a fiduciary duty toward him or her that is related to the claim, and *Murphy* is clearly to the contrary. While *Bartone* spoke of the plaintiff's burden, that litigation, brought by a homeowner, against a building contractor and its subcontractors for the faulty installation of a septic system, did not involve a fiduciary relationship. The opinion said nothing about the allocation of the burden of proof as to fiduciaries.

We conclude that where a defendant owes a fiduciary duty to a plaintiff and the plaintiff asserts under the fraudulent concealment tolling statute that the defendant has fraudulently concealed the plaintiff's cause of action, Connecticut law requires that the defendant bear the burden of proof as to the elements of fraudulent concealment set out in *Bartone.* If the fiduciary is to avoid the application of the tolling statute, the defendant must show that one of these elements is not met.

Finally, as in other instances in which the burden shifts to the fiduciary to show fair dealing, such proof must be by "clear and convincing evidence," *Murphy,* 721 A.2d at 1184. As we have seen, fraudulent concealment in the fiduciary context is simply one of many possible forms of unfair dealing by a fiduciary. We have no reason to think that Connecticut courts would adopt some lighter burden of proof for the fiduciary to meet here. The district court's instructions to the jury with respect to the second and third *Bartone* factors--intentional concealment by the defendant for the purpose of obtaining delay--were therefore proper.

D. The Diocese's Knowledge

[9] The first *Bartone* factor that must be established in order to conclude that a defendant is guilty of fraudulent concealment so as to toll the statute of limitations in a claim against it is that the defendant harbor "actual awareness, rather than imputed knowledge, of the facts necessary to establish the plaintiff's cause of action." *Bartone,* 656 A.2d at 225. In ruling on the Diocese's motion for summary judgment, the district court concluded that the Diocese did not possess the actual knowledge required under *Bartone* because there was no evidence that the Diocese knew prior to the

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institution of this lawsuit that Martinelli had been sexually abused. Agreeing, however, with Martinelli that "the Diocese should not be permitted to take advantage of its ignorance now when its ignorance was the result of a failure to fulfill a duty to investigate and warn," the district court decided that this first requirement of *Bartone* could be "relax[ed]." *Martinelli I,* 989 F.Supp. at 116. The court reasoned that "[a]lthough Connecticut courts do not appear to have squarely addressed this particular claim ... [there is] ample support ***424** in the case law for the proposition that a defendant may not avoid application of § 52-595 by relying on the violation of a legal duty." *Id.* The court concluded that Martinelli therefore could "demonstrate § 52-595 to be applicable notwithstanding the Diocese's ignorance of his cause of action if [he could] show that the Diocese's ignorance was the result of a violation of a legal duty to [him] to investigate and warn." *Id.* at 116. Thus the district court decided that if there is a fiduciary duty to investigate and warn, the first *Bartone* requirement relating to the defendant's actual knowledge disappears. The district court instructed the jury accordingly.

We agree with the Diocese that this was error. We are aware of no Connecticut decision that can be made to stand for such a proposition. *But see Bound Brook Assocs.,* 504 A.2d at 1052 n. 12 ("In view of our finding that [the] evidence does not establish an intent to conceal, we need not decide whether [the defendant] had a duty to investigate or to warn, or whether an intentional failure to act in such circumstances would be sufficient to establish fraudulent concealment.").

The district court, in so holding, relied on cases that address whether a defendant's silence is sufficient to constitute concealment under Connecticut's tolling statute and similar laws in other states. *See Martinelli I,* 989 F.Supp. at 116-17. Those cases indicate that silence is insufficient to meet the concealment standard absent a special duty to disclose. *See Manufacturers Hanover Trust Co. v. Stamford Hotel Ltd. Partnership,* No. CV 91 011697 IS, 1994 WL 720368, at *3-4 (Conn.Super.Ct. Dec. 15, 1994) (considering whether special circumstances giving rise to duty to disclose were present and noting that if they were defendant may have had a duty to disclose to plaintiff facts giving rise to the fraud); *Lapuk v. Simons,* No. PJR CV 93 0704542S, 1995 WL 5633, at *16 (Conn.Super.Ct. Jan. 3, 1995) (acknowledging that Connecticut courts have found that silence may constitute an act of concealment despite the fact that the courts have also held that the concealment must be for the purpose of delaying the onset of a lawsuit); *A.M. v. Roman Catholic Church,* 669 N.E.2d 1034, 1038 (Ind.Ct.App.1996) (under Indiana law, equitable tolling on grounds of fraudulent concealment can arise either from an active effort to conceal a cause of action or from the violation of a fiduciary or confidential relationship, described as constructive fraud); *Koenig v. Lambert,* 527 N.W.2d 903, 905 (S.D.1995), *overruled on other grounds, Stratmeyer v. Stratmeyer,* 567 N.W.2d 220 (S.D.1997) (in South Dakota silence by party with duty to disclose constitutes fraudulent concealment without need to show any affirmative attempt to hide facts from plaintiff); *see also Hamilton v. Smith,* 773 F.2d 461, 468 (2d Cir.1985) ("To establish fraudulent concealment under Connecticut law, a plaintiff must show that ... *absent a fiduciary relationship,* the defendant was guilty of some affirmative act of concealment.") (emphasis added) (citations omitted). Whether a defendant's silence in the face of a duty to speak constitutes an affirmative act of concealment is relevant to the second *Bartone* factor, the defendant's intentional concealment, but has no bearing on the first with which we are now concerned, the defendant's actual awareness of the facts necessary to establish the plaintiffs' cause of action. We do not agree with the district court that the cited cases justify the elimination of the need to establish the first *Bartone* requirement.

The first *Bartone* factor reflects a policy judgment by the Supreme Court of Connecticut that a defendant should not be subjected to the tolling provided by § 52-595 unless it had actual knowledge of significant facts that it concealed from the plaintiff; knowledge imputed to it by law is not enough. *Murphy* requires that where the defendant owes the plaintiff a fiduciary duty, it is the defendant that must prove the absence of such actual knowledge. Irrespective of who must ***425** prove it, though, the defendant's actual knowledge remains necessary in order to establish fraudulent concealment. We therefore agree with the Diocese that the court erred in dispensing with the first *Bartone* factor.

E. Facts Necessary To Establish the Cause of Action

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The Diocese argues that since, as we hold, the first *Bartone* factor was improperly eliminated from the case by the district court, it is entitled to judgment as a matter of law: There was no evidence that the Diocese knew that Martinelli had been injured and it therefore could not have been found to have, as the first *Bartone* factor requires, "actual awareness ... of *the facts necessary to establish the ... cause of action,*" *Bartone,* 656 A.2d at 225 (emphasis added). We do not agree.

[10] We review *de novo* the district court's denial of the Diocese's Rule 50(b) motion. *See EEOC v. Ethan Allen, Inc.,* 44 F.3d 116, 119 (2d Cir.1994). In doing so, we "must view the evidence in the light most favorable to the party against which the motion was made ... making all credibility assessments and drawing all inferences in favor of the non- movant." *Id.* (internal quotation marks and citations omitted).

Although the district court erred in instructing the jury that the "actual awareness" element of *Bartone* was not fully required to be met, we agree with its conclusion on the Rule 50(b) motion that the Diocese is nonetheless not entitled to judgment as a matter of law on the issue, but for different reasons.

[11] In our view, both the parties and the district court misconstrue what the first *Bartone* factor--"actual awareness ... of the facts necessary to establish [Martinelli's] cause of action," *Bartone,* 656 A.2d at 225-- requires with respect to the Diocese's knowledge. We do not think it means that for the Diocese to have fraudulently concealed Martinelli's cause of action, it had to have been aware that Father Brett sexually assaulted Martinelli rather than another of Brett's students. Such specific knowledge is not necessary to establish Martinelli's cause of action.

The import of *Bartone* 's first element is that defendant's knowledge must be actual not imputed. Although the clause went on to state that the knowledge needed to be of the "facts necessary to establish plaintiff's cause of action," that language was beside the point that the *Bartone* court was making.

The Supreme Court of Connecticut's articulation of the first *Bartone* factor must be understood in light of the *Bartone* facts. The issue in *Bartone* was straightforward: whether one of the defendants, a building general contractor, was aware of defects in the work of its employees which it concealed from the plaintiffs, owners of a new home built by the contractor, in order to avoid liability to the plaintiffs. The identity of the plaintiffs as the victims of the contractor's negligence, if any, was obvious and therefore not an issue in the case. *Bartone* did not involve, as does the present case, a potential for harm to unknown persons allegedly exacerbated by the defendant's failure to disclose.

Bartone would be similar to the present case only if the defendant contractor there had actual knowledge of something like the delivery of dangerously defective building materials to one of its work sites, but did not know to which of several sites the defective materials had gone. If that had been the case, we are confident that the *Bartone* opinion would not have described that which the defendant needed to know to establish fraudulent concealment as the "facts necessary to establish plaintiff's cause of action." We seriously doubt that the Supreme Court of Connecticut would have thereby exempted the defendant from operation of the tolling statute simply because it did not know whose home had been built with the defective materials and, not knowing who the potential plaintiff ***426** was, did not know all of the "facts necessary to establish" the claim.

[12] We conclude that, in the proper case, the Connecticut Supreme Court would hold that to establish the first *Bartone* factor it is sufficient to show that the defendant had and concealed actual awareness of facts that created a *likely potential for harm,* especially if the defendant was a fiduciary for the likely victim.

This is, of course, just such a case. The claim on which the jury based its award to Martinelli is that, when the Diocese learned that Father Brett had sexually molested boys, at least one of them unidentified, it owed the boys within the scope of its fiduciary obligations, including Martinelli, a duty to investigate and to warn possible past and future victims of the harm. Its failure to do so prevented Martinelli from receiving the treatment he required, thereby exacerbating his injury.

A jury could reasonably find that in December 1964 the Diocese learned that Father Brett had sexually abused "T.F." in Bridgeport, and that Brett had "been involved" with another youth in

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Stamford. In January 1966, the Diocese learned about another minor, "M.F.," whom Father Brett had allegedly solicited; "M.F." did not tell his parents about Father Brett's conduct for some two years, and at the end of that period "M.F." required hospitalization. Assuming, as the jury found, that the Diocese owed parishioners in Martinelli's circumstances a fiduciary duty, the jury could also conclude that the Diocese breached that duty by failing to investigate who the additional victims were, or by failing to warn or inform parishioners in Martinelli's circumstances of Brett's conduct so as to increase the likelihood that victims would seek counseling and treatment.

If the Diocese had a fiduciary duty toward Martinelli and knew that at least one other young person to whom it owed such a duty had been assaulted and that the Diocese's failure to disclose Brett's conduct or discover who the victim was would likely compound this victim's injury, a jury could conclude that the Diocese was actually aware of the "facts necessary" to establish Martinelli's cause of action sufficiently to satisfy the first *Bartone* factor. Just as a hit-and-run driver need not know the identity of an injured pedestrian to recognize that the pedestrian likely has a cause of action against the driver, the Diocese's knowledge of the actual identity of an assaulted child was not required for it to realize that there was likely to be an actionable claim, or for it to seek to conceal from such a potential plaintiff the facts underlying the claim. [FN7]

> FN7. It is at this point, we think, that the dissent's analysis goes awry. The dissent describes a Diocese with "early storm warnings," dissent, *post* at 433, or "hints," *id.* at 433, that Father Brett may have molested an unknown boy, or knowledge of the "*potential* for injury." *Id.* at 435 (emphasis in original). The evidence suggests facts starkly to the contrary. A jury could conclude that the Diocese actually--not by imputation--*knew* that at least one unidentified boy had probably been sexually abused by Father Brett and that it deliberately failed to disclose that fact or to determine the identity of the victim or victims. Such a finding of actual awareness and failure to investigate or disclose would support a finding for the plaintiff on the first *Bartone* factor, whether or not possession of "early storm warnings" or "hints" or knowledge of "potential for injury" would suffice.
>
> We question the dissent's reliance on *Bound Brook Associates v. City of Norwalk*, 198 Conn. 660, 504 A.2d 1047 (1986). *See* dissent, *post* at [433- 35]. There the defendant had no knowledge of the facts underlying the plaintiffs cause of action "[w]ithout [which defendant] could hardly have intended to conceal the rights the plaintiffs now claim to have." 198 Conn. at 668, 504 A.2d at 1052. Here, by contrast, a jury could conclude that the defendant had knowledge of the facts necessary to establish the plaintiff's cause of action, excepting only his identity which it failed to seek to determine, and that it carefully concealed those facts. *Bound Brook* hardly seems to us an "analog," "close[ ]" or otherwise, to the case at bar; that there was no duty to investigate or warn in *Bound Brook* says little about the duties owed by the defendant to the plaintiff here.

We therefore agree with the district court's conclusion that an absence of evidence ***427** that the Diocese knew that Martinelli rather than another boy was the victim of abuse did not preclude a finding that the Diocese fraudulently concealed Martinelli's cause of action. *Bartone* does not require that the Diocese have possessed such knowledge and the Diocese was not therefore entitled to judgment as a matter of law on that basis.

On retrial, the court will be obliged to charge the jury on this issue. While we predict with confidence that, when similar issues are presented to the Connecticut Supreme Court, it will allow the first *Bartone* factor to be satisfied by evidence of the character adduced by the plaintiff in this case, we cannot safely predict precisely how the court will formulate the test. In view of this uncertainty, it would, we think, be prudent for the district judge when fashioning a charge to adhere as closely as possible to the facts on which Martinelli's claim depends, rather than attempting to anticipate the more generalized standard that the Connecticut court will ultimately adopt. We suggest in the margin [FN8] for the guidance of the district court

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an approach that we think would lead to a jury instruction that would come within the *Bartone* rule as it is likely to be interpreted when the Connecticut courts deal with facts similar to these.

> FN8. The court might instruct the jury that it must determine whether the Diocese had actual knowledge of the following: 1) Father Brett provided leadership and guidance to a group of minor male students at a school affiliated with the Diocese; 2) he sexually abused at least one of those boys whose identity was known to the Diocese and it was likely that he was sexually involved with or sexually abused another boy; 3) such sexual abuse of a minor could be injurious to the minor; 4) the extent or gravity of the injury could be reduced if the victim received treatment or help; 5) a minor in such circumstances is likely to conceal, suppress or repress the facts of such abuse and would therefore be less likely to receive beneficial treatment or help if the Diocese failed to disclose what it had learned of Father Brett's misconduct; and 6) the Diocese knew that, despite its knowledge of the first five facts, it had failed to disclose Father Brett's misconduct to other potential victims, including Martinelli, and their families. The instruction might continue: "If you find that the Diocese has proven by clear and convincing evidence that it did not have actual knowledge of one or more of those six facts, you must find for the Diocese on the issue of the Diocese's actual knowledge; otherwise you must find for the plaintiff on the issue."

F. Plaintiff's Ignorance.

The district court instructed the jury that the Diocese carried the burden of proof not only with respect to the *Bartone* factors, but as to Martinelli's own ignorance of the existence of his cause of action under § 52-595 as well. The Diocese was required by the court to "disprove ... by clear and convincing evidence ... [t]hat [Martinelli] was not aware of the essential factual elements of his cause of action prior to July 27, 1990," three years prior to his institution of suit. We agree with the Diocese that this was error.

[13] Although § 52-595 does not explicitly say so, it clearly implies that plaintiff's ignorance of the facts is a necessary element of tolling under that statute. A statute that tolls a limitations period because of the defendant's fraudulent concealment of a fact or facts obviously operates for the benefit of those--and we think *only* those--who are not aware of the facts that have been concealed. Moreover, because the statute provides that, after tolling, "the cause of action shall be deemed to accrue ... at the time when the person entitled to sue thereon first discovers its existence," there plainly can be no effective tolling for a plaintiff who was aware of the existence of his or her cause of action from the time the claim originally accrued. We therefore conclude that the plaintiff must be ignorant of the facts that the defendant has sought to conceal for the statute of limitations to toll under § 52-595.

[14] Because the Diocese owed a fiduciary duty to Martinelli and the principles of *Murphy* call for shifting some burdens ***428** of proof to a fiduciary defendant, the district court placed the burden of proof with respect to the issue of plaintiff's ignorance on the defendant. We do not think that the Connecticut cases so hold or justify the district court's having done so.

[15] In general, the law places the burden of proof on the party that asserts a contention and seeks to benefit from it. *See, e.g., Katz v. Goodyear Tire and Rubber Co.*, 737 F.2d 238, 243 (2d Cir.1984) (burden of proving residency under New York borrowing statute placed on party seeking to take advantage of its terms). From time to time, however, for reasons of policy often involving fairness to the parties, the law shifts the burden. Thus, in cases not involving a fiduciary relationship, § 52-595 places the burden of proving both the plaintiff's ignorance and the defendant's fraudulent concealment on a plaintiff who seeks to assert and benefit from a finding of the defendant's fraudulent concealment. *See Bartone*, 656 A.2d at 224-25. For the policy reasons explored in *Murphy*, when a plaintiff seeks the tolling provided by the statute and the defendant owes a fiduciary duty to the plaintiff, the burden of proof on the issue of the propriety of the defendant's conduct is shifted to the defendant; it must prove its own fair dealing. The reasons that justify shifting the burden to the

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fiduciary defendant on that question do not apply to the issue of plaintiff's ignorance.

The *Murphy* burden-shifting relates to the fiduciary's fair dealing. *See Murphy,* 721 A.2d at 1183 ("the burden of proving fair dealing properly shifts to the fiduciary") (citations and internal quotation marks omitted). Fair dealing is also the issue addressed by *Bartone* 's three-factor test relating to the defendant's awareness, conduct and motivation. Several factors justify shifting the burden of proof on fair dealing, including the fiduciary's "superior knowledge, skill ... expertise" and "dominant" position which "afford[ ] him great opportunity for abuse," *id.;* the difficulty such a plaintiff may have gathering the information needed to establish unfair dealing; and the fact that the fiduciary relationship places the fiduciary under an obligation to reveal such information to the person to whom the fiduciary duty is owed for his or her benefit.

But nothing in the language or the reasoning of *Murphy* similarly calls for shifting the burden on the issue of plaintiff's ignorance. Here, by contrast with the *Bartone* factors, the defendant's "superior knowledge, skill ... expertise" and "dominant" position do not deter the plaintiff from establishing that he did not learn the facts necessary for his or her cause of action from some other source; with respect to the plaintiff's knowledge, defendant's knowledge and access are *inferior* to the plaintiff's; and the fiduciary defendant cannot be expected to know, and has no duty to learn, what the knowledge the plaintiff may have obtained from others. There is therefore no reason to shift the burden of proof to the fiduciary defendant.

[16] Because the district court wrongly instructed the jury that to avoid tolling the statute of limitations the Diocese had to prove that Martinelli had knowledge of his cause of action, the jury deliberated on a critical issue under an erroneous legal standard. And because we cannot say that the jury would have reached the same conclusion if Martinelli had been required to bear the burden of establishing his ignorance of the facts underlying his cause of action, the error was not harmless. We therefore reverse the judgment and remand for a new trial on the issue of whether under the tolling statute Martinelli can demonstrate by a preponderance of the evidence that he was unaware of the existence of his cause of action until after July 27, 1990.

II. Sufficiency of the Evidence

The Diocese also argued in its Rule 50(b) motion that there was insufficient evidence to support the jury's finding that there was a fiduciary relationship between *429 the Diocese and Martinelli. In asserting on appeal that the district court erred in denying the motion on this ground, the Diocese claims principally that Martinelli was merely one of 300,000 parishioners to whom it owed no particular duty. We agree with the district court.

This Circuit has not resolved whether in a diversity action the sufficiency of the evidence is a question governed by state or federal law. *See Willis v. Westin Hotel Co.,* 884 F.2d 1556, 1563 n. 5 (2d Cir.1989). We need not do so in this instance because there is no material difference between the two standards' application here. [FN9]

> FN9. *Compare SEC v. Warde,* 151 F.3d 42, 46 (2d Cir.1998) ("We will overturn a jury's verdict in favor of a plaintiff if the evidence supporting the verdict, viewed in the light most favorable to the plaintiff, is insufficient to support a reasonable finding in plaintiff's favor."), *with Blanchette v. Barrett,* 229 Conn. 256, 266, 640 A.2d 74, 80 n. 8 (1994) ("In an appeal from a judgment rendered upon a jury verdict, we review the evidence in the case in the light most favorable to the prevailing party to determine if it reasonably supports the jury's verdict.") (citation omitted).

[17][18] Under Connecticut law, a fiduciary relationship is a relationship that is "characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other." *Dunham,* 528 A.2d at 1133. We are unable to say that the evidence did not reasonably support the jury's finding of a fiduciary relationship between the Diocese and Martinelli.

[19] Relying primarily on cases from other states, the Diocese asserts that for a fiduciary relationship to have arisen, the Diocese would have had to have clearly undertaken to act as a fiduciary with respect

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to Martinelli and to have had individual contact with him; and that there was no evidence that it did so here. We are unpersuaded. The Connecticut Supreme Court has specifically "refused to define a fiduciary relationship in precise detail and in such a manner as to exclude new situations, choosing instead to leave the bars down for situations in which there is a justifiable trust confided on one side and a resulting superiority and influence on the other." *Alaimo v. Royer,* 188 Conn. 36, 41, 448 A.2d 207, 209 (1982) (internal quotation marks and citation omitted). We are disinclined to read the specific requirements that the Diocese offers into Connecticut law.

The Diocese argues forcefully that it was not and must not be held to have been in a fiduciary relationship with all of its parishioners. But that is not the issue before us and we express no view with respect to it. We agree with the district court that irrespective of the duties of the Diocese to its parishioners generally, the jury could reasonably have found that the Diocese's relationship with Martinelli, based on the particulars of his ties to Brett and the Diocese's knowledge and sponsorship of that relationship, was of a fiduciary nature:

- Martinelli attended Stamford Catholic High School, a diocesan school where he was taught by priests who were employed by the Diocese.
- Martinelli had, and the Diocese knew he had, a special and privileged relationship with Father Brett, another of the Diocese's priests although not a Diocesan employee, as a member of "Brett's Mavericks," the small group of boys interested in liturgical reform in the Catholic Church to whom Brett acted as a mentor and spiritual advisor.
- Martinelli, as the Diocese was of course aware, was taught in grade school catechism classes and thereafter to trust and respect the bishop of the diocese; he considered his bishop his caretaker and moral authority.
- Martinelli's parents allowed him to participate with Father Brett and others in church-sponsored and extracurricular activities because they trusted Brett inasmuch as he was a priest.

***430** - Father Brett spent more time with this identifiable group of boys than with others. In addition to more formal contacts, the group and Father Brett went for dinners, ice cream, and on walks, and rode around in his car together. These contacts were well known in the school and Diocesan communities. Msgr. Cusack, the guidance counselor at the Diocesan high school that Martinelli attended, knew specifically about Father Brett's contacts with Martinelli and the other boys.

- The Diocese encouraged Father Brett to work with the youth of the church. His responsibility, shared with another priest, for conducting the activities of the Diocese's Catholic Youth Organization, which sponsored weekly social and educational activities for high school parishioners, was widely known.
- Father Brett, surely with the knowledge and approval of the Diocese, also escorted boys on church field trips, on one occasion taking Martinelli and another boy to Baltimore and Washington where the three stayed at a seminary.
- The Diocese was entrusted with reports from young victims that they had been abused by Father Brett, who had used his position to influence them and inflict injury. One victim, "T.F.," specifically informed the Diocese of his concerns for other students who had accompanied Father Brett on his trips.
- The Diocese also learned, after its representatives confronted Father Brett, that he had assaulted other boys in Stamford. "M.F.," a second victim who complained to the Diocese, was also a member of Brett's Mavericks.

We agree with the district court that there was thus sufficient evidence from which the jury could reasonably have found that there existed a special relationship of trust and confidence between Martinelli and not only Father Brett, but the Diocese. It is reasonable for the jury to conclude that Martinelli, through the particular activities in which he was involved, including those which the Diocese sponsored, had a particularly close relationship with the Diocese from which a fiduciary duty might arise. The Diocese, in turn, occupied a superior position of influence and authority over Martinelli. It was also reasonable for the jury to conclude, based on evidence as to the specific information that the Diocese received about Brett's misconduct, including the existence and location of other likely victims and the ease with which the Diocese might have determined precisely who the likely victims were, that the Diocese owed Martinelli, and youths with a similar relationship with the Diocese, a duty of care including a duty to investigate and warn or inform so as to prevent or alleviate harm to additional victims. We agree with the district court, therefore, that the jury's finding of a fiduciary relationship under Connecticut law was

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supported by the evidence.

III. First Amendment Claim

[20] The Diocese argues to us, as it did in its Rule 50(b) motion to the district court, that the Free Exercise Clause of the First Amendment prohibits the court's finding of a fiduciary relationship between the Diocese and Martinelli because the finding was based on religious doctrine and practices. The Diocese draws our attention to evidence at trial concerning religious matters, including testimony that Martinelli was taught that the bishop is like a "shepherd" to his "flock" of parishioners, and testimony about the status and responsibilities of the bishop under Canon Law. The Diocese makes the related point on appeal that in sustaining the jury's finding of a fiduciary relationship in its ruling denying the Rule 50(b) motion, the district court unconstitutionally relied on its own interpretation of religious doctrine, thereby determining for the church the religious duties it owes to its parishioners.

These arguments are meritless. As our preceding discussion makes clear, the jury's finding of a fiduciary duty was supported by ample evidence apart from the *431 evidence of a religious nature singled out by the Diocese.

[21] To the extent that the jury did consider religious teachings and tenets, moreover, it did so to determine not their validity but whether, as a matter of fact, Martinelli's following of the teachings and belief in the tenets gave rise to a fiduciary relationship between Martinelli and the Diocese. The First Amendment does not prevent courts from deciding secular civil disputes involving religious institutions when and for the reason that they require reference to religious matters. *See, e.g., Jones v. Wolf,* 443 U.S. 595, 603, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979) (court permitted to decide issue as to church property even though it required court to examine religious documents). Although "First Amendment values are plainly jeopardized when ... litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice," *Presbyterian Church v. Hull Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), neither the district court nor we have made any decision for or against any religious doctrine or practice. The Diocese points to no disputed religious issue which the jury or the district judge in this case was asked to resolve.

[22] *Amici* cite the teaching of the Supreme Court that under the Constitution, "[t]he law knows no heresy, and is committed to the support of no dogma, the establishment of no sect." *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 728, 20 L.Ed. 666 (1871). That is now an American truism, but it is unrelated to this appeal. Where a person's beliefs are alleged to give rise to a special legal relationship between him and his church, we may be required to consider with other relevant evidence the nature of that person's beliefs in order properly to determine whether the asserted relationship in fact exists. In doing so, we judge nothing to be heresy, support no dogma, and acknowledge no beliefs or practices of any sect to be the law.

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

Finally on this score, we find no merit to the Diocese's claim that the judgment violated the First Amendment by determining the Diocese's obligations to its parishioners as a matter of church doctrine. Martinelli's claim was brought under Connecticut law, not church law; church law is not ours to assess or to enforce. Martinelli's claim neither relied upon nor sought to enforce the duties of the Diocese according to religious beliefs, nor did it require or involve a resolution of whether the Diocese's conduct was consistent with them. The jury's consideration of church doctrine here was both permissible under First Amendment principles and required by Connecticut law.

In *Watson v. Jones,* a decision involving a dispute

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over church property that is relied upon by *amici* and quoted above, the Supreme Court made an observation that applies fully, we think, to the tort case now before us:

> [T]he courts when so called on must perform their functions [in cases involving churches] as in other cases.
>
> Religious organizations come before us in the same attitude as other voluntary *432 associations for benevolent or charitable purposes, and their rights of property, or of contract [or, we would add, their liability arising from the commission of a tort], are equally under the protection of the law, and the actions of their members subject to its restraints.... [W]e enter upon [the appeal's] consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

80 U.S. at 714.

IV. Missing Witness Charge

The Diocese's final argument is that it was reversible error for the district court to charge the jury that it could draw a negative inference from the Diocese's failure to produce Father Brett as a witness.

[23][24] We need not determine whether in a diversity case a missing witness charge is governed by federal or state law because here the two standards are similar, [FN10] and the charge, which we review only for abuse of discretion, *see United States v. Torres,* 845 F.2d 1165, 1170-71 (2d Cir.1988); *State v. Lewis,* 245 Conn. 779, 813-14, 717 A.2d 1140, 1159 (1998), was plainly proper under both standards.

> FN10. In this circuit, the charge "permits the jury to draw an adverse inference against a party failing to call a witness when the witness's testimony would be material and the witness is peculiarly within the control of that party." *United States v. Caccia,* 122 F.3d 136, 138 (2d Cir.1997). In determining whether a witness was available to be called by the party, the court considers "all the facts and circumstances bearing upon the witness's relation to the parties, rather than merely on physical presence or accessibility." *United States v. Torres,* 845 F.2d 1165, 1170 (2d Cir.1988) (internal quotation marks and citation omitted). In Connecticut, an adverse inference instruction may be given where a witness "is available; and ... could reasonably be expected, by his relationship to the party or the issues, to have peculiar or superior information material to the case that, if favorable, the party would produce." *State v. Lewis,* 245 Conn. 779, 813-14, 717 A.2d 1140, 1159 (1998) (citing *Secondino v. New Haven Gas Co.,* 147 Conn. 672, 165 A.2d 598 (1960)) (quotation and additional citations omitted).

The Diocese's principal complaint is that Martinelli did not show that Father Brett was *available* to be produced at trial. The record shows, however, that Brett remained incardinated to the Bridgeport Diocese; Diocesan officials were in contact with him as late as in 1993, and after the date that Martinelli brought his claim; the Diocese knew Brett's address, telephone number, and place of employment; and a Ms. Warick, apparently acting on the Diocese's behalf, also had more recent contact with the priest. In light of evidence of this nature, we are unable to conclude that the district court's instruction was an abuse of discretion.

CONCLUSION

For the foregoing reasons, we affirm the district court's order denying the Diocese's Rule 50(b) renewed motion for judgment as a matter of law. We also vacate the judgment and remand for a new trial on the issues of (1) whether Martinelli has met his burden of proof as to his own lack of knowledge of his cause of action and therefore can invoke the tolling statute; and (2) whether the Diocese has demonstrated by clear and convincing evidence that it lacked knowledge of the plaintiff's cause of action, so as to avoid application of the tolling statute on that basis. While a new trial is necessary on these two points, we leave it to the district court's discretion to determine the extent to which these issues may fairly be tried in isolation from other aspects of the case. If the district judge thinks it preferable, she may conduct a broader retrial on remand.

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The parties shall bear their own costs on appeal.

MORAN, District Judge, dissenting:

While I agree with a great deal of the majority's thorough and thoughtful opinion, *433 I must dissent. Even if we accept that the Diocese had a duty to inquire further into Brett's misconduct and thus charge the defendant with an awareness of Martinelli's cause of action based on earlier "storm warnings," [FN1] the fact remains that the Diocese' knowledge of Martinelli's trauma is still imputed knowledge. *Bartone,* the last word from the Connecticut Supreme Court, is very clear on this point: imputed knowledge is insufficient to toll the statute of limitations.

> FN1. *See Dodds v. Cigna Securities, Inc.,* 12 F.3d 346, 350 (1993) (2d Cir.1993) (noting that sufficient "storm warnings" of fraud will trigger a duty of inquiry and knowledge will be imputed to an investor who does not make such an inquiry), *cert. denied,* 511 U.S. 1019, 114 S.Ct. 1401, 128 L.Ed.2d 74 (1994).

> Under our case law, to prove fraudulent concealment, the plaintiffs were required to show: (1)[the] defendant's actual awareness, rather than imputed knowledge, of the facts necessary to establish the plaintiffs' cause of action; (2)[the] defendant's intentional concealment of these facts from the plaintiffs; and (3)[the] defendant's concealment of the facts for the purpose of obtaining delay on the plaintiffs' part in filing a complaint on their cause of action.

Bartone v. Robert L. Day, Co., 232 Conn. 527, 533, 656 A.2d 221 (Conn.1995) (emphasis added) (citations omitted).

The majority contends that the actual knowledge requirement can be met here by showing that the Diocese knew of the essential facts giving rise to Martinelli's claim of "breach of duty to investigate and warn." In other words, the first *Bartone* prong is satisfied if the Diocese had actual knowledge that it failed to investigate hints that Father Brett abused at least one other parish boy. The majority speculates, at 40-41, that on different facts involving an unknown victim the *Bartone* court would not have stated the test to require defendant's knowledge of the "facts necessary to establish plaintiff's cause of action," and that this second clause "was beside the point that the *Bartone* court was making."

The hypothesis does not take into account that this formulation of the test was previously stated by the high court in 1986 in a case involving an alleged duty to investigate and warn unidentified victims. In *Bound Brook Associates v. City of Norwalk,* 198 Conn. 660, 504 A.2d 1047 (Conn.1986), arguably the closest analog to the case at hand, subdivision residents sought damages from the City, its chief building inspector, and other city officials for latent damage to their homes. Part of the subdivision had been constructed on a swamp with a fluctuating water table and settlement problems resulted when the untreated wood pilings on which the homes were built began to decay. All parties agreed that absent a finding of fraudulent concealment, the suits would be time-barred. The Supreme Court set aside the judgment for the homeowners after finding insufficient evidence that the building inspectors intended to conceal information regarding potential piling defects with an intent to delay the plaintiffs' discovery of their cause of action. The Court consequently declined to decide whether the defendants had a duty to investigate and warn (although it is obvious that investigation and enforcement of standards was a core purpose of the municipal department) or whether an intentional failure to act in such circumstances would be sufficient to establish fraudulent concealment. *Bound Brook,* 198 Conn. at 669-70 & nn.12, 13, 504 A.2d 1047. It is instructive, however, that despite plaintiffs' argument that defendants owed a duty to investigate and warn other homeowners after the inspectors learned of the first three homes needing repiling, the Court did not reassign the burden of proof or reformulate the actual knowledge requirement to focus on defendants' knowledge of the red flags.

"Knowledge" is imputed where it is reasonable to charge a party with information it should know whether by agency, respondeat superior, or breach of a duty to investigate. In this last category, the defendant *434 can always be said to have actual knowledge of the "warning" facts that make imputing knowledge of the ultimate facts a reasonable thing to do. The majority's theory would effectively eliminate the actual knowledge

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requirement any time there is an allegation that the defendant had a duty to investigate. There is no indication that the Legislature or the Supreme Court of Connecticut would favor liberalizing the limitations period for such claims. On the contrary, by refusing to allow imputed knowledge to satisfy the first prong, the Connecticut Supreme Court has implicitly rejected the theory on which the majority relies. Furthermore, breach of a duty to disclose is foreseeably implicated by Conn. Gen.Stat. § 52-595 , which by its terms involves concealment of actionable information. Breach of a duty to warn or investigate, on the other hand, is more tenuously connected to the purposes of the statute. [FN2]

> FN2. *See, e.g., Lippitt v. Ashley,* 89 Conn. 451, 94 A. 995, 1005 (Conn.1915) (no fraudulent concealment where directors of bank failed to discover treasurer's ongoing embezzlement). We can find no case from Connecticut (or any other jurisdiction) in which defendant's breach of a duty to investigate was sufficient to meet the actual knowledge requirement for fraudulent concealment.

Father Brett's conduct was reprehensible and, assuming Martinelli's account is accurate, I don't doubt that it has caused him significant pain. This is not a claim against Brett, however; nor is it a claim against the parish leadership. It is actually a rather remote claim against the regional diocese. The result here will mean that if an organization may owe a fiduciary duty to someone, anyone, it must investigate any possible source of harm and disclose the details to all potential plaintiffs. If it does not, the statute of limitations will offer no protection when the unknown claim ripens years later. Given that the source of the duty to investigate here is not the master-servant relationship with Brett but the Diocese' relationship with Martinelli, what new obligations does this holding impose on boys and girls clubs, and YMCAs, and other organizations who regularly shelter children at risk? Moreover, if awareness that someone might or would be harmed is the standard, then anyone injured in an auto accident who claims defective design can now argue that the manufacturer knew of the potential for injury, if not the victim, and the statute will be tolled. Back pains may materialize years after a collision.

We should not let this sad case disrupt the carefully balanced tolling framework established by the State of Connecticut. As the United States Supreme Court explained in *Johnson v. Railway Express Agency, Inc.:*

> Any period of limitation ... is understood fully only in the context of the various circumstances that suspend it from running against a particular cause of action. Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones. In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application.

421 U.S. 454, 463-464, 95 S.Ct. 1716, 44 L.Ed.2d 295 (1975). See also *Spinozzi v. ITT Sheraton Corp.,* 174 F.3d 842, 848 (7th Cir.1999) (("[A]ccrual and tolling rules ... are reciprocals of the length of the period. A short limitations period can be offset by generous accrual and tolling rules, and a long limitations period offset by miserly ones")). The Connecticut legislature gave victims an extraordinary 17 year period after the age of majority in which to bring claims regarding sexual abuse. In doing so, it has rendered its "value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson,* 421 U.S. at 463-464, 95 S.Ct. 1716. I do not *435 share the majority's belief that the State Supreme Court would follow such an attenuated path to release Martinelli from his obligation to timely file his claim or to prove tolling by "clear, precise, and unequivocal evidence." *Bartone,* 656 A.2d at 224.

As a federal court sitting in diversity, we should be circumspect with our predictions, particularly if they expand the scope of liability. *See Guaranty Trust Co.of N.Y. v. York,* 326 U.S. 99, 105, 65 S.Ct. 1464, 89 L.Ed. 2079 (1945) ("In giving federal courts 'cognizance' of equity suits in cases of diversity jurisdiction, Congress never gave, nor did the federal courts every claim, the power to deny substantive rights created by State law or to create substantive rights denied by State law."); *Todd v. Societe Bic, S.A.,* 21 F.3d 1402, 1412 (7th Cir.) ("When given a choice between an interpretation of

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Illinois law which reasonably restricts liability, and one which greatly expands liability, we should choose the narrower and more reasonable path (at least until the Illinois Supreme Court tells us differently)."), *cert. denied,* 513 U.S. 947, 115 S.Ct. 359, 130 L.Ed.2d 312 (1994). If we guess wrong, and we sometimes do, [FN3] we "inevitably skew the decisions of [those] who rely on [our opinion] and inequitably affect the losing federal litigant who cannot appeal the decision to the state's supreme court; [we] may even mislead lower state courts that may be inclined to accept federal predictions as applicable precedent." Sloviter, *supra,* 78 Va.L.Rev. at 1681, *quoted in Lexington Ins. Co. v. Rugg & Knopp, Inc.,* 165 F.3d 1087, 1092-93 (7th Cir.1999). Worse, we will have intruded on the exclusive prerogative of the State to control the development of its laws. *See Factors Etc., Inc. v. Pro Arts, Inc.,* 652 F.2d 278, 282 (2d Cir.1981) (noting that courts sitting in diversity should seek to minimize any "interruption of the orderly development and authoritative exposition of state law."); *Torres v. Goodyear Tire & Rubber Co., Inc.,* 857 F.2d 1293, 1296 (9th Cir.1988) ("We hesitate prematurely to extend the law of products liability in the absence of an indication from the Arizona courts or the Arizona legislature that such an extension would be desirable. We have limited discretion in a diversity case 'to adopt untested legal theories brought under the rubric of state law.' "). Given my belief that the majority has guessed wrong, I must respectfully dissent.

FN3. *See, e.g.,* Dolores K. Sloviter, *A Federal Judge Views Diversity Jurisdiction through the Lens of Federalism,* 78 Va.L.Rev. 1671, 1679-80 & nn.48-51 (1992) (collecting erroneous "Erie guesses" in the 3rd Circuit); *Poindexter v. Armstrong,* 934 F.Supp. 1052, 1056 (W.D.Ark.1994) (noting that 8th Circuit Court of Appeals was "apparently mistaken" in light of subsequent decision by Arkansas Supreme Court); *DeWeerth v. Baldinger (DeWeerth II),* 38 F.3d 1266, 1272 (2d Cir.1994) (acknowledging that New York Court of Appeals subsequently applied a different standard on applicable statute of limitations from the one predicted by the Second Circuit, but refusing any post-judgment relief for the plaintiff because the doctrine of finality of judgments outweighed "any injustice DeWeerth believes she has suffered by litigating her case in the federal as opposed to the state forum."). In *DeWeerth II,* at least, the plaintiff had chosen the federal forum. Here, the Diocese never had the opportunity to secure a state court interpretation of Conn. Gen.Stat. § 52-595.

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Briefs and Other Related Documents (Back to top)

• 1999 WL 33628829 (Appellate Brief) Brief of the United States Catholic Conference, the Church of Jesus Christ of Latter-Day Saints, the Rev. Clifton Kirkpatrick as Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), the General Conference of Seventh-Day Adventist s, the General Council on Finance and Administration of the United States Methodist Church, the First Church of Christ, Scientist, and the Evangelical Lutheran Church in America, as Amici Curiae in Support of Defendant-Appellant's Petition for Rehea (Nov. 30, 1999)

• 1998 WL 34088286 (Appellate Brief) Reply Brief for Defendant-Appellant (Nov. 04, 1998)

• 1998 WL 34088284 (Appellate Brief) Brief for Plaintiff-Appellee Frank Martinelli (Oct. 21, 1998)

• 1998 WL 34088283 (Appellate Brief) Brief for Defendant-Appellant (Aug. 31, 1998)

• 1998 WL 34088285 (Appellate Brief) Brief of the United States Catholic Conference, the Church of Jesus Christ of Latter-Day Saints, the Rev. Clifton Kirkpatrick As Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.), the General Conference of Seventh-Day Adventist s, the General Council on Finance and Administration of the United Methodist Church, the First Church of Christ, Scientist, and the Evangelical Lutheran Church in America. As Amici Curiae in Support of Appellant Bridgeport Roman Catholic Diocesan Co (Aug. 31, 1998)

• 1998 WL 34089768 (Appellate Brief) Brief for Defendant-Appellant (Aug. 31, 1998)

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EXHIBIT 35

C
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Court of Appeals of Texas, Dallas.

Maria G. MARTINEZ, Appellant
v.
PRIMERA ASEMBLEA DE DIOS, INC., Appellee

No. 05-96-01458-CV

May 15, 1998.

On Appeal from the 193rd District Court Dallas County, Texas Trial Court Cause No. 96-01054-L.

Before Justices LAGARDE, KINKEADE, and Morris.

OPINION

Justice LAGARDE.

*1 Primera Asemblea de Dios, Inc., a church located in Grand Prairie, terminated the membership of Maria G. Martinez after she alleged that Jonathan Armenta, a church elder, sexually assaulted her. Thereafter, Martinez sued the church alleging that (1) the church improperly terminated her membership, and (2) the church's negligence proximately caused the sexual assaults. [FN1] The church moved for summary judgment on two discrete grounds. First, the church argued that the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution prohibited the trial court from exercising jurisdiction over Martinez's suit. Second, the church argued that, as a matter of law, it can not be held liable for the tortious conduct of Armenta. Apparently agreeing with the church's jurisdictional argument, the trial court dismissed Martinez's suit in its entirety. Martinez appeals the trial court's dismissal order. We conclude that the trial court (1) *lacked* jurisdiction over Martinez's claims concerning her membership status and (2) *had* jurisdiction over Martinez's negligence claims. Accordingly, we affirm that portion of the trial court's order dismissing Martinez's claims regarding her membership status, and we reverse that portion of the trial court's dismissal order relating to Martinez's negligence claims and remand only those claims to the trial court for further proceedings.

FN1. Martinez's parents and husband also sued the church. Martinez, however, is the sole appellant.

MARTINEZ'S MEMBERSHIP STATUS

In reviewing this summary judgment, we follow well established rules articulated by the supreme court in *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (Tex.1985). Taking evidence favorable to Martinez, the nonmovant, as true, the summary judgment record reflects that between 1991 and 1994, Martinez and Armenta had a number of encounters that Martinez characterizes as sexual assaults. [FN2] Martinez reported Armenta's conduct to the church pastor and members of the board of directors. Thereafter, the board of directors wrote Martinez a letter informing her that her church membership had been terminated.

FN2. In her affidavit in opposition to the church's motion for summary judgment, Martinez states that Armenta "repeatedly committed sexual assault against" her. The only encounter that Martinez describes with particularity is the first encounter. Martinez averred: "I was the choir secretary and Jonathan Armenta had assisted me in getting that appointment. I was helping him and he asked me to turn out the lights in the ladies room, and when I emerged from the ladies room he approached me, began putting his hands on me and kissed me. I turned and left."

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Martinez decided to contest the termination. She reviewed the church's constitution and rules to determine the appeal procedure and noted the following:

> Any member that has been expelled must be notified according to action taken by the Pastor and Directive Table. The secretary of the assembly should notify and make known that he has a right to appeal. If the expelled member appeals to the directive table asking it to *reconsider its action and a reintegration is denied*, the expelled member will also have the right to appeal to the congregation. The action of the assembly manifested by majority of vote will be considered final. Mat. 18: 15-18; Rom. 16: 17, 18; I Cor. 5: 1-5; II Tes. 3: 6- 15. (Note: The appeal is related to persons who believe to be right with God and are not violating the requirements that must characterize a Christian, or of a member of the assembly). [FN3]

> FN3. The church's constitution and rules are written in Spanish. Martinez translated them into English and attached them to her response to the church's motion for summary judgment.

*2 In accordance with the above provision, Martinez orally requested the opportunity to address the entire congregation regarding her membership. Additionally, her attorneys communicated the same request in writing.

When the church did not respond to either request, Martinez filed this lawsuit. In her live petition, Martinez requests the following relief *vis-a-vis* her membership status: (1) "the court enter a final and permanent injunction, enjoining defendant from asserting any validity of any action taken in terminating the membership of plaintiffs;" and (2) "on final trial, the court declare that all actions taken on or about May 28, 1994, in terminating the *membership of plaintiffs are* null and void; and that plaintiffs are valid members of the church." [FN4]

> FN4. At oral argument, Martinez's counsel stated that Martinez was not seeking a judicial declaration regarding the status of her membership but instead only seeks to have the trial court order the church to allow her to address the congregation. Martinez's live petition belies her counsel's representation at oral argument because it clearly requests that the trial court declare that Martinez is a "valid member of the church." The only portion of Martinez's live petition that is conceivably consistent with counsel's statement at oral argument is Martinez's general prayer which requests "all other relief, both at law and in equity, to which these plaintiffs are due and owing *and will ever pray.*"

The First Amendment to the United States Constitution, applied to the states through the Fourteenth Amendment, provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amends. I, XIV. Over a century ago, the United States Supreme Court determined that when the highest authority of a church judicatory has decided questions of discipline, faith, or ecclesiastical rule, custom, or law, secular civil courts must accept such decisions as final and binding:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the *ecclesiastical government of all the individual* members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be vain consent and would lead to total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-29, 20 L.Ed. 666 (1871). More recently, the Supreme Court followed its holding in *Watson* in *Serbian East Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 708-09, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

Martinez argues that the holding of *Watson* and

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Milivojevich applies only to churches of a hierarchical polity and not to churches of a congregational polity. As to the issues presented in this case, we disagree. A hierarchical church is one where the religious ecclesiastical body is but a subordinate member of some general church organization in which there are superior ecclesiastic tribunals with a general and ultimate power of control more or less complete, and some supreme judicatory over the whole membership of that organization. *Mangum v. Swearingen,* 565 S.W.2d 957, 958 (Tex.App.--San Antonio 1978, writ ref'd n.r.e.). A congregational church is a religious congregation which, by the nature of its organization is strictly independent of other ecclesiastic organizations, as far as church government is concerned, and owes no fealty or obligation to any higher authority. *Id.* Thus, for example, a catholic or methodist church would be hierarchical whereas a baptist church or jewish synagogue would be congregational. For purposes of this opinion, we accept Martinez's representation that the appellee church, which is affiliated with Assemblies of God, is congregational rather than hierarchical.

*3 In *Hill v. Sargent,* 615 S.W.2d 300, 301 (Tex.Civ.App.--Dallas 1981, no writ), this Court, citing *Watson* and *Milivojevich,* recognized that the "civil courts of this country are prohibited by the First Amendment from interfering "in the purely ecclesiastical or administrative affairs of the church." *Hill* affirmed the trial court's refusal to entertain a civil suit that would have required the court to determine whether a particular church meeting was proper under the church's written laws and constitutions. This Court affirmed the trial court's dismissal of the cause of action for lack of jurisdiction under the First Amendment because "for us to make that determination would require the interpretation of ambiguous religious law and usage." *Id.* at 301. Although this Court recognized that *Watson* and *Milivojevich* concerned churches of hierarchical polity, and the church in *Hill* was of a congregational polity, this Court concluded that there was no "meaningful distinction between the two forms of government for the purpose of applying the First Amendment." *Id.* at 302 note 1. Similarly in this case, for the purpose of applying the First Amendment, we conclude that it is immaterial whether appellee is a congregational or a hierarchical church. The issue is whether the redress of Martinez's complaint would result in the civil courts interfering "in purely ecclesiastical or administrative affairs of the church." *See Hill,* 615 S.W.2d at 301.

The civil courts cannot redress Martinez's membership status complaint without entangling themselves in ecclesiastical or religious matters. The appeal provision in the church's constitution and rules provides that the appeal is "related to persons who believe to be right with God and are not violating the requirements that must characterize a Christian, or a member of the assembly." The provision references the books of Matthew, Romans, I Corinthians, and II Thessalonians. Thus, to redress Martinez's membership status claim, the civil courts would be required to interpret Christian scriptures rather than neutral principles of law. The trial court, and this Court, are without jurisdiction to engage in such a review. *See Hill,* 615 S.W.2d at 302. Accordingly, we conclude that the trial court properly dismissed for want of jurisdiction Martinez's cause of action regarding her membership status. [FN5] We affirm the trial court's order of dismissal relating to that claim.

FN5. We express no opinion on whether a motion for summary judgment is the proper procedural vehicle for challenging a trial court's jurisdiction. *Compare Patterson v. Southwestern Baptist Seminary,* 858 S.W.2d 602 (Tex.App.--Fort Worth 1993, no writ) (granting summary judgment on jurisdictional grounds) with *Green v. United Pentecostal Church,* 899 S.W.2d 28 (Tex.App.--Austin 1995, writ denied) (granting church's motion to dismiss for want of jurisdiction).

MARTINEZ'S TORT CLAIMS

Martinez's live petition asserted several negligence-based causes of action against the church relating to Jonathan Armenta. [FN6] The trial court apparently also dismissed Martinez's negligence-based claims for want of jurisdiction. [FN7] The Free Exercise clause has never immunized clergy or churches from all causes of action alleging tortious conduct. *See Tilton v. Marshall,* 925 S.W.2d 672, 677 (Tex.1996).

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Religious groups may be held liable in tort for secular acts. Assuming jurisdiction over Martinez's negligence- based claims will not entangle the trial court in the ecclesiastical affairs of the church. Accordingly, we conclude that the trial court has jurisdiction over Martinez's negligence-based claims. We express no opinion on the merits of Martinez's negligence-based claims but, instead, remand those claims to the trial court for its consideration of the merits.

FN6. Martinez alleged, among other things, that the church negligently hired Armenta, failed to do a background check on him, failed to have him undergo psychiatric testing prior to hiring him, failed to properly supervise him, failed to train him, and negligently placed him in a position wherein he would be able to take advantage of women in a vulnerable state.

FN7. The order granting the church's summary judgment decrees that the motion for summary judgment is granted as to all claims and the court "further orders that this cause of action be dismissed in its entirety." Had the trial court addressed the merits of Martinez's negligence-based claims and concluded in favor of the church, it would have entered a judgment that Martinez take nothing on those claims.

*4 In conclusion, we affirm the trial court's dismissal order for want of jurisdiction insofar as it relates to Martinez's membership status claim. [FN8] We reverse the trial court's dismissal order insofar as it relates to Martinez's negligence claims and we remand those claims to the trial court for further proceedings consistent with this opinion.

FN8. We affirm the trial court's dismissal of all claims that are in any way related to Martinez's status as a member of Primera Asemblea de Dios, Inc. or concerning her right to appeal the church's termination of her membership, including those claims that Martinez has couched in terms of negligence such as "negligently terminating the membership of plaintiffs."

1998 WL 242412 (Tex.App.-Dallas)

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EXHIBIT 36

90 S.Ct. 499
24 L.Ed.2d 582
(Cite as: 396 U.S. 367, 90 S.Ct. 499)

Supreme Court of the United States

The MARYLAND AND VIRGINIA ELDERSHIP OF the CHURCHES OF GOD et al.
v.
The CHURCH OF GOD AT SHARPSBURG, INC., et al.

No. 414.

Jan. 19, 1970.

Actions by regional church against local churches and others to prevent local churches from withdrawing from regional church and to determine which of two factions should control local churches and their property and corporations. The Circuit Court, Washington County, Maryland, dismissed the complaint and regional church appealed. Thejudgment was affirmed, 249 Md. 650, 241 A.2d 691, and regional church appealed. The United States Supreme Court, 393 U.S. 528, 89 S.Ct. 850, 21 L.Ed.2d 750, vacated the judgment and remanded the cause. The Court of Appeals again affirmed, 254 Md. 162, 254 A.2d 162, and an appeal was taken. The Supreme Court then held that since the Maryland Court of Appeals, resolution of the dispute involved no inquiry into religious doctrine, the appeal of the regional church, which argued primarily that the Maryland statute, as applied, deprived the regional church of property in violation of the First Amendment, had to be dismissed for want of a substantial federal question.

Appeal dismissed.

West Headnotes

Federal Courts ⇐505
170Bk505 Most Cited Cases
(Formerly 106k394(3))

Since state court's resolution of dispute between regional church and two secessionist congregations involved no inquiry into religious doctrine, appeal of the regional church, which argued primarily that the state statute, as applied, deprived the regional church of property in violation of the First Amendment, had to be dismissed for want of a substantial federal question. Code Md.1957, art. 23, §§ 256-270; U.S.C.A.Const. Amend. 1.

****499 *367** Alfred L. Scanlan, James H. Booser and Charles O. Fisher, for appellants.

Arthur G. Lambert, for appellees.

PER CURIAM.

In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by religious corporations, [FN1] upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A.2d 162 (1969) . [FN2] Appellants ****500** argue primarily that the statute, as applied, deprived the General Eldership ***368** of property in violation of the First Amendment. Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question. It is so ordered.

FN1. Md.Ann.Code, Art. 23, ss 256--270 (1966 Repl.Vol.).

FN2. The Maryland court reached the same decision in May 1968. 249 Md. 650, 241 A.2d 691. This Court vacated and remanded the case 'for further consideration in light of Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church * * *.' 393 U.S. 528, 89 S.Ct. 850, 21 L.Ed.2d 750 (1969).

Appeal dismissed.

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Mr. Justice BRENNAN, with whom Mr. Justice DOUGLAS and Mr. Justice MARSHALL join, concurring.

I join the per curiam but add these comments. We held in Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969), that 'First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely eccelesiastical concern. * * * (T)he (First) Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.' It follows that a State may adopt any one of various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith.

Thus the States may adopt the approach of Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), and enforce the property decisions made within a church of congregational polity 'by a majority of its members or by such other local organism as it may ahve instituted for the purpose of ecclesiastical government,' id., at 724 and within a **369** church of hierarchical polity by the highest authority that has ruled on the dispute at issue, [FN1] unless 'express terms' in the 'instrument by which the property is held' condition the property's use or control in a specified manner. [FN2] Under Watson civil courts do not inquire whether the relevant church governing body has power under religious law to control the property in question. Such a determination, unlike the identification of the governing body, frequently necessitates the interpretation of ambiguous religious law and usage. To permit civil courts to probe deeply enough into the allocation of power within a church so as to decide where religious law places control over the use of church property **501 would violate the First Amendment in much the same manner as civil determination of religious doctrine. [FN3] Similarly, where the identity of the governing body or bodies that exercise general authority within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be **370** essential to the resolution of the controversy. In other words, the use of the Watson approach is consonant with the prohibitions of the First Amendment only if the appropriate church governing body can be determined without the resolution of doctrinal questions and without extensive inquiry into religious policy.

FN1. Under the Watson definition, supra, at 722--723, congregational polity exists when 'a religious congregation * * *, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.' Hierarchical polity, on the other hand, exists when 'the religious congregation * * * is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.'

FN2. Id., at 722. Except that 'express terms' cannot be enforced if enforcement is constitutionally impermissible under Presbyterian Church. Any language in Watson, supra, at 722--723, that may be read to the contrary must be disapproved. Only express conditions that may be effected without consideration of doctrine are civilly enforceable.

FN3. Except that civil tribunals may examine church rulings alleged to be the product of 'fraud, collusion, or arbitrariness.' Gonzalez v. Roman Catholic Archibishop, 280 U.S. 1, 16, 50 S.Ct. 5, 7, 74 L.Ed. 131 (1929).

'(N)eutral principles of law, developed for use in all

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property disputes,' Presbyterian Church, supra, 393 U.S. 440 at 449, 89 S.Ct. at 606, provide another means for resolving litigation over religious property. Under the 'formal title' doctrine, civil courts can determine ownership by studying deeds, reverter clauses, and general state corporation laws. Again, however, general principles of property law may not be relied upon if their application requires civil courts to resolve doctrinal issues. For example, provisions in deeds or in a denomination's constitution for the reversion of local church property to the general church, if conditioned upon a finding of departure from doctrine, could not be civilly enforced. [FN4]

> FN4. Thus a State that normally resolves disputes over religious property by applying general principles of property law would have to use a different method in cases involving such provisions, perhaps that defined in Watson. By the same token, States following the Watson approach would have to find another ground for decision, perhaps the application of general property law, when identification of the relevant church governing body is impossible without immersion in doctrinal issues or extensive inquiry into church polity.

A third possible approach is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical policy, as well as doctrine, to church governing bodies. [FN5] Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 98 L.Ed. 120 (1952).

> FN5. See, e.g., Goodson v. Northside Bible Church, 261 F.Supp. 99 (D.C.S.D.Ala. 1966), aff'd, 387 F.2d 534 (C.A.5th Cir. 1967).

90 S.Ct. 499, 396 U.S. 367, 24 L.Ed.2d 582

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EXHIBIT 37

130 A.2d 881
(Cite as: 44 N.J.Super. 468, 130 A.2d 881)

C

Superior Court of New Jersey.
Appellate Division.

James McBRIDE, Plaintiff-Appellant,
v.
Lloyd W. McCORKLE, Principal Keeper of the New Jersey State Prison, Defendant-Respondent.

No. A--121.

Argued April 8, 1957.
Decided April 15, 1957.

Proceeding brought for review of determination that prisoner was not being subjected to cruel and unusual punishment in violation of his constitutional rights. The Appellate Division, Goldmann, S.J.A.D., held that prisoner who, in common with the other 30 men in the segregation wing of the State Prison, was prevented from attending Mass on Sundays and Holy Days as prescribed by Roman Catholic Church, was not thereby subjected to cruel and unusual punishment or deprived of his constitutional right of free exercise of his religion.

Appeal dismissed.

West Headnotes

[1] Prisons ⇐13(3)
310k13(3) Most Cited Cases
(Formerly 310k13)

Whether Chancery Division was proper forum before which to bring prisoner's claim, that denial to him of right to attend Mass constituted cruel and unusual punishment, would depend upon existence of adequate remedy elsewhere.

[2] Prisons ⇐4(1)
310k4(1) Most Cited Cases
(Formerly 310k4)

Actions, decisions and rules of Principal Keeper of State Prison were in fact those of a "state administrative agency". R.R. 4:88-8; R.S. 30:1-2, 7, 30:4-1, N.J.S.A.

[3] Sentencing and Punishment ⇐1553
350Hk1553 Most Cited Cases
(Formerly 110k1213.10(4), 110k1213)

[3] Prisons ⇐13(5)
310k13(5) Most Cited Cases
(Formerly 310k13)

Prisoner's refusal to obey orders and his repeated use of foul and obscene language to prison officials merited his continued confinement in segregation wing of State Prison, and he was not thereby subjected to cruel and unusual punishment.

[4] Prisons ⇐4(3)
310k4(3) Most Cited Cases
(Formerly 310k4)

Courts are not required to supervise administration of prison rules and regulations and prison disciplinary procedures, and reasonable discretion must be accorded Principal Keeper of State Prison in discharging his duties; but there must be a rule of reason in all prison discipline, and if Principal Keeper treats prisoner arbitrarily, or deprives him of constitutional rights, and such treatment or deprivation is uncorrected by administrative action or review, prisoner has a judicial remedy.

[5] Constitutional Law ⇐84.5(14)
92k84.5(14) Most Cited Cases
(Formerly 92k84)

[5] Sentencing and Punishment ⇐1553
350Hk1553 Most Cited Cases
(Formerly 110k1213.10(2), 110k1213)

Prisoner who, in common with other 30 men in segregation wing of State Prison was prevented from attending Mass on Sundays and Holy Days as prescribed by Roman Catholic Church, was not thereby subjected to cruel and unusual punishment or deprived of his constitutional right of free exercise of his religion.

[6] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[6] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

The First Amendment to the Federal Constitution

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guarantees free exercise of religion and, coupled with Fourteenth Amendment, also protects citizens from state action prohibiting such exercise. U.S.C.A.Const. Amends. 1, 14; Const.1947, Art. I, par. 3.

[7] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Freedom to believe is absolute, but freedom to exercise one's belief is not and must be considered in light of the general public welfare; and attendance at Mass on Sundays and Holy Days as prescribed by Roman Catholic Church is "exercise" of religion. U.S.C.A.Const. Amends. 1, 14; Const.1947, Art. I, par. 3.

***470 **882** Hamilton F. Kean, Newark, for appellant.

Eugene T. Urbaniak, Deputy Atty. Gen., for respondent (Grover C. Richman, Jr., Atty. Gen., attorney).

Before Judges GOLDMANN, FREUND, and CONFORD.

The opinion of the court was delivered by

GOLDMANN, S.J.A.D.

Plaintiff is now serving a life sentence at the New Jersey State Prison as an habitual offender. In October 1956 he filed what was in effect a petition in the Chancery Division praying that an order to show cause be issued directing defendant McCorkle, then Principal Keeper of the State Prison, to explain why he was subjecting plaintiff to cruel and unusual punishment through prolonged 'solitary confinement' and denying him free exercise of his religious beliefs through attendance at Mass on Sundays and Holy Days as prescribed by the Roman Catholic Church. Defendant moved to dismiss on the ground *471 that the matter was reviewable only in the Appellate Division under R.R. 4:88--8. The Chancery Division thereupon ordered the proceedings transferred to the Appellate Division 'for its consideration' as to whether the matter was reviewable under that rule.

In his initial brief in this court, filed Pro se, plaintiff stated that 'he is not questioning the reason or reasons as to why he is not released from solitary (sic) confinement nor * * * attacking the rules or regulations of the Board of Managers of the Prison or * * * of the State Board of Control of Institutions and Agencies,' but was 'only seeking an 'order to show cause' why the Principal Keeper of the New Jersey State Prison should not be restrained from invoking cruel and inhuman and unusual punishment upon the plaintiff, because the Principal Keeper has prevented in the past and is now preventing the plaintiff * * * the right to the free exercise of religious beliefs and attendance of Mass on Sundays and Holy days as prescribed by the Roman Catholic Church and nothing else.' The Attorney-General, acting on behalf of defendant, then filed an answering brief questioning whether matters relating to the disciplining of an inmate for infraction of prison rules are reviewable under R.R. 4:88--8, but in any event arguing that defendant was not subjected to cruel and unusual punishment or deprived of his religious liberties in violation of the State or Federal Constitution. Attached to this brief was an appendix, certified by the Attorney-General, setting out plaintiff's disciplinary record at the State Prison in detail.

The appendix reveals that plaintiff is not in solitary confinement, as he claims, but has been kept in the segregation wing of the Prison. Although inmates in segregation do not have contact with the general inmate population, they do have contact with each other in the segregation exercise yard and are permitted exercise outdoors for two hours each day, weather permitting. If their conduct warrants, they are permitted commutation credits for good behavior as provided in R.S. 30:4--140, N.J.S.A., and may take special *472 correspondence school courses through the educational department. They have the same mail privileges as other inmates, and visiting privileges are the same except that visitors must come at stated hours. The case of each inmate in segregation is reviewed once each month by the supervising officer in the custodial department, at which time a decision is made as to whether the inmate **883 may be returned to the general prison population. Inmates in segregation are not allowed to accompany the general prison population to chapel for religious services on Sunday and other appropriate days, but a chaplain of each religious faith is available to such men to visit them in their cells for spiritual guidance, including Holy

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Communion. Any request made by plaintiff for spiritual assistance would be granted. None of these matters relating to men in segregation is denied. We were informed at oral argument that there are presently some 30 men in the segregation wing of the State Prison.

Following the coming in of plaintiff's reply brief this court, on its own motion, appointed Hamilton F. Kean, Esquire, to brief and argue the appeal on behalf of the prisoner. Counsel was instructed to argue, among such other points as he might desire to raise, whether this appeal properly comes before the Appellate Division under R.R. 4:88--8 and whether the denial to plaintiff of attendance at Mass amounted to what he describes as cruel and unusual punishment. This court desires to express its appreciation to assigned counsel for the thoroughness and excellence of his presentation.

The following facts are not in dispute:

(1) Plaintiff has been in the segregation wing since October 1952. Defendant alleges he was so confined because he participated in the riot in No. 7 Wing at the State Prison on October 12, 1952; plaintiff, however, denies such participation. Plaintiff's disciplinary record shows no acts of misconduct between October 1952 and July 29, 1954, but lists some 15 violations since then which have resulted in a continuation of confinement in segregation. Most of these charges relate to the use of 'foul, obscene and indecent language' to prison officials and plaintiff's refusal to obey orders.

*473 (2) While in segregation plaintiff has not been permitted to attend Mass in the prison chapel along with the nonsegregated inmates. The Catholic chaplain will not hold Mass in the segregation wing in the absence of a chapel.

(3) The Catholic chaplain has at all times been available to plaintiff and others in segregation, to offer spiritual advice, guidance and counsel as well as the benefits of the Holy Sacraments.

(4) Plaintiff never complained to or sought a hearing before the Board of Managers of the State Prison as to the matters now complained of, prior to the institution of these proceedings. He has since--as noted below.

Taking advantage of the opportunity afforded under our order assigning counsel, plaintiff's attorney not only attacks as unconstitutional the action of the prison authorities in prohibiting plaintiff from attending Mass on Sundays and other Holy Days, but also their determination that he should be kept in segregation.

[1][2] We first consider whether the Appellate Division is the proper forum for judicial relief under R.R. 4:88--8, which provides that review of 'the final decision or action of any state administrative agency'--other than the Workmen's Compensation Division and the Wage Collection Section of the Wage and Hour Bureau of the Department of Labor and Industry--shall be by appeal to this court.

The State Prison is one of the institutions within the organizational frame of the New Jersey Department of Institutions and Agencies. That Department is headed by the State Board of Control, with the Commissioner of Institutions and Agencies as principal executive officer. N.J.S.A. 30:1--2, N.J.S.A. The State Board of Control has 'complete and exclusive jurisdiction, supreme and final authority, and the requisite power to accomplish its aims and purposes in and upon' the State Prison, among other institutions and agencies. R.S. 30:1--7, N.J.S.A. R.S. 30:4--1, N.J.S.A. provides for the appointment by the State **884 Board of Control of a board of managers for each institution or agency within the Department, and R.S. 30:4--4, N.J.S.A. states that

'Subject to the supervision, control and ultimate authority of the state board, the management, direction and control of the several *474 institutions and noninstitutional agencies shall be vested in the several boards of managers who shall be responsible to the state board for their efficient, economical and scientific operation.'

Under the provisions of R.S. 30:4--5, N.J.S.A., the chief executive officer of each institution or agency shall be its executive and administrative officer and, subject to the rules and regulations adopted by the board of managers, be responsible to that board for 'the proper conduct and management of the institution or agency, * * * and the care and treatment of the inmates.' Finally, R.S. 30:4--6, N.J.S.A. provides in part that

'* * * The principal keeper of the state prison * * * shall receive from the hands of the sheriff or other proper officer every person sentenced to imprisonment in his institution and safely keep him therein according to law and the rules and regulations of the institution until lawfully discharged therefrom. * * *'

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Plaintiff argues that whether the Principal Keeper is in fact a 'state administrative agency' would appear to be immaterial, for under the statutory scheme outlined above, he operates the State Prison under the direct control of the Board of Managers which, in turn, is under the control of and responsible to the State Board of Control, the chief component of the Department of Institutions and Agencies. Even though he may not technically be a 'state administrative agency,' his actions, decisions and rules are in fact those of a state administrative agency.

Since the burden of plaintiff's argument is that he has the remedy at law he presently pursues for any wrongs suffered, he consistently urges that the Chancery Division was not the proper forum for him to bring his action initially. This conclusion depends, of course, upon the existence of an adequate remedy elsewhere. An injunction may not be the most appropriate remedy where the execution of a criminal sentence or the violation of personal rights is involved. McClintock, Equity, 426, 428 (1936); Note, 'Habeas Corpus, Coram Nobis, Remedies Available to Validly Sentenced Prisoners Who Are Mistreated by State *475 Prison Authorities,' 33 Neb.L.Rev. 434, 436 (1954). There is some precedent for the granting of equitable relief upon the threatened deprivation of constitutional rights of a prisoner. Davis v. Berry, 216 F. 413, 418 (D.C.S.D.Iowa 1914). Plaintiff contends, however, that if the relief requested in the instant case can be obtained from proceedings in the nature of Certiorari and Mandamus, there would appear to be no need for invocation of the extraordinary powers of equity.

Defendant agrees that if plaintiff has any remedy, it must be by review under R.R. 4:88--8, citing McKenna v. N.J. Highway Authority, 19 N.J. 270, 274 ff., 116 A.2d 29 (1955), where the court discusses the broad reach of New Jersey's former Certiorari practice. However, he contends that this action should proceed against the Board of Managers of the State Prison, rather than against the Principal Keeper, for the latter is only the Board's agent and in carrying out its directives must do so within the limits of the rules and regulations promulgated by it. His action is the ultimate responsibility of the Board of Managers, so that plaintiff properly should have proceeded against it as the 'state administrative agency' contemplated by R.R. 4:88--8. Defendant also argues that there is lacking here a final decision or action of a state administrative agency, as required by the cited rule, and that there can be no such decision or action **885 until the prisoner has first made representations to the Board of Managers that he is being subjected to cruel and unusual punishment and being deprived of his religious liberties, with consequent action and determination by that board.

There is no need for further exploration of the question presented by these oppositive views. Directly after being assigned, counsel did make written request of the Board of Managers for a hearing and determination as to whether plaintiff (a) was being subjected to cruel and unusual punishment in violation of his constitutional rights; (b) was being denied the free exercise of his religion; (c) should be allowed to attend Mass in the prison chapel with the *476 other prisoners; and (d) should be released from segregation at this time. The Attorney-General stipulates that the request may be considered as one also addressed to the Principal Keeper, the Disciplinary Court of the State Prison, and the Department of Institutions and Agencies itself, and turned down because, in the considered opinion of those concerned, plaintiff is not being subjected to cruel and unusual punishment, is not being deprived of the free exercise of his religion, cannot be allowed to attend Mass where he may mingle with the inmate population at the regular chapel, and cannot be released from segregation in view of his disciplinary record. We have, then, a final decision or action by a state administrative agency within the meaning of R.R. 4:88--8, and so proceed to discuss the merits.

[3][4][5] Does plaintiff's continued confinement in the segregation wing of the State Prison amount to cruel and unusual punishment within the prohibition of the Eighth and Fourteenth Amendments of the United States Constitution or Article I, paragraph 12 of the New Jersey Constitution of 1947? He calls our attention to the fact that he was in segregation from October 1952 to the end of July 1954, although no disciplinary charges were brought against him and he was never afforded the opportunity of a hearing on any charge that may have existed. If there was any cause for complaint, none was made at the time. Nor was any addressed to the prison authorities or to the courts until the institution of the present proceedings, well over two years later. The fact is that since July 29, 1954 plaintiff has on 15 different occasions, while in

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segregation, been charged with violations, none of them denied, resulting in disciplinry action. His record is one of continued misconduct, exhibiting not the slightest contrition or desire for rehabilitation. Significantly, that record of misconduct came to a sudden stop the moment plaintiff instituted his Chancery Division proceedings. We cannot and will not say that plaintiff's refusal to obey orders and his repeated *477 use of foul and obscene language to prison officials did not merit his continued confinement in the segregation wing

Although plaintiff initially stated that he was not questioning the reason for his continuation in segregation, or attacking the rules and regulations of the Prison Board of Managers, he now claims that his lot within prison walls is not in strict keeping with these rules and regulations. Courts are not required to supervise the administration of prison rules and regulations and prison disciplinary procedures. To do so would effectively disrupt prison administration and contravene public policy. We do not believe the Legislature or the rules of court intended any such review or result. Such matters are left to the discretion of prison authorities so long as their conduct does not involve deprivation of the prisoner's constitutional rights and is not clearly capricious or arbitrary. The moment a man is sentenced to State Prison and received within its walls, there arises a duty on the part of the Principal Keeper to discipline him according to the practice laid down by the Board of Managers and the State Board of Control. Reasonable discretion must be accorded the Principal Keeper in discharging his duties; penal administration must be kept flexible to the **886 circumstances of a particular case. Whether he is properly enforcing prison rules and regulations is left to the judgment of the Board of Managers, to whom he is responsible in the first instance, and of the State Board of Control ultimately.

Thus, the only situation calling for review would be one where there was presented a statement of facts which, if true, would clearly amount to arbitrary or capricious treatment of the prisoner by the Principal Keeper, or a deprivation of the prisoner's constitutional rights. Present such treatment or deprivation, uncorrected by administrative action or review, there unquestionably would be a judicial remedy. United States ex rel. Foley v. Ragen, 52 F.Supp. 265 (D.C.N.D.Ill.1943); Coffin v. Reichard, 143 F.2d 443, 155 A.L.R. 143 (6 Cir., 1944); and see Notes, 59 Yale L.J. 800 (1950), 33 Neb.L.Rev. 434 (1954). *478 Such is not the case here. The essential facts are manifested by the recitals and admissions before us and do not require any further showing by formal hearing.

There must be a rule of reason in all prison discipline. Conduct leading to open rebellion or insolence on the part of prisoners cannot be permitted. A prisoner forfeits his free choice of conduct at the moment of his commitment, especially where such conduct is calculated to destroy the order and effectiveness of the institution. In the light of plaintiff's disciplinary record during more than two years last past, his continued confinement in segregation is well within the rule of reason which must obtain in the administration of our penal institutions. It does not amount to cruel and unusual punishment. Cf. Rosenberg v. Carroll, 99 F.Supp. 630 (D.C.S.D.N.Y.1951); In re Pinaire, 46 F.Supp. 113 (D.C.N.D.Tex.1942).

We find, further, that the denial of permission for plaintiff to attend Mass on Sundays and Holy Days in the prison chapel, along with the general prison population, does not amount to cruel and unusual punishment or a deprivation of his constitutional rights of the free exercise of his religion. We do not deal here with a case where plaintiff has been singled out from the whole prison population as the only inmate so treated. All men in the segregation wing are treated alike; they are not permitted to attend Mass, but they are all afforded visitation by the chaplains of their respective faiths and, in the cases of Catholic prisoners, the opportunity to receive the Holy Sacraments.

[6][7] The First Amendment to the United States Constitution guarantees the free exercise of religion, and coupled with the Fourteenth Amendment it also protects citizens from state action prohibiting such exercise. Cantwell v. State of Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940). And our own State Constitution, Article I, paragraph 3, provides that 'No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; * * *.' The Supreme Court in the Cantwell *479 case drew a distinction between freedom to believe and freedom to exercise one's belief, pointing out that the former is absolute, the

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latter not. 310 U.S. at pages 303--304, 60 S.Ct. at page 903. Freedom to practice one's religion must be considered in the light of the general public welfare. Sadlock v. Carlstadt Board of Education, 137 N.J.L. 85, 91, 58 A.2d 218 (Sup.Ct.1948); Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244 (1878). Attendance at Mass is the exercise of religion, and the action taken by the prison authorities in the instant case undeniably curtails it. Examination of decisions upholding curtailment of the free exercise of religion shows that they involved situations where the court found the restriction reasonably necessary to protect some paramount societal interest. Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); Hamilton v. Regents of the University of California, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343 (1934); Cantwell v. State of Connecticut, above; and see **887 Antieau, 'The Limitation of Religious Liberty,' 18 Fordham L.Rev. 221 (1949).

Chief Justice Hughes, speaking for the court in Cox v. State of New Hampshire, 312 U.S. 569, 574, 61 S.Ct. 762, 765, 85 L.Ed. 1049, 1052 (1941), said that 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' The statement is appropriate here. While the State and Federal Constitutions stand as essential barriers against arbitrary or unjust deprivation of civil liberties, they have not been transgressed in this case. The social interest involved in depriving plaintiff of the opportunity to attend Mass with the rest of the prison population can only be the preservation of order and discipline in the prison. If plaintiff has lost any right, it has come about by his own hand. The interest of an orderly society that required his imprisonment insists only that he be privileged to worship God to the extent that his conduct in prison permits.

*480 Plaintiff argues that defendant has not shown that it is necessary to keep him from Mass to preserve prison discipline. We think he has. Such attendance would obviously impair the disciplinary effect of continuous segregation. It is not for us to review the practiced judgment of the prison authorities, based upon experience, that this would interfere with plaintiff's discipline and the existing regimen of discipline and order of the remainder of the prison population.

We have noted the availability of the chaplain of the Catholic faith to prisoners in the segregation wing. In the light of plaintiff's claims, the Attorney-General has felt impelled to present the chaplain's affidavit, in which he states that his offers of spiritual advice, guidance and counsel, as well as of the Holy Sacraments, have consistently been refused by the prisoner. We find it difficult to believe plaintiff's denial of these representations. Whatever merit there may be in his claim of frustration of a deeply held religious desire, his spiritual wants will soon be completely provided for. We were informed at oral argument that the request of the Department of Institutions and Agencies for funds to erect a small chapel in the segregation wing--a request first made in 1953--has finally been met. The chapel with be ready for religious services within a few weeks.

The appeal is dismissed.

130 A.2d 881, 44 N.J.Super. 468

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EXHIBIT 38

863 P.2d 310
(Cite as: 863 P.2d 310)

Supreme Court of Colorado,
En Banc.

Mary E. MOSES, n/k/a Mary Elaine Tenantry,
Plaintiff-Appellee and Cross-Appellant,
v.
The DIOCESE OF COLORADO, a Colorado corporation, and Bishop William Frey,
Defendants-Appellants and Cross-Appellees.

No. 92SA415.

Nov. 15, 1993.
Rehearing Denied Dec. 6, 1993.

Parishioner brought action against Episcopal dioceses and bishop for injuries sustained as result of her sexual relations with priest, whom she sought for counseling. The District Court, City and County of Denver, Herbert L. Stern, III, J., entered judgment on jury verdict awarding $1,216,500 as damages. Diocese and bishop appealed. The Supreme Court, Erickson, J., held that: (1) recovery was not barred by First Amendment; (2) evidence supported claims of negligent hiring and supervision; but (3) bishop and diocese were not subject to vicarious liability.

Affirmed in part and reversed in part.

Rovira, C.J., concurred in part and dissented in part with separate opinion.

West Headnotes

[1] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases

The First Amendment does not grant religious organizations absolute immunity from tort liability; liability can attach for breach of fiduciary duty and negligent hiring and supervision. U.S.C.A. Const.Amend. 1.

[2] Appeal and Error ⇐169
30k169 Most Cited Cases

Issues not raised in trial court cannot form basis of appeal.

[3] Appeal and Error ⇐170(2)
30k170(2) Most Cited Cases

Fact that issue involves questions of constitutional analysis interpretation, or application is not dispositive of whether it will be addressed on appeal despite fact that it was not properly preserved.

[4] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Pursuant to First Amendment, court must not become embroiled in dispute involving religious organization if court would be required to interpret or weigh church doctrine. West's C.R.S.A. § 13-21-102.5; U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

"Neutral principles" doctrine allows court to apply neutral laws of state to religious organizations, but forbids court from resolving disputed issues of religious doctrine and practice. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Application of secular standards to religious organization's secular conduct that is tortious is not prohibited by the Constitution; civil actions against clergymen and their superiors that involve claims of breach of fiduciary duty, negligent hiring and supervision, and vicarious liability are actionable if they are supported by competent evidence in record. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Parishioner's claim against Episcopal diocese and bishop for injuries sustained when priest entered into sexual relationship with parishioner, who came to priest for counseling, and bishop attempted to resolve problems created by relationship, was not barred by First Amendment; claims did not involve disputes within church and were not based solely on ecclesiastical or disciplinary matters which would call into question trial court's power to render judgment against diocese and bishop. U.S.C.A. Const.Amends. 1, 14.

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[8] Religious Societies ⇐31(5)
332k31(5) Most Cited Cases

Sufficient evidence existed to allow jury to find that Episcopal diocese and bishop had fiduciary relationship with parishioner and that breach of fiduciary duty caused parishioner's injuries, where bishop held superior position over parishioner, who sought counseling regarding her sexual relation with priest, bishop assumed control of situation, which demanded that he consider parishioner's interest, and bishop then used parishioner's trust to her detriment by failing to act to help her and instead binding her to secrecy.

[9] Fraud ⇐7
184k7 Most Cited Cases

A fiduciary relationship may arise where one party occupies superior position relative to another.

[10] Fraud ⇐7
184k7 Most Cited Cases

While professional relationship can be used as evidence that one party has both position and opportunity to influence the other party, it is not prerequisite to finding fiduciary relationship; fiduciary relationship can arise out of relationship of blood, business, friendship, or association.

[11] Religious Societies ⇐27(3)
332k27(3) Most Cited Cases

Clergy-parishioner relationship is not necessarily a fiduciary relationship, but does involve type of interaction that creates trust and reliance.

[12] Fraud ⇐7
184k7 Most Cited Cases

Unequal relationship does not automatically create fiduciary duty; superior party must assume duty to act in independent party's best interest to be liable.

[13] Religious Societies ⇐30
332k30 Most Cited Cases

Once member of clergy accepts parishioner's trust and accepts the role of counselor, duty exists to act with utmost good faith for benefit of parishioner.

[14] Religious Societies ⇐31(5)
332k31(5) Most Cited Cases

There was sufficient evidence that employment relationship existed between Episcopal diocese and priest, that diocese was negligent in hiring and supervising priest, and that such negligence caused injuries to parishioner who had sexual relations with priest to support verdict for parishioner on her negligence claims against diocese and bishop, considering evidence of structure of Episcopal Church, control of bishop and diocese over manner in which priests conduct their activities and bishop's potential input on discipline decisions, reliance and trust induced by priest's position, psychological reports that put diocese on notice to inquire whether priest was capable of counseling parishioners, and failure of diocese and bishop to communicate questions regarding priest's fitness to handle counseling to parishioners or to assume greater degree of care in monitoring priest's conduct.

[15] Master and Servant ⇐303
255k303 Most Cited Cases

Employer may be liable for harm to others for negligently employing improper person for task which may involve risk to others.

[16] Master and Servant ⇐303
255k303 Most Cited Cases

Prerequisite to establishing negligent hiring is employment or agency relationship.

[17] Master and Servant ⇐332(1.1)
255k332(1.1) Most Cited Cases

Existence of agency relationship necessary to claim of negligent hiring is ordinarily question of fact to be determined by fact finder; court can decide whether agency relationship exists as matter of law only when facts are not in dispute.

[18] Master and Servant ⇐303
255k303 Most Cited Cases

Tort of negligent hiring does not involve vicarious liability; principle of negligent hiring is based not on rule of agency but on law of torts and is therefore distinguishable from agency doctrine of vicarious liability.

[19] Master and Servant ⇐303

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255k303 Most Cited Cases

Agency necessary to claim of negligent hiring is ultimately question of intention of parties and is evidenced by their acts and not on what relationship is called; what is critical is that parties materially agree to enter into particular relation to which legal consequences of agency attach even though those consequences might not have been contemplated by parties at time of their agreement.

[20] Principal and Agent ⇐1
308k1 Most Cited Cases

"Agent" is generally one who acts for, or in place of, another, or is entrusted with business of another.

[21] Principal and Agent ⇐1
308k1 Most Cited Cases

Control principal exercises over manner of work performed by agent is evidence that agency relationship exists; while no one factor is determinative, most important factor is right to control, not fact of control.

[22] Master and Servant ⇐303
255k303 Most Cited Cases

Employer's liability for negligent hiring is predicated on employer's antecedent ability to recognize potential employee's attributes of character or prior conduct which would create an undue risk of harm to those with whom employee came in contact in executing his employment responsibilities.

[23] Master and Servant ⇐303
255k303 Most Cited Cases

Employer has duty to exercise reasonable care in making his decision to hire, and scope of employer's duty depends on employee's anticipated degree of contact with other persons in carrying out duties of employment; requisite degree of care increases and may require expanded inquiry into employee's background, when employer expects employee to have frequent contact with public or when nature of employment fosters close contact and special relationship between particular persons and employee.

[24] Religious Societies ⇐30
332k30 Most Cited Cases

Episcopal diocese was subject to increased degree of care in hiring priest who was placed in position that required not only frequent contact with others, but induced reliance of trust through counseling process.

[25] Master and Servant ⇐303
255k303 Most Cited Cases

Employer may be liable for negligent supervision if employer knows or should have known that employee's conduct would subject third parties to unreasonable risk of harm.

[26] Religious Societies ⇐30
332k30 Most Cited Cases

Episcopal priest was not acting within scope and course of his employment when he engaged in sexual relations with parishioner, and therefore diocese and bishop were not vicariously liable for his tortious conduct.

[27] Master and Servant ⇐300
255k300 Most Cited Cases

Agency doctrine of vicarious liability is based on theory of respondeat superior which postulates that master may be liable for acts of agent acting on master's behalf.

[28] Master and Servant ⇐302(1)
255k302(1) Most Cited Cases

Employer may be held vicariously liable for employee's tort only when tort is committed within course and scope of employment.

[29] Master and Servant ⇐302(2)
255k302(2) Most Cited Cases

Employee is acting within scope of his employment, for purposes of vicarious liability, if he is doing work assigned to him by employer, or what is necessarily incidental to that work, or customary in employer's business.

[30] Master and Servant ⇐302(2)
255k302(2) Most Cited Cases

Although commission of intentional tort may

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sometimes be within scope of employment, for purposes of vicarious liability, agent's intent in committing tortious act must be to further employer's business; if employee commits intentional tort solely for reasons that do not further his employer's business or cannot be considered natural incident of employment, employer cannot be vicariously liable.

[31] Religious Societies ⇦30
332k30 Most Cited Cases

That Episcopal priest does not take vow of celibacy, but is free to marry and engage in sexual acts, does not compel finding that he, unlike Catholic priest who takes vow of celibacy, is acting within scope of employment, when he engages in sexual relations with mentally ill parishioner, for purposes of claim of vicarious liability.

[32] Religious Societies ⇦30
332k30 Most Cited Cases

Vicarious liability of religious organization for torts of its employees would not be expanded to cover foreseeable acts.

***313** Holland, Seelen & Pagliuca, Joyce A. Seelen, Denver, Jean E. Dubofsky, P.C., Boulder, for plaintiff-appellee and cross-appellant.

Cooper & Kelley, P.C., Paul D. Cooper, John R. Mann, Denver, for defendants-appellants and cross-appellees.

Justice ERICKSON delivered the Opinion of the Court.

This appeal is from a judgment entered on a jury verdict awarding Mary E. Moses, who is now known as Mary Moses Tenantry (Tenantry), $1,216,500 as damages against the Episcopal Diocese of Colorado, a Colorado corporation (Diocese), and Bishop ***314** William Frey (Bishop Frey). Tenantry was a parishioner at St. Philip and St. James Episcopal Church in Denver. She sought counseling from Father Paul Robinson (Father Robinson), who was then an assistant priest at St. Philip and St. James. Although Tenantry had a long history of mental illness, her condition was relatively stable at the time she began her counseling with Father Robinson. While counseling and advising Tenantry, Father Robinson entered into a sexual relationship with her that included multiple acts of both fellatio and cunnilingus. When her relationship with Father Robinson ended, Tenantry suffered a relapse and aggravation of her mental illness. Shortly thereafter, her marriage ended in divorce. Tenantry is now under psychiatric care which will be required indefinitely.

The jury found that Bishop Frey and the Diocese breached their fiduciary duties to the plaintiff, the Diocese negligently hired and negligently supervised Father Robinson, and was vicariously liable for Robinson's breach of his fiduciary duty to Tenantry. The award consisted of $598,000 for economic damage and $618,000 for noneconomic damage. The trial judge reduced the verdict for noneconomic damage by $118,000 to comply with the statutory limit of $500,000 imposed by section 13-21-102.5, 6A C.R.S. (1987 & 1993 Supp.).

On appeal, the Diocese and Bishop Frey assert that the First Amendment of the United States Constitution forecloses recovery for clergy malpractice and an award against them for the damages sustained by Tenantry. If the First Amendment defense is valid, the remaining issues on appeal are moot. In our view, the First Amendment does not grant the Diocese and its employees immunity from liability in this case. The Diocese and Bishop Frey also assert that the evidence was insufficient to support the jury's findings. [FN1] We disagree in part. The evidence was sufficient to support Tenantry's claims for breach of fiduciary duty, negligent hiring, and supervision. The evidence, however, was not sufficient to prove that Robinson was acting within the scope of his employment when he engaged in oral sex with Tenantry; therefore, the Diocese is not vicariously liable for Robinson's sexual acts with Tenantry.

FN1. On appeal, all of the evidence must be construed to support the jury's verdict if such construction is reasonable. *Lambrecht v. Archibald,* 119 Colo. 356, 203 P.2d 897 (1949); *see also City of Aurora v. Loveless,* 639 P.2d 1061 (Colo.1981) (stating if reasonable, court must interpret evidence adduced at trial to make the jury's verdict consistent).

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Tenantry asserts in her cross appeal that the trial court should not have reduced the noneconomic damage award because section 13-21-102.5, 6A C.R.S. (1987 & 1993 Supp.), is unconstitutional. Because we vacate the award predicated on vicarious liability, the noneconomic damage award does not exceed the statutory cap and the issue submitted on cross appeal is moot. [FN2]

FN2. Section 13-21-102.5, 6A C.R.S. (1987 & 1993 Supp.), creates a "damage cap" for "noneconomic loss or injury." Subsection 3(a) provides that "[i]n no case shall the amount of such damages exceed five hundred thousand dollars." The jury awarded Tenantry $618,000 in noneconomic damages and the trial court reduced that award to $500,000 pursuant to the statute.

Tenantry contends that section 13-21-102.5 violates tort victims' due process and equal protection rights and the open courts provision of the Colorado Constitution embodied in article II, section 6. Although we have upheld statutory damage caps as constitutional in the past, *see State v. DeFoor,* 824 P.2d 783 (Colo.) (upholding a cap on damages in an action against a public entity), *cert. denied,* --- U.S. ----, 113 S.Ct. 483, 121 L.Ed.2d 387 (1992), we do not address the constitutionality of the $500,000 statutory damage cap because the jury erroneously found the Diocese vicariously liable for the breach of fiduciary duty by Father Robinson. When the erroneous portion of the award is vacated, the remainder of the jury award for noneconomic damages is $370,800. *See infra* note 26.

Section 13-21-102.5(4) requires that the statutory cap "not be disclosed to a jury in any such action, but shall be imposed by the court before judgment." Therefore, the damage cap was applied by the trial judge after the jury awarded damages, and the jury's deliberation concerning the total damage award was not affected prior to the time the trial judge applied the statutory cap. Because the statutory cap could not have influenced the jury's damage award, no remand is necessary to determine the amount of damages the jury would have awarded had the trial court not applied the statutory cap.

The statutory damage cap also limits an award for "noneconomic loss or injury" to $250,000 unless the court finds justification by clear and convincing evidence of damages which exceed that amount. The trial judge found by clear and convincing evidence that total noneconomic damages exceeded $250,000. The portion of the noneconomic damages awarded by the jury and supported by this decision remains over $250,000 and we agree with the trial court that there is clear and convincing evidence which justifies a noneconomic damage award over $250,000. The cross-appellant does not challenge the constitutionality of the $250,000 statutory cap.

*315 Accordingly, we affirm the judgment of the trial court on Tenantry's claims for breach of fiduciary duty and negligent hiring and supervision. We reverse the judgment for damages against the Diocese and Bishop Frey based upon the claim of vicarious liability, and remand with directions.

I

A

Tenantry and one of her older sisters, Joyce Mohr (Mohr), were sexually abused by their father when they were children. Expert testimony established that Tenantry developed a multiple personality disorder as protection against the sexual abuse by her father. [FN3] Before Tenantry entered grade school she had developed several separate identities.

FN3. A multiple personality disorder is a protective mechanism which may be employed by children who suffer extensive abuse. The mechanism disassociates the child from the abusive acts.

Tenantry married Geoffrey Moses (Moses) in 1974. Moses knew of, and attempted to help Tenantry overcome, her mental illness. The couple were married for sixteen years and five children were born as issue of their marriage. Tenantry was

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hospitalized and attempted suicide in 1978 and 1979 because of her mental illness. While Tenantry was being treated for her mental illness, there were periods during which she was permitted to visit her children only if an outside party supervised the visitation. Father Vernon Myers (Father Myers), the priest at St. Philip and St. James Parish, often supervised these visits. The association between Father Myers and Tenantry existed before he supervised the visits because he performed the marriage ceremony for Moses and Tenantry and baptized all of their children.

After treatment for her mental illness concluded in 1979, Tenantry became an active member of St. Philip and St. James Parish. Two of Tenantry's sisters were also members of the parish and together the three sisters participated in social events, taught Bible classes, and supervised children's programs. The husbands of the three sisters were also involved in the activities of the parish and all three men served on the parish vestry--the governing board of the church. By all accounts, Tenantry's mental illness appeared to be in remission during the period that she and members of her family actively participated in church programs and activities. Tenantry's membership in the church started the longest period of improved mental health she had ever experienced.

In 1984, the vestry of St. Philip and St. James decided to hire an assistant priest because Father Myers was nearing retirement. Father Myers suggested the vestry interview Father Robinson, a newly ordained priest who would help the vestry accomplish its goal of attracting young families to the parish. Father Myers interviewed Father Robinson during his ordination period and knew that Bishop Frey considered Father Robinson to be "bishop material." Neither Bishop Frey nor the Diocese provided the church vestry with any of the information about Father Robinson contained in the Diocese's personnel files. Included in Father Robinson's personnel file were reports of psychological examinations that were conducted as a result of Father Robinson seeking ordination. These reports indicated Father Robinson had problems with depression, low self-esteem, and possessed a "sexual identification ambiguity."

Father Robinson was selected by the vestry to begin his duties as assistant priest at St. Philip and St. James Parish in June 1984. Tenantry and her husband were among many of the young couples who befriended Father Robinson and his wife. *316 An outgrowth of Father Robinson's interaction with the young members of the parish was that a number of the women in the parish, including Tenantry and Mohr, were attracted to, and infatuated with, Father Robinson. Tenantry's brother-in-law, Michael Padbury (Padbury), warned Father Robinson that both Tenantry and Mohr were infatuated with him. [FN4]

> FN4. Among the difficulties Tenantry experienced as a result of the sexual abuse she suffered as a child was her inability to understand appropriate behavior or recognize accepted boundaries with respect to her relationships with men.

In September 1984, Tenantry sought counseling with Father Robinson to discuss her fear that she was responsible for the cerebral palsy that afflicted her youngest child. At the time of these counseling sessions, Father Robinson knew Tenantry and Mohr had been sexually abused as children. Tenantry's counseling sessions with Father Robinson always ended with a prayer and a hug. The hugs eventually led to fondling, and finally, to mutual oral sex. On at least one occasion, Tenantry and Father Robinson attempted to have intercourse but were interrupted. During the course of the sexual relationship, they never had intercourse.

In mid-1985, Tenantry told Mohr about her sexual relationship with Father Robinson. Mohr confronted Father Robinson who at first denied, but then admitted, there was a sexual relationship. Father Robinson concluded his conversation with Mohr by indicating that Mohr must keep his sexual relationship with Tenantry a secret because the conversation constituted a confession. Despite Father Robinson's attempt to keep Mohr from disclosing the sexual relationship with Tenantry, Mohr discussed the conversation with her husband. While visiting another Episcopal church, Mohr and her husband consulted Father Bruce McNabb (Father McNabb) regarding whether Father Robinson had made a confession and what course of action they should take to help Tenantry. Father McNabb told Mohr she had not received a confession and was not required to keep the relationship confidential. He recommended that

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Mohr and her husband immediately tell Father Robinson's superior, Father Myers, about the relationship.

Acting on Father McNabb's recommendation, Mohr and her husband saw Father Myers. Mohr told Father Myers about the sexual relationship between Tenantry and Father Robinson and about Father Robinson's attempt to keep the relationship a secret. Mohr advised Father Myers that she had consulted Father McNabb and that he told her Father Robinson could not force her to be quiet. Father Myers' reaction to the sexual relationship shocked both Mohr and her husband. [FN5] Father Myers was angered that Mohr did not keep Father Robinson's secret and scolded her for discussing the relationship with her husband and Father McNabb. Father Myers said that Father Robinson was bishop material and that Mohr and her husband should not ruin his career. Father Myers also asked them why they were trying to destroy Father Robinson and said that Father Robinson's actions were not that bad and that Tenantry had not been injured. As a result of this meeting, Mohr's husband resigned from the vestry and the couple decided to disassociate themselves from the St. Philip and St. James parish.

FN5. Evidence presented at trial indicated that Myers had known of the relationship before being confronted by Mohr. Specifically, Myers had ordered Tenantry to stop talking to Robinson before Tenantry spoke to Mohr about the relationship.

After the meeting, Father Myers confronted Father Robinson and Father Robinson admitted to having oral sex with Tenantry. Father Myers told Father Robinson to be more careful in the future. Once Father Myers had spoken with Father Robinson, he involved the Diocese in the matter. [FN6] No action was taken by the Diocese *317 to help Tenantry after Father Myers' meeting with Mohr and her husband.

FN6. Father Myers was impeached at trial concerning whether he notified the Diocese of Tenantry and Robinson's relationship immediately after Mohr's allegations in August of 1985. In deposition, Father Myers stated that as a result of the meeting with Mohr, he confronted Robinson and then immediately involved the bishop because the bishop should be involved in any serious matter. This evidence contradicts the Diocese's assertion that it was not aware of the matter until March of 1986.

Mohr and her husband related the content and outcome of their discussion with Father Myers to Padbury, who was a member of the vestry and was married to Tenantry's oldest sister. Padbury decided that his strong relationship with Father Myers would enable him to compel Father Myers to address the issue. At a vestry retreat, Padbury confronted Father Myers about the relationship between Tenantry and Father Robinson seeking to understand what had happened. Father Myers told Padbury that he did not understand why Mohr and her husband were so upset and that there were worse things a priest could do. The response caused Padbury to question Father Myers about what action the church had taken. Father Myers indicated that he had received a "satisfactory response" from Father Robinson and was not pursuing the matter. Both Father Myers and Father Robinson attempted to ignore the situation. Father Myers also ordered Tenantry not to talk to Father Robinson.

In an attempt to separate herself from Father Robinson, Tenantry persuaded her husband to leave St. Philip and St. James and to attend Ascension Episcopal Church. By the fall of 1985, the traditional Tenantry family gatherings after church had disintegrated and Tenantry's mental illness resurfaced. The pressure of maintaining the secrecy of the affair caused Tenantry not only to deteriorate mentally but also to become physically ill. By February 1986, Father Robinson and Tenantry's sexual relationship had ended.

After leaving the church, Tenantry learned that Father Robinson had received a call to be the pastor at St. Michael's Episcopal Church in Colorado Springs. She asked her husband, Moses, about his feelings concerning Father Robinson's new position. Unaware of any relationship between his wife and Father Robinson, Moses said he was sorry to see a friend go, but it was a good job and he was happy

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for Father Robinson. Over the course of the next few days, Tenantry continued to tell her husband she was upset by Father Robinson's appointment and eventually told him of her sexual relationship with Father Robinson.

Moses confronted Father Robinson and Father Robinson denied, and then admitted, the existence of a sexual relationship. Moses told Father Robinson he intended to call Bishop Frey and tell him of the relationship. Father Robinson then called Father Myers who arranged to see Moses. Moses demanded Father Myers inform Bishop Frey about the relationship. Bishop Frey scheduled a meeting on March 4, 1986, with Moses, Father Robinson, and Father Myers. On March 3, 1986, the day before the scheduled meeting, Bishop Frey signed a letter which promoted Father Robinson to the position of pastor of the Colorado Springs church. [FN7]

> FN7. Bishop Frey did not inform the vestry of Father Robinson's newly assigned parish about the allegations against Father Robinson despite the fact that Bishop Frey knew that the prior priest assigned to the Colorado Springs parish had left that church because of his illicit sexual relationship with a parishioner.
> An expert who testified at trial expressed the opinion that the likelihood of a priest repeating sexual relationships with parishioners is fifty percent.

At the March 4 meeting, Father Robinson admitted to a sexual relationship with Tenantry which included oral sex but not intercourse. Bishop Frey asked Moses if he would be content to let the Bishop supervise "whatever needed to happen." Moses acquiesced to Bishop Frey assuming control of the matter. Bishop Frey arranged to meet with Tenantry in order to resolve the matter. After Moses left, Bishop Frey informed Father Robinson that if this was a one- time episode, he would not mention it to the Colorado Springs parish. The Bishop also gave Father Robinson a book entitled "Affair Prevention" and told him to get counseling and to advise him immediately if the matter came up in the Colorado Springs parish.

Moses returned home and informed Tenantry that Bishop Frey wanted to see her. *318 Tenantry was terrified about the loss of her salvation and feared having to meet with the Bishop. At their meeting, Tenantry described her past to Bishop Frey and explained that she had an intimate sexual relationship with Father Robinson. Tenantry discussed her fear of not having salvation because of her acts and Bishop Frey granted Tenantry absolution. At trial, Bishop Frey testified that at this meeting his impression of Tenantry was that she was fragile and had a sense of guilt that bordered on pathological because she blamed herself for the relationship. [FN8]

> FN8. Subsequent to Tenantry's commencement of her legal action for damages in February 1990, Bishop Frey provided a statement to the newspapers in which he described Father Robinson as "a fine priest" and Tenantry as "an unfortunate lady."

Tenantry explained to Bishop Frey that she still loved Father Robinson. Bishop Frey told Tenantry that if she loved Father Robinson she should not talk to anyone about her relationship with him, never go near the church, and never talk to Father Robinson again. Tenantry received permission from Bishop Frey to speak to a priest or counselor. Tenantry told Bishop Frey that she had discussed the relationship with her sister and asked if she needed to stop talking with her. Bishop Frey stated that the prohibition on talking to people included Tenantry's sister. Tenantry then asked if she could talk to her husband and Bishop Frey gave her permission to talk to him. The Bishop took no further action to assist Tenantry after this meeting.

Soon after her meeting with Bishop Frey, Tenantry started a day-care business and stopped participating in church activities. In 1989, she encountered Father Robinson by chance at Denver General Hospital. Tenantry reported the meeting to her husband. The reoccurrence of contact between Tenantry and Father Robinson resulted in dissolution of Tenantry's marriage. In May 1990, Tenantry and Moses separated, and in October 1990, they divorced. Subsequently, Tenantry's mental health deteriorated; she stopped spending time with her family, and her day-care business failed. At trial, mental health experts testified that

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the discovery of Bishop Frey's promotion of Father Robinson led to the unraveling of Tenantry's personality structure. Tenantry was diagnosed as suffering a recurrence of her multiple personality disorder and post-traumatic stress syndrome. [FN9]

> FN9. These experts testified that the church provided Tenantry with a structure that helped her deal with multiple personality disorder and taught her to organize her life and to act in an acceptable way. The structure provided by the church broke down as a result of Tenantry's sexual relationship with Father Robinson because she lost her capacity to trust in God and the church. Bishop Frey aggravated the breakdown in trust when he (1) allowed her to believe that she was primarily at fault; (2) did not ask to hear her side of the affair; (3) did not ask her how she felt about the relationship or how she planned to deal with it; and (4) requested that she maintain secrecy about the relationship.

B

In February 1990, Tenantry commenced a civil action against the Diocese and Father Robinson. Tenantry later amended her complaint to include Bishop Frey. Subsequently, Father Robinson filed for bankruptcy and Tenantry's claims against him were severed from the case. The jury returned a verdict finding the defendants liable for breach of fiduciary duty and negligent hiring and supervision and awarded Tenantry damages of $728,100; the jury also found the defendants vicariously liable for Father Robinson's breach of fiduciary duty and awarded $488,400.

We affirm the judgment of the trial court on the issues of breach of fiduciary duty and negligent hiring and supervision. We reverse the judgment on vicarious liability.

II

[1][2][3] For the first time on appeal, the defendants have formulated First Amendment defenses that were not raised in the trial court and allegedly bar Tenantry's claims for the injuries she suffered as a result of the conduct of Father Robinson, *319 Bishop Frey, and the Diocese. The First Amendment issues raised on appeal were not properly preserved in the trial court. However, it is within our discretion to review the First Amendment defenses. [FN10] C.A.R. 1(d); *see Mt. Emmons Mining Co. v. Town of Crested Butte,* 690 P.2d 231, 238 (Colo.1984) (stating the exercise of discretion to notice an issue not raised below "is especially appropriate in a case involving a record that does not clearly establish the evidentiary basis for the rendition of a final judgment on substantial constitutional claims"). The First Amendment to the United States Constitution does not grant religious organizations absolute immunity from tort liability. Liability can attach for breach of a fiduciary duty, negligent hiring and supervision. *Destefano v. Grabrian,* 763 P.2d 275, 284, 286-87 (Colo.1988).

> FN10. The defendants' only argument at trial regarding the First Amendment was it barred admission of two pamphlets that described the hierarchical structure of the Episcopal Church. The defendants submitted a trial brief in support of their position that the pamphlets should not be admitted. In their brief, the defendants asserted that any evidence of church law or discipline should not be admitted. The defendants phrased the summary of this argument very broadly in their Rule 16 disclosure statement--"the First Amendment prevents the court from resolving any claims based upon interpretations of 'church law.' " The trial briefs and the record show that the defendants' only argument at trial was that the First Amendment barred admission of church documents in a civil court proceeding. The defendants did not argue at trial that the First Amendment forbids claims of breach of fiduciary duty, negligent hiring and supervision and vicarious liability against a religious organization.
> We have consistently held, with few exceptions, issues not raised in the trial court cannot form the basis of an appeal. *See, e.g., Paine, Webber, Jackson & Curtis, Inc. v. Adams,* 718 P.2d 508, 513 (Colo.1986) (recognizing that appellate challenges to issues that do not call into

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question the trial court's subject matter jurisdiction and that are not raised in the trial court are waived and will not be reviewed for the first time on appeal). The fact that the non-preserved issue involves questions of constitutional analysis, interpretation, or application is not dispositive of whether we will address the issue on appeal. *See, e.g., Massey v. People,* 656 P.2d 658, 662 (Colo.1982) (declining to address a constitutional argument on appeal that was not presented for determination by the trial court).

A

The First Amendment to the United States Constitution prohibits any "law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. The amendment "embraces two concepts-- freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." *Cantwell v. Connecticut,* 310 U.S. 296, 303- 04, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940).

Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871), established the doctrine of judicial abstention in matters involving court interpretation of ecclesiastical law. *Watson* involved a struggle between two factions of a local Presbyterian church for control of the local church's property. *Id.* 80 U.S. at 684-85. The governing body of the Presbyterian Church of the United States ordered all members of local congregations who believed in the divine character of slavery to "repent and forsake these sins." *Id.* at 691. A minority faction of one local congregation deemed this order a deviation from the church's original doctrine. The minority faction alleged they were the true church and should control their local church's property. An ecclesiastical judiciary of the Presbyterian Church interpreted the church's law and decided which of the disputants should have possession of the local church property. The losing faction sought a contrary determination in the civil courts. The Supreme Court held that civil courts could not deprive religious bodies of the right to construe their own church laws. [FN11]

FN11. *Watson* was decided prior to the application of the First Amendment to the states. The case, however, is the basis for later cases that adopted its rationale in applying the doctrine of judicial abstention to the states on a constitutional basis.

The Court has continued to define what are matters of purely ecclesiastical concern and has applied the doctrine of judicial abstention to cases that do not involve property disputes. *See *320Bouldin v. Alexander, 82 U.S. (15 Wall.) 131, 21 L.Ed. 69 (1872) (stating civil courts have no power to question ordinary acts of church discipline, requirements for membership, or whether excommunication is proper in specific cases);* Kedroff v. St. Nicholas Cathedral, *344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) [FN12] (holding state statute that declared one faction of the Russian Orthodox Church to be the owner of certain church property an unconstitutional intrusion on the decision making ability of the church authorities);* Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, *393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1968) (holding if intra-church property dispute required interpreting and weighing church doctrine, a court could not intervene; if, however, neutral principles of law could be applied without determining underlying question of religious doctrine and practice, a court could intervene);* Serbian E. Orthodox Diocese v. Milivojevich, *426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976) (forbidding judicial inquiry into whether the church judicatory body properly followed its own rules of procedure in removing a bishop from office).*

FN12. *Kedroff* was the first case to come before the Supreme Court involving the doctrine of judicial abstention following the application of the First Amendment's religion clauses to the states. *See Cantwell v. Connecticut,* 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940) (specifying that First Amendment, as to religion, was made applicable to the states by the Fourteenth Amendment).

[4][5] The principle of these cases, as this court has recognized, is that courts must not become

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embroiled in disputes involving a religious organization if the court would be required to interpret or weigh church doctrine. *See Bishop and Diocese of Colorado v. Mote,* 716 P.2d 85, 102 (Colo.1986) (stating that *Jones* and its progeny do not require a court to abstain from religious controversy "as long as the inquiry does not require resolutions of disputed issues of religious doctrine"). *Mote* held that Colorado law required application of the "neutral principles" doctrine when a court is resolving a religious property dispute. *Id.* at 96. The "neutral principles" doctrine was first announced in *Blue Hull,* 393 U.S. at 449, 89 S.Ct. at 606, and allows a court to apply the neutral laws of the state to religious organizations but forbids a court from resolving disputed issues of religious doctrine and practice. In *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), the Supreme Court of the United States explained, "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees, or purchase goods." *Id.* at 606, 99 S.Ct. at 3027.

Even though *Mote* involved a church property dispute, we noted that during the turn of the century this court had held that religious corporations, "are subject to the principles of the common law and the practice and procedure applicable to corporations under the general incorporation laws, so far as the same are pertinent." *Mote,* 716 P.2d at 98 (quoting *Horst v. Traudt,* 43 Colo. 445, 96 P. 259 (1908)). We recognized in *Mote* that *Horst* was not controlling precedent but we read *Horst* as general guidance and "as a persuasive statement that this court should analyze legal issues that arise out of church organizations in the same manner as we would analyze those issues if they arose out of any other corporation or voluntary association." *Mote,* 716 P.2d at 99.

[6] Application of a secular standard to secular conduct that is tortious is not prohibited by the Constitution. *See Mote,* 716 P.2d at 98-99; *Horst,* 43 Colo. at 448, 96 P. at 259; *Employment Div., Dept. of Human Resources of Oregon v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (stating that even religiously motivated conduct is not immune from neutral laws of general applicability). The Supreme Court has not granted churches broad immunity against being sued in civil courts. *See Destefano,* 763 P.2d at 284 n. 9; *see generally* Carl H. Esbeck, *Tort Claims Against Churches and Ecclesiastical Officers: The First Amendment Considerations, *321 89 W.Va.L.Rev. 1 (1986). Civil actions against clergy members and their superiors that involve claims of a breach of fiduciary duty, negligent hiring and supervision, and vicarious liability are actionable if they are supported by competent evidence in the record.* Destefano, *763 P.2d at 284, 286-87.*

[7] The facts of Tenantry's case indicate that an organization, confronted with the misdeeds of one of its agents, assumed control of the matter and in the process of protecting itself injured a vulnerable individual. The defendants have not argued that Bishop Frey's decision to assume control and resolve the problems created by Father Robinson and Tenantry's relationship was a matter of purely ecclesiastical concern. Tenantry's claims in this case do not involve disputes within the church and are not based solely on ecclesiastical or disciplinary matters which would call into question the trial court's power to render a judgment against the defendants. Our decision does not require a reading of the Constitution and Canons of the Protestant Episcopal Church or any other documents of church governance. Because the facts of this case do not require interpreting or weighing church doctrine and neutral principles of law can be applied, the First Amendment is not a defense against Tenantry's claims.

III

[8] On appeal, Bishop Frey and the Diocese have urged this court to overrule *Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988). The defendants contend the claims of breach of fiduciary duty and clergy malpractice are merely different names for professional liability. Their position is that because we refused to recognize a claim for clergy malpractice in *Destefano,* and all of Tenantry's claims relating to the negligence of the church and the acts of the church's agents are in reality claims for clergy malpractice, Tenantry's case should have been dismissed. We have declared that breach of fiduciary duty and clergy malpractice are not identical claims and involve different elements. [FN13] Sufficient evidence existed to allow the jury to find that a fiduciary relationship existed between Bishop Frey and the Diocese and Tenantry and that the breach of the fiduciary duty caused

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Tenantry's injuries.

> FN13. *Destefano* held that a cause of action for breach of fiduciary duty was separate and distinct from a claim of clergy malpractice. The fundamental difference between the two causes of action is the former is a breach of trust and does not require a professional relationship or a professional standard of care, while the latter is an action for negligence based on a professional relationship and a professional standard of care. In *Destefano,* we held the defendant owed a fiduciary duty to the plaintiff that "was created by his undertaking to counsel [the plaintiff]." *Destefano v. Grabrian,* 763 P.2d 275, 284 (Colo.1988). The position of trust occupied by the defendant, when coupled with his positive act of counseling the plaintiff, resulted in a duty to the plaintiff. The relevant common facts in *Destefano* and Tenantry's case are not the profession of the defendants; the relevant facts are that the defendants in both cases occupied a position of superiority, assumed a duty to act in good faith, and then breached their duty. In Colorado, breach of fiduciary duty is actionable, clergy malpractice is not. *Id.* at 284-86.

A

[9][10] A prerequisite to finding a fiduciary duty is the existence of a fiduciary relationship. "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) of Torts § 874 cmt. a (1979). A fiduciary relationship may arise where one party occupies a superior position relative to another. Stuart M. Speiser et al., *The American Law of Torts,* § 36:81 (1983) (stating that there are two ways to find a fiduciary relationship: it may presumed from the relationship of the parties; or, it may exist as a result of the superiority and influence that accompanies a repose of trust); *see also Bailey v. Allstate Ins. Co.,* 844 P.2d 1336 (Colo.App.1992) (recognizing that although some relationships give rise to a fiduciary duty as a matter of law, e.g., attorney-client, the nature of the claim is a relationship of trust, confidence and reliance). Although a professional relationship can be used as evidence that one party ***322** has both the position and opportunity to influence the other party, a professional relationship is not a prerequisite to finding a fiduciary relationship. A fiduciary relationship can arise out of a relationship of blood, business, friendship, or association. Speiser et al., *supra,* § 36:81. The claim for breach of fiduciary duty in this case involves a party who used his superior position as a counselor, a bishop, and a final arbiter of problems with the clergy to the detriment of a vulnerable, dependent party.

[11] The clergy-parishioner relationship is not necessarily a fiduciary relationship. It does, however, involve the type of interaction that creates trust and reliance. Courts have recognized the fiduciary nature of the clergy-parishioner relationship. *See, e.g., Destefano,* 763 P.2d at 284 (holding a priest who abuses his role as counselor can be liable for breach of fiduciary duty); *Erickson v. Christenson,* 781 P.2d 383, 386 (Or.App.1989) (same); *Adams v. Moore,* 96 N.C.App. 359, 385 S.E.2d 799, 801 (1989) (finding preacher owed fiduciary duty to parishioner and violated that duty by using his position and influence to obtain the deed to parishioner's home).

The existence of the fiduciary relationship is a question of fact for the jury. *Paine, Webber, Jackson & Curtis, Inc. v. Adams,* 718 P.2d 508, 516-18 (Colo.1986); *Tschudy v. Amos C. Sudler & Co.,* 158 Colo. 421, 426, 407 P.2d 877, 879 (1965). In this case, the jury was properly instructed on the requisite elements of a fiduciary relationship and determined a fiduciary relationship existed between Bishop Frey and Tenantry. [FN14] The jury's determination of a factual issue will not be reversed if the record reveals a reasonable basis to support it. *Alzado v. Blinder, Robinson & Co.,* 752 P.2d 544 (Colo.1988); *Rupert v. Clayton Brokerage Co. of St. Louis, Inc.,* 737 P.2d 1106 (Colo.1987); *City of Aurora v. Loveless,* 639 P.2d 1061 (Colo.1981).

> FN14. The trial court instructed the jury to consider, among other things, the extent to which Tenantry trusted the defendants; whether Tenantry's repose of trust was justified; whether the Diocese or Bishop Frey knew, or should have known, that

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> Tenantry was relying on Bishop Frey to look out for her interests; whether the Diocese or Bishop Frey invited, accepted, or acquiesced in Tenantry's trust; and, whether the Diocese or Bishop Frey undertook to represent her interests. The defendants did not object to these instructions.

In the meeting between Bishop Frey and Tenantry the parties did not occupy equal positions. Bishop Frey held a position of authority in the church and had the power to resolve conflicts in the church. In addition, Bishop Frey's role during the meeting was as a counselor to Tenantry, not as a representative of the Diocese or Father Robinson. If Bishop Frey was acting *only* for the Diocese and Father Robinson, he failed to convey that fact to Tenantry and led her to believe he was acting in her interest.

Bishop Frey had ordered a meeting with Tenantry and Tenantry believed he had the power to decide if she would lose her salvation. Tenantry was mentally unstable and Bishop Frey recognized that she was fragile and had a pathological sense of guilt. The superior position of Bishop Frey and the power he had over Tenantry is evinced by Tenantry's request for permission to talk to people in her family and for special permission to speak to her husband. The record supports the jury's finding that Bishop Frey was in a superior position and was able to exert substantial influence over Tenantry.

B

[12] An unequal relationship does not automatically create a fiduciary duty. In order to be liable the superior party must assume a duty to act in the dependent party's best interest. *See Hill v. Bache Halsey Stuart Shields Inc.*, 790 F.2d 817 (10th Cir.1986) (recognizing that fiduciary liability requires not only a repose of trust, but an assumption of a duty and breach of that duty); *First Nat'l Bank of Meeker v. Theos,* 794 P.2d 1055 (Colo.App.1990) (same). The defendants assert they are not liable because Bishop Frey and the Diocese did not take any action that would allow the jury to conclude they assumed a duty to Tenantry. There is sufficient evidence that the defendants assumed a duty *323 to Tenantry when they acted to resolve the problems that were the result of the relationship between Father Robinson and Tenantry.

Father Myers informed the Diocese of the relationship between Tenantry and Father Robinson as early as August of 1985. Father Myers stated he took no action after informing the Diocese because the Diocese had assumed control of the matter. The fact the Diocese had assumed control was reinforced by Bishop Frey's assumption of personal responsibility for the resolution of the matter. Bishop Frey asked Moses to rely on him to take care of "whatever needed to happen" to resolve the issues created by the sexual relationship between Tenantry and Father Robinson. Bishop Frey asked to speak to Tenantry to resolve the problem. The record supports the jury's finding that Bishop Frey and the Diocese assumed a duty on behalf of Tenantry.

[13] One of the fiduciary's duties is the duty to deal "with utmost good faith and solely for the benefit" of the dependent party. *Destefano,* 763 P.2d at 284. Once a member of the clergy accepts the parishioner's trust and accepts the role of counsellor, a duty exists to act with the utmost good faith for the benefit of the parishioner. *See Destefano,* 763 P.2d at 284. The breach of the duty which the Diocese and Bishop Frey assumed is evinced by Bishop Frey's actions.

Bishop Frey had significant experience in addressing the issue of a priest's sexual involvement with a parishioner. During the course of his seventeen years as a bishop in Colorado, Bishop Frey had, on seven occasions, dealt with sexual relationships between a priest and a parishioner. Bishop Frey also knew of Tenantry's vulnerability. Despite his experience in handling issues of clergy misconduct and his knowledge of Tenantry's extreme vulnerability, Bishop Frey took no action to help Tenantry. Acting as the representative for the Diocese, Bishop Frey failed to assist Tenantry in understanding that she was not the only person responsible for her sexual relationship with Father Robinson. He did not recommend counseling for Tenantry but did recommend counseling for Father Robinson and ordered Father Robinson to make progress reports on the counseling. Bishop Frey's only action in regard to Tenantry was to bind her to secrecy. Thus, Bishop Frey assumed control of a situation that demanded he consider Tenantry's interests and then used Tenantry's trust to her detriment.

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The record supports the jury's finding that a fiduciary relationship existed between Bishop Frey and Tenantry, that the Diocese and Bishop Frey assumed a duty toward Tenantry, and that the Diocese and Bishop Frey breached their duty.

IV

[14] Bishop Frey and the Diocese contend that the jury erred in finding the Diocese negligent in hiring and supervising Father Robinson and that the alleged negligence caused Tenantry's injuries. Bishop Frey and the Diocese maintain that there was no employment relationship between the Diocese and Father Robinson and even if there was, there was insufficient evidence in the record to support these negligence claims. [FN15]

FN15. Frey and the Diocese also contend that the First Amendment of the United States Constitution was violated by the trial court when it admitted into evidence two pamphlets which helped establish the employment relationship between the Diocese and Robinson. As discussed *supra* part II, Tenantry's claims for negligent hiring and supervision are not barred by the First Amendment of the United States Constitution because neutral principles of law can be applied. In order to determine if an employer- employee relationship exists, we do not have to interpret or weigh church doctrine. *See Bishop and Diocese of Colorado v. Mote,* 716 P.2d 85, 95 (Colo.1986) (quoting *Jones v. Wolf,* 443 U.S. 595, 604, 99 S.Ct. 3020, 3026, 61 L.Ed.2d 775 (1979)) (Colorado, in adopting the 'neutral-principles' doctrine, recognized "a civil court must take special care to scrutinize the [church] document in purely secular terms, and not to rely on religious precepts....").

A

[15][16][17][18] An employer may be liable for harm to others for negligently employing ***324** an improper person for a task which may involve a risk to others. [FN16] Restatement (Second) of Agency § 213(b) (1958); *Connes v. Molalla Transport System, Inc.,* 831 P.2d 1316, 1320 (Colo.1992). It is axiomatic that a prerequisite to establishing negligent hiring is an employment or agency relationship. The existence of an agency relationship is ordinarily a question of fact to be determined by the fact finder. *Stortroen v. Beneficial Fin. Co.,* 736 P.2d 391 (Colo.1987); *Marron v. Helmecke,* 100 Colo. 364, 67 P.2d 1034 (1937). A court can only decide whether an agency relationship exists as a matter of law when the facts are not in dispute. *Stortroen,* 736 P.2d at 395; *Smith v. Davis,* 67 Colo. 128, 186 P. 519 (1920). The existence of an agency relationship can be proven by the conduct of the parties. *Victorio Realty Group, Inc. v. Ironwood IX,* 713 P.2d 424 (Colo.App.1985); *see also* Restatement (Second) of Agency § 1 cmt. a (1958) (stating "[t]he relation of agency is created as the result of conduct"). Tenantry produced sufficient evidence to raise a factual dispute on the issue of the relationship between the Diocese and Father Robinson as well as the relationship between Bishop Frey and Father Robinson. Because a dispute existed, the trial court properly submitted the issue to the jury.

FN16. Almost invariably, in a claim for negligent hiring, the tort committed by the employee for which the employer may be held liable is an intentional tort committed outside the scope of employment. *Connes v. Molalla Transport System, Inc.,* 831 P.2d 1316, 1321 (Colo.1992). Torts committed within the scope of employment, however, may create vicarious liability. The tort of negligent hiring is a separate cause of action and does not involve vicarious liability. The principle of negligent hiring is based not on the rule of agency but on the law of torts and is therefore distinguishable from the agency doctrine of vicarious liability discussed *infra* in part V. *Id.* at 1320-21 (quoting *Di Cosala v. Kay,* 91 N.J. 159, 450 A.2d 508, 515 (1982)) ("Thus, the tort of negligent hiring addresses the risk created by exposing members of the public to a potentially dangerous individual, while the doctrine of *respondeat superior* is based on the theory that the employee is the agent or is acting for the employer. Therefore the scope of employment limitation on liability which is part of the

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respondeat superior doctrine is not implicit in the wrong of negligent hiring.").

[19][20] Agency is ultimately a question of the intention of the parties and is evidenced by their acts and not on what the relationship is called. *Granite State Fire Ins. Co. v. Mitton,* 98 F.Supp. 706 (D.Colo.1951), *aff'd* 196 F.2d 988 (10th Cir.1952). What is critical is that the parties materially agree to enter into a particular relation to which the legal consequences of agency attach even though those consequences might not have been contemplated by the parties at the time of their agreement. *Stortroen,* 736 P.2d at 391. An "agent" is generally one who acts for, or in place of, another, or is entrusted with the business of another. *Victorio Realty Group, Inc.,* 713 P.2d at 424.

[21] The control a principal exercises over the manner of work performed by an agent is evidence that an agency relation exists. [FN17] *United States v. Young,* 736 F.2d 565, 567-68 (10th Cir.1983) *rev'd on other grounds,* 470 U.S. 1, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985). No one factor, including control, is determinative. *Dana's Housekeeping v. Butterfield,* 807 P.2d 1218, 1220 (Colo.App.1990). The most important factor in determining whether a person is an agent is "the right to control, not the fact of control." *Id.; Olsen v. Bondurant & Co.,* 759 P.2d 861, 864 (Colo.App.1988).

FN17. For example, in *Bradbury v. Phillips Petroleum Co.,* 815 F.2d 1356 (10th Cir.1987), the court found sufficient control to support a jury finding of agency, albeit under a lesser standard, between the exploration company and a drilling company that had contracted to perform work as an independent contractor. The court found the following evidence established an agency relation between the drilling company (agent) and the exploration company (principal): (1) the drilling company drilled where the exploration company requested; (2) the exploration company made arrangements with local landowners to secure access and drilling rights for the drilling company; (3) an employee of the exploration company would receive complaints about the drilling company drilling on the wrong property; and, (4) that the exploration company had an employee at the drilling site on a daily basis indicating a supervisory role. *Id.* at 1360. The evidence in this case establishes sufficient control to support the jury finding of agency.

***325** At trial, sufficient evidence was presented to establish that the structure of the Episcopal Church was such that the Diocese and Bishop Frey had and exercised the right of control over the manner of work performed by a priest as well as the hiring, compensation, counseling performed by the priest and discipline of the priest. The evidence was sufficient, in this case, to support the finding of an agency relation between the Diocese and Father Robinson.

The evidence presented at trial shows that the structure of the Episcopal Church is basically hierarchal. A pamphlet distributed by the Episcopalian Church titled "About Being an Episcopalian" (Exhibit 25) contains a chart of the "Structure of the Episcopal Church." The chart graphically shows that the bishop presides over the Diocese and the priests. A priest presides over the parish "subject to the bishop's approval." In "The Episcopal Church: Essential Facts" another pamphlet admitted during the trial (Exhibit 24), the Episcopal Church defines the role of priests: "Priests (also known as presbyters) are ordained and consecrated to assist the bishop in overseeing the Church." The pamphlet sets forth that the diocese "is governed by its bishop and a diocesan convention composed of clergy of the diocese and lay persons elected by the parishes." Vestries call rectors to serve only after consultation with the bishop. [FN18] Additionally, the bishop signs a letter promoting a priest to a pastor of a parish.

FN18. The dissent distinguishes the hiring of a rector from the hiring of an assistant priest and points to evidence that the rector supervises the day-to-day duties of the assistant priest, and only the rector can terminate the assistant priest. This evidence was controverted by an expert in pastoral care who testified on cross-examination:
Q: As a matter of fact, in the Episcopal

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> Church, you are familiar with the fact that the bishop of an Episcopal Church does not have the right to veto [the choice of] an assistant, a curate, I am talking about a curate [assistant priest] now, not a priest.
> A: If you are using the term "veto" which is not a church term to refer to some sort of canon which says you can say no, yes. If you are talking about the effect of the ability to veto, you are wrong. The reality is that the bishop can influence that choice quite easily. Even if we assume, *arguendo,* that the rector has exclusive control over an assistant priest, the rector's acts are imputed to the Diocese under the principles of agency. The Diocese and the bishop have substantial control over the rector and the rector and the Diocese, in turn, have control over the assistant priest. If the rector is a subagent of the bishop, an agent of the Diocese, and the assistant priest is a subagent of either the bishop or the rector, the actions of the rector and assistant priest are imputed to Bishop Frey and the Diocese. *See Bradbury,* 815 F.2d at 1360 (stating that because an employee of the principal exploration company supervised the day-to-day activities of an "independent contractor" drilling company, evidence existed of an agency relationship between the exploration company and the drilling company); *see also* Restatement (Second) of Agency § 5 cmt. d (1958) ("A subagent performing acts which the appointing agent has authorized him to perform in accordance with an authorization from the principal is an agent of the principal.... Furthermore, the subagent stands in a fiduciary relation to the principal, and is subject to all the liabilities of an agent to the principal....").

Other evidence presented at trial establishes the relationship among the rector, the bishop, the diocese, and the assistant priest. The rector supervises an assistant priest's counseling duties which are specifically prescribed by regulations promulgated by the Diocese. In addition, the rector in this case stated that he reported to the bishop and that the bishop made final decisions on discipline. Father Robinson testified that when a priest needs pastoral care, the priest looks to the bishop. The Diocese has independent responsibility for the employment of priests. The bishop oversees ordination, discipline, counseling, the maintenance of personnel files and the provision of information with respect to hiring. Vestries rely on the Diocese to prepare and educate candidates, to obtain psychological evaluations of candidates for ordination, and provide information about individuals who are being considered for clergy positions in the parish. While the individual priests and parishes may be independently responsible for their day-to-day activities, the Diocese exercises an employment option in the hiring of its pastors.

Gary Richard Schoener (Schoener), an expert in pastoral counseling and care and treatment of priests who have had sexual ***326** contact with parishioners, testified that the structure of the Episcopal Church was such that the Diocese had substantial control over hiring, compensation, counseling by priests, and discipline of priests. [FN19]

> FN19. Schoener testified that his services had been utilized by the Episcopal Church on a number of occasions and that he serves on a faculty that trains bishops, priests, and lay people to be leaders in the Episcopal church. In addition, the Episcopal House of Bishops, which Schoener described as a national office that supports bishops around the country, refers cases of sexual exploitation of parishioners to him. The cost for instructing the diocese on issues such as counseling the pastor and communicating to the parishioners is paid for by the House of Bishops.

Schoener also testified that the Diocese is represented by the bishop. His testimony included a description of the bishop's role in the Diocese's hiring process:

> First of all, the diocese and specifically the Bishop basically keeps some degree of awareness of what is going on in the training of a potential priest. The priest sent from here to a seminary stays in contact, periodically lets the bishop know how things are going in the seminary training or in the practical experience that is connected with that. In addition, periodic reports are made by

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> the seminary or the people overseeing the actual pastoral counselor training experience to the bishop describing how the person is doing, how they are progressing and including problems or inadequacies in their work. The diocese does set policies and standards for the review of the person once they have finished seminary, and *the question is are we going to have one of our churches hire them.*

(Emphasis added.) He described the mechanism that "the diocese through the bishop" uses to evaluate the individuals who have completed seminary and seek employment. Part of the process includes having the potential priest undergo psychological evaluations. The Diocese hires a psychologist to do the evaluation and, in addition to the psychologist's own report, the Diocese requires the psychologist to complete a form supplied by the Diocese. [FN20] Thus, the Diocese has a mechanism for directing the psychologist's assessment.

> FN20. Because the Diocese assumes this screening role, it keeps all the records on the candidates. The Diocese's file led Schoener to conclude:
> [The Diocese] had a fair degree of knowledge of his background during his training process, some of the problems [Father Robinson] had.... they had as is their job, helped work out a game plan for him to get a job, to get a decent salary, and served in the role as a helper to he and his family, to help him come back to Colorado and get a position and to get paid decently.

Schoener acknowledged that the vestries make the final hiring decision but "[t]he vestries or the managing bodies of the Episcopal congregation [are] counting on the bishop for checking out the clergy. Although they do the actual hiring, they assume they are being given candidates who have a clean bill of health." Schoener noted vestries "don't do the sort of screening that an employer might do with a certain amount of detailed background check. That's presumed to be done by the diocese." He explained the control the Diocese has over the hiring process by noting, "it is the bishop and the diocese that determines in effect who is available to be called by a congregation [i.e.,] to be considered to be hired. You can't just submit your name because you finished a seminary and be available to be hired."

The evidence of the Diocese's control does not end with the evidence of its substantial input in the hiring decisions. The bishop's role, Schoener said, also includes input into a priest's compensation:

> the bishop is expected to, and in this case in fact did, look after the well- being of priests and their families as regards what kind of money they get paid. For example, the bishop may not concur with an offer being made to a priest simply because the pay is not adequate or benefits are not adequate. And this file demonstrates that quite well. There is quite a bit of correspondence around money and benefits, *and that's the key thing that the priest looks to the bishop to help with....*

(Emphasis added.)

The bishop's control over the manner in which priests conduct their activities also *327 includes the bishop's substantial input on discipline decisions. Schoener testified that the bishop could propose discipline and because of his "considerable influence," the vestry would comply with his recommendation:

> I guarantee you if you want the bishop to walk over to the vestry, which is the managing body, and say you have a problem here. We have to do something about it. He has to go on medical leave for a period of time until we sort this out. The likelihood the vestry will say no is very, very slim. It is an extraordinary rather rare case where if a bishop says this is what you really should do, they don't do it. Now, bishops come to me with frustrations sometimes because the churches don't do it quickly enough. The bishop often realizes the kind of liability the Diocese has and wants something done quickly, beyond dragging their feet. I haven't known a Diocese or congregation at any time to say no [to the bishop].

He pointed out that Bishop Frey addressed seven cases of sexual misconduct by priests and that his recommendations regarding discipline had been followed in all seven cases. Schoener's testimony is supported by the testimony of Father Myers who acknowledged that the bishop is the final authority in all disciplinary matters.

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In addition to controlling certain aspects of hiring, compensation, and discipline, the Diocese also controls and supervises the duties of priests in their role as counselors. Schoener stated that the Diocese sets standards and rules regarding pastoral counseling and that priests "look to the diocese for some rules around pastoral counseling, ... that's where they see the rules coming from." Schoener specifically noted that Bishop Frey indicated he had given talks about national issues or standards to the priests in the Diocese. In addition, Father Farr testified that the Diocese had specific printed regulations on pastoral counseling and that these regulations describe the form counseling should take. The regulations include such details as how appointments are to be kept, what attire is to be worn, where in the room the prayer book and desk should be, and even how the pastor should sit.

All of these facts indicate that a priest is not independent of the Diocese but is controlled by the Diocese and the bishop. The priest's education is monitored by the bishop, he is put through a screening for hire by the Diocese which includes psychological evaluation. The priest's compensation is affected by the bishop, the priest's discipline is controlled by the bishop, and every part of the form of the priest's counseling is regulated by the Diocese. The evidence at trial created a factual issue regarding whether an agency relationship existed. The trial court properly submitted this issue to the jury for determination and the jury found that there was an agency relationship between Father Robinson and the Diocese.

[22][23] Because an agency or employment relationship existed between the Diocese and Father Robinson, and Father Robinson's duties included a close relationship with parishioners, the Diocese could be liable for negligent hiring and supervision. Liability of the employer is predicated on the employer's antecedent ability to recognize a potential employee's "attribute[s] of character or prior conduct" which would create an undue risk of harm to those with whom the employee came in contact in executing his employment responsibilities. [FN21] *Connes,* 831 P.2d at 1321. An employer has a duty to exercise reasonable care in making his decision to hire. ***328***Connes,* 831 P.2d at 1320; *Island City Flying Service v. General Elec. Credit Corp.,* 585 So.2d 274, 278 (Fla.1991); *Plains Resources, Inc. v. Gable,* 235 Kan. 580, 682 P.2d 653, 662 (1984). The scope of the employer's duty in exercising reasonable care in a hiring decision depends on the employee's anticipated degree of contact with other persons in carrying out the duties of employment. *Connes,* 831 P.2d at 1321. The requisite degree of care increases, and may require expanded inquiry into the employee's background, when the employer expects the employee to have frequent contact with the public or when the nature of the employment fosters close contact and a special relationship between particular persons and the employee. *See id.* at 1322 (stating that employers who expect their employees to have frequent or close contact with others are required to go beyond the job application and perform an independent inquiry into the background of the candidate); Restatement (Second) of Agency § 213 cmt. d (1958) ("If, however, the work is likely to subject third persons to serious risk of great harm, there is a special duty of investigation.").

> FN21. Bishop Frey and the Diocese contend that in order to establish a claim of negligent hiring, the plaintiff must show that the employer was aware of the employee's specific propensity and that the employee has a history of criminal, tortious or otherwise dangerous conduct. We disagree. Liability for negligent hiring is not based on past conduct alone, but may also be based on character attributes of the employee. In *Connes,* we held that liability may be predicated on the employer's hiring of a person where the employer believes that the person by "reason of some *attribute of character or prior conduct,* would create an undue risk of harm to others in carrying out his or her employment responsibilities." *Connes,* 813 P.2d at 1321 (emphasis added).

[24] The duty is increased in this case because the Diocese placed Father Robinson in a position that required not only frequent contact with others, but induced reliance and trust through the counseling process. A parishioner in pastoral counseling may develop a deep emotional dependence on a priest. *See Ferguson v. People,* 824 P.2d 803 (Colo.1992). The emotional dependence is called "transference" and is a typical reaction characterized by a patient unconsciously attributing repressed feelings to the

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counselor. Transference is one of the most significant concepts in therapy. *See* Noyles & Kolb, *Modern Clinical Psychiatry* 505 (6th ed. 1963), *quoted in Simmons v. United States,* 805 F.2d 1363, 1365 (9th Cir.1986). A counselor must be capable of addressing these feelings, both loving and hostile. [FN22] *See Simmons,* 805 F.2d at 1365 (noting the counselor should look for manifestations of the transference and be prepared to handle it as it develops).

FN22. Courts have routinely regarded the mishandling of transference as malpractice or gross negligence. *See, e.g., Vigilant Ins. Co. v. Employers Ins. of Wausau,* 626 F.Supp. 262 (S.D.N.Y.1986); *Aetna Life & Casualty Co. v. McCabe,* 556 F.Supp. 1342 (E.D.Pa.1983); *Waters v. Bourhis,* 40 Cal.3d 424, 220 Cal.Rptr. 666, 709 P.2d 469 (1985); *Seymour v. Lofgreen,* 209 Kan. 72, 495 P.2d 969 (1972); *L.L. v. Medical Protective Co.,* 122 Wis.2d 455, 362 N.W.2d 174 (1984).

Father Robinson's duties included counseling and close association with parishioners at the church. The Diocese was in possession of a psychological report which concluded that Father Robinson has a "sexual identification ambiguity." [FN23] Another psychological report indicated that Father Robinson had a problem with depression and suffered from low self-esteem. [FN24] An expert testified that a large number of clergy who have sexual relationships with their parishioners do so partially as a result of suffering from depression and low self-esteem. Father Robinson's struggle with his sexual identity and his problems with depression and low self-esteem put the Diocese on notice to inquire further whether Father Robinson was capable of counseling parishioners. These reports gave the Diocese a reason to believe Father Robinson should not be put in a position to counsel vulnerable individuals and that might be unable to handle the transference phenomenon. The failure to communicate this knowledge to the vestry and subsequent placement of Father Robinson in the role of *329 counselor breached the Diocese's duty of care to Tenantry.

FN23. At trial a clinical psychologist testified:

> Dr. Dolby [the psychologist filing the report on Father Robinson] makes a statement [Father Robinson] has a history of sexual identification ambiguity. Although he says that [Father Robinson] functions exclusively as a heterosexual both physically and in fantasy. His marriage is apparently satisfying. I don't understand what that means. Obviously, it would be of some concern to know if he is having any sort of struggle in the area of sexual identity. That is something that I think a reasonably prudent bishop or anyone else reading this would want to know what that meant, what is the issue that has been found here.

FN24. There were two psychological reports presented at trial that were in the possession of the Diocese. The first was dated June 9, 1980, and the second April 25, 1983.

B

[25] The jury also found the Diocese was negligent in its supervision of Father Robinson. The Restatement (Second) of Agency section 213 (1958) states:

> A person conducting an activity through servants or other agents is subject to liability for harm resulting from his conduct if he is negligent or reckless:
>
> ....
>
> (c) in the supervision of the activity....

Comment d states:

> The principal may be negligent because he has reason to know that the servant or other agent, because of his qualities, is likely to harm others in view of the work or instrumentalities entrusted to him. If the dangerous quality of the agent causes harm, the principal may be liable under the rule that one initiating conduct having undue tendency to cause harm is liable therefor.

An employer may therefore be subject to liability for negligent supervision if he knows or should have known that an "employee's conduct would subject third parties to an unreasonable risk of

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harm...." *Destefano,* 763 P.2d at 288.

Both the Diocese and Bishop Frey had previous exposure to the problem of sexual relationships developing between priests and parishioners because the problem had arisen seven times before. The psychological reports gave notice that further supervision may be required. The reports indicate problems of sexual identification ambiguity, depression and low self-esteem. Father Robinson's file also indicated he had problems with authority. Father Robinson had an inability to respond to superior authority. A reasonable person would have inquired further into Father Robinson's known difficulty in dealing with superior authority, and would have assumed a greater degree of care in monitoring his conduct. In light of its knowledge, it was reasonable for the jury to determine the defendants should have been alert to the possibility of problems with Father Robinson and taken adequate steps to insure Father Robinson was not in a position where he could abuse the trust he enjoys as a priest conducting counseling. [FN25]

> FN25. Father Robinson testified that he did not have any guidance on how his office could adversely affect the people he counseled. He also testified that the church does not have any procedures for priests to follow when they have trouble in counseling nor does the church have any procedure for addressing romantic or physical relationships between priests and parishioners. Father Robinson stated that the only assistance for a troubled priest is the tradition of seeking the help of the bishop.

V

[26] The jury determined that the Diocese and Bishop Frey were vicariously liable for Father Robinson's tortious conduct. Father Robinson, however, was not acting within the scope and course of his employment and therefore the Diocese and Bishop Frey are not vicariously liable. [FN26]

> FN26. As noted *supra* part IV(A), the jury had sufficient evidence to find that Father Robinson was an agent of the Diocese.

[27][28][29][30][31] The agency doctrine of vicarious liability is based on the theory of respondeat superior which postulates that a master may be liable for the acts of an agent acting on the master's behalf. *Connes,* 831 P.2d at 1320-21; *Cooley v. Eskridge,* 125 Colo. 102, 241 P.2d 851 (1952); Restatement (Second) of Agency § 213 (1958). An employer may be held vicariously liable for an employee's tort only when the tort is committed within the course and scope of employment. [FN27] ***330***Destefano, 763 P.2d at 286;* McDonald v. Lakewood Country Club, *170 Colo. 355, 461 P.2d 437 (1969). An employee is acting within the scope of his employment if he is doing the work assigned to him by his employer, or what is necessarily incidental to that work, or customary in the employer's business.* Destefano, *763 P.2d at 287;* Russell v. First Am. Mortgage Co., *39 Colo.App. 360, 565 P.2d 972 (1977). We have previously held "[w]hen a priest has sexual intercourse with a parishioner it is not part of the priest's duties nor customary within the business of the church. Such conduct is contrary to the principles of Catholicism and is not incidental to the tasks assigned a priest by a diocese." [FN28]* Destefano, *763 P.2d at 287;* see also Dausch v. Rykse, *1993 WL 34873, 1993 U.S. Dist. LEXIS 1448 (N.D.Ill., Feb. 9, 1993) ("When a clergyman has sexual relations with a parishioner, particularly when he is counseling the parishioner for emotional problems, his actions would clearly not be part of his ministerial duties nor customary within the business of the church." (citations omitted)).*

> FN27. The scope of employment requirement restricts vicarious liability for tortious conduct to actions that "should be considered as one of the normal risks to be borne by the business in which the servant is employed." Restatement (Second) of Agency § 229 cmt. a (1958). Although the commission of an intentional tort may sometimes be within the scope of employment, the agent's intent in committing the tortious act must be to further the employer's business. *See Cooley v. Eskridge,* 125 Colo. 102, 112, 241 P.2d 851, 856 (1952) (stating authority to do an unlawful act will not be implied unless it is warranted from the nature of the employment itself) (citations

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omitted); *Byrd v. Faber*, 57 Ohio St.3d 56, 565 N.E.2d 584, 587 (1991) (giving the example that a bar owner employing a bouncer may be vicariously liable to a patron if the bouncer injures the patron while removing him from the premises). However, if an employee commits an intentional tort solely for reasons that do not further his employer's business or cannot be considered a natural incident of employment, the employer cannot be vicariously liable. *Cooley*, 125 Colo. at 114, 241 P.2d at 857. The *scope of* employment limitation on vicarious liability partially distinguishes vicarious liability from the tort of negligent hiring. *See supra* note 16.

FN28. We do not find the distinction between the Catholic priest in *Destefano*, who takes a vow of celibacy, and Episcopal priests, who are free to marry and engage in sexual acts, to be dispositive. Regardless of the denomination, when a priest engages in oral sex with a mentally ill parishioner, the priest is not acting within the scope of employment.

[32] There is no evidence in the record to support Tenantry's contention that Father Robinson was acting in the scope of his employment by engaging in oral sex with her. [FN29] In fact, the evidence in the record establishes that Father Robinson was not acting within the scope of his employment by engaging in fellatio and cunnilingus with Tenantry. Bishop Frey testified that Father Robinson's conduct was a "serious breach of [his] ordination vows." Father Robinson testified that his physical *relationship was not within the scope of his* employment with the church. Even Tenantry's own experts testified that Father Robinson's sexual conduct was outside the scope of his priestly duties. [FN30]

FN29. Although it is evident that a priest who engages in tortious sexual contact with a parishioner under the facts in this case is not acting within the scope of his employment, Tenantry nevertheless claims that the Diocese is vicariously liable because it was foreseeable that Robinson would mishandle the transference phenomenon. There is some support for the theory that reasonable foreseeability can establish vicarious liability. In *Milla v. Roman Catholic Archbishop of Los Angeles*, 187 Cal.App.3d 1453, 232 Cal.Rptr. 685 (1986), the California appellate court found that a Catholic Archdiocese could be held liable under the theory of respondeat superior for several *priests' sexual contact with a parishioner if* their conduct was characteristic of the activities of the church or reasonably foreseeable. This concept was adopted in *Byrd*, 565 N.E.2d at 588. While the phenomenon of transference is foreseeable, we do not wish to expand the concept of vicarious liability as the California appellate or Ohio supreme court did. Expanding vicarious liability of a religious organization to cover foreseeable acts may well intrude into the First Amendment of the United States Constitution. Rather, the phenomenon of transference is better dealt with in this case through the claim of negligent hiring and supervision.

FN30. Questions 8, 9, and 10 of the special verdict form completed by the jury read as follows:
QUESTION NO. 8. Was Robinson an agent of the defendant Diocese?
ANSWER: Yes
QUESTION NO. 9. If the answer to number 8 is "yes," was defendant Robinson acting within the course and scope of his agency during the events regarding Mary Tenantry?
ANSWER: Yes
QUESTION NO. 10. If the answer to number 9 is "yes," continue at question 11. If the answer to number 9 is "no," did the defendant Diocese ratify non-party Robinson's actions in connection with the events regarding Mary Tenantry?
ANSWER: ___
Based upon the answers to questions 8 and 9, it was not necessary to answer question 10 on ratification and question 10 was crossed out by the jury. Accordingly, we

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do not address the issue of whether the Diocese ratified Father Robinson's actions.

*331 The jury's finding that Robinson was acting within the scope of his employment when he had tortious sexual contact with Tenantry is erroneous as a matter of law. The Diocese is not vicariously liable for Robinson's acts of oral sex with Tenantry. We therefore order the trial court to vacate its judgment holding the Diocese and Bishop Frey vicariously liable for Father Robinson's acts. [FN31]

FN31. An erroneous portion of a judgment may be set aside if susceptible to segregation, and the remainder of the judgment may be affirmed. *Department of Transportation v. Kendricks*, 148 Ga.App. 242, 250 S.E.2d 854, 859 (1978); *Chicago, Indianapolis & Louisville Ry. Co. v. Brown*, 157 Ind. 544, 60 N.E. 346 (1901). In this case, the jury findings in the trial court's special verdict form specifically awarded $488,400 in past and future damages and interest to Tenantry for the Diocese's vicarious liability for the acts of Father Robinson. It is this portion of the judgment we vacate.

VI

The judgment entered by the trial court is affirmed in part and reversed in part. We affirm the trial court judgment against the Diocese and Bishop Frey for breach of fiduciary duty, negligent hiring and supervision. We reverse the judgment that the Diocese and Bishop Frey are vicariously liable for the acts of Father Robinson and order the trial court to vacate the judgment predicated on the jury's finding of vicarious liability and the damages based on vicarious liability.

ROVIRA, C.J., concurs in part and dissents in part.

Chief Justice ROVIRA concurring in part and dissenting in part:

The majority holds that sufficient evidence was presented at trial to create a question for the jury regarding whether an employment or agency relationship existed between the Diocese of Colorado (diocese) and Father Paul Robinson and therefore, the diocese may be liable for the negligent hiring and supervision of Robinson. [FN1] For the reasons set forth below, I disagree and, accordingly, respectfully dissent.

FN1. It is unclear whether the majority concludes that the evidence supports a finding of either agency or employment, or both. Because the requirements for finding an employer-employee relation differ from those needed to find an agency relation--but either finding could support a claim for negligent hiring and supervision--I address each issue separately.

I

Mary Moses (plaintiff) was a parishioner at St. Philip and St. James Episcopal Church. Father Vernon Meyers was the head priest and rector of that parish. Father Paul Robinson was employed as an assistant priest at St. Philip and St. James. The parish is one local body of the Episcopal Diocese of Colorado. Bishop William Frey was the head of the diocese. [FN2]

FN2. Other relevant facts and information are detailed in the majority opinion, repetition of which is unnecessary here.

II

The majority correctly observes that "a prerequisite to establishing [a claim of] negligent hiring is an employment or agency relationship." Maj. op. at 324. Though not expressly stated by the majority, a finding of employment or agency, similarly, is a prerequisite to a claim of negligent supervision. *See* Restatement (Second) of Agency § 213 (1958). The question of agency is ordinarily a factual one, properly resolved by the trier of fact when conflicting evidence of agency is presented. *Stortroen v. Beneficial Fin. Co.*, 736 P.2d 391, 395 (Colo.1987). A court may, however, properly

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decide whether an agency relation exists when the relevant facts are not in dispute. *Id.*

While the majority points to several facts in support of its conclusion that the evidence presented was sufficient to create a factual dispute respecting whether the relationship between the diocese and Father Robinson was one of either agency or employment, those facts do not create such a dispute because they have no bearing on the critical elements needed to establish the existence of either of these legal relationships. Because the evidence pertaining to **332 those decisive elements* was undisputed and cannot, as a matter of law, support a finding of an agency or employment relationship, the Diocese of Colorado cannot be held liable for the negligent hiring and supervision of Father Robinson.

A

"Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." *Stortroen v. Beneficial Fin. Co.*, 736 P.2d 391, 395 (Colo.1987) (quoting Restatement (Second) of Agency § 1(1) (1957). *See also Montano v. Land Title Guarantee Co.*, 778 P.2d 328, 331 (Colo.App.1989).

> The agency relation results if, but only if, there is an understanding between the parties which, as interpreted by the court, creates a fiduciary relation in which the fiduciary is subject to the directions of the one on whose account he acts. *It is the element of continuous subjection to the will of the principal which distinguishes the agent from other fiduciaries and the agency agreement from other agreements.*

Restatement (Second) of Agency § 1 cmt. b (1958) (emphasis added); *United States v. Young*, 736 F.2d 565, 567-68 (10th Cir.1983) *rev'd on other grounds*, 470 U.S. 1, 105 S.Ct. 1038, 84 L.Ed.2d 1 (1985) (holding that a showing of mere subordination to another is insufficient to establish agency or employment; the "right to control" must be shown under common law requirements); W. Edward Sell, *Sell on Agency* § 2 at 2 (1975) ("The agent differs from most other fiduciaries such as executors, trustees, etc., in that he remains under the continuous control of the principal as to matters relating to the object of his agency, throughout the entire period of his agency."); 2A C.J.S. *Agency* § 6 (1972) ("The right to control ... is the primary or essential test of agency ... without which no agency exists...."). As this authority makes clear, the *sine qua non* of the agency relationship is the right of continuous control by the principal over the acts of the agent. Thus, I agree with the majority's conclusion that "[t]he most important factor in determining whether a person is an agent is 'the right to control, not the fact of control.' " Maj. op. at 324 (quoting *Dana's Housekeeping v. Butterfield*, 807 P.2d 1218, 1220 (Colo.App.1990)).

The uncontradicted evidence presented at trial established that the diocese neither had the right of continuous control over Father Robinson nor exercised that "right." Indeed, no evidence was presented which created even the inference that the diocese was vested with such power over Father Robinson. Canon 14(a) of the Episcopal Church provides that "[a]ll assistant Clergy ... shall be selected by the rector ... and shall serve under the authority and direction of the Rector." *Constitution & Canons for the Government of The Episcopal Church* Title III, canon 14(a) at 80 (1988). Numerous witnesses testified that it was the rector at St. Philip and St. James Parish who gave Father Robinson his assignments and who instructed him as to how to carry out his day-to-day duties. Those same witnesses testified that those day-to-day activities would be supervised and controlled by the rector, and not the diocese or the bishop. Father Charles Farr, [FN3] Father Meyers, and Gary Schoener, [FN4] all were in complete agreement on these points. In short, the evidence established, as the majority concedes, that individual rectors are "independently responsible for their [assistant priests'] day-to-day activities." Maj. op. at 325.

FN3. Father Farr, who testified on behalf of plaintiff, was the rector at the Church of the Epiphany, another Episcopal Church located in Denver.

FN4. Schoener, who was qualified as an expert in the area of pastoral counseling and the care and treatment of offending priests, also testified on behalf of plaintiff.

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The fact that the individual rectors, and not the bishop or diocese, are charged with overseeing the day-to-day activities of assistant priests weighs heavily against a finding that an agency relation exists. *See* Restatement (Second) of Agency § 1 cmt. b (1958); maj. op. at 325. The power to *333 control and oversee Robinson's day-to-day activities is the method which, by definition, continuous control is exerted over him. Because it was the rector at St. Philip and St. James, and not the bishop or diocese, who exerted continuous control over Robinson, I would hold that no evidence was presented at trial to support the jury's verdict that an agency relation existed between Robinson and the diocese and that, as a matter of law, no such relation was established here.

B

The majority additionally concludes that "the Diocese exercises an employment option in the hiring of its pastors." Maj. op. at 325. Like continuous control in the context of agency, the power of continuous control is a critical element, or prerequisite, to finding an employer-employee relationship. *Jacobson v. Doan,* 136 Colo. 496, 503, 319 P.2d 975, 978 (1957) ("The determination of whose servant an employee is in a given case depends on who has the right to control him."); *Magnuson v. Smith and Saetveit, P.C.,* 722 P.2d 1020, 1022 (Colo.App.1986) ("The central element in an employer-employee relationship is the right of the employer to control the details of performance of the employee's duties."); *Miller v. Hirschbach Motor Lines, Inc.,* 714 S.W.2d 652, 658 (Mo.App.1986) (control over discharge of duties is a "preeminent characteristic" of employer-employee relationship). *See also* Restatement (Second) of Agency § 220 (1958). Other particularly probative indicators of an employment relationship include the power to hire and terminate, *see e.g. King v. Southwestern Greyhound Lines,* 169 F.2d 497, 499 (10th Cir.), *cert. denied,* 335 U.S. 891, 69 S.Ct. 245, 93 L.Ed. 428 (1948) (noting that numerous courts have held that the right to terminate a contract for services creates an employer-employee relationship as a matter of law); *Hirschbach Motor Lines, Inc.,* 714 S.W.2d at 658 ("no single fact is more conclusive of the existence of the nature of the employment [relationship] than the right to discharge summarily"), and whether the purported employer pays the salary of or otherwise compensates the alleged employee. *See Jacobson v. Doan,* 136 Colo. 496, 319 P.2d 975 (1957). In sum, the dispositive elements needed to show an employer-employee relationship are:

> whether [the alleged employer] selected or employed [the employee]; whether wages or other consideration were to be paid; whether [the alleged employer] had the power or right to dismiss and the right to control [the alleged employee]. The central element is the right to control the details of performance.

CJI-Civ.3d 7:6 (1989).

As noted above, the undisputed evidence reveals that the diocese neither had nor exercised the right to control Father Robinson's day-to-day activities. Similarly, the undisputed evidence established that the diocese did not have the power or authority to either hire or terminate Father Robinson. Canon 14(a) provides that "[a]ny assistant selected shall serve at the discretion of the Rector...." *Constitution & Canons for the Government of The Episcopal Church* Title III, canon 14(a) at 80 (1988). Father Farr testified that an assistant priest serves at the pleasure of the rector, and only the rector can terminate the priest. Father Farr also stated that a bishop's approval is not needed prior to termination. Schoener testified that Bishop Frey did not have the authority to remove Father Robinson from his priestly duties. Rather, Schoener testified that "in that regard the church is the direct supervisor of that, that they have to make that decision."

Marie Fortune, another expert who testified on behalf of plaintiff, acknowledged that it was Father Meyers who presented Father Robinson to the vestry with the recommendation that he be hired. Meyers also conceded that the diocese had no "vote" in that matter. Furthermore, Meyers agreed that an assistant priest serves at the pleasure of the rector, and it is he who is charged with determining the priest's employment status.

Finally, it was undisputed that the parish, acting through its vestry, was the entity which compensated Robinson for his services, and not the diocese or Bishop Frey. *334 Again, Bishop Frey, Father Farr, and Father Meyers all confirmed this fact.

The diocese did not have the power to control Father Robinson's day-to-day activities. Nor did it

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have the power or authority to initiate or terminate Robinson's employment with the parish. [FN5] Finally, it was the parish of St. Philip and St. James that was responsible for compensating Robinson, not the diocese.

> FN5. In my opinion, it strains credulity to conclude that one who lacks the power either to hire or terminate an "employee" can nevertheless occupy the position of employer with respect to hiring that employee. I for one am unable to see how the diocese could have been negligent in *hiring* Father Robinson when the undisputed evidence established not only that the diocese could not, but, in fact did not, hire Robinson.

Thus, I am of the opinion that the uncontradicted evidence precludes, as a matter of law, a finding that the diocese and Father Robinson occupied an employer-employee relationship.

III

The majority, however, points to number of facts about the structure of the Episcopal Church and places primary reliance on the testimony of Schoener in support of the conclusion that sufficient evidence was presented to create a jury question as to whether Robinson was either an agent or employee of the diocese. In my opinion, none of those facts support the conclusion for which they are enlisted, because none of them relate to the critical elements needed to establish an agency or employment relationship. The facts presented by the majority fall into two broad categories, each of which will be addressed in turn.

A

The first category of facts on which the majority relies in reaching its conclusion concerns the relationship among a diocese, bishop, and rector or head priest of a parish. Maj. op. at 325-326. Standing alone, all of these facts are entirely irrelevant to determining the legal relationship between Robinson and the diocese because Robinson was an assistant priest, not a rector. As common sense would suggest, extensive and uncontroverted evidence was presented at trial to establish that an assistant priest is not a rector, and that the duties, responsibilities, and supervisory relationships of rectors and assistant priests differ.

The majority apparently cites these facts, not to show that assistant priests and rectors are one and the same, but to establish that the doctrine of subagency is applicable here and that therefore, Robinson's conduct as a subagent of Meyers, who is an agent of the diocese, can be imputed to the diocese. Maj. op. at 325 n. 18.

The doctrine of subagency is set forth in the Restatement of Agency as follows: "A subagent is a person appointed by an agent empowered to do so, to perform functions undertaken by the agent for the principal, but for whose conduct the agent agrees with the principal to be primarily responsible for." Restatement (Second) of Agency § 5(1) (1958). In order to establish a subagent relation, it must be shown that the agent of the principal had agreed to be primarily responsible for the conduct of the alleged subagent. *See id.; Estate of Greenberg v. Skurski,* 95 Nev. 736, 602 P.2d 178, 179 (1979). In my opinion, while the doctrine of subagency could have been relied on here, the fact is, it was not.

The only instruction concerning the establishment of either an agency or employment relationship which the trial court tendered was Jury Instruction 23. That instruction provided:

> The term principal and agent refers to the relationship which exists when one person, the principal, retains another, the agent, to do certain work. In determining whether the relationship exists you should consider whether the Diocese of Colorado and/or Bishop William Frey selected or retained Father Robinson; whether wages or other consideration were to be paid by them; whether the Diocese of Colorado and/or Bishop William Frey had the power or right to dismiss and the right to control Father *335 Robinson. The central element is the right to control the details of performance. It matters not whether the Diocese of Colorado and/or Bishop William Frey actually exercised any right to control Father Robinson.

This was the only instruction proffered to the jury regarding the question of how, and whether, an agency or employment relationship exists. Consequently, no other possible legal bases for

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finding such relationships under the facts of this case could have been considered by the jury in reaching its verdict. Because the jury could not have concluded that Robinson was a subagent of the diocese, evidence which tends to establish subagency cannot be used to establish that evidence was presented either to create a question for the jury or to support the jury's verdict. Therefore, the majority's reliance on this first category of evidence is, in my opinion, misplaced, and in no way supports the conclusion that sufficient evidence was presented to create a jury question.

B

The second category of evidence cited by the majority concerns the relationship among the diocese, bishop, and assistant priests, and is culled almost exclusively from the testimony of Gary Schoener. While I concede that the evidence cited by the majority establishes that a bishop can exert *influence* over assistant priests, such influence falls far short of establishing the requirements needed to prove an agency or employment relationship.

First, it is important to reiterate that the majority does not contend that either the bishop or diocese controlled the day-to-day activities of Father Robinson. Maj. op. at 325. Rather, the majority concedes that "individual priests and parishes may be independently responsible for [assistant priests'] day-to-day activities...." *Id.* [FN6] In spite of the fact that this critical element is lacking, the majority nevertheless concludes that the "Diocese exercises an employment option in the hiring of its priests." *Id.*

> FN6. While the majority acknowledges this fact, it nevertheless concludes that "Bishop Frey had and exercised the right of control over the manner of work performed by a priest as well as the hiring, compensation, and counseling performed by the priest and discipline." Maj. op. at 325. Irrespective of whatever inconsistency there may be in maintaining both of these propositions simultaneously, for the reasons that follow, I disagree that Bishop Frey had or exercised the right of control as described by the majority.

The majority notes that "[t]he rector supervises an assistant priest's counseling duties...." Maj. op. at 325. This is indicative of the fact that it is the rector, and not the bishop or diocese, that exerts continuous control over assistant priests. The fact that those counseling duties "are specifically prescribed by regulations promulgated by the Diocese," *id.*, in no way alters this conclusion for the simple reason that pastoral counseling is only one of myriad duties and activities in which an assistant priest engages. In addition, this fact has no bearing on the question of the power to hire, terminate, or compensate assistant priests.

Similarly, though a priest may look to the bishop for "pastoral care," *id.*, this fact is inapposite to the question of whether the bishop exerts continuous control over the conduct of the assistant priest. In fact, Schoener testified that an assistant priest would consult with a bishop only in exceptional circumstances. Likewise, even if the bishop has "independent responsibility" for the employment of assistant priests (including overseeing ordination, discipline, counseling, and maintenance of personal files), *id.*, the sort of independent responsibility identified by the majority has no relevance to the question of whether the diocese exerts continuous control over the daily conduct of assistant priests, whether the diocese has the power to actually hire and terminate assistant priests, or whether the diocese compensates assistant priests. Finally, the fact that vestries rely on the bishop and diocese to prepare candidates and provide information about them is entirely irrelevant to the questions of control, employment decisions, and duty to compensate.

*336 In addition to the aforementioned facts, the majority quotes at length the testimony of Schoener as it related to his "description of the bishop's role in the Diocese's hiring process...." Maj. op. at 326, 326-327. Though I acknowledge that the Diocese does indeed play a role in the hiring of assistant priests--i.e., having "substantial input in the hiring decisions," maj. op. at 327--the majority fails to point to any evidence which established that the diocese is actually vested with the authority to hire or terminate assistant priests.

The closest the majority comes to pointing to such evidence is Schoener's statement that "it is the bishop and the diocese that determines in effect who is available to be called by a congregation [i.e.,] to

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be considered to be hired. You can't just submit your name because you finished a seminary and be available to be hired." Maj. op. at 326. However, Schoener also acknowledged that a given diocese determines who is available to be called only if a parish looks to that diocese for hiring guidance. Schoener stated that a parish is not bound to look only to candidates who have been approved by that parish's diocese. In fact, Schoener stated that in most states, local parishes look outside their own diocese for assistant priests. Furthermore, Schoener testified that St. Philip and St. James was in no way required or obligated to look only to the Diocese of Colorado for eligible candidates. Thus, a given diocese actually exerts much less influence in the hiring process than one could otherwise be led to assume. The majority, however, apparently misconstrues the extent to which a given parish is dependent on its diocese in the hiring of assistant priests, by concluding that the Diocese of Colorado exercises an employment "option," maj. op. at 326, with respect to the hiring of assistant priests at the diocese's parishes.

The majority also paraphrases Schoener's testimony regarding the influence a bishop may exert over disciplinary decisions as follows: "the bishop could propose discipline and because of his 'considerable influence,' the vestry would comply with his recommendation...." Maj. op. at 327. Schoener did indeed testify as to the influence a bishop could exert in such matters, however he stated only that the likelihood of a vestry ignoring a bishop's advice was "very, very slim." Nevertheless, he acknowledged not only that sometimes parishes do not follow the advice of a bishop quickly enough but specifically recognized that vestries and churches do not always follow the advice of a Bishop: "If you talk to bishops," Schoener stated, "you will learn about that." Regardless of the precise scope of a bishop's influence in matters of discipline, nowhere was it ever suggested that such influence rises to the level of continuous control or that such influence extends to the actual hiring, termination, or duty to compensate assistant priests.

Finally, the fact that an assistant "priest's compensation is affected by the bishop," has nothing to do with the critical elements needed to establish an agency or employment relationship. The ability to affect the rate of compensation certainly cannot be equated with the power to actually hire or terminate employment. Nor is this ability to "affect" tantamount to a duty of compensation. The jury was specifically instructed that they should consider "whether wages or other consideration were to be paid by them [i.e., Bishop Frey or the diocese]," in determining whether an employment relation existed between Robinson and the diocese. *See supra* p. 334-335 (quoting Jury Instruction 23). The jury was not instructed to consider whether the diocese could "affect" the rate at which Robinson was compensated and therefore, the fact of such an ability cannot create a dispute properly resolved by the jury. Furthermore, it was undisputed that the bishop and diocese did not compensate Robinson, but that the parish, acting through its vestry, did.

C

Thus, the considerable number of facts and lengthy testimony cited by the majority do not support the conclusion that the diocese was either the principal or employer of Father Robinson, because none of those facts establish that the diocese had continuous control over Robinson, was *337 vested with the power to terminate his employment with the parish, or had the duty to compensate him for his services. [FN7] Though these facts do establish that Bishop Frey and the diocese were capable of exerting influence over the conduct of an assistant priest, such an ability cannot establish either an agency or employment relationship nor can it create a factual dispute as to whether such relationships exist.

FN7. This conclusion is supported by recognition that, standing alone, many of the facts cited by the majority occur in contexts which could in no way be regarded as agency or employment relations. For example, to the extent that the bishop oversees ordination, discipline, and the maintenance of personal files on prospective assistant priests, he is not unlike this court, which is vested with the power and obligation to oversee the admittance, discipline, and maintenance of personal files on members of the Colorado Bar. Similarly, to the extent that vestries rely on the diocese to prepare and educate candidates, they are not unlike government agencies and law firms who rely on law schools to properly train and educate prospective attorneys. In this sense, this

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> court and law schools are similarly vested with "independent responsibility" for the employment of lawyers. This fact does not of course, nor could it, support a conclusion that either the supreme court or law schools occupy an agency or employment relation with respect to all attorneys practicing in Colorado.
>
> Likewise, while a bishop can "affect" an assistant priest's compensation, many people and organizations similarly affect the compensation paid to others while not occupying an employment relationship with them. For example, a labor union can affect the rate of compensation and nature of benefits paid to its members. Similarly, state and federal governments can affect the compensation of others by mandating minimum wage requirements or payment of disability or unemployment benefits. It could not, however, be argued that simply because such organizations and institutions affect the compensation paid to others in these ways, that they are therefore the employers of those affected.

The jury was properly instructed that in order to find an employment relation between the diocese and Robinson, they should consider whether: (1) the diocese selected or retained Robinson; (2) wages or other consideration were to be paid by them; (3) the diocese or bishop had the power to terminate Robinson; and (4) the diocese or Bishop Frey had the right to control Robinson. *See supra* p. 334-335 (quoting Jury Instruction 23). The majority concedes that the fourth, and "critical," element of control is wanting here because it is the rector who controls an assistant priest's day- to-day activities. Furthermore, the majority nowhere states or concludes that the diocese hired Robinson, had the duty to compensate Robinson, or had the actual ability to terminate Robinson's employment with the parish.

In short, the majority never contends that *any* of the elements that the jury was instructed to consider in determining whether an employment relation existed between the diocese and Robinson have been met here. Rather, all of the evidence cited establishes only that the bishop and diocese can exert influence over an assistant priest. The jury was not, however, instructed that "influence" alone could either support a finding of an employment relation or that such a fact should even be considered by them. Thus, the fact that such influence exists cannot support the conclusion that sufficient evidence was presented to either create a question for the jury or to support the jury's verdict.

Consequently, I would hold that the trial court erred in denying defendant's directed verdict motion dismissing plaintiff's claim for negligent hiring and supervision. Accordingly, I concur in the result in Part III, concur in Part V, and dissent from Part IV of the majority opinion.

863 P.2d 310

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EXHIBIT 39

482 N.W.2d 806
60 USLW 2680
(Cite as: 482 N.W.2d 806)

Court of Appeals of Minnesota.

Thomas Joseph MROZKA, et al., Appellants
(C6-91-1441), Respondents (C9-91-1515,
C0-91-1516),
v.
ARCHDIOCESE OF ST. PAUL AND
MINNEAPOLIS, Respondent (C6-91-1441,
C0-91-1516),
Appellant (C9-91-1515).
The CHURCH OF THE IMMACULATE
CONCEPTION IN COLUMBIA HEIGHTS,
MINNESOTA, et al.,
Defendants,
and
Diocese of Winona, defendant and third-party
plaintiff, Respondent (C6-91-1441,
C9-91-1515), Appellant (C0-91-1516),
v.
Thomas ADAMSON, third-party defendant,
Respondent.

Nos. C6-91-1441, C9-91-1515 and C0-91-1516.

March 24, 1992.
Review Denied May 24, 1992.

Child abuse victim and parent brought action against church for damages resulting from sexual abuse of child by pastor. Following jury trial, the District Court, Anoka County, Phyllis G. Jones, J., directed verdict against parents, awarded compensatory damages to child, and remitted punitive damage award, and all parties appealed. The Court of Appeals, Kalitowski, J., held that: (1) award of punitive damages against church did not violate public policy; (2) award of punitive damages against church was not unconstitutional; (3) award of punitive damages was supported by evidence; (4) trial court could grant remittitur; and (5) parents could not recover for intentional infliction of emotional distress.

Affirmed.

Randall, J., filed opinion concurring in part and dissenting in part.

West Headnotes

[1] Damages ⇐92
115k92 Most Cited Cases

[1] Religious Societies ⇐30
332k30 Most Cited Cases

Awarding punitive damages against church is not against public policy. M.S.A. § 549.20.

[2] Constitutional Law ⇐70.3(3)
92k70.3(3) Most Cited Cases

Public policy of state is for legislature to determine, not the court.

[3] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2))

[3] Constitutional Law ⇐84.5(1)
92k84.5(1) Most Cited Cases

Although Free Exercise Clause of Federal Constitution affords absolute right to hold religious beliefs, it does not absolutely protect religiously based conduct; individual's religious beliefs do not excuse compliance with otherwise valid and neutral law prohibiting conduct that state is free to regulate. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7))

[4] Religious Societies ⇐30
332k30 Most Cited Cases

Award of punitive damages against church for negligence in permitting sexual abuse of child by pastor did not violate free exercise clause of United States Constitution, despite contention that statutory exemption for municipalities prevented law from being "neutral"; state's interest in protecting children from dangerous behavior was sufficiently compelling to justify any indirect burden church might incur by having its external actions subject to sanction. M.S.A. § 549.20; U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7))

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[5] Religious Societies ⇐30
332k30 Most Cited Cases

Punitive damage award against church for negligence in permitting pastor to sexually abuse child did not violate establishment clause of United States Constitution, despite contention that inquiry into reasonableness of church's actions relating to discipline of priest would result in excessive governmental entanglement, where conduct by church resulted in external and secular harm, and church conceded that examination of reasonableness of its actions was constitutionally allowable for purpose of determining negligence and compensatory damages. M.S.A. § 549.20; U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7))

[6] Religious Societies ⇐30
332k30 Most Cited Cases

Inquiry into financial situation of church in order to assess punitive damages did not create excessive governmental entanglement with religion, where information relied on to determine church's net worth was taken largely from published information, and intrusion was secular and limited in scope and time. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7))

[7] Religious Societies ⇐30
332k30 Most Cited Cases

Award of punitive damages against church that negligently permitted pastor to sexually abuse child did not violate religious freedom provisions of the State Constitution, where criminal sanctions were unavailable and punitive damages award against individuals involved would have been ineffective; State's goals could not be accomplished through less restrictive means. M.S.A. Const. Art. 1, § 16.

[8] Damages ⇐184
115k184 Most Cited Cases

Punitive damages are allowed in civil actions only upon clear and convincing evidence that acts of defendant show willful indifference to rights and safety of others. M.S.A. § 549.20, subd. 1.

[9] Damages ⇐91(1)
115k91(1) Most Cited Cases

"Willful indifference," for purpose of statute permitting imposition of punitive damages, does not imply purpose of actually intending to harm plaintiff, but malicious, reckless or knowing disregard of plaintiff's rights or safety. M.S.A. § 549.20, subd. 1.

[10] Religious Societies ⇐30
332k30 Most Cited Cases

Evidence supported award of punitive damages against church that negligently permitted pastor to sexually abuse child, despite evidence that church tried to act responsibly, where jury could also conclude from evidence that church officials repeatedly and knowingly placed pastor in situations where he could sexually abuse boys and then failed to properly supervise him, and did not deal with allegations of sexual abuse until public disclosure was threatened. M.S.A. § 549.20, subd. 1.

[11] Appeal and Error ⇐930(1)
30k930(1) Most Cited Cases

[11] Appeal and Error ⇐1003(7)
30k1003(7) Most Cited Cases

Verdict should be overturned only when manifestly and palpably contrary to evidence considered in light most favorable to verdict.

[12] Religious Societies ⇐30
332k30 Most Cited Cases

Trial court did not abuse its discretion in remitting punitive damage award against church that allowed pastor to sexually abuse child from $2,700,000 to $187,000, where effect of other settlements and judgments and media coverage, which were unknown to jury, made full punitive award much larger than necessary to punish and deter.

[13] Damages ⇐128
115k128 Most Cited Cases

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Trial court has broad discretion in determining whether to set aside verdict as being excessive, and should not hesitate to do so where it feels evidence does not justify amount, even if verdict was not actuated by passion and prejudice.

[14] Appeal and Error ⇐1004(11)
30k1004(11) Most Cited Cases
(Formerly 30k1004.1(10))

Open ended and volatile nature of punitive damages requires reviewing court to exercise close supervision over the award.

[15] Damages ⇐128
115k128 Most Cited Cases

When determining whether remittitur is proper, courts should look for proportionality between egregious misconduct and amount of damages, keeping in mind statutory factors. M.S.A. § 549.20.

[16] Appeal and Error ⇐979(5)
30k979(5) Most Cited Cases

Because trial court has significant advantage of viewing entire proceeding, some of which is not apparent on record, appellate court should not interfere with court's decision regarding remittitur unless there is clear abuse of discretion.

[17] Appeal and Error ⇐979(5)
30k979(5) Most Cited Cases

Where trial court grants remittitur, noting its reasons for doing so, appellate courts are not likely to tamper with that determination.

[18] Damages ⇐94
115k94 Most Cited Cases

Trial court may consider information and evidence not presented to jury, such as amount of other settlements and judgments and nature and extent of media coverage, in considering and granting remittitur of punitive damages.

[19] Damages ⇐208(6)
115k208(6) Most Cited Cases

Parents of child sexually abused by church pastor did not overcome high threshold standard of proof required to submit claim of intentional infliction of emotional distress to jury, even though emotional distress suffered by parents was significant.

[20] Damages ⇐50.10
115k50.10 Most Cited Cases

Tort actions seeking damages for intentional infliction of emotional distress are disfavored, and application of tort is limited to those cases where emotional distress is so severe that no reasonable person could be expected to endure it.

***808** Syllabus by the Court

1. Whether an award of punitive damages against a religious organization is contrary to the public policy of the state is a legislative determination.

2. An award of punitive damages against a religious organization does not violate the United States or Minnesota Constitutions.

3. An award of punitive damages is allowed where evidence supports a finding that religious organizations repeatedly placed a known child molester in positions of authority over children.

4. The trial court did not abuse its discretion when it remitted punitive damages awards to amounts it believed would punish and deter in light of other settlements and judgments, negative publicity, and nature of religious organizations' assets.

5. A claim for intentional infliction of emotional distress by parents of sexual abuse victim was properly dismissed where distress was not sufficiently severe.

Jeffrey R. Anderson, Mark A. Wendorf, Susan Ford Bedor, Reinhardt and Anderson, St. Paul, for Thomas Joseph Mrozka, et al.

Andrew J. Eisenzimmer, Meier, Kennedy & Quinn, John R. Hoffman, ***809**Daniel A. Haws, Murnane, Conlin, White, Brandt & Hoffman, St. Paul, John D. French, Patrick J. Schiltz, Theresa H. Keninger, Faegre & Benson, Minneapolis, for Archdiocese of St. Paul and Minneapolis.

George F. Restovich, Bruce K. Piotrowski, Patterson-Restovich-Lund Law Offices, Ltd., Rochester, for Diocese of Winona.

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482 N.W.2d 806
60 USLW 2680
(Cite as: 482 N.W.2d 806)

Theodore J. Collins, Collins, Buckley, Sauntry & Haugh, St. Paul, for Thomas Adamson.

Considered and decided by KALITOWSKI, P.J., and RANDALL and MULALLY [FN*], JJ.

FN* Retired judge of the district court, acting as judge of the Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 2.

OPINION

KALITOWSKI, Judge.

Following a jury trial, a victim of child sexual abuse was awarded compensatory and punitive damages against religious organizations. The trial court remitted the punitive damages award and the victim appeals. The religious organizations challenge the punitive damages awards as contrary to state public policy and unconstitutional. The victim's parents challenge the trial court's dismissal of their claim for intentional infliction of emotional distress. We affirm.

FACTS

The Diocese of Winona first learned that Father Thomas Adamson had sexually abused a boy in 1964. The Diocese learned of other sexual misconduct in 1966, 1973, and 1974. Adamson's superiors typically responded to these incidents by reprimanding Adamson, suggesting or insisting that he seek counselling, and transferring him to another parish. In December 1974, Bishop Loras Watters received a number of phone calls from two men who accused Adamson of sexually abusing their brother since the early 1960's. One brother said that Adamson had also abused him, and threatened to expose Adamson if he was not immediately removed. When confronted with the allegations, Adamson admitted sexually abusing the youth for a period of ten years.

To avoid public disclosure and scandal, Bishop Watters removed Adamson and transferred him to the Archdiocese of St. Paul and Minneapolis. Bishop Watters told Archbishop Roach that Adamson was receiving treatment, but he did not disclose the type of treatment or Adamson's sexual history. In the years that followed, Bishop Watters repeatedly denied Adamson's requests to return to the Diocese. Archbishop Roach, with Bishop Watters' approval, appointed Adamson associate pastor of St. Thomas Aquinas Church in January 1976, and head pastor of Immaculate Conception Church in June 1979. Adamson began abusing Thomas Mrozka shortly after his arrival at Immaculate Conception.

The Archdiocese first learned of sexual misconduct by Adamson in November 1980, when Adamson admitted to attempting to touch a parish boy. Although Archbishop Roach ordered Adamson to be psychologically evaluated, he allowed Adamson to return to his parish pending the evaluation. Adamson agreed to be monitored closely, cease all youth contact, and resign if his misconduct became known. In late December, Archbishop Roach instructed Adamson to resign amid concern that Adamson spent too much time with boys, including Mrozka, and threats by an abused boy's father to go to the police. Also, Bishop Watters had written Archbishop Roach that the latest incident was a "reoccurrence of a longstanding problem." Adamson underwent 19 days of inpatient treatment as a result of this incident. Although Adamson's doctor did not advocate him for a pastorate, both Diocese and Archdiocese officials testified that they understood Adamson could return to his priestly duties. Archbishop Roach appointed Adamson to an associate pastorship and instructed him to avoid youth contact and continue his therapy.

During the ensuing year, the Archdiocese learned that Adamson was having contact with youth, including Mrozka. The ***810** violations were, for the most part, ignored. In February 1983, the Archdiocese learned that police had investigated and dismissed charges against Adamson for alleged child sexual abuse. When Archbishop Roach confronted Adamson about violating their agreement, Adamson stated that he had misunderstood the agreement's terms. Roach allowed Adamson to return to his parish, reduced their agreement to writing, and warned that any future violation would result in his immediate removal. In July 1984, Archbishop Roach removed Adamson after Adamson admitted to having sexually abused a boy for a number of years

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while at St. Thomas Aquinas parish.

Mrozka sued the Archdiocese and Diocese (collectively, the "Church"), alleging that they negligently allowed Adamson to sexually abuse him when he was a minor. His parents sued the Archdiocese alleging, among other things, intentional infliction of emotional distress. The Church admitted negligence. The jury awarded Mrozka $855,000 in compensatory damages and $2,700,000 in total punitive damages. The trial court remitted the punitive damages award to approximately $187,000.

Mrozka appeals the trial court's remittitur. His parents appeal the dismissal of their intentional infliction of emotional distress claim on directed verdict. The Church challenges the award of punitive damages as being violative of state public policy, unconstitutional, and contrary to the evidence.

ISSUES

I. Does an award of punitive damages against a religious organization violate state public policy?

II. Is an award of punitive damages against a religious organization unconstitutional?

III. Was the award of punitive damages supported by the evidence?

IV. Did the trial court abuse its discretion in granting remittitur?

V. Did the trial court err when it granted a directed verdict on the parents' claim of intentional infliction of emotional distress?

ANALYSIS

I.

[1] The Church, relying on *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981), argues that awarding punitive damages against a religious organization is contrary to public policy. In *City of Newport*, the U.S. Supreme Court held that punitive damages could be awarded against municipal employees, but not against the municipality itself. *Id.* 453 U.S. at 271, 101 S.Ct. at 2762. The Church contends that the same public policy considerations addressed in *City of Newport*, including the concern that the punishment is not a deterrent because it is inflicted on innocent persons rather than the wrongdoers, apply to religious organizations. *See id.* 453 U.S. at 266-70, 101 S.Ct. at 2759-61.

We find the municipal exception from punitive damages in *City of Newport* distinguishable from the Church's proposed exemption for religious organizations. In *City of Newport* the Court found it necessary to determine congressional intent because of its assumption that Congress would have specifically addressed municipal immunity if it meant to alter the longstanding common law rule exempting municipalities from punitive damages awards. *Id.* 453 U.S. at 263-66, 101 S.Ct. at 2758-59. Similarly, the Supreme Court also has looked to congressional intent in holding that punitive damages are not allowed in certain actions against labor unions because of the essentially remedial nature of the National Labor Relations Act. *See International Bhd. of Elec. Workers v. Foust*, 442 U.S. 42, 52, 99 S.Ct. 2121, 2128, 60 L.Ed.2d 698 (1979).

Here, legislative intent is not at issue. There is no common law rule exempting religious or non-profit organizations from punitive damages awards. Punitive damages have been sought against non-profit corporations in Minnesota, although disallowed on other grounds. *See, e.g., Minnesota-Iowa Television Co. v. Watonwan T.V. Improvement Ass'n*, 294 N.W.2d 297, 309-11 (Minn.1980); *811 *Wild v. Rarig*, 302 Minn. 419, 440-42, 234 N.W.2d 775, 789-90 (1975), *cert. denied*, 424 U.S. 902, 96 S.Ct. 1093, 47 L.Ed.2d 307 (1976). Furthermore, punitive damages have been allowed against religious organizations in other jurisdictions. *See, e.g., Bredberg v. Long*, 778 F.2d 1285, 1290 (8th Cir.1985); *Christofferson v. Church of Scientology*, 57 Or.App. 203, 251-53, 644 P.2d 577, 607-08 (1982), *cert. denied*, 459 U.S. 1206, 103 S.Ct. 1196, 75 L.Ed.2d 439 (1983).

[2] If the legislature intended to exempt religious organizations from Minn.Stat. § 549.20 (1986), it could have specifically done so, as it did with municipalities in Minn.Stat. § 466.04, subd. 1(b) (1990). The public policy of the state is for the legislature to determine, not the court. *Mattson v. Flynn*, 216 Minn. 354, 363, 13 N.W.2d 11, 16

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information relied on to determine the Archdiocese and Diocese's net worth was taken largely from published information. The intrusion was secular and limited in scope and time. We find no excessive entanglement.

B. Minnesota Constitution.

[7] Article I, § 16 of the Minnesota Constitution precludes infringement or interference with religious freedom. However, it further states:

> [T]he liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Minn. Const. art. I, § 16; *see also State v. Hershberger,* 462 N.W.2d 393, 397 (Minn.1990). The Church's actions as determined by the trial court fall within this exclusion. The repeated placement of Adamson in parishes without restriction arguably condoned acts of licentious behavior and justified practices inconsistent with the peace and safety of the state.

Awarding punitive damages furthers the state's interest in protecting its citizens from harm by deterring and punishing such conduct. *Hodder v. Goodyear Tire & Rubber Co.,* 426 N.W.2d 826, 837 (Minn.1988). The state is not only concerned with compensating plaintiffs, but also ensuring that similar conduct does not harm others in the future. Here, the unavailability of criminal sanctions and the ineffectiveness of a punitive damages award against the individuals involved support the trial court's determination that an imposition of punitive damages against the Church is appropriate because the state's goals cannot be accomplished through less restrictive means.

III.

[8][9] Punitive damages are allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show a willful indifference to the rights and safety of others. Minn.Stat. § 549.20, subd. 1 (1986). "Willful indifference" does not imply a purpose of actually intending to harm the plaintiff, but a malicious, reckless or knowing disregard of the plaintiff's rights or safety. *Wirig v. Kinney Shoe Corp.,* 461 N.W.2d 374, 381 (Minn.1990); *Wikert v. Northern Sand & Gravel, Inc.,* 402 N.W.2d 178, 182 (Minn.App.1987), *pet. for rev. denied* (Minn. May 18, 1987).

[10] The Church contends that punitive damages were not proper in this case because the jury failed to appreciate how little was known about pedophilia at the time the Church made decisions regarding Adamson. The Church argues that it was not "willfully indifferent" to the dangers Adamson posed; rather, it attributes its decisions to its inability to appreciate the extent of Adamson's problem or addiction, its reliance on his doctors' recommendations, and its subjective belief that he would not abuse again.

[11] A verdict should be overturned only when manifestly and palpably contrary to the evidence considered in the light most favorable to the verdict. *Melina v. Chaplin,* 327 N.W.2d 19, 20 (Minn.1982) . Although evidence exists that the Church ***813** tried to act responsibly, there is also evidence from which the jury could conclude that Church officials repeatedly and knowingly placed Adamson in situations where he could sexually abuse boys and then failed to properly supervise him and disclose his sexual problem. There was also testimony that the Church avoided dealing with allegations of abuse until public disclosure was threatened. The jury's decision to award punitive damages is supported by the evidence.

IV.

[12][13][14] Appellant Mrozka argues that the trial court abused its discretion when it granted remittitur. A trial court, however, has broad discretion in determining whether to set aside a verdict as being excessive and should not hesitate to do so where it feels the evidence does not justify the amount, even if the verdict was not actuated by passion and prejudice. *Caspersen v. Webber,* 298 Minn. 93, 100, 213 N.W.2d 327, 331 (1973). The "open-ended and volatile nature of punitive damages" requires a reviewing court to exercise close supervision over the award. *Estate of Hartz v. Nelson,* 437 N.W.2d 749, 757 (Minn.App.1989) (quoting *Hodder,* 426 N.W.2d at 835), *pet. for rev. denied* (Minn. July 12, 1989).

[15][16][17] When determining whether remittitur is proper, courts should look for proportionality between the egregious misconduct and the amount

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of damages, keeping in mind the factors set forth in Minn.Stat. § 549.20. *Hodder,* 426 N.W.2d at 837. Because the trial court has the significant advantage of viewing the entire proceeding, some of which is not apparent on the record, an appellate court should not interfere with the court's decision regarding remittitur unless there is a clear abuse of discretion. *Sorenson v. Kruse,* 293 N.W.2d 56, 62 (Minn.1980); *Caspersen,* 298 Minn. at 100, 213 N.W.2d at 331. Where the trial court grants remittitur, noting its reasons for doing so, the appellate courts are not likely to tamper with that determination. *Sorenson,* 293 N.W.2d at 63.

When it granted remittitur, the trial court took into account the total effect of other punishment upon the Church, including damages awarded and settlements in other actions and the extent of negative publicity generated by the trial. Appellant Mrozka argues the trial court was, in effect, reversing the jury on the basis of information and evidence not presented to the jury and that this constitutes an abuse of discretion. We disagree.

[18] The amount of other settlements and judgments and the nature and extent of media coverage were properly kept from the jury. However, in light of the trial court's responsibility to closely supervise an award of punitive damages, these matters were appropriately considered in granting remittitur. *See Johnson v. Ramsey County,* 424 N.W.2d 800, 807-08 (Minn.App.1988) (the trial court did not err in ordering remittitur where court but not jury had evidence of the defendant's ability to pay), *pet. for rev. denied* (Minn. Aug. 24, 1988). In light of the court's particular knowledge, it found that the damages were excessive and "much larger than necessary to punish and deter." This determination was not an abuse of discretion.

The trial court also specifically addressed the financial condition of the Church, distinguishing its net worth from its liquid assets. In light of the unique nature of the assets of the Church, the trial court's analysis of the Church's ability to pay and assessment as to the amount of punitive damages necessary to satisfy the purposes of Minn.Stat. § 549.20 was not an abuse of discretion.

V.

[19][20] The trial court properly directed a verdict on the parents' claim of intentional infliction of emotional distress. While we recognize that the emotional distress suffered by the parents was significant, the trial court properly concluded that it was not sufficient to overcome "the high threshold standard of proof required of a complainant before [the issue] may be submitted to a jury." *Hubbard v. United Press Int'l, Inc.,* 330 N.W.2d 428, 439 (Minn.1983). Minnesota disfavors tort actions seeking damages for intentional infliction of emotional distress. ***814***Eklund v. Vincent Brass & Aluminum Co.,* 351 N.W.2d 371, 379 (Minn.App.1984), *pet. for rev. denied* (Minn. Nov. 1, 1984). Application of this tort is limited to those cases where the emotional distress is so severe that no reasonable person could be expected to endure it. *Hubbard,* 330 N.W.2d at 439-40.

DECISION

There was sufficient evidence to support an award of punitive damages against the Diocese and Archdiocese. Such an award of punitive damages against a religious organization is not violative of state public policy or the United States or Minnesota Constitutions. The trial court did not abuse its discretion in granting remittitur, and it did not err in dismissing appellant parents' claim of intentional infliction of emotional distress.

Affirmed.

RANDALL, Judge, concurring in part, dissenting in part.

I concur in part and dissent in part. I concur in the conclusions reached by the majority, including the holding that the punitive damages, if applicable, were not improperly reduced by the trial court. But on the issue of whether public policy allows any award of punitive damages against a recognized religious organization, I dissent. The conclusion is inescapable that the strong and pronounced public policy argument exempting municipalities and labor unions from awards of punitive damages exempts recognized religious organizations as well.

This issue of punitive damages does not involve a question of appropriate compensation. The

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defendants agree that even on public policy grounds, punitive damages can be assessed against the individual defendants. They also agree that both the individuals and the religious entity they are associated with can be liable for compensable damages. They do not agree, however, that bona fide religious organizations can be liable for punitive damages.

Plaintiff has a right to be fully and properly compensated and has been. Punitive damages, by definition, are not intended as compensation. Rather, they are intended to punish and serve as a deterrence to others. I conclude that punitive damages, as a deterrence to organizations, overstep the bounds of public policy as applied to recognized religions, on the same principles that apply to municipalities and labor unions.

In *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 101 S.Ct. 2748, 69 L.Ed.2d 616 (1981), the Supreme Court found that while punitive damages could be recovered against an individual municipality employee, punitive damages could not be awarded against the municipality itself. The Court discussed public policy considerations and found, among other things, that if punitive damages were to be assessed against a municipality, the money would come out of the pockets of the municipal taxpayers, resulting in a downgrading of the municipal services received by residents. The Court found that taxpayers and citizens of a municipality were innocent of any wrongdoing:

> [A]n award of punitive damages against a municipality "punishes" only the taxpayers, who took no part in the commission of the tort. These damages are assessed over and above the amount necessary to compensate the injured party. * * * [They] are in effect a windfall to a fully compensated plaintiff, and are likely accompanied by an increase in taxes or a reduction of public services for the citizens footing the bill. Neither reason nor justice suggests that such retribution should be visited upon the shoulders of blameless or unknowing taxpayers.

Id. 453 U.S. at 267, 101 S.Ct. at 2759-60 (footnote omitted).

The Court also noted that assessing punitive damages against a municipality does not achieve the aim of punishing the individual who committed the act:

> Under ordinary principles of retribution, it is the wrongdoer himself who is made to suffer for his unlawful conduct. If a government official acts knowingly and maliciously to deprive others of their civil rights, he may become the appropriate object of the community's vindictive sentiments. A municipality, however, *815 can have no malice independent of the malice of its officials. Damages awarded for *punitive* purposes, therefore, are not sensibly assessed against the governmental entity itself.

Id. 453 U.S. at 267, 101 S.Ct. at 2760 (citations omitted; emphasis in original).

The United States Supreme Court did not free municipalities from responsibility for compensable damages, and did not free employees of the municipality, as individuals, from punitive damages. It simply carved out for the municipality itself the one exception defendants here seek, an exemption from an assessment of punitive damages.

Relative to labor unions, the United States Supreme Court followed the same logic. In *International Bhd. of Elec. Workers v. Foust,* 442 U.S. 42, 99 S.Ct. 2121, 60 L.Ed.2d 698 (1979), the Supreme Court declined to allow punitive damages to be inflicted upon a union for a breach of duty to represent a member. The Court found that the award would penalize the very union members that the law mandating fair representation was intended to protect. *Id.* 442 U.S. at 50-51, 99 S.Ct. at 2127. The Court was concerned that punitive damages awards would burden the exercise of rights granted under federal labor law. *Id.* 442 U.S. at 51-52, 99 S.Ct. at 2127-28. The Supreme Court refused to burden unions "beyond the extent necessary to compensate employees for their injuries." *Id.* 442 U.S. at 50, 99 S.Ct. at 2126. I suggest that the allowance of punitive damages against religious organizations would unduly burden the free exercise of first amendment rights established by the United States Constitution. [FN1]

> FN1. The first amendment of our federal constitution provides:
> Congress shall make no law respecting an establishment of religion, or prohibiting

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> the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. U.S. Const. amend. I.

Given the priorities adopted by the federal government and by individual states, the right of citizens in a community to form a municipality, and the right of workers to organize a labor union are firmly established. I suggest that the first amendment right of the federal constitution guaranteeing to the people freedom of religion and religious organizing is equally firm. The public policy in *City of Newport* and *Foust* is sound. It should also be applied to established religion.

Both sides agree that present Minnesota law does not, with specificity, allow or disallow the assessment of punitive damages against recognized religion. It could be argued that the lack of a specific right to a punitive damages award against them by plaintiffs means that they do not have that right. It could be argued that the lack of a specific prohibition against assessing punitive damages against a religious organization means it can be done until the legislature speaks to it.

I suggest the overall intent to be gleaned from legislative enactments and prior Minnesota case law addressing the importance of taxpayers' rights, union members' rights, and the rights of religious organizations supports the conclusion that Minnesota public policy bars the assessment of punitive damages against an organized religion.

482 N.W.2d 806, 60 USLW 2680

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EXHIBIT 4C

921 F.Supp. 66
(Cite as: 921 F.Supp. 66)

United States District Court,
D. Connecticut.

Matthew J. NUTT, Mark D. Nutt, Plaintiffs,
v.
The NORWICH ROMAN CATHOLIC DIOCESE, Thomas J. Doyle, S.M., The Sacred Heart Church of Vernon, Connecticut, The Marianist Society, Inc., Brother Stephen Dematteis and Father Michael Melendez, Defendants.

Civil No. 3:94cv00776(AVC).

March 28, 1995.
Order Granting Renewed Motion For Summary Judgment July 24, 1995.

Former altar boys who were allegedly sexually abused by a priest brought negligent employment action against Catholic church, diocese, and order of priests; church and diocese moved for dismissal, or in alternative for summary judgment, and order moved for dismissal. The District Court, Covello, J., held that: (1) former altar boys failed to establish that priest was acting in furtherance of his employer's business as required for defendants to be liable under doctrine of respondeat superior; (2) 17-year limitations period for actions based upon sexually abusive conduct applied to claim for negligent employment; (3) First Amendment did not bar action for negligent employment; and on rehearing held that: (4) church and diocese were entitled to judgment as matter of law on negligence claims.

Motions granted in part, and denied in part.

*68 Holly Abery-Wetstone, Doris B. D'Ambrosio, Wetstone & D'Ambrosio, Farmington, CT, Susan K. Smith, Hartford, CT, for Matthew J. Nutt, Mark D. Nutt, Mary A. Nutt, James D. Nutt.

Joseph T. Sweeney, James M. Sconzo, Halloran & Sage, Hartford, CT, for Norwich Roman Catholic Diocese Corp., Sacred Heart Church of Vernon, CT.

Walter R. Hampton, Jr., Andrea Marie Melanson, Hampton & Hampton, Canton, CT, for Thomas J. Doyle, S.M.

Jeffrey L. Fisher, Richard A. Roberts, Nuzzo & Roberts, Cheshire, CT, for Marianist Society, Inc.

Joseph H. Farrell, Conway, Farrell, Curtin & Kelly, New York City, Terri Ann Knapsack, White, Dombroski, Knapsack & Hillis, New Haven, CT, for Michael Melendez.

Susan K. Smith, Hartford, CT, for amicus curiae Connecticut Network of Victims' Lawyers.

RULING ON DEFENDANTS' MOTIONS

COVELLO, District Judge.

This is an action for damages in which the plaintiffs claim they were sexually abused by the defendant, Thomas J. Doyle. The complaint alleges the following causes of action against him: 1) "reckless assault and battery"; 2) "negligent assault and battery"; 3) negligence; 4) intentional or reckless infliction of emotional distress; and 5) unintentional infliction of emotional distress. The plaintiffs also assert a claim for negligence against the defendants Stephen DeMatteis and Michael Melendez. The remaining three defendants are institutions, namely, the Sacred Heart Church of Vernon, Connecticut ("Sacred Heart"), the Norwich Roman Catholic Diocesan Corporation ("the Norwich Diocese"), and the Marianist Society, Inc. ("Marianist"). The plaintiffs claim that these three institutional defendants are liable for damages under the doctrine of respondeat superior and their own negligence.

Two of these institutions, Sacred Heart and the Norwich Diocese, now move to dismiss or, in the alternative, for summary judgment (document no. 16) on all counts as to them. The third institution, Marianist, moves only to dismiss (document no. 24) all the counts as they pertain to it.

For the reasons stated herein, the court grants the defendants' motions with respect to the claims based upon the doctrine of respondeat superior. With respect to the negligence claims against the defendants, Sacred Heart and Norwich Diocese, the motion is denied without prejudice. With respect to the negligence claims against the defendant, Marianist, the motion is denied. [FN1]

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FN1. The plaintiffs and the defendants have presented facts and documentary proof outside the complaint. Fed.R.Civ.P. 12(b) states, in pertinent part, as follows:
If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.
This provision expressly allows the court to examine matters in addition to the pleadings when considering a Rule 12(b)(6) motion to dismiss. "If such additional matters are examined, the motion will be construed as if it had been brought for summary judgment under Fed.R.Civ.P. 56." *Galvin v. Lloyd,* 663 F.Supp. 1572, 1575 (D.Conn.1987). The court has complete discretion in deciding whether to accept such matters, but once it does, conversion to a Rule 56 motion is mandatory. *See Carter v. Stanton,* 405 U.S. 669, 671, 92 S.Ct. 1232, 1234, 31 L.Ed.2d 569 (1972) (per curiam). The court elects to accept and analyze the additional materials submitted by the parties. The issues raised in the defendants' motions to dismiss will, therefore, be treated as motions for summary judgment for the purposes of this ruling.

***69 FACTS**

Examination of the pleadings, affidavits, exhibits, and other supporting materials accompanying the motions and the responses thereto discloses the following:

The plaintiffs, Matthew Nutt and Mark Nutt, (hereinafter Matthew and Mark) are twin brothers. They are currently 28 years old and live in Maine. The plaintiffs and their family have been members of the Roman Catholic Church, St. Bernard's Parish Church in Rockville, Connecticut, since 1977. In 1977, the plaintiffs, who were then twelve years old, began serving as altar boys at St. Bernard's.

One of the defendants, Thomas J. Doyle, is a Marianist priest. From 1976 through 1978, Doyle served as parish priest at St. Bernard's. From 1977 to 1978, Doyle was the parish priest for the plaintiffs. From September 1978 to September 1979, he also served at St. Joseph's Church in Clinton, Connecticut; from September 1979 to September 1981, he served at St. Mary's Church in Vernon, Connecticut; and from 1981 to 1992, he served at Sacred Heart Church in Vernon, Connecticut. As a priest, Doyle was required to adhere to the laws and standards of the Roman Catholic Church. The laws and standards of the Roman Catholic Church include a priests' personal commitment to celibacy and expressly prohibit all priests from engaging in any sexual activity of any kind.

All of the above-named Roman Catholic parishes and churches where Doyle served are within the jurisdiction of the defendant, Norwich Diocese.

The defendant, Marianist Society, Inc., admitted and ordained Doyle to the Catholic priesthood and assigned him to the Norwich Diocese, St. Bernard's Parish Church, and Sacred Heart Church. The Marianist Society also provided Doyle with a residence at the Marianist Community House and a condominium rented by the Marianist Society.

From 1979 through 1985 the plaintiffs allege that Doyle showed R-rated and X- rated movies to Mark in the Sacred Heart Rectory and the Marianist Community House in Vernon, Connecticut. In November or December 1980, the plaintiffs further allege that during an out-of-town Christmas shopping trip, Mark and Doyle were forced to stop at a motel in Stockbridge, Massachusetts, due to a snow storm. On this occasion, Doyle allegedly dumped ice on one of the double beds in the room, causing Mark to share a bed with Doyle. During this evening, Doyle allegedly placed his hands inside Mark's underwear and fondled Mark's genitals. Then Doyle allegedly removed Mark's underwear, positioned Mark's hands for mutual masturbation, and performed oral sex on Mark. This same manner of sexual activity also allegedly occurred on the following trips and occasions: in August 1982 on a trip from Maine to Nova Scotia and return; in February 1984, June 1986, and August 1988 on three trips to New York City to see

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Broadway plays; and in the Summer of 1987 at the Marianist Community House in Vernon, Connecticut. In addition, the plaintiffs allege that from 1986 forward, Doyle's sexual activity included digital anal penetration of Mark.

In July 1983, Mark allegedly informed the defendant Stephen DeMatteis and the defendant, Michael Melendez, that Doyle was sexually abusing him. This report allegedly occurred July 18-23, 1983, during a Marianist family retreat held in New Jersey.

The plaintiffs further claim that from 1979 through 1985, Matthew went on trips with Doyle and watched X-rated movies. During this time, they also allegedly watched R-rated movies at the Sacred Heart Rectory.

On one such trip in 1979, Matthew and Doyle visited Doyle's mother's home on Long Island, New York. The plaintiffs claim that Matthew, then age fourteen, woke to find Doyle had pushed his twin bed next to Matthew's and was fondling Matthew's genitals *70 to the point of masturbation. The plaintiffs further claim that between 1979 and 1985, Doyle repeated the sexual act described above on the following occasions: in 1981 while Doyle and Matthew traveled to New York City to see a Broadway play; in February 1982 when they took a trip from Connecticut to New York City, to Cherry Hill, New Jersey, to Baltimore, Maryland, and then to Washington D.C.; and in January 1985, while Matthew and Doyle took a trip to Edgartown, Massachusetts.

In July 1983, during a Marianist family retreat in New Jersey, Matthew allegedly informed Melendez that Doyle had been sexually abusing him. The abuse was allegedly not reported to the legal authorities as required by law.

In mid-September 1992, Matthew and his parents allegedly met with Norwich Diocesan officials and complained about the sexual misconduct of Doyle. Shortly after these complaints, Doyle was relieved of his duties as Pastor of Sacred Heart Church, pending investigation.

STANDARD

[1][2] On a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256, 106 S.Ct. 2505, 2514, 91 L.Ed.2d 202 (1986). A dispute regarding a material fact is genuine " 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Aldrich v. Randolph Cent. Sch. Dist.*, 963 F.2d 520, 523 (2d Cir.), *cert. denied*, 506 U.S. 965, 113 S.Ct. 440, 121 L.Ed.2d 359 (1992) (quoting *Anderson*, 477 U.S. at 248, 106 S.Ct. at 2510). The court resolves "all ambiguities and draw[s] all inferences in favor of the nonmoving party in order to determine how a reasonable jury would decide." *Aldrich*, 963 F.2d at 523. Thus, "[o]nly when reasonable minds could not differ as to the import of the evidence is summary judgment proper." *Bryant v. Maffucci*, 923 F.2d 979, 982 (2d Cir.), *cert. denied*, 502 U.S. 849, 112 S.Ct. 152, 116 L.Ed.2d 117 (1991). *See also Suburban Propane v. Proctor Gas, Inc.*, 953 F.2d 780, 788 (2d Cir.1992).

DISCUSSION

I. Respondeat Superior

The plaintiffs claim that the institutional defendants are liable for the acts of Doyle under the doctrine of respondeat superior. The defendants contend, however, that they can not be held liable because Doyle acted outside the scope of his employment when he allegedly abused the plaintiffs.

The doctrine of respondeat superior rests on common law agency principles of vicarious liability. Generally, the doctrine states that the master (employer) is responsible for the acts of his or her servant (employee) because the master controls the servant's actions. Restatement (Second) of Agency § 1, at 7. Central to the issue of liability under the doctrine is whether the employee was acting within the scope of his or her employment. If the employee was acting within the scope of his or her employment, the employer may be liable for the plaintiff's acts. Restatement (Second) of Agency, *supra* § 219, at 481.

[3] Often, the issue of whether or not an act is within the scope of one's employment is a question of fact for the jury to decide. In some situations, however, the acts of the servant are so clearly without the scope of his authority that the question is one of law. *Gutierrez v. Thorne*, 13 Conn.App.

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493, 499, 537 A.2d 527 (1988). The test in Connecticut as to whether an employee is acting within the scope of his or her employment rests on whether the employee was furthering the employer's business. This standard has been applied to an employee's negligent acts, *Levitz v. Jewish Home for the Aged, Inc.*, 156 Conn. 193, 239 A.2d 490 (1968), and to an employee's willful torts such as a fatal stabbing, *Cardona v. Valentin*, 160 Conn. 18, 22, 273 A.2d 697 (1970). The doctrine of respondeat superior focuses on the employee's conduct rather than on the employer's knowledge or approval of the conduct. *Belanger v. Village Pub I*, 26 Conn.App. 509, 603 A.2d 1173 (1992).

[4] The plaintiffs claim that Doyle, as an "employee" of the three Roman Catholic institutional defendants, acted within the scope of his employment as a parish priest when he ***71** allegedly sexually assaulted and abused the plaintiffs. Even if Doyle committed the acts alleged by the plaintiffs, however, there is no evidence to support a finding that these acts were in furtherance of his employer's business and therefore within the scope of his employment.

In *Brown v. Housing Authority of New Haven*, 23 Conn.App. 624, 583 A.2d 643 (1990), *certification denied*, 217 Conn. 808, 585 A.2d 1233 (1991), the plaintiff claimed that the defendant's employee, Sam Jones, assaulted and battered him. Jones, a maintenance mechanic, had been driving the defendant's van in between job sites when the intentional and criminal assault occurred. The plaintiff argued that the defendant was liable for Jones's acts under the doctrine of respondeat superior. The court held that "[i]t is clear in the present case that Jones was not furthering the defendant's business interests when he assaulted the plaintiff. His intentional, criminal acts were in no way connected to the defendant's business." *Id.* at 628, 583 A.2d 643. The court upheld the trial court's granting of summary judgment for the defendant because, "[a]s there were no facts before the court from which it could conclude that Jones was furthering the defendants interests, the defendant's nonliability under the doctrine of respondeat superior was properly determined as a matter of law." *Id.*

Similarly, in *A-G Foods, Inc. v. Pepperidge Farm, Inc.*, 216 Conn. 200, 579 A.2d 69 (1990), the plaintiff claimed Pepperidge Farm was liable for the fraudulent acts of one of its distributors, Anthony Spinelli. Spinelli had defrauded the plaintiff by charging it for Pepperidge Farm products he was not actually delivering. In a criminal proceeding, Spinelli pleaded guilty to larceny. In a subsequent civil jury trial, the court awarded the plaintiff over one million dollars in damages and costs against Spinelli. The jury also awarded the plaintiff damages against Pepperidge Farm. Pepperidge Farm moved to set aside the verdict.

Pepperidge Farm argued that there was insufficient evidence to conclude Spinelli was acting within the scope of his employment and in furtherance of Pepperidge Farm's business when he stole from the plaintiff. The trial court agreed and rendered a judgment notwithstanding the verdict in favor of the defendant. On appeal, the supreme court agreed, stating that " '[o]rdinarily, it is a question of fact as to whether a wilful tort of the servant has occurred within the scope of the servant's employment and was done to further his master's business. See, e.g. *Rappaport v. Rosen Film Delivery System, Inc.*, [127 Conn. 524, 526, 18 A.2d 362 (1941)]. But there are occasional cases where a servant's digression from duty is so clear-cut that the disposition of the case becomes a matter of law.' " *A-G Foods*, 216 Conn. at 207, 579 A.2d 69 (citations omitted). Although a servant may be acting within the scope of employment when the conduct is found negligent, disobedient, or willful, that is not the end of the inquiry. " '[T]he vital inquiry ... is whether the servant on the occasion in question was engaged in a disobedient or unfaithful conducting of the master's business, or was engaged in an abandonment of the master's business....' " *Id.* at 209, 579 A.2d 69 (quoting *Butler v. Hyperion Theatre Co.*, 100 Conn. 551, 124 A. 220 (1924)).

There is nothing in the record to indicate that the alleged sexual abuse by Doyle was motivated by any purpose or object that would serve his employer. Indeed, as the affidavits submitted by the defendants indicate, the laws and standards of the Roman Catholic Church expressly prohibit priests from engaging in any sexual activity of any kind. Thus, even if Doyle engaged in sexually abusive conduct, he did so only after abandoning the church's tenets and his personal commitment to celibacy. Sexually abusive conduct amounts to the abandonment of the Churchs' business. As a matter of law, therefore, the alleged sexual abuse, even if true, can not be said to further the defendant's

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Specifically, the defendants assert that the court's determination of the plaintiffs' claims of negligent employment would promote exactly that type of state involvement in religion which the First Amendment intends to prevent, i.e., the intrusion of secular interests into matters of purely ecclesiastical concerns. The defendants refer to *Dausch v. Ryske,* 1993 WL 34873 (N.D.Ill.), in which the court stated:

> Any inquiry into the policies and practices of church defendants in hiring or supervising their clergy is barred by the First *73 Amendment because it might foster excessive state entanglement with religion (Citations omitted.) It might involve the court in making sensitive judgments about the proprieties of the church defendants' supervision in light of their religious beliefs.

Id. at *6; *see also Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991). The defendants thus contend that personnel issues involving their clergy must be determined by the laws and policies of the Roman Catholic Church, which are based upon the religious tenets of Roman Catholicism, rather than upon nonecclesiastical law.

The plaintiffs, in response, argue that "[t]o have protection of the [r]eligious [c]lauses, the claims must be rooted in religious belief." *Wisconsin v. Yoder,* 406 U.S. 205, 215-16, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972); *see also Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963). They contend that a claim of negligence does not implicate any religious belief or practice, and therefore, the Free Exercise Clause is inapplicable as a defense to such actions. The court agrees.

The First Amendment to the United States Constitution forbids any "law respecting the establishment of religion, or prohibiting the free exercise thereof." U.S. Const. Amend. I. The Free Exercise Clause prohibits excessive state entanglement with religion. *See Lemon v. Kurtzman,* 403 U.S. 602, 614-15, 91 S.Ct. 2105, 2112, 29 L.Ed.2d 745 (1971). Although no Supreme Court decision has determined the applicability of the Free Exercise Clause of the First Amendment as a defense for a religious organization's negligent conduct, the Court has held that the First Amendment does not create blanket tort immunity for religious institutions or their clergy, thus allowing clergy and clerical institutions to be sued for the torts they commit. *United States v. Ballard,* 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944).

Moreover, the court has "never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Dept. of Human Resources v. Smith,* 494 U.S. 872, 878-79, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990). The *Smith* Court went on to state as follows:

> As described succinctly by Justice Frankfurter in *Minersville School Dist. Bd. of Ed. v. Gobitis,* 310 U.S. 586, 594-595 [60 S.Ct. 1010, 1012-1013, 84 L.Ed. 1375] (1940): 'Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs....' We first had occasion to assert that principle in *Reynolds v. United States,* 98 U.S. 145 [25 L.Ed. 244] (1879), where we rejected the claim that criminal laws against polygamy could not be constitutionally applied to those whose religion commanded the practice. 'Laws,' we said, 'are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices.... Can a man excuse his practices to the contrary because of his religious belief? To permit this would make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.' *Id.* at 166-67.
>
> Subsequent decisions have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'

Id. at 879, 110 S.Ct. at 1600 (quoting *United States v. Lee,* 455 U.S. 252, 263, n. 3, 102 S.Ct. 1051, 1058, n. 3, 71 L.Ed.2d 127 (1982).

In *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993), the Court further defined the 'religious beliefs or practices' afforded protection by the Free Exercise Clause in its examination of the constitutionality of certain civil and criminal laws.

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judgment with respect to the negligence claims. *See* Fed.R.Civ.P. 56(c).

Sacred Heart and the Norwich Diocese next argue that, even if the court concludes that the defendants did owe a duty to the plaintiffs, the alleged breach of that duty was not the proximate cause of the plaintiffs' alleged injuries. Specifically, they assert that it was the alleged sexual misconduct of Doyle which proximately caused the plaintiffs' injuries "rather than any possible negligence on the part of either Sacred Heart Church or the Diocese."

[9][10] Proximate cause is "[a]n actual cause that is a substantial factor in the resulting harm...." *Doe v. Manheimer,* 212 Conn. 748, 757, 563 A.2d 699 (1989) (quoting *Coburn v. Lenox Homes, Inc.,* 186 Conn. 370, 383, 441 A.2d 620 (1982)). "[A conclusion of proximate cause] becomes a conclusion of law only when the mind of a fair and reasonable man could reach only one conclusion; if there is room for a reasonable disagreement the question is one to be determined by the trier of fact." *Id.* (quoting *Trzcinski v. Richey,* 190 Conn. 285, 295, 460 A.2d 1269 (1983)).

Because there is a disputed issue of fact as to whether the defendants had knowledge of Doyle's alleged sexual misconduct, the court cannot determine, as a matter of law, that the defendants' alleged negligence in supervising Doyle was not the proximate cause of the plaintiffs' injuries. Accordingly, the defendants' argument fails. Due to the court's conclusion that there is an issue of fact concerning the defendant's notice of Doyle's alleged sexual misconduct, the court must deny the defendant's motion for summary judgment. This denial however, is without prejudice to the defendant to renew the motion upon presentation, by affidavit or otherwise, of facts disproving the plaintiffs' allegations that during 1979-1993, Doyle underwent treatment for sexual abuse of minors at Servant's of Paraclete in New Mexico and/or St. Luke's Treatment Center in Maryland. Should the defendants submit such evidence, the plaintiffs are given leave to file counter affidavits.

CONCLUSION

For the foregoing reasons, Sacred Heart's and the Norwich Diocese's motion for summary judgment (document no. 16) is granted in part and denied in part. The motion is granted with respect to each of the plaintiff's claims based upon the doctrine of respondeat superior. Accordingly, Counts 1, 2, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 19, and 20 are dismissed to the extent that they allege claims against Sacred Heart or the Norwich Diocese. The motion is denied without prejudice with respect to the negligence claims (Counts 9, 10, 22, and 23). Further, the court grants Marianist's motion (document no. 24) with respect to the plaintiff's respondeat superior claims (Counts 8 and 21), and denies the motion with respect to the negligence claims (Counts 11 and 24).

SO ORDERED.

RULING ON DEFENDANTS' RENEWED MOTION FOR SUMMARY JUDGMENT

[11] This is an action for damages in which the plaintiffs claim they were sexually abused by the defendant, Thomas J. Doyle. On March 28, 1995, the court granted in part and denied in part the defendants', Sacred Heart Church of Vernon, Connecticut ("Sacred Heart") and the Norwich Roman Catholic Diocesan Corporation ("the Norwich Diocese"), motion for summary judgment. *See Nutt v. Norwich Roman Catholic Diocese et al.,* 921 F.Supp. 66 (D.Conn. March 28, 1995). The court granted the defendants' motion with respect to the claims against them based upon the doctrine of respondeat superior. The court denied, without prejudice, the defendants' motion as it pertained to the claims against them based upon negligence. The court gave the defendants leave to renew their motion "upon presentation, by affidavit or otherwise, of facts disproving the plaintiff's allegations that during [the period alleged in the complaint], Doyle underwent treatment for sexual abuse of minors at Servant's of Parcelete in New Mexico and/or St. *76 Luke's Treatment Center in Maryland." *Id.* at 75. On March 31, 1995, the defendants filed the within renewed motion for summary judgment as to the negligence claims with supporting affidavits. For the reasons stated herein, the court grants the motion.

DISCUSSION [FN1]

FN1. The court incorporates by reference the statement of facts recited in the court's March 28, 1995 "Ruling on Defendants' Motions."

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In support of their renewed motion for summary judgment as to the negligence claims, the defendants argue that the affidavits filed in support thereof

> make unequivocally clear that at no time prior to September 1992, did either of [the defendants] ever have any knowledge or reason to believe or suspect that [Doyle] had ever undergone or participated in any retreat or treatment for sexual abuse of minors or for any sexual misconduct of any kind ... at any retreat or treatment facility at any location.

This, the defendants argue, "clearly establish[es] the total absence of any ... knowledge or notice in this case. This demonstrated absence of any genuine issue of fact as to neither [of the defendants] having had any knowledge or notice of sexual misconduct relating to ... Doyle ... calls for the entry of summary judgment" as to the negligence counts.

Despite the court's express directive granting the plaintiffs leave to file counter affidavits, the plaintiffs have filed no formal response to the defendants' renewed motion. Rather, by way of letter to the court, the plaintiffs refer the court to their prior filings in connection with the defendants' initial motion for summary judgment.

"In order to defeat the defendants' motion for summary judgment [as to the negligence claims], the plaintiffs must demonstrate that there is a genuine issue of material fact as to whether the risk of injury suffered by the plaintiffs was foreseeable to the defendants. *See Monahan v. Montgomery,* 153 Conn. 386, 216 A.2d 824 (1966)." *Nutt v. Norwich Roman Catholic Diocese et al.,* 921 F.Supp. 66, 74 (D.Conn. March 28, 1995); *see Noebel v. Housing Authority,* 146 Conn. 197, 201, 148 A.2d 766 (1959). The plaintiffs, moreover, "may not rest on the mere allegations ... of [their] pleading, but [their] response, by affidavits or ... otherwise ... must set forth specific facts showing that there is a genuine issue for trial. If the [plaintiffs do] not so respond, summary judgment, if appropriate, shall be entered against the [plaintiffs]." Fed.R.Civ.P. 56(e).

The affidavits of Bishop Daniel P. Reilly, Reverend Monsignor Paul J. St. Onge, Reverend John J. White, and Thomas J. Madden expressly state that these individuals had no knowledge or suspicion that Doyle underwent treatment for sexual abuse of minors at the locations or during the time period alleged in the complaint. The plaintiffs, despite being given ample opportunity to do so, have filed no affidavits or any other material whatsoever countering the factual assertions set forth in the defendants' affidavits. There is, therefore, nothing in the record establishing any issue of fact with respect to the defendants' notice of Doyle's alleged sexual misconduct. Accordingly, the defendants are entitled to judgment on the negligence counts as a matter of law.

CONCLUSION

For the foregoing reasons, the defendants' renewed motion for summary judgment (document no. 71) is granted. Counts nine, ten, twenty-two, and twenty-three are, therefore, dismissed to the extent they allege claims against Sacred Heart or the Norwich Diocese.

SO ORDERED.

921 F.Supp. 66

END OF DOCUMENT

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EXHIBIT 41

89 S.Ct. 601
21 L.Ed.2d 658
(Cite as: 393 U.S. 440, 89 S.Ct. 601)

Supreme Court of the United States

PRESBYTERIAN CHURCH IN the UNITED STATES et al., Petitioners,
v.
MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH et al.

No. 71.

Argued Dec. 9 and 10, 1968.
Decided Jan. 27, 1969.

Actions by local churches to enjoin general church from trespassing on local church properties. General church cross-claimed for injunctive relief. The Superior Court of Chatham County, Georgia, rendered judgment to plaintiffs, and defendants appealed. The Supreme Court of Georgia, 224 Ga. 61, 159 S.E.2d 690, affirmed. On certiorari, the United States Supreme Court, Mr. Justice Brennan, held that restraints of First Amendment, as applied to states through Fourteenth Amendment, forbid a civil court from awarding church property on basis of interpretation and significance the civil court assigns to aspects of church doctrine.

Reversed and remanded with directions.

West Headnotes

[1] Federal Courts ⇐504.1
170Bk504.1 Most Cited Cases
(Formerly 170Bk504)

The United States Supreme Court granted certiorari to consider First Amendment questions raised in actions by local churches to enjoin general church from trespassing on local church properties wherein general church contended that questions of ecclesiastical nature concerning whether or not a church has abandoned its tenets and doctrines are exclusively within jurisdiction of church courts and should not be submitted to a jury for determination as this would destroy doctrine of separation of church and state. U.S.C.A.Const. Amend. 1.

[2] Property ⇐1
315k1 Most Cited Cases

State has a legitimate interest in resolving property disputes.

[3] Courts ⇐5
106k5 Most Cited Cases

A civil court is a proper forum for resolution of property disputes.

[4] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

First Amendment severely circumscribes role that civil courts may play in resolving church property disputes. U.S.C.A.Const. Amends. 1, 14.

[5] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

Not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. U.S.C.A.Const. Amends. 1, 14.

[6] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

First Amendment enjoins employment of organs of government for essentially religious purposes. U.S.C.A.Const. Amend. 1.

[8] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

Restraints of First Amendment, as applied to states through Fourteenth Amendment, forbid a civil court from awarding church property on basis of interpretation and significance the civil court assigns to aspects of church doctrine. U.S.C.A.Const. Amends. 1, 14.

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[9] Religious Societies ⇐24
332k24 Most Cited Cases

States, religious organizations and individuals must structure relationships involving church property so as not to require civil courts to resolve ecclesiastical questions.

[10] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

First Amendment precluded resolution of property dispute between local churches and general church by civil court on basis of departure-from-doctrine standard, that is, whether general church had abandoned its tenets of faith and practice existing at time of affiliation by local churches. U.S.C.A.Const. Amend. 1.

[11] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

First Amendment prohibits state from employing religious organizations as an arm of civil judiciary to perform function of interpreting and applying state standards. U.S.C.A.Const. Amend. 1.

[12] Religious Societies ⇐14
332k14 Most Cited Cases

A civil court may no more review a church decision applying a state departure- from-doctrine standard than it may apply that standard itself. U.S.C.A.Const.Amend. 1.

****602 *440** Charles L. Gowen, Atlanta, Ga., for petitioners.

*441 Owen H. Page, Savannah, Ga., for respondents.

Mr. Justice BRENNAN delivered the opinion of the Court.

This is a church property dispute which arose when two local churches withdrew from a hierarchical general church organization. Under Georgia law the right to the property previously used by the local churches was made to turn on a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it. The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine.

Petitioner, Presbyterian Church in the United States, is an association of local Presbyterian churches governed *442 by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body.

A dispute arose between petitioner, the general church, and two local churches in Savannah, Georgia--the respondents, Hull Memorial Presbyterian Church and Eastern Heights Presbyterian Church--over control of the properties used until they by the local churches. In 1966, the membership of the local churches, in the belief that certain actions and pronouncements of the general church were violations of that organization's constitution and departures from the doctrine and practice in force at the time of affiliation, [FN1] voted to withdraw from the general church and to reconstitute the local churches as an autonomous Presbyterian organization. The ministers of the two ****603** churches renounced the general church's *443 jurisdiction and authority over them, as did all but two of the ruling elders. In response, the general church, through the Presbytery of Savannah, established an Administrative Commission to seek a conciliation. The dissident local churchmen *remained steadfast; consequently,* the Commission acknowledged the withdrawal of the local leadership and proceeded to take over the local churches' property on behalf of the general church until new local leadership could be appointed.

FN1. The opinion of the Supreme Court of Georgia summarizes the claimed violations and departures from petitioner's original tenets of faith and practice as including the

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following: 'ordaining of women as ministers and ruling elders, making pronouncements and recommendations concerning civil, economic, social and political matters, giving support to the removal of Bible reading and prayers by children in the public schools, adopting certain Sunday School literature and teaching neo-orthodoxy alien to the Confession of Faith and Catechisms, as originally adopted by the general church, and causing all members to remain in the National Council of Churches of Christ and willingly accepting its leadership which advocated named practices, such as the subverting of parental authority, civil disobedience and intermeddling in civil affairs'; also 'that the general church has * * * made pronouncements in matters involving international issues such as the Vietnam conflict and has disseminated publications denying the Holy Trinity and violating the moral and ethical standards of the faith.' 224 Ga. 61, 62--63, 159 S.E.2d 690, 692 (1968).

[1] The local churchmen made no effort to appeal the Commission's action to higher church tribunals--the Synod of Georgia or the General Assembly. Instead, the churches filed separate suits in the Superior Court of Chatham County to enjoin the general church from trespassing on the disputed property, title to which was in the local churches. The cases were consolidated for trial. The general church moved to dismiss the actions and cross-claimed for injunctive relief in its own behalf on the ground that civil courts were without power to determine whether the general church had departed from its tenets of faith and practice. The motion to dismiss was denied, and the case was submitted to the jury on the theory that Georgia law implies a trust of local church property for the benefit of the general church on the sole condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches. [FN2] Thus, the jury was instructed to determine whether the actions of the general church 'amount to a fundamental or substantial abandonment of the original tenets and doctrines of the (general *444 church), so that the new tenets and doctrines are utterly variant from the purposes for which the (general church) was founded.' The jury returned a verdict for the local churches, and the trial judge thereupon declared that the implied trust had terminated and enjoined the general church from interfering with the use of the property in question. The Supreme Court of Georgia affirmed, 224 Ga. 61, 159 S.E.2d 690 (1968). We granted certiorari to consider the First Amendment questions raised. [FN3] **604392 U.S. 903, 88 S.Ct. 2060, 20 L.Ed.2d 1362 (1968). We reverse.

FN2. This theory derives from principles fashioned by English courts. See, e.g., Craigdallie v. Aikman, 1 Dow 1, 3 Eng.Rep. 601 (H.L.1813) (Scot.); Attorney General ex rel. Mander v. Pearson, 3 Mer. 353, 36 Eng.Rep. 135 (Ch. 1817). For the subsequent development of the implied trust theory in English courts, see Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142, 1148-- 1149 (1962).

FN3. We reject the contention of respondent local churches that no First Amendment issues were raised or decided in the state courts. Petitioner's answer and cross-claim in each case included an express allegation that the action of respondents in appropriating the church property to their use was 'in violation of the laws of Georgia, the United States of America, and the Southern Presbyterian Church.' (Italics supplied.) At trial, petitioners' counsel objected to the admission of all testimony 'pertaining to (the) alleged deviation from the faith and practice of the Presbyterian Church in the United States' because that question was 'exclusively within the right of the Presbyterian Church in the United States through its proper judicial body to determine.' On appeal, petitioners again contended 'that questions of an ecclesiastical nature concerning whether or not a church has abandoned its tenents (sic) and doctrines, or some of them, are exclusively within the jurisdiction of the church courts and should not be submitted to a jury for determination as this would

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> destroy the doctrine of separation of church and state.' Petitioners thus clearly raised claims under the First Amendment as applied to the States by the Fourteenth Amendment. Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 116, 119, 73 S.Ct. 143, 97 L.Ed. 120 (1952). The Georgia Supreme Court considered and decided these claims. 'In considering this contention (that the petitions raise ecclesiastical questions which are exclusively within the jurisdiction of the church, not of civil courts, and therefore that respondents could not maintain their action),' the court said, 'we are mindful that 'The traditional American doctrine of freedom of religion and separation of church and state carries with it freedom of the church from having its doctrines or beliefs defined, interpreted, or censored by civil courts. '" 224 Ga., at 68, 159 S.E.2d, at 695. The court concluded, however, that the trial court did not violate the doctrine. Citing Georgia Code Ann. s 22--408, which provides: 'Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust,' the court held that 'a trust (in favor of the general church) is conditioned upon the general church's adherence to its tenets of faith and practice existing when the local church affiliated with it and * * * an abandonment of, or departure from, such tenets is a diversion from the trust, which the civil courts will prevent.' 224 Ga., at 68, 159 S.E.2d, at 695.

*445 [2][3] It is of course true that the State has a legitimate interest in resolving property disputes, and that a civil court is a proper forum for that resolution. Special problems arise, however, when these disputes implicate controversies over church doctrine and practice. The approach of this Court in such cases was originally developed in Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), a pre-Erie R. Co. v. Tompkins diversity decision decided before the application of the First Amendment to the States but nonetheless informed by First Amendment considerations. [FN4] There, as here, civil courts were asked to resolve a property dispute between a national Presbyterian organization and local churches of that organization. There, as here, the disputes arose out of a controversy over church doctrine. There, as here, the Court was asked to decree the termination of an implied trust because of departures from doctrine by the national organization. The Watson Court refused pointing out that it was wholly inconsistent with the American concept of the relationship ***446** between church and state to permit civil courts to determine ecclesiastical questions. In language which has a clear constitutional ring, the Court said

> FN4. 'Watson v. Jones, although it contains a reference to the relations of church and state under our system of laws, was decided without depending upon prohibition of state interference with the free exercise of religion. It was decided in 1871 (sic), before judicial recognition of the coercive power of the Fourteenth Amendment to protect the limitations of the First Amendment against state action. It long antedated the 1938 decisions of Erie R. Co. v. Tompkins and Ruhlin v. New York Life Ins. Co., 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, and 304 U.S. 202, 58 S.Ct. 860, 82 L.Ed. 1290 and, therefore, even though federal jurisdiction in the case depended solely on diversity, the holding was based on general law rather than Kentucky law.' Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 115--116, 73 S.Ct. 143, 154 (1952).

'In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. * * * All who unite themselves to such a body (the general church) do so with an implied consent to (its) government, and are bound to submit to it. But it

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would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them (sic) reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to ****605** such appeals as the organism itself provides for.' 13 Wall., at 728--729. [FN5]

FN5. Accord, see, e.g., decisions involving Presbyterian churches, Trustees of Pencader Presbyterian Church in Pencader Hundred v. Gibson, 26 Del.Ch. 375, 22 A.2d 782 (1941); Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873 (1956); St. John's Presbytery v. Central Presbyterian Church of St. Petersburg, 102 So.2d 714 (Fla.1958) ; see also Northside Bible Church v. Goodson, 387 F.2d 534 (C.A.5th Cir. 1967). See generally for an examination of the development and growth of the rules for settling church property disputes, Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv.L.Rev. 1142 (1962); 54 Va.L.Rev. 1451 (1968); Duesenberg, Jurisdiction of Civil Courts Over Religious Issues, 20 Ohio St.L.J. 508 (1959); Comment, Judicial Intervention in Church Property Disputes--Some Constitutional Considerations, 74 Yale L.J. 1113 (1965).

*447 The logic of this language leaves the civil courts no role in determining ecclesiastical questions in the process of resolving property disputes.

Later cases, however, also decided on nonconstitutional grounds, recognized that there might be some circumstances in which marginal civil court review of ecclesiastical determinations would be appropriate. [FN6] The scope of this review was delineated in Gonzalez v. Roman Catholic Archbishop of Manila, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929). There, Gonzalez claimed the right to be appointed to a chaplaincy in the Roman Catholic Church under a will which provided that a member of his family receive that appointment. The Roman Catholic Archbishop of Manila, Philippine Islands, refused to appoint Gonzalez on the ground that he did not satisfy the qualifications established by Canon Law for that office. Gonzalez brought suit in the Court of First Instance of Manila for a judgment directing the Archbishop, among other things, to appoint him chaplain. The trial court entered such an order, but the Supreme Court of the Philippine Islands reversed and 'absolved the Archbishop from the complaint.' This Court affirmed. Mr. Justice Brandeis, speaking for the Court, defined the civil court role in the following words: 'In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.' 280 U.S., at 16.

FN6. See, e.g., Bouldin v. Alexander, 15 Wall. 131, 21 L.Ed. 69 (1872); Brundage v. Deardorf, 55 F. 839 (C.C.N.D.Ohio 1893).

In Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), the Court converted the principle of Watson as qualified by Gonzalez into a constitutional rule. Kedroff grew out of a dispute between the Moscow-based general Russian Orthodox Church and the Russian Orthodox ***448** churches located in North America over an appointment to St. Nicholas Cathedral in New York City. The North American churches declared their independence from the general church, and the New York Legislature enacted a statute recognizing their administrative autonomy. The New York courts sustained the constitutionality of the statute and held that the North American churches' elected hierarch had the right to use the cathedral. This Court reversed, finding that the Moscow church had not acknowledged the schism, and holding the statute unconstitutional. The Court said, 344 U.S., at 116, 73 S.Ct. at 154:

'The opinion (in Watson v. Jones) radiates * * * a spirit of freedom for religious organizations, an independence from secular control or

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manipulation-- in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine. Freedom to select the clergy, where no improper methods of choice ****606** are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference.' (Italics supplied.)

And, speaking of the New York statute, the Court said further, id., at 119, 73 S.Ct. at 156:

'By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment.' (Italics supplied.)

This holding invalidating legislative action was extended to judicial action in Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960), where the Court held that the constitutional guarantees of religious liberty required the ***449** reversal of a judgment of the New York courts which transferred control of St. Nicholas Cathedral from the central governing authority of the Russian Orthodox Church to the independent Russian Church of America.

[4][5][6][7][8][9] Thus, the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, School District of Township of Abington, Pa. v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied ***450** requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination ****607** only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion--the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role.

[10][11][12] Since the Georgia courts on remand may undertake to determine whether petitioner is entitled to relief on its cross-claims, we find it appropriate to remark that the departure-from-doctrine element of Georgia's

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implied trust theory can play no role in any future judicial proceedings. The departure-from-doctrine approach is not susceptible of the marginal judicial involvement contemplated in Gonzalez. [FN7] Gonzalez' rights under a will ***451** turned on a church decision, the Archbishop's, as to church law, the qualifications for the chaplaincy. It was the archbishopric, not the civil courts, which had the task of analyzing and interpreting church law in order to determine the validity of Gonzalez' claim to a chaplaincy. Thus, the civil courts could adjudicate the rights under the will without interpreting or weighing church doctrine but simply by engaging in the narrowest kind of review of a specific church decision--i.e., whether that decision resulted from fraud, collusion, or arbitrariness. Such review does not inject the civil courts into substantive ecclesiastical matters. In contrast, under Georgia's departure- from-doctrine approach, it is not possible for the civil courts to play so limited a role. Under this approach, property rights do not turn on a church decision as to church doctrine. The standard of departure-from-doctrine, though it calls for resolution of ecclesiastical questions, is a creation of state, not church, law. Nothing in the record suggests that this state standard has been interpreted and applied in a decision of the general church. Any decisions which have been made by the general church about the local churches' withdrawal have at most a tangential relationship to the state- fashioned departure-from-doctrine standard. A determination whether such decisions are fraudulent, collusive, or arbitrary would therefore not answer the questions posed by the state standard. To reach those questions would require the civil courts to engage in the forbidden process of interpreting and weighing church doctrine. Even if the general church had attempted to apply the state standard, the civil courts could not review and enforce the church decision without violating the Constitution. The First Amendment prohibits a State from employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying state standards. See School District of Township of Abington, Pa. ***452** v. Schempp, supra. Thus, a civil court may no more review a church decision applying a state departure-from-doctrine standard than it may apply that standard itself.

FN7. We have no occasion in this case to define or discuss the precise limits of review for 'fraud, collusion, or arbitrariness' within the meaning of Gonzalez.

The judgment of the Supreme Court of Georgia is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Judgment reversed and case remanded.

Mr. Justice HARLAN, concurring.

I am in entire agreement with the Court's rejection of the 'departure-from- doctrine' approach taken by the Georgia courts, as that approach necessarily requires the civilian courts to weigh the significance and the meaning of disputed ****608** religious doctrine. I do not, however, read the Court's opinion to go further to hold that the Fourteenth Amendment forbids civilian courts from enforcing a deed or will which expressly and clearly lays down conditions limiting a religious organization's use of the property which is granted. If, for example, the donor expressly gives his church some money on the condition that the church never ordain a woman as a minister or elder, see ante, at 602, n. 1, or never amend certain specified articles of the Confession of Faith, he is entitled to his money back if the condition is not fulfilled. In such a case, the church should not be permitted to keep the property simply because church authorities have determined that the doctrinal innovation is justified by the faith's basic principles. Cf. Watson v. Jones, 13 Wall. 679, 722--724, 20 L.Ed. 666 (1872).

On this understanding, I join the Court's opinion.

89 S.Ct. 601, 393 U.S. 440, 21 L.Ed.2d 658

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EXHIBIT 42

64 S.Ct. 438
88 L.Ed. 645
(Cite as: 321 U.S. 158, 64 S.Ct. 438)

Supreme Court of the United States

PRINCE
v.
COMMONWEALTH OF MASSACHUSETTS.

No. 98.

Argued Dec. 14, 1943.
Decided Jan. 31, 1944.
Rehearing Denied Mar. 27, 1944.
See 321 U.S. 804, 64 S.Ct. 784.

Sarah Prince was convicted of furnishing an infant with magazines knowing she would sell them unlawfully on the street and of permitting such infant to work contrary to law, 313 Mass. 223, 46 N.E.2d 755, and she appeals.

Affirmed.

Mr. Justice JACKSON, Mr. Justice ROBERTS, Mr. Justice FRANKFURTER, and Mr. Justice MURPHY, dissenting.

West Headnotes

[1] Federal Courts ⇐506
170Bk506 Most Cited Cases
(Formerly 106k394(10))

On appeal to Federal Supreme Court from conviction in state court for furnishing infant with magazines knowing she would sell them unlawfully and for permitting infant to work contrary to law on ground that the statute abridged appellant's freedom of religion and denied appellant equal protection of the laws, whether what the infant did was a sale or an offer to sell or was work within state statute was not open to review. G.L.(Ter.Ed.) Mass. c. 149, s 69, as amended by St.1939, c. 461, s 7; s 81; U.S.C.A.Const. Amends. 1, 14.

[2] Child Custody ⇐22
76Dk22 Most Cited Cases
(Formerly 285k2(1))

The custody, care, and nurture of the child resides first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.

[3] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

The family is not beyond regulation in the public interest as against a claim of religious liberty.

[4] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[4] Parent and Child ⇐1
285k1 Most Cited Cases

Neither rights of religion nor rights of parenthood are beyond limitation.

[5] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

The authority of the State as parens partriae is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience.

[6] Constitutional Law ⇐84.5(17)
92k84.5(17) Most Cited Cases
(Formerly 92k84)

The right to practice religion does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death.

[7] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[7] Parent and Child ⇐1
285k1 Most Cited Cases

The state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare, and such power includes to some extent matters of conscience and religious conviction.

[8] Infants ⇐11

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211k11 Most Cited Cases
(Formerly 211k12)

The state's authority over children's activities is broader than over like actions of adults.

[9] Infants ⇐13
211k13 Most Cited Cases

A democratic society rests for its continuance upon the healthy, well-rounded growth of young people into full maturity as citizens with all that implies, and state may secure it against impeding restraints and dangers within a broad range of selection.

[10] Infants ⇐65
211k65 Most Cited Cases

What may be wholly permissible for adults may not be so for children either with or without their parents' presence.

[11] Highways ⇐165
200k165 Most Cited Cases

[11] Highways ⇐167
200k167 Most Cited Cases
(Formerly 200k168)

Street preaching, whether oral or by handing out literature, is not the primary use of the highway even for adults, and, within reasonable limits, use of highway can be regulated in accommodation to the primary and other incidental uses.

[12] Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases

[12] Constitutional Law ⇐242.1(4)
92k242.1(4) Most Cited Cases
(Formerly 92k238(1))

[12] Constitutional Law ⇐274(2)
92k274(2) Most Cited Cases
(Formerly 92k274)

[12] Infants ⇐12(6)
211k12(6) Most Cited Cases
(Formerly 211k12)

A state statute forbidding boys under 12 and girls under 18 to sell magazines, etc., in street or public places and penalizing the furnishing of such minors magazines, etc., with knowledge of minor's intent to sell them in street or public place, and penalizing parent, custodian, etc., who permits such minors to sell magazines, etc., in street or public place, is not unconstitutional as denying or abridging "freedom of religion" or denying "equal protection of the laws" as applied to member of a religious sect who furnished religious periodicals to minor girl who was under custody of member, and permitted girl to sell and distribute periodicals on the streets. G.L.(Ter.Ed.) Mass. c. 149, § 69 as amended by St.1939, c. 461, § 7; §§ 80, 81; U.S.C.A.Const. Amends. 1, 14.

****438 *159** Appeal from the Superior Court of Massachusetts, Plymouth County.

****439** Mr. Hayden C. Covington, of Brooklyn, N.Y., for appellant.

Mr. R. T. Bushnell, of Boston, Mass., for appellee.

Mr. Justice RUTLEDGE delivered the opinion of the Court.

The case brings for review another episode in the conflict between Jehovah's Witnesses and state authority. This time Sarah Prince appeals from convictions for violating Massachusetts' child labor laws, by acts said to be a rightful exercise of her religious convictions.

When the offenses were committed she was the aunt and custodian of Betty M. Simmons, a girl nine years of age. Originally there were three separate complaints. They ***160** were, shortly, for (1) refusal to disclose Betty's identity and age to a public officer whose duty was to enforce the statutes; (2) furnishing her with magazines, knowing she was to sell them unlawfully, that is, on the street; and (3) as Betty's custodian, permitting her to work contrary to law. The complaints were made, respectively, pursuant to Sections 79, 80 and 81 of Chapter 149, Gen.Laws of Mass. (Ter.Ed.). The Supreme Judicial Court reversed the conviction under the first complaint on state grounds; [FN1] but sustained the judgments founded on the other two. [FN2] 313 Mass. 223, 46 N.E.2d 755. They present the only questions for our decision. These are whether Sections 80 and 81, as applied, contravene the

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Fourteenth Amendment by denying or abridging appellant's freedom of religion and by denying to her the equal protection of the laws.

FN1 The court found there was no evidence that appellant was asked Betty's age. It then held that conviction for refusal to disclose the child's name, based on the charge under Section 79, would violate Article 12 of the Declaration of Rights of the Commonwealth, which provides in part: 'No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself.'

FN2 Appellant received moderate fines on each complaint, first in the District Court of Brockton, then on pleas of not guilty by trial de novo without a jury in the Superior Court for Plymouth County. Motions to dismiss and quash the complaints, for directed findings, and for rulings, were made seasonably and denied by the Superior Court.

Sections 80 and 81 form parts of Massachusetts' comprehensive child labor law. [FN3] They provide methods for enforcing the prohibitions of Section 69, which is as follows:

FN3 Mass.Gen. Laws, Ter.Ed., c. 149, as amended by Acts and Resolves of 1939, c. 461.

'No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspapers, magazines, periodicals or any other articles of merchandise of any ***161** description, or exercise the trade of bootblack or scavenger, or any other trade, in any street or public place.'

Section 80 and 81, so far as pertinent, read:

'Whoever furnishes or sells to any minor any article of any description with the knowledge that the minor intends to sell such article in violation of any provision of sections sixty-nine to seventy-three, inclusive, or after having received written notice to this effect from any officer charged with the enforcement thereof, or knowingly procures or encourages any minor to violate any provisions of said sections, shall be punished by a fine of not less than ten nor more than two hundred dollars or by imprisonment for not more than two months, or both.' (Section 80)

'Any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of any provision of sections sixty to seventy-four, inclusive, * * * shall for a first offence be punished by a fine of not less than two nor more than ten dollars or by imprisonment for not more than ****440** five days, or both; * * *.' (Section 81)

The story told by the evidence has become familiar. It hardly needs repeating, except to give setting to the variations introduced through the part played by a child of tender years. Mrs. Prince, living in Brockton, is the mother of two young sons. She also has legal custody of Betty Simmons who lives with them. The children too are Jehovah's Witnesses and both Mrs. Prince and Betty testified they were ordained ministers. The former was accustomed to go each week on the streets of Brockton to distribute 'Watchtower' and 'Consolation,' according to the usual plan. [FN4] She had permitted the children to ***162** engage in this activity previously, and had been warned against doing so by the school attendance officer, Mr. Perkins. But, until December 18, 1941, she generally did not take them with her at night.

FN4 Cf. the facts as set forth in Jamison v. Texas, 318 U.S. 413, 63 S.Ct. 669; Largent v. Texas, 318 U.S. 418, 63 S.Ct. 667; Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, 146 A.L.R. 82; Busey v. District of Columbia, 75 U.S.App.D.C. 352, 129 F.2d 24. A common feature is that specified small sums are generally asked and received but the publications may be had without the payment if so desired.

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That evening, as Mrs. Prince was preparing to leave her home, the children asked to go. She at first refused. Childlike, they resorted to tears and, motherlike, she yielded. Arriving downtown, Mrs. Prince permitted the children 'to engage in the preaching work with her upon the sidewalks.' That is, with specific reference to Betty, she and Mrs. Prince took positions about twenty feet apart near a street intersection. Betty held up in her hand, for passersby to see, copies of 'Watch Tower' and 'Consolation.' From her shoulder hung the usual canvas magazine bag, on which was printed 'Watchtower and Consolation 5¢ per copy.' No one accepted a copy from Betty that evening and she received no money. Nor did her aunt. But on other occasions, Betty had received funds and given out copies.

Mrs. Prince and Betty remained until 8:45 p.m. A few minutes before this Mr. Perkins approached Mrs. Prince. A discussion ensued. He inquired and she refused to give Betty's name. However, she stated the child attended the Shaw School. Mr. Perkins referred to his previous warnings and said he would allow five minutes for them to get off the street. Mrs. Prince admitted she supplied Betty with the magazines and said, '(N)either you nor anybody else can stop me * * *. This child is exercising her God-given right and her constitutional right to preach the gospel, and no creature has a right to interfere with God's commands.' However, Mrs. Prince and Betty departed. She remarked as she went, 'I'm not going through this any more. We've been through it time and time again. I'm going home and put the little girl to bed.' It may be added that testimony, by Betty, her aunt and others, was offered at the trials, and was excluded, ***163** to show that Betty believed it was her religious duty to perform this work and failure would bring condemnation 'to everlasting destruction at Armageddon.'

[1] As the case reaches us, the questions are no longer open whether what the child did was a 'sale' or an 'offer to sell' within Section 69 [FN5] or was 'work' within Section 81. The state court's decision has foreclosed them adversely to appellant as a matter of state law. [FN6] The only question ****441** remaining therefore is whether, as construed and applied, the statute is valid. Upon this the court said: 'We think that freedom of the press and of religion is subject to incidental regulation to the slight degree involved in the prohibition of the selling of religious literature in streets and public places by boys under twelve and girls under eighteen and in the further statutory provisions herein considered, which have been adopted as a means of enforcing ***164** that prohibition.' 313 Mass. 223, 229, 46 N.E.2d 755, 758.

FN5 In this respect the Massachusetts decision is contrary to the trend in other states. Compare State v. Mead, 230 Iowa 1217, 300 N.W. 523; State v. Meredith, 197 S.C. 351, 15 S.E.2d 678; State ex rel. Semansky v. Stark, 196 La. 307, 199 So. 129; City of Shreveport v. Teague, 200 La. 679, 8 So.2d 640; People v. Barber, 289 N.Y. 378, 46 N.E.2d 329; Thomas v. City of Atlanta, 59 Ga.App. 520, 1 S.E.2d 598; City of Cincinnati v. Mosier, 61 Ohio App. 81, 22 N.E.2d 418. Contra: McSparran v. City of Portland (Circuit Court, Multnomah County, Oregon, June 8, 1942), appeal dismissed, 169 Or. 377, 129 P.2d 65, certiorari denied, 318 U.S. 768, 63 S.Ct. 759.

FN6 The court's opinion said: 'The judge could find that if a passerby should hand over five cents in accordance with the sign on the bag and should receive a magazine in return, a sale would be effected. The judge was not required to accept the defendant's characterization of that transaction as a 'contribution.' He could believe that selling the literature played a more prominent part in the enterprise than giving it way. He could find that the defendant furnished the magazines to Betty, knowing that the latter intended to sell them, if she could, in violation of section 69. * * * The judge could find that the defendant permitted Betty to 'work' in violation of section 81. * * * (W)e cannot say that the evils at which the statutes were directed attendant upon the selling by children of newspapers, magazines, periodicals, and other merchandise in streets and public places do not exist where the publications are of a religious nature.' 313 Mass. 223, 227, 228, 46

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N.E.2d 755, 757.

Appellant does not stand on freedom of the press. Regarding it as secular, she concedes it may be restricted as Massachusetts has done. [FN7] Hence, she rests squarely on freedom of religion under the First Amendment, applied by the Fourteenth to the states. She buttresses this foundation, however, with a claim of parental right as secured by the due process clause of the latter Amendment. [*FN8*] *Cf.* Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446. These guaranties, she thinks, guard alike herself and the child in what they have done. Thus, two claimed liberties are at stake. One is the parent's, to bring up the child in the way he should go, which for appellant means to teach him the tenets and the practices of their faith. The other freedom is the child's, to observe these; and among them is 'to preach the gospel * * * by public distribution' of 'Watchtower' and 'Consolation,' in conformity with the scripture: 'A little child shall lead them.'

> FN7 Appellant's brief says: 'The purpose of the legislation is to protect children from economic exploitation and keep them from the evils of such enterprises that contribute to the degradation of children.' And at the argument counsel stated the prohibition would be valid as against a claim of freedom of the press as a nonreligious activity.

> FN8 The due process claim, as made and perhaps necessarily, extends no further than that to freedom of religion, since in the circumstances all that is comprehended in the former is included in the latter.

If by this position appellant seeks for freedom of conscience a broader protection than for freedom of the mind, it may be doubted that any of the great liberties insured by the First Article can be given higher place than the others. All have preferred position in our basic scheme. Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213, 128 A.L.R. 1352. All are interwoven there together. Differences there are, in them and in the modes appropriate for their exercise. But they have unity in the charter's prime place because they have unity in their human sources and ***165** functionings. Heart and mind are not identical. Intuitive faith and reasoned judgment are not the same. Spirit is not always thought. But in the everyday business of living, secular or otherwise, these variant aspects of personality find inseparable expression in a thousand ways. They cannot be *altogether parted in law more than in life.*

To make accommodation between these freedoms and an exercise of state authority always is delicate. It hardly could be more so than in such a clash as this case presents. On one side is the obviously earnest claim for freedom of conscience and religious practice. With it is allied the parent's claim to authority in her own household and in the rearing of her children. The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democracy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner ****442** conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growth into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on.

[2] The rights of children to exercise their religion, and of parents to give them religious training and to *encourage them in the practice of religious belief,* as against preponderant sentiment and assertion of state power voicing it, have had recognition here, most recently in ***166**West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178. Previously in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468, this Court had sustained the parent's authority to provide religious with secular schooling, and the child's right to receive it, as against the state's requirement of attendance at public schools. And in

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Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446, children's rights to receive teaching in languages other than the nation's common tongue were guarded against the state's encroachment. It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. Pierce v. Society of Sisters, supra. And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.

[3][4][5][6][7] But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244; Davis v. Beason, 133 U.S. 333, 10 S.Ct. 299, 33 L.Ed. 637. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, [FN9] regulating or prohibiting the child's labor, [FN10] and in many other ways. [FN11] Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. [FN12] The right to practice religion freedly does not include liberty to expose the community or the child ***167** to communicable disease or the latter to ill health or death. People v. Pierson, 176 N.Y. 201, 68 N.E. 243, 63 L.R.A. 187, 98 Am.St.Rep. 666. [FN13] The catalogue need not be lengthened. It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction.

FN9 State v. Bailey, 157 Ind. 324, 61 N.E. 730, 59 L.R.A. 435; compare Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1446; Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468; West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178.

FN10 Sturges & Burn Mfg. Co. v. Beauchamp, 231 U.S. 320, 34 S.Ct. 60, 58 L.Ed. 245, L.R.A.1915A, 1196; compare Muller v. Oregon, 208 U.S. 412, 28 S.Ct. 324, 52 L.Ed. 551, 13 Ann.Cas. 957.

FN11 Cf. People v. Ewer, 141 N.Y. 129, 36 N.E. 4, 25 L.R.A. 794, 38 Am.St.Rep. 788.

FN12 Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765.

FN13 See also State v. Chenoweth, 163 Ind. 94, 71 N.E. 197; Owens v. State, 6 Okl.Cr. 110, 116 P. 345, 36 L.R.A.,N.S., 633, Ann.Cas.1913B, 1218.

But it is said the state cannot do so here. This, first, because when state action impinges upon a claimed religious freedom, it must fall unless shown to be necessary for or conducive to the child's protection against some clear and present danger, cf. Schenck v. United States, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470; and, it is added, there was no such showing here. The child's presence on the street, with her ****443** guardian, distributing or offering to distribute the magazines, it is urged, was in no way harmful to her, nor in any event more so than the presence of many other children at the same time and place, engaged in shopping and other activities not prohibited. Accordingly, in view of the preferred position the freedoms of the First Article occupy, the statute in its present application must fall. It cannot be sustained by any presumption of validity. Cf. Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155. And, finally, it is said, the statute is, as to children, an absolute prohibition, not merely a reasonable regulation, of the denounced activity.

Concededly a statute or ordinance identical in terms with Section 69, except that it is applicable to adults or all persons generally, would be invalid. Young v. California, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Nichols v. Massachusetts, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Jamison v. Texas, 318

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U.S. 413, 63 S.Ct. 669; Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, 146 A.L.R. 82; Martin v. City of Struthers, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313. [FN14] *168 But the mere fact a state could not wholly prohibit this form of adult activity, whether characterized locally as a 'sale' or otherwise, does not mean it cannot do so for children. Such a conclusion granted would mean that a state could impose no greater limitation upon child labor than upon adult labor. Or, if an adult were free to enter dance halls, saloons, and disreputable places generally, in order to discharge his conceived religious duty to admonish or dissuade persons from frequenting such places, so would be a child with similar convictions and objectives, if not alone then in the parent's company, against the state's command.

FN14 Pertinent also are the decisions involving license features: Lovell v. City of Griffin, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949; Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155; Hague v. Committee for Industrial Organization, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423.

[8][9] The state's authority over children's activities is broader than over like actions of adults. This is peculiarly true of public activities and an matters of employment. A democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection. Among evils most appropriate for such action are the crippling effects of child employment, [FN15] more especially in public places, and the possible harms arising from other activities subject to all the diverse influences of the street. [FN16] It is too late now to doubt *169 that legislation appropriately designed to reach such evils is within the state's police power, whether against the parents claim to control of the child or one that religious scruples dictate contrary action.

FN15 See, e.g., Volumes 1-4, 6-8, 14, 18, Report on Condition of Woman and Child Wage Earners in the United States, Sen. Doc. No. 645, 61st Cong., 2d Sess.; The Working Children of Boston, U.S. Dept. of Labor, Children's Bureau Publication No. 89 (1922); Fuller, The Meaning of Child Labor (1922); Fuller and Strong, Child Labor in Massachusetts (1926).

FN16 See, e.g., Clopper, Child Labor in City Streets (1912); Children in Street Work, U.S. Dept. of Labor, Children's Bureau Publication No. 183 (1928); Children Engaged in Newspaper and Magazine Selling and Delivering, U.S. Dept. of Labor, Children's Bureau Publication No. 227 (1935).

[10] It is true children have rights, in common with older people, in the primary use of highways. But even in such use streets afford dangers for them not affecting adults. And in other uses, whether in work or in other things, this difference may be magnified. This is so not only when children are unaccompanied but certainly to some extent when they are with their parents. What may be wholly permissible for adults therefore may not be so for children, either with or without their parents' presence.

[11][12] Street preaching, whether oral or by handing out literature, is not the primary use of the highway, even for adults. **444 While for them it cannot be wholly prohibited, it can be regulated within reasonable limits in accommodation to the primary and other incidental uses. [FN17] But, for obvious reasons, notwithstanding appellant's contrary view, [FN18] the validity of such a prohibition applied to children not accompanied by an older person hardly would seem open to question. The case reduces itself therefore to the question whether the presence of the child's guardian puts a limit to the state's power. That fact may lessen the likelihood that some evils the legislation seeks to avert will occur. But it cannot forestall all of them. The zealous though lawful exercise of the right to engage in propagandizing the community, whether in religious, political or other matters, may and at times does create situations *170 difficult enough for adults to cope with and wholly inappropriate for children, especially of tender years, to face. Other harmful possibilities could be stated, of emotional

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It is difficult for me to believe that going upon the streets to accost the public is the same thing for application of public law as withdrawing to a private structure for religious worship. But if worship in the churches and the activity of Jehovah's Witnesses on the streets 'occupy the same high estate' and have the 'same claim to protection' it would seem that child labor laws may be applied to both if to either. If the Murdock doctrine stands along with today's decision, a foundation is laid for any state intervention in the indoctrination and participation of children in religion, provided it is done in the name of their health or welfare.

This case brings to the surface the real basis of disagreement among members of this Court in previous Jehovah's Witness cases. Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292, 146 A.L.R. 82; Martin v. Struthers, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313; Jones v. Opelika, 316 U.S. 584, 86 L.Ed. 1691, 141 A.L.R. 514; Id., 319 U.S. 103, 63 S.Ct. 890, 87 L.Ed. 1290; Douglas v. Jeannette, 319 U.S. 157, 63 S.Ct. 877, 882, 87 L.Ed. 1324. Our basic difference seems to be as to the method of establishing limitations which of necessity bound religious freedom.

My own view may be shortly put: I think the limits begin to operate whenever activities begin to affect or collide with liberties of others or of the public. Religious activities which concern only members of the faith are and ought to be free--as nearly absolutely free as anything can be. But beyond these, many religious denominations or sects engage in collateral and secular activities intended to obtain means from unbelievers to sustain the worshippers and their leaders. They raise money, not merely by passing the plate to those who voluntarily attend services or by contributions by their own people, but by solicitations and drives addressed to the public by holding public dinners and entertainments, by various kinds *178 of sales and Bingo games and lotteries. All such money-raising activities on a public scale are, I think, Caesar's affairs and may be regulated by the state so long as it does not discriminate against one because he is doing them for a religious purpose, and the regulation is not arbitrary and capricious, in violation of other provisions of the Constitution.

The Court in the Murdock case rejected this principle of separating immune religious activities from secular ones in declaring the disabilities which the Constitution imposed on local authorities. Instead, the Court now draws a line based on age that cuts across both true exercise of religion and auxiliary secular activities. I think this is not a correct principle for defining the activities immune from regulation on grounds of religion, and Murdock overrules the grounds on which I think affirmance should rest. I have no alternative but to dissent from the grounds of affirmance of a judgment which I think was rightly decided, and upon right grounds, by the Supreme Judicial Court of Massachusetts. 313 Mass. 223, 46 N.E.2d 755.

Mr. Justice ROBERTS and Mr. Justice FRANKFURTER join in this opinion.

Mr. Justice MURPHY, dissenting.

*171 This attempt by the state of Massachusetts to prohibit a child from exercising her constitutional right to practice her religion on the public streets cannot, in my opinion, be sustained.

The record makes clear the basic fact that Betty Simmons, the nine-year old child in question, was engaged in a genuine religious, rather than commercial, activity. **446 She was a member of Jehovah's Witnesses and had been taught the tenets of that sect by her guardian, the appellant. Such tenets included the duty of publicly distributing religious tracts on the street and from door to door. Pursuant to this religious duty and in the company of the appellant, Betty Simmons on the night of December 18, 1941, was standing on a public street corner and offering to distribute Jehovah's Witness literature to passersby. There was no expectation of pecuniary profit to *172 herself or to appellant. It is undisputed, furthermore, that she did this of her own desire and with appellant's consent. She testified that she was motivated by her love of the Lord and that He commanded her to distribute this literature; this was, she declared, her way of worshipping God. She was occupied, in other words, in 'an age-old form of missionary evangelism' with a purpose 'as evangelical as the revival meeting.' Murdock v. Pennsylvania, 319 U.S. 105, 108, 109, 63 S.Ct. 870, 872, 873, 87 L.Ed. 1292, 146 A.L.R. 82.

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Religious training and activity, whether performed by adult or child, are protected by the Fourteenth Amendment against interference by state action, except insofar as they violate reasonable regulations adopted for the protection of the public health, morals and welfare. Our problem here is whether a state, under the guise of enforcing its child labor laws, can lawfully prohibit girls under the age of eighteen and boys under the age of twelve from practicing their religious faith insofar as it involves the distribution or sale of religious tracts on the public streets. No question of freedom of speech or freedom of press is present and we are not called upon to determine the permissible restraints on those rights. Nor are any truancy or curfew restrictions in issue. The statutes in question prohibit all children within the specified age limits from selling or offering to sell 'any newspapers, magazines, periodicals or any other articles of merchandise of any description * * * in any street or public place.' Criminal sanctions are imposed on the parents and guardians who compel or permit minors in their control to engage in the prohibited transactions. The state court has construed these statutes to cover the activities here involved, cf. State v. Richardson, 92 N.H. 178, 27 A.2d 94, thereby imposing an indirect restraint through the parents and guardians on the free exercise by minors of their religious beliefs. This indirect restraint is no less effective than a direct one. A square conflict between the constitutional *173 guarantee of religious freedom and the state's legitimate interest in protecting the welfare of its children is thus presented.

As the opinion of the Court demonstrates, the power of the state lawfully to control the religious and other activities of children is greater than its power over similar activities of adults. But that fact is no more decisive of the issue posed by this case than is the obvious fact that the family itself is subject to reasonable regulation in the public interest. We are concerned solely with the reasonableness of this particular prohibition of religious activity by children.

In dealing with the validity of statutes which directly or indirectly infringe religious freedom and the right of parents to encourage their children in the practice of a religious belief, we are not aided by any strong presumption of the constitutionality of such legislation. United States v. Carolene Products Co., 304 U.S. 144, 152, 58 S.Ct. 778, 783, 82 L.Ed. 1234, note 4. On the contrary, the human freedoms enumerated in the First Amendment and carried over into the Fourteenth Amendment are to be presumed to be invulnerable and any attempt to sweep away those freedoms is prima facie invalid. It follows that any restriction or prohibition must be justified by those who deny that the freedoms have been unlawfully invaded. The burden was therefore on the state of Massachusetts to prove the reasonableness and necessity of prohibiting children from engaging in religious activity of the type involved in this case.

The burden in this instance, however, is not met by vague references to the reasonableness underlying child labor legislation in general. The great interest of the state in shielding minors from the evil vicissitudes of early life does not warrant every limitation on their religious training and activities. The reasonableness that justifies the prohibition of the ordinary distribution of literature in the public streets by children is not necessarily the reasonableness *174 **447 that justifies such a drastic restriction when the distribution is part of their religious faith. Murdock v. Pennsylvania, supra, 319 U.S. 111, 63 S.Ct. 874, 87 L.Ed. 1292, 146 A.L.R. 82. If the right of a child to practice its religion in that manner is to be forbidden by constitutional means, there must be convincing proof that such a practice constitutes a grave and immediate danger to the state or to the health, morals or welfare of the child. West Virginia State Board of Education v. Barnette, 319 U.S. 624, 639, 63 S.Ct. 1178, 1186. The vital freedom of religion, which is 'of the very essence of a scheme of ordered liberty,' Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288, cannot be erased by slender references to the state's power to restrict the more secular activities of children.

The state, in my opinion, has completely failed to sustain its burden of proving the existence of any grave or immediate danger to any interest which it may lawfully protect. There is no proof that Betty Simmons' mode of worship constituted a serious menace to the public. It was carried on in an orderly, lawful manner at a public street corner. And 'one who is rightfully on a street which the state has left open to the public carries with him there as elsewhere the constitutional right to express his views in an orderly fashion. This right extends

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to the communication of ideas by handbills and literature as well as by the spoken word.' Jamison v. Texas, 318 U.S. 413, 416, 63 S.Ct. 669, 672. The sidewalk, no less than the cathedral or the evangelist's tent, is a proper place, under the Constitution, for the orderly worship of God. Such use of the streets is as necessary to the Jehovah's Witnesses, the Salvation Army and others who practice religion without benefit of conventional shelters as is the use of the streets for purposes of passage.

It is claimed, however, that such activity was likely to affect adversely the health, morals and welfare of the child. Reference is made in the majority opinion to 'the crippling effects of child employment, more especially in public *175 places, and the possible harms arising from other activities subject to all the diverse influences of the street.' To the extent that they flow from participation in ordinary commercial activities, these harms are irrelevant to this case. And the bare possibility that such harms might emanate from distribution of religious literature is not, standing alone, sufficient justification for restricting freedom of conscience and religion. Nor can parents or guardians be subjected to criminal liability because of vague possibilities that their religious teachings might cause injury to the child. The evils must be grave, immediate, substantial. Cf. Bridges v. California, 314 U.S. 252, 262, 62 S.Ct. 190, 193, 86 L.Ed. 192. Yet there is not the slightest indication in this record, or in sources subject to judicial notice, that children engaged in distributing literature pursuant to their religious beliefs have been or are likely to be subject to any of the harmful 'diverse influences of the street.' Indeed, if probabilities are to be indulged in, the likelihood is that children engaged in serious religious endeavor are immune from such influences. Gambling, truancy, irregular eating and sleeping habits, and the more serious vices are not consistent with the high moral character ordinarily displayed by children fulfilling religious obligations. Moreover, Jehovah's Witness children invariably make their distributions in groups subject at all times to adult or parental control, as was done in this case. The dangers are thus exceedingly remote, to say the least. And the fact that the zealous exercise of the right to propagandize the community may result in violent or disorderly situations difficult for children to face is no excuse for prohibiting the exercise of that right.

No chapter in human history has been so largely written in terms of persecution and intolerance as the one dealing with religious freedom. From ancient times to the present day, the ingenuity of man has known no limits in its ability to forge weapons of oppression for use against *176 those who dare to express or practice unorthodox religious beliefs. And the Jehovah's Witnesses are living proof of the fact that even in this nation, conceived as it was in the ideals of freedom, the right to practice religion in unconventional ways is still far from secure. Theirs is a militant and unpopular faith, pursued with a fanatical zeal. They have suffered brutal beatings; their property has been destroyed; they have been harassed at every turn by the resurrection and enforcement **448 of little used ordinances and statutes. See Mulder and Comisky, 'Jehovah's Witnesses Mold Constitutional Law,' 2 Bill of Rights Review, No. 4, p. 262. To them, along with other present-day religious minorities, befalls the burden of testing our devotion to the ideals and constitutional guarantees of religious freedom. We should therefore hesitate before approving the application of a statute that might be used as another instrument of oppression. Religious freedom is too sacred a right to be restricted or prohibited in any degree without convincing proof that a legitimate interest of the state is in grave danger.

64 S.Ct. 438, 321 U.S. 158, 88 L.Ed. 645

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EXHIBIT 43

54 P.3d 349
382 Ariz. Adv. Rep. 21
(Cite as: 203 Ariz. 320, 54 P.3d 349)

H

Court of Appeals of Arizona,
Division 1, Department B.

Shirin RASHEDI, Plaintiff-Appellant,
v.
GENERAL BOARD OF CHURCH OF the NAZARENE, a foreign benevolent corporation; Arizona/Southern Nevada District Church of the Nazarene, an entity of unknown type, Defendants-Appellees.

No. 1 CA-CV 01-0550.

Sept. 19, 2002.
Review Denied June 30, 2003.

Parishioner, who was allegedly defrauded and seduced by her pastor, filed complaint against the district for her church, and its board, among others, alleging that defendants were liable for negligent hiring, negligent supervision, negligent retention, negligence under a theory of respondeat superior, intentional infliction of emotional distress, securities fraud, constructive fraud, and racketeering. The Superior Court, Maricopa County, No. CV 2000-013332, Cari A. Harrison, J., dismissed action as violative of doctrine of ecclesiastical abstention. Parishioner appealed. The Court of Appeals, E.G. Noyes, Jr., J., held that neither Free Exercise Clause nor doctrine of ecclesiastical abstention barred parishioner's cause of action for negligent hiring.

Reversed and remanded.

West Headnotes

[1] Appeal and Error ⇐893(1)
30k893(1) Most Cited Cases

A court's decision that it lacks jurisdiction to adjudicate a claim is a question of law that the Court of Appeals reviews de novo.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies ⇐27(.5)
332k27(.5) Most Cited Cases

The First Amendment and the ecclesiastical abstention doctrine preclude civil courts from inquiring into ecclesiastical matters, and thus, for example, courts may not consider employment disputes between a religious organization and its clergy because such matters necessarily involve questions of internal church discipline, faith, and organization that are governed by ecclesiastical rule, custom, and law. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[3] Religious Societies ⇐27(1)
332k27(1) Most Cited Cases

Pursuant to the First Amendment and the ecclesiastical abstention doctrine, whether an individual is qualified to be a clergy member of a particular faith is a matter to be determined by the procedures and dictates of that particular faith. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[4] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases

[4] Religious Societies ⇐14
332k14 Most Cited Cases

[4] Religious Societies ⇐24
332k24 Most Cited Cases

Pursuant to the First Amendment and the ecclesiastical abstention doctrine, civil courts may not inquire into internal organizational disputes between different factions of a religious organization or into property disputes that would require interpreting religious doctrine or practice. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[5] Religious Societies ⇐14
332k14 Most Cited Cases

Pursuant to the First Amendment and the ecclesiastical abstention doctrine, civil courts must accept the decisions of the highest judicatories of a

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religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law; however, when a church-related dispute can be resolved by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy, the civil courts may adjudicate the dispute. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

[6] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases

[6] Religious Societies ⇐15.1
332k15.1 Most Cited Cases

[6] Religious Societies ⇐30
332k30 Most Cited Cases

Because religious organizations are part of the civil community, they are subject to societal rules governing property rights, torts, and criminal conduct; the First Amendment does not excuse individuals or religious groups from complying with valid neutral laws. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[7] Religious Societies ⇐30
332k30 Most Cited Cases

Neither Free Exercise Clause nor doctrine of ecclesiastical abstention barred parishioner's cause of action for negligent hiring, supervision, and retention, asserted against various officials of a religious organization, based on allegations that parishioner was defrauded of money by her pastor, even if examination of structure of the religious organization was necessary to define duties of the various defendants; application of neutral tort principles to determine whom any of the officials knew or had reason to know the pastor was likely to victimize members of the organization did not conflict with the polity of the church, as any inquiry into the organization's structure would be to factually determine the roles the parties played in the licensing and hiring of the pastor, and manual for the organization did provide for possibility of a district superintendent disapproving a proposed local pastor. U.S.C.A. Const.Amend. 1.

****350 *321** Sanders & Parks, P.C., By Rick N. Bryson, Shane D. Buntrock, Michele L. Forney, Phoenix, Attorneys for Plaintiff-Appellant.

Douglas & Cox, L.L.P., By Dean R. Cox, Daniel E. Fredenberg, Phoenix, Attorneys for Defendant-Appellee, General Board of Church of the Nazarene.

Law Office of Jerry Steele, By Jerry Steele, Phoenix, Attorney for Defendant-Appellee, Arizona/Southern Nevada District Church of the Nazarene.

OPINION

NOYES, Judge.

¶ 1 Shirin Rashedi, who was allegedly defrauded and seduced by her pastor, appeals the trial court's dismissal of her complaint against the General Board of the Church of the Nazarene ("Board") and the Arizona/Southern Nevada District Church of the Nazarene ("District"). The trial court concluded that it lacked subject-matter jurisdiction ***322 **351** because the case against the Board and the District would involve inquiry into the ecclesiastical doctrine, law, and polity of the Church of the Nazarene, in violation of the doctrine of ecclesiastical abstention. We conclude that the claims in question can be resolved by application of neutral principles of civil law and, therefore, that the trial court does have subject-matter jurisdiction.

I.

¶ 2 Rashedi's amended complaint alleged that the Board and District were guilty of negligent hiring, negligent supervision, negligent retention, negligence under a theory of respondeat superior, intentional infliction of emotional distress, securities fraud, constructive fraud, and racketeering. Named defendants also included the Crossroads Church of the Nazarene (the "Church"), pastor Edward Yousfi, church employee Joseph Youssefi, the senior pastor and president of the Church, the executive pastor of the Church, and several companies on whose behalf Edward Yousfi and Joseph Youssefi allegedly solicited investment funds from Rashedi. The Board and the District

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are the only defendants involved in this appeal.

¶ 3 Rashedi's complaint alleged that in 1996 the Church began to reach out to the Persian community of the East Valley of Maricopa County. To that end, the Board, the District, and the Church hired Edward Yousfi as a pastor. However, according to the complaint, at or about the time these defendants hired Yousfi, they had credible information that he had a history of stealing money from, improperly soliciting investments from, and engaging in sexual misconduct with church members in other states. The complaint alleged that, between July 16, 1998, and January 2000, Yousfi and his brother (Youssefi) defrauded Rashedi of at least $286,000, that Yousfi gave the Church thousands of dollars improperly obtained from church members, and that he promised the Church a multi-million dollar donation. The complaint also alleged that, when the Church was informed that Yousfi and Youssefi were soliciting money from Church members, the Church vouched for Yousfi and conducted no investigation despite having knowledge of his reputation and history.

¶ 4 The complaint also alleged that Yousfi engaged in sexual relations with Rashedi by using his position as pastor and spiritual advisor to exert emotional and physical control over her in an attempt to defraud her of money.

¶ 5 In their answer, the Board and District denied that the court had subject- matter jurisdiction, denied having control over the business affairs of the Church, and denied hiring Yousfi. The Board and the District filed separate Motions to Dismiss.

¶ 6 The Board's motion argued that the doctrine of ecclesiastical abstention required dismissal of the lawsuit against the Board under Arizona Rules of Civil Procedure ("Rule") 12(b)(1) and (6). Citing the "Manual of the Church of the Nazarene" (the "Manual"), and attaching several pages of the Manual to its motion, the Board explained that the Church of the Nazarene is a hierarchical church composed of three independent authorities: the local churches, the district assemblies, and the General Assembly, over which presides the Board. The Board contended that the authority of the General Assembly, and therefore of the Board, was limited to making rules and regulations for departments related to the Church of the Nazarene, organizing the membership of the Church of the Nazarene into district assemblies, determining the qualifications of district assembly representatives and the boundaries of assembly districts, and defining the powers of the district assemblies. The Board maintained that it had no control over and no knowledge of the operations of local churches. The Board argued that, under the ecclesiastical abstention doctrine, civil courts must accept the provisions of the Manual and are precluded from inquiring further.

¶ 7 The District's motion to dismiss argued that the court lacked subject- matter jurisdiction under the First Amendment and the doctrine of ecclesiastical abstention. Also citing the Manual, the District stated that the Church was an independent entity that had the right to select and hire its own pastor, manage its own financial affairs, and **352 *323 control its own local work. According to the District, local churches report their activities to the District annually, but the District does not hire or discharge local pastors or staff members or set their duties. The District alleged that its only contact with Yousfi was in granting him the status of licensed minister for the Church of the Nazarene, which authorized him to preach the Word, to administer sacraments, and to officiate at marriages.

¶ 8 The District asserted that it approved or disapproved of a local church's selection of pastor based on an ecclesiastical review. The senior pastor was required to report annually to the District; others on the staff of the local church reported to the senior pastor. The District would review the status of licensed ministers annually for renewal of the license. Otherwise, the District exercised oversight with respect to its ministers only upon complaint by a church member.

¶ 9 The District argued that, because its role was limited to licensing Yousfi, any inquiry into the District's involvement in the case would necessarily require a review of the ecclesiastical doctrine of the Church of the Nazarene regarding licensing ministers, a matter over which, it asserted, the courts have no jurisdiction.

¶ 10 Rashedi responded that her complaint did not involve ecclesiastical issues; it involved a determination whether the Board and the District

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breached a secular duty by hiring and licensing Yousfi despite knowledge of his prior victimization of parishioners. Rashedi also argued that the Manual was outside the pleadings, and she requested a continuance to conduct further discovery under Rule 56(f) if the court considered the Manual in reaching its decision. Rashedi argued that attempts to depose the Board and the District had been unsuccessful and that she expected that the depositions would demonstrate that both the Board and the District had in fact been involved in hiring Yousfi.

¶ 11 The court ruled that the Manual set out the duties of the Church, the District, and the Board, and that any review of the District's and the Board's role in the case "would necessarily require a review of the ecclesiastical doctrine, law and polity of the Church of the Nazarene as it relates to granting licenses to ministers." The court concluded that such an inquiry was precluded by the First Amendment of the United States Constitution and the doctrine of ecclesiastical abstention. The court granted the Board's and the District's motions to dismiss, and it denied Rashedi's Rule 56(f) motion, finding that the requested discovery would not "defeat the basis of the Court's granting dismissal."

¶ 12 Over objection of Rashedi, the court included Rule 54(b) language in its dismissal order. Rashedi timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes section 12-2101(B) (1994).

II.

[1] ¶ 13 A court's decision that it lacks jurisdiction to adjudicate a claim is a question of law that we review *de novo*. *Hughes v. Creighton,* 165 Ariz. 265, 267, 798 P.2d 403, 405 (App.1990).

[2][3][4] ¶ 14 The First Amendment and the ecclesiastical abstention doctrine preclude civil courts from inquiring into ecclesiastical matters. For example, courts may not consider employment disputes between a religious organization and its clergy because such matters necessarily involve questions of internal church discipline, faith, and organization that are governed by ecclesiastical rule, custom, and law. *Gonzalez v. Roman Catholic Archbishop of Manila,* 280 U.S. 1, 16, 50 S.Ct. 5, 74 L.Ed. 131 (1929); *Dobrota v. Free Serbian Orthodox Church St. Nicholas,* 191 Ariz. 120, 124, ¶ 14, 952 P.2d 1190, 1194 (App.1998) (citing *Lewis v. Seventh Day Adventists Lake Region Conf.,* 978 F.2d 940, 942 (6th Cir.1992)); *Higgins v. Maher,* 210 Cal.App.3d 1168, 258 Cal.Rptr. 757, 759-60 (App.1989). Whether an individual is qualified to be a clergy member of a particular faith is a matter to be determined by the procedures and dictates of that particular faith. *Gonzalez,* 280 U.S. at 16, 50 S.Ct. 5; *Rayburn v. Gen. Conf. of Seventh-Day Adventists,* 772 F.2d 1164, 1169 (4th Cir.1985). Nor can civil courts inquire into internal organizational disputes between different factions ***324 **353** of a religious organization or into property disputes that would require interpreting religious doctrine or practice. *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 709, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Crowder v. S. Baptist Convention,* 828 F.2d 718, 726 (11th Cir.1987).

[5] ¶ 15 Civil courts must accept "the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law." *Milivojevich,* 426 U.S. at 713, 96 S.Ct. 2372. However, when a church-related dispute can be resolved by applying neutral principles of law without inquiry into religious doctrine and without resolving a religious controversy, the civil courts may adjudicate the dispute. *Jones v. Wolf,* 443 U.S. 595, 602-04, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); *Barnes v. Outlaw,* 188 Ariz. 401, 404, 937 P.2d 323, 326 (App.1996), *vacated in part on other grounds,* 192 Ariz. 283, 964 P.2d 484 (1998).

[6] ¶ 16 Because religious organizations are part of the civil community, they are subject to societal rules governing property rights, torts, and criminal conduct. *Dobrota,* 191 Ariz. at 125, ¶ 22, 952 P.2d at 1195. The First Amendment does not excuse individuals or religious groups from complying with valid neutral laws. *Employment Div., Dep't of Human Res. v. Smith,* 494 U.S. 872, 878-79, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990).

[7] ¶ 17 The question in the present case is whether the civil court can adjudicate claims against certain officials of a religious organization based on their alleged licensing and hiring of a pastor whom they knew or had reason to know was likely to victimize members of that organization. Courts

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addressing this kind of issue have reached various conclusions.

¶ 18 In *Ayon v. Gourley,* the plaintiff alleged sexual abuse by a priest and sued the priest and the archdiocese on claims that included negligent hiring and supervision. 47 F.Supp.2d 1246, 1250 (D.Colo.1998). The court reasoned that the tort claims raised by the plaintiff required much more subjective judgment on the appropriateness of the conduct than the neutral law found applicable in *Employment Division v. Smith,* which concerned a statutory criminal prohibition. *Ayon,* 47 F.Supp.2d at 1248-49. The court concluded that any consideration of the hiring and supervision policies of the archdiocese would necessarily require examination of church policy and doctrine, as well as a determination whether those policies were reasonable and adequate. *Id.* at 1250-51. The court held that the First Amendment precluded this examination. *Id.* at 1251.

¶ 19 Church defendants obtained similar immunity for negligence-based claims in *Isely v. Capuchin Province,* 880 F.Supp. 1138, 1150-51 (E.D.Mich.1995), *Gibson v. Brewer,* 952 S.W.2d 239, 246-49 (Mo.1997), and *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 790-91 (1995). [FN1] In *Gibson,* the court expressed concern that imposing tort standards of reasonableness on religious organizations would necessarily require evaluating "the reasonableness of religious beliefs, discipline, and government." *Gibson,* 952 S.W.2d at 247-50.

> FN1. The *Isely* court concluded that the court could not consider claims based on negligent hiring and retention because they would involve interpreting canon law and internal church policies and practices, but that the court could consider a claim of negligent supervision. 880 F.Supp. at 1150-51. The *Gibson* court found that claims based on negligence were barred, but that the court could consider claims based on intentional torts. 952 S.W.2d at 246-49.

¶ 20 However, other courts have decided that claims involving negligent hiring, supervision, and retention can be addressed without inquiring into ecclesiastical matters. In *Smith v. O'Connell,* plaintiffs sued Catholic priests and various officials of the diocese, alleging that the priests had sexually assaulted them. 986 F.Supp. 73, 75 (D.R.I.1997). Diocesan officials moved to dismiss based on the First Amendment. *Id.* The court noted that the case before it was not a dispute between factions within a church, or between a church and its clergy, or involving an internal church matter. *Id.* Rather, the dispute concerned whether the diocesan defendants failed to take appropriate action for the protection of the plaintiffs--a matter governed by tort law that did not require interpreting religious doctrine or ecclesiastical law. *Id.* ****354 *325** The court found tort law principles to be neutral and generally applicable and therefore not violative of the First Amendment. *Id.* at 80. The court noted that although the defendants claimed that canon law limited their ability to discipline priests, nothing suggested that canon law precluded officials "from taking appropriate action to *prevent* priests, who are known pedophiles, from sexually abusing children." *Id.* at 78. The court acknowledged that some individual claims might require deciding questions of church doctrine, but did not address individual claims as the defendants raised only a general challenge to the court's jurisdiction. *Id.* at 81.

¶ 21 In *Destefano v. Grabrian,* a husband sued a priest and the diocese after the priest, who had been acting as a marriage counselor, engaged in a sexual relationship with his wife. 763 P.2d 275, 277-78 (Colo.1988). The defendants moved to dismiss, arguing that sacramental counseling was an ecclesiastical matter and that the court could not interfere. *Id.* at 283. The court acknowledged that marital counseling might involve spiritual counseling as well, but concluded that the First Amendment did not immunize the defendants there because it was not alleged that the priest's sexual activity was conduct that "falls within the practices or beliefs of the Catholic church." *Id.* at 283-84.

¶ 22 In *Moses v. Diocese of Colorado,* the plaintiff sued a priest, a bishop, and the diocese after the priest, from whom she had sought counseling, entered into a sexual relationship with her. 863 P.2d 310, 313-14 (Colo.1993). She alleged torts of negligent hiring and supervision against the diocese and the bishop. *Id.* at 314. After a jury verdict in plaintiff's favor, the diocese

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and the bishop asserted on appeal that the First Amendment precluded recovery on the claims. *Id.* The court disagreed. The court recognized that it could not become involved in a dispute concerning a religious organization where it would have to interpret church doctrine. *Id.* at 320. The court concluded, however, that the case did not require interpreting or weighing church doctrine but could be resolved by applying neutral principles. *Id.* at 320-21. The court found that claims of breach of fiduciary duty, negligent hiring and supervision, and vicarious liability were actionable if supported by competent evidence. *Id.* at 321.

¶ 23 In the recent case of *Malicki v. Doe,* the Florida Supreme Court found that claims of negligent hiring and supervision in a case involving a priest's sexual assault of parishioners could be addressed through the neutral application of tort law principles. 814 So.2d 347, 360-61 (Fla.2002). The court found that, because the prohibited behavior was not governed by sincerely held religious beliefs or practices, the First Amendment did not bar adjudication of the case. *Id.* at 361. The court noted that adjudicating a negligent hiring claim did not involve inquiry into the general reasons why an individual was hired for a particular position, but rather whether the specific danger that came to pass was reasonably foreseeable at the time of hiring. *Id.* at 362. The court found that the U.S. Supreme Court had not extended what it termed the "religious autonomy principle" beyond ecclesiastical intrachurch disputes. *Id.* at 363.

¶ 24 In the present case, Rashedi claims that she was injured by the tortious conduct of individuals whom church officials placed in a position to injure her when they knew or should have known of the risk of harm presented by those individuals. In our opinion, resolution of these claims does not require the interpretation of religious doctrine or ecclesiastical law; it requires application of tort law principles that are neutral and generally applicable.

¶ 25 The Board contends that, even if neutral principles of tort law applied, the court would still have to examine the structure of the Church of the Nazarene to properly define the duties of the various defendants. Maybe so. But the court can examine the structure of a religious organization for such a purpose. A court may examine religious documents so long as it is done in purely secular terms. *Wolf,* 443 U.S. at 604, 99 S.Ct. 3020. Any inquiry into the structure of the religious organization would not be undertaken to resolve any internal organizational dispute or the appropriateness of the conduct of the parties in relation to their ****355 *326** religious beliefs or obligations. Inquiry into the organizational structure would be to factually determine the roles the parties played in the licensing and hiring of an employee.

¶ 26 The District argues that Rashedi seeks to have it assert control over local churches and pastors in contradiction to the polity of the Church of the Nazarene, which precludes interference with the local church by the District. Rashedi's claims are not that broad. We also note that the Manual provides for the possibility of a district superintendent disapproving a proposed pastor to a local church. *Manual of the Church of the Nazarene* §§ 208.8, 208.11. Consequently, the application of neutral tort principles in this case does not conflict with the polity of the Church.

¶ 27 As in *Smith v. O'Connell,* the parties here have not specifically addressed individual claims at this stage of the litigation. Because the Board and District presented a general challenge to the court's jurisdiction to consider the case, we have addressed the matter generally.

¶ 28 Because of our resolution of the jurisdictional issue, we do not decide whether the trial court abused its discretion when denying Rashedi's Rule 56(f) motion or when including Rule 54(b) language in its dismissal order.

III.

¶ 29 We conclude that the trial court erred in concluding that it lacked subject-matter jurisdiction to adjudicate any of Rashedi's claims against the Board and the District. The judgment of dismissal is therefore reversed and the matter is remanded to the trial court for further proceedings.

CONCURRING: JON W. THOMPSON, Presiding Judge, and SHELDON H. WEISBERG, Judge.

54 P.3d 349, 203 Ariz. 320, 382 Ariz. Adv. Rep. 21

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EXHIBIT 44

98 U.S. 145
8 Otto 145, 25 L.Ed. 244
(Cite as: 98 U.S. 145)

Supreme Court of the United States

REYNOLDS
v.
UNITED STATES.

October Term, 1878

West Headnotes

Criminal Law ⚿20
110k20 Most Cited Cases

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does.

Criminal Law ⚿31
110k31 Most Cited Cases

A belief that particular law ought not to have been enacted, was no defense in prosecution for violation of such law, though such belief was part of defendant's professed religion.

Criminal Law ⚿32
110k32 Most Cited Cases

Ignorance of a fact may sometimes be taken as evidence of want of criminal intent, but not ignorance of the law.

Criminal Law ⚿543(2)
110k543(2) Most Cited Cases

The question whether witness is absent by defendant's procurement, so as to authorize admission of evidence concerning testimony of such witness at former trial, is practically one of fact, to be settled as preliminary to the admission of secondary evidence, and court's finding thereon has the effect of a jury verdict and should not be disturbed unless error is manifest.

Criminal Law ⚿543(2)
110k543(2) Most Cited Cases

In bigamy prosecution, evidence concerning defendant's refusal to assist in serving of subpoena on defendant's second wife, who lived with defendant, *held* to cast upon defendant burden of showing that he had not been instrumental in concealing or keeping her away, and to authorize admission of evidence concerning her testimony at former trial.

Criminal Law ⚿655(1)
110k655(1) Most Cited Cases

Every appeal by the trial court to the jury's passions or prejudices should be promptly rebuked, and reviewing court must take care that wrong is not done in that way.

Criminal Law ⚿662.60
110k662.60 Most Cited Cases
(Formerly 110k662(6))

In a criminal prosecution, the accused is in no condition to assert that his constitutional right to be confronted with the witnesses against him has been violated, by allowing competent evidence of the testimony which they gave on a previous trial between the United States and himself upon the same issue, when they are absent by his procurement, or when enough has been proved to cast upon him the burden of showing, and he, having full opportunity therefor, fails to show, that he has not been instrumental in concealing them, or in keeping them away. Such evidence is admissible.

Criminal Law ⚿1043(1)
110k1043(1) Most Cited Cases

Where it is apparent from the record that the challenge of a petit juror, if it had been made by the United States for favor, should have been sustained, the judgment against the prisoner will not be reversed simply because the challenge was in form for cause.

Criminal Law ⚿1133
110k1133 Most Cited Cases

Where error in trial court's sentence, in requiring imprisonment to be at hard labor though statute provided for imprisonment only, was not assigned for error on the original hearing by United States Supreme Court, court might decline to consider it on rehearing, but where such irregularity appeared

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on the face of the record, Supreme Court vacated its former judgment of affirmance, and reversed the judgment for the purpose of correcting such error.

Criminal Law ⚿1152(2)
110k1152(2) Most Cited Cases

The trial court's finding upon question of juror's partiality ought not to be set aside by reviewing court unless the error is manifest, when tested by rules no less stringent than those applied in motions for new trial because verdict is against the evidence, and it must be made clearly to appear that upon the evidence, the court ought to have found that juror had formed an opinion, and that the law left nothing to the court's conscience or discretion.

Grand Jury ⚿3
193k3 Most Cited Cases

Rev.St. § 808, 28 U.S.C.A. § 419, providing for impaneling grand juries, and prescribing that they shall consist of not less than 16, nor more than 23, persons, applies only to the circuit and the district courts of the United States. Territorial courts are left free to act in obedience to the requirements of the territorial laws in force for the time being; and hence an indictment may be found in a district court of Utah by a grand jury of 15 persons, impaneled pursuant to the laws of that territory.

Jury ⚿97(1)
230k97(1) Most Cited Cases

In prosecution for bigamy, challenge of jurors on ground that they had been living in polygamy was good for favor, if not for principal cause.

Jury ⚿97(1)
230k97(1) Most Cited Cases

To be "impartial", a juror must be indifferent as he stands unsworn. U.S.C.A. Const.Amend. 6.

Jury ⚿99
230k99 Most Cited Cases
(Formerly 230k99(2))

It is good ground for challenge for principal cause that a juror has formed an opinion on the issue to be tried, but such opinion must be founded on some evidence, and be more than a mere impression or merely hypothetical.

Jury ⚿99.5
230k99.5 Most Cited Cases
(Formerly 230k99(6))

The fact that juror had not expressed his opinion concerning issue to be tried is important only as tending to show that he had not formed a disqualifying opinion, and positive and decided opinion renders juror incompetent even if it had not been expressed.

Jury ⚿103(3)
230k103(3) Most Cited Cases

A petit juror in a criminal case having testified on his voir dire that he had formed an opinion, although not upon evidence produced in court, as to the question of the innocence or guilt of the prisoner, but that he had not expressed it, and did not think that it would influence his verdict, he was challenged by the prisoner for cause, and the challenge was overruled by the court. *Held*, that the action of the court was not erroneous.

Jury ⚿131(4)
230k131(4) Most Cited Cases

To make out the existence of a principal cause of challenge, juror may be examined on his voir dire, and asked any questions that do not tend to his infamy or disgrace.

Jury ⚿133
230k133 Most Cited Cases

The question of whether opinion formed by juror renders juror subject to challenge for principal cause is one of mixed law and fact, to be tried upon the evidence.

Bigamy ⚿1
55k1 Most Cited Cases

Rev.St. § 5352, 18 U.S.C.A. § 513, defining and providing for the punishment of bigamy, is not in conflict with the constitutional provision against the making of laws respecting religion.

Bigamy ⚿2
55k2 Most Cited Cases

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On a trial for polygamy, evidence was offered by defendant to show that polygamous marriage was a part of his religion. *Held,* that such evidence was not admissible, and has no foundation for its admission in either justice, reason, or law.

Bigamy ⚿14
55k14 Most Cited Cases

In the trial of a criminal prosecution for bigamy, the court told the jury to "consider what are to be the consequences to the innocent victims of this delusion [the doctrine of polygamy]. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children,-innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the territory of Utah, just so do these victims multiply and spread themselves over the land." *Held,* that the charge was not improper.

Constitutional Law ⚿84.5(1)
92k84.5(1) Most Cited Cases
(Formerly 92k84)

A party's religious belief cannot be accepted as a justification for his committing an overt act made criminal by the law of the land. Where, therefore, the prisoner, knowing that his wife was living, married again in Utah, and when indicted and tried therefor, set up that the church whereto he belonged enjoined upon its male members to practice polygamy, and that he, with the sanction of the recognized authorities of the church, and by a ceremony performed pursuant to its doctrines, did marry again, *held,* that the court properly refused to charge the jury that he was entitled to an acquittal, although they should find that he had contracted such second marriage pursuant to, and in conformity with, what he believed at the time to be a religious duty.

Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84)

The true distinction between what properly belongs to the church and what belongs to the state is found in the preamble of the Virginia statute for religious freedom, reciting that civil magistrate should not be suffered to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency, and that civil officers should interfere only when principles break out into overt acts against peace and good order. 12 Hening's Stat. 84.

Constitutional Law ⚿84.5(1)
92k84.5(1) Most Cited Cases
(Formerly 92k84)

Section 5352 of the Revised Statutes, 18 U.S.C.A. § 513, which declares bigamy committed in the territories a crime against the United States, and prescribes its punishment, is in all respects constitutional and valid.

Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84)

In order to ascertain the meaning of the word "religion" as used in constitutional prohibition against interfering with religious freedom, court should consider the history of the times in the midst of which the provision was adopted.

Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84)

Under constitutional provision against establishment of religion or prohibiting free exercise thereof, Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Constitutional Law ⚿84.1
92k84.1 Most Cited Cases
(Formerly 92k84)

Though laws cannot interfere with mere religious belief and opinions, they may interfere with practices.

Federal Courts ⚿1021
170Bk1021 Most Cited Cases
(Formerly 106k428)

The statute giving district courts of the Territory of Utah the same jurisdiction in all cases arising under the constitution and laws of the United States as is

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vested in the circuit and district courts of the United States does not make them circuit and district courts of the United States. Rev.Stat. § 1910.

ERROR to the Supreme Court of the Territory of Utah.

This is an indictment found in the District Court for the third judicial district of the Territory of Utah, charging George Reynolds with bigamy, in violation of sect. 5352 of the Revised Statutes, which, omitting its exceptions, is as follows:----

'Every person having a husband or wife living, who marries another, whether married or single, in a Territory, or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than $500, and by imprisonment for a term of not more than five years.'

The prisoner pleaded in abatement that the indictment was not found by a legal grand jury, because fifteen persons, and no more, were impanelled and sworn to serve as a grand jury at the term of the court during which the indictment was found, whereas sect. 808 of the Revised Statutes of the United States enacts that every grand jury impanelled before any District or Circuit Court shall consist of not less than sixteen persons.

An act of the legislature of Utah of Feb. 18, 1870, provides that the court shall impanel fifteen men to serve as a grand jury. Compiled Laws of Utah, ed. of 1876, p. 357, sect. 4.

The court overruled the plea, on the ground that the territorial enactment governed.

The prisoner then pleaded not guilty. Several jurors were examined on their *voire dire* by the district attorney. Among them was Eli Ransohoff, who, in answer to the question, 'Have you formed or expressed an opinion as to the guilt or innocence of the prisoner at the bar?' said, 'I have expressed an opinion by reading the papers with the reports of the trial.'

Q. 'Would that opinion influence your verdict in hearing the evidence?'

A. 'I don't think it would.'

By the defendant: 'You stated that you had formed some opinion by reading the reports of the previous trial?'

A. 'Yes.'

Q. 'Is that an impression which still remains upon your mind?'***147**

A. 'No; I don't think it does: I only glanced over it, as everybody else does.'

Q. 'Do you think you could try the case wholly uninfluenced by any thing?'

A. 'Yes.'

Charles Read, called as a juror, was asked by the district attorney, 'Have you formed or expressed any opinion as to the guilt or innocence of this charge?'

A. 'I believe I have formed an opinion.'

By the court: 'Have you formed and expressed an opinion?'

A. 'No, sir; I believe not.'

Q. 'You say you have formed an opinion?'

A. 'I have.'

Q. 'Is that based upon evidence?'

A. 'Nothing produced in court.'

Q. 'Would that opinion influence your verdict?'

A. 'I don't think it would.'

By defendant: 'I understood you to say that you had formed an opinion, but not expressed it.'

A. 'I don't know that I have expressed an opinion: I have formed one.'

Q. 'Do you now entertain that opinion?'

A. 'I do.'

The defendant challenged each of these jurors for cause. The court overruled the challenge, and

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98 U.S. 145
8 Otto 145, 25 L.Ed. 244
(Cite as: 98 U.S. 145)

permitted them to be sworn. The defendant excepted.

The court also, when Homer Brown was called as a juror, allowed the district attorney to ask him the following questions: *Q.* 'Are you living in polygamy?' *A.* 'I would rather not answer that.' The court instructed the witness that he must answer the question, unless it would criminate him. By the district attorney: 'You understand the conditions upon which you refuse?' *A.* 'Yes, sir.'--*Q.* 'Have you such an opinion that you could not find a verdict for the commission of that crime?' *A.* 'I have no opinion on it in this particular case. I think under the evidence and the law I could render a verdict accordingly.' Whereupon the United States challenged the said Brown for favor, which challenge was sustained by the court, and the defendant excepted.***148**

John W. Snell, also a juror, was asked by the district attorney on *voire dire: Q.* 'Are you living in polygamy?' *A.* 'I decline to answer that question.'--*Q.* 'On what ground?' *A.* 'It might criminate myself; but I am only a fornicator.' Whereupon Snell was challenged by the United States for cause, which challenge was sustained, and the defendant excepted.

After the trial commenced, the district attorney, after proving that the defendant had been married on a certain day to Mary Ann Tuddenham, offered to prove his subsequent marriage to one Amelia Jane Schofield during the lifetime of said Mary. He thereupon called one Pratt, the deputy marshal, and showed him a subpoena for witnesses in this case, and among other names thereon was the name of Mary Jane Schobold, but no such name as Amelia Jane Schofield. He testified that this subpoena was placed in his hands to be served.

Q. 'Did you see Mr. Reynolds when you went to see Miss Schofield?'

A. 'Yes, sir.'

Q. 'Who did you inquire for?'

A. 'I inquired for Mary Jane Schofield, to the best of my knowledge. I will state this, that I inserted the name in the subpoena, and intended it for the name of the woman examined in this case at the former term of the court, and inquired for Mary Jane Schofield, or Mrs. Reynolds, I do not recollect certainly which.'

Q. 'State the reply.'

A. 'He said she was not at home.'

Q. 'Did he say any thing further.'

A. 'I asked him then where I could find her. I said, 'Where is she? And he said, 'You will have to find out."

Q. 'Did he know you to be a deputy marshal?'

A. 'Yes, sir.'

Q. 'Did you tell him what your business was as deputy marshal?'

A. 'I don't remember now: I don't think I did.'

Q. 'What else did he say?'***149**

A. 'He said, just as I was leaving, as I understood it, that she did not appear in this case.'

The court then ordered a subpoena to issue for Amelia Jane Schofield, returnable instanter.

Upon the following day, at ten o'clock A.M., the said subpoena for the said witness having issued about nine o'clock P.M. of the day before, the said Arthur Pratt was again called upon, and testified as follows:----

Q. (By district attorney.) 'State whether you are the officer that had subpoena in your hands.' (Exhibiting subpoena last issued, as above set forth.)

A. 'Yes, sir.'

Q. 'State to the court what efforts you have made to serve it.'

A. 'I went to the residence of Mr. Reynolds, and a lady was there, his first wife, and she told me that this woman was not there; that that was the only home that she had, but that she hadn't been there for two or three weeks. I went again this morning, and she was not there.'

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Q. 'Do you know any thing about her home,--where she resides?'

A. 'I know where I found her before.'

Q. 'Where?'

A. 'At the same place.'

Q. 'You are the deputy marshal that executed the process of the court?'

A. 'Yes, sir.'

Q. 'Repeat what Mr. Reynolds said to you when you went with the former subpoena introduced last evening.'

A. 'I will state that I put her name on the subpoena myself. I know the party, and am well acquainted with her, and I intended it for the same party that I subpoenaed before in this case. He said that she was not in, and that I could get a search-warrant if I wanted to search the house. I said, 'Will you tell me where she is?' He said, 'No; that will be for you to find out.' He said, just as I was leaving the house,--I don't remember exactly what it was, but my best recollection is that he said she would not appear in this case.'*150

Q. 'Can't you state that more particularly?'

A. 'I can't give you the exact words, but I can say that was the purport of them.'

Q. 'Give the words as nearly as you can.'

A. 'Just as I said, I think those were his words.'

The district attorney then offered to prove what Amelia Jane Schofield had testified to on a trial of another indictment charging the prisoner with bigamy in marrying her; to which the prisoner objected, on the ground that a sufficient foundation had not been laid for the introduction of the evidence.

A. S. Patterson, having been sworn, read, and other witnesses stated, said Amelia's testimony on the former trial, tending to show her marriage with the defendant. The defendant excepted to the admission of the evidence.

The court, in summing up to the jury, declined to instruct them, as requested by the prisoner, that if they found that he had married in pursuance of and conformity with what he believed at the time to be a religious duty, their verdict should be 'not guilty,' but instructed them that if he, under the influence of a religious belief that it was right, had 'deliberately married a second time, having a first wife living, the want of consciousness of evil intent--the want of understanding on his part that he was committing crime--did not excuse him, but the law inexorably, in such cases, implies criminal intent.'

The court also said: 'I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, and there are pure-minded women and there are innocent children,--innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory, just so do these victims multiply and spread themselves over the land.'

To the refusal of the court to charge as requested, and to the charge as given, the prisoner excepted. The jury found him guilty, as charged in the indictment; and the judgment that he be imprisoned at hard labor for a term of two years, and pay *151 a fine of $500, rendered by the District Court, having been affirmed by the Supreme Court of the Territory, he sued out this writ of error.

The assignments of error are set out in the opinion of the court.

Mr. George W. Biddle and *Mr. Ben Sheeks* for the plaintiff in error.

First, The jury was improperly drawn. Two of the jurors were challenged for cause by the defendant below, because they admitted that they had formed, and still entertained, an opinion upon the guilt or innocence of the prisoner. The holding by a juror of any opinions which would disqualify him from rendering a verdict in accordance with the law of the land, is a valid objection to his serving.

An opinion based merely upon a hypothetical case, as that 'if so and so is true, the prisoner is guilty,' is not always sufficient; but where the opinion is as to

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the *actual fact* of guilt or innocence, it is a disqualification, according to all the authorities. Burr's Trial, 414, 415; *United States* v. *Wilson*, 1 Baldw. 83; *Ex parte Vermilyea*, 6 Cow. (N. Y.) 563; *The People* v. *Mather*, 4 Wend. (N. Y.) 238; *Cancemi* v. *People*, 16 N. Y. 502; *Fouts* v. *The State* , 11 Ohio St. 472; *Neely* v. *The People*, 23 Ill. 685; *Schoeffler* v. *The State*, 3 Wis. 831; *Trimble* v. *The State*, 2 Greene (Iowa), 404; *Commonwealth* v. *Lesher*, 17 Serg. & R. (Pa.) 155; *Staup* v. *Commonwealth*, 74 Pa. St. 458; *Armistead's Case*, 11 Leigh (Va.), 658; *Stewart* v. *The State*, 13 Ark. 740.

It was clearly erroneous for the prosecution to ask several of the jurymen, upon *voire dire*, whether they were living in polygamy; questions which tend to disgrace the person questioned, or to render him amenable to a criminal prosecution, have never been allowed to be put to a juror. *Anonymous*, Salk. 153; Bacon, Abr., tit. Juries, 12(f); 7 Dane, Abr. 334; *Hudson* v. *The State*, 1 Blackf. (Ind.) 319.

Second, The proof of what the witness, *Amelia Jane Schofield*, testified to in a former trial, under another indictment, should not have been admitted. The constitutional right of a prisoner to confront the witness and cross-examine him is not to be abrogated, unless it be shown that the witness is dead, or ***152** out of the jurisdiction of the court; or that, *having been summoned*, he appears to have been kept away by the adverse party on the trial. It appeared not only that no such person as *Amelia Jane Schofield* had been subpoenaed, but that no subpoena had ever been taken out for her. An unserved subpoena with the name of *Mary* Jane *Schobold* was shown. At nine o'clock in the evening, during the trial, a new subpoena was issued; and on the following morning, with no attempt to serve it beyond going to the prisoner's usual residence and inquiring for her, the witness Patterson was allowed to read from a paper what purported to be statements made by *Amelia Jane Schofield* on a former trial. No proof was offered as to the genuineness of the paper or its origin, nor did the witness testify to its contents of his own knowledge. This is in the teeth of the ruling in *United States* v. *Wood* (3 Wash. 440), and the rule laid down in all the American authorities. *Richardson* v. *Stewart*, 2 Serg. & R. (Pa.) 84; *Chess* v. *Chess*, 17 id. 409; *Huidekopper* v. *Cotton*, 3 Watts (Pa.) 56; *Powell* v. *Waters*, 17 Johns. (N. Y.) 176; *Cary* v. *Sprague*, 12 Wend. (N. Y.) 45; *The People* v. *Newman*, 5 Hill (N. Y.), 295; *Brogy* v. *The Commonwealth*, 10 Gratt. (Va.) 722; *Bergen* v. *The People*, 17 Ill. 426; *Dupree* v. *The State*, 33 Ala. 380.

Third, As to the constitutionality of the Poland Bill. Rev. Stat., sect. 5352. Undoubtedly Congress, under art. 4, sect. 3, of the Constitution, which gives 'power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States,' and under the decisions of this court upon it, may legislate over such territory, and regulate the form of its local government. But its legislation can be neither exclusive nor arbitrary. The power of this government to obtain and hold territory over which it might legislate, without restriction, would be inconsistent with its own existence in its present form. There is always an excess of power exercised when the Federal government attempts to provide for more than the assertion and preservation of its rights over such territory, and interferes by positive enactment with the social and domestic life of its inhabitants and their internal police. The offence prohibited by sect. 5352 is not a *malum in se;* it is not prohibited by the decalogue; and, if it be said ***153** that its prohibition is to be found in the teachings of the New Testament, we know that a majority of the people of this Territory deny that the Christian law contains any such prohibition.

The Attorney-General and *The Solicitor-General, contra.*

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The assignments of error, when grouped, present the following questions:----

1. Was the indictment bad because found by a grand jury of less than sixteen persons?

2. Were the challenges of certain petit jurors by the accused improperly overruled?

3. Were the challenges of certain other jurors by the government improperly sustained?

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4. Was the testimony of Amelia Jane Schofield, given at a former trial for the same offence, but under another indictment, improperly admitted in evidence?

5. Should the accused have been acquitted if he married the second time, because he believed it to be his religious duty?

6. Did the court err in that part of the charge which directed the attention of the jury to the consequences of polygamy?

These questions will be considered in their order.

1. As to the grand jury.

The indictment was found in the District Court of the third judicial district of the Territory. The act of Congress 'in relation to courts and judicial officers in the Territory of Utah,' approved June 23, 1874 (18 Stat. 253), while regulating the qualifications of jurors in the Territory, and prescribing the mode of preparing the lists from which grand and petit jurors are to be drawn, as well as the manner of drawing, makes no provision in respect to the number of persons of which a grand jury shall consist. Sect. 808, Revised Statutes, requires that a grand jury impanelled before any district or circuit court of the United States shall consist of not less than sixteen nor more than twenty-three persons, while a statute of the Territory limits the number in the district courts of the Territory ***154** to fifteen. Comp. Laws Utah, 1876, 357. The grand jury which found this indictment consisted of only fifteen persons, and the question to be determined is, whether the section of the Revised Statutes referred to or the statute of the Territory governs the case.

By sect. 1910 of the Revised Statutes the district courts of the Territory have the same jurisdiction in all cases arising under the Constitution and laws of the United States as is vested in the circuit and district courts of the United States; but this does not make them circuit and district courts of the United States. We have often so decided. *American Insurance Co.* v. *Canter*, 1 Pet. 511; *Benner et al.* v. *Porter*, 9 How. 235; *Clinton* v. *Englebrecht*, 13 Wall. 434. They are courts of the Territories, invested for some purposes with the powers of the courts of the United States. Writs of error and appeals lie from them to the Supreme Court of the Territory, and from that court as a territorial court to this in some cases.

Sect. 808 was not designed to regulate the impanelling of grand juries in all courts where offenders against the laws of the United States could be tried, but only in the circuit and district courts. This leaves the territorial courts free to act in obedience to the requirements of the territorial laws in force for the time being. *Clinton* v. *Englebrecht, supra; Hornbuckle* v. *Toombs*, 18 Wall. 648. As Congress may at any time assume control of the matter, there is but little danger to be anticipated from improvident territorial legislation in this particular. We are therefore of the opinion that the court below no more erred in sustaining this indictment than it did at a former term, at the instance of this same plaintiff in error, in adjudging another bad which was found against him for the same offence by a grand jury composed of twenty-three persons. 1 Utah, 226.

2. As to the challenges by the accused.

By the Constitution of the United States (Amend. VI.), the accused was entitled to a trial by an impartial jury. A juror to be impartial must, to use the language of Lord Coke, 'be indifferent as he stands unsworn.' Co. Litt. 155 *b*. Lord Coke also says that a principal cause of challenge is 'so called because, if it be found true, it standeth sufficient of itself, without ***155** leaving any thing to the conscience or discretion of the triers' (id. 156 *b*); or, as stated in Bacon's Abridgment, 'it is grounded on such a manifest presumption of partiality, that, if found to be true, it unquestionably sets aside the . . . juror.' Bac. Abr., tit. Juries, E. 1. 'If the truth of the matter alleged is admitted, the law pronounces the judgment; but if denied, it must be made out by proof to the satisfaction of the court or the triers.' Id. E. 12. To make out the existence of the fact, the juror who is challenged may be examined on his *voire dire*, and asked any questions that do not tend to his infamy or disgrace.

All of the challenges by the accused were for principal cause. It is good ground for such a challenge that a juror has formed an opinion as to the issue to be tried. The courts are not agreed as to the knowledge upon which the opinion must rest in order to render the juror incompetent, or whether the opinion must be accompanied by malice or

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ill-will; but all unite in holding that it must be founded on some evidence, and be more than a mere impression. Some say it must be positive (Gabbet, Criminal Law, 391); others, that it must be decided and substantial (*Armistead's Case*, 11 Leigh (Va.), 659; *Wormley's Case*, 10 Gratt. (Va.) 658; *Neely* v. *The People*, 13 Ill. 685); others, fixed (*State* v. *Benton*, 2 Dev. & B. (N. C.) L. 196); and, still others, deliberate and settled (*Staup* v. *Commonwealth*, 74 Pa. St. 458; *Curley* v. *Commonwealth*, 84 id. 151). All concede, however, that, if hypothetical only, the partiality is not so manifest as to necessarily set the juror aside. Mr. Chief Justice Marshall, in *Burr's Trial* (1 Burr's Trial, 416), states the rule to be that 'light impressions, which may fairly be presumed to yield to the testimony that may be offered, which may leave the mind open to a fair consideration of the testimony, constitute no sufficient objection to a juror; but that those strong and deep impressions which close the mind against the testimony that may be offered in opposition to them, which will combat that testimony and resist its force, do constitute a sufficient objection to him.' The theory of the law is that a juror who has formed an opinion cannot be impartial. Every opinion which he may entertain need not necessarily have that effect. In these days of newspaper enterprise and universal education, every case of public interest is almost, as a matter of necessity, ***156** brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits. It is clear, therefore, that upon the trial of the issue of fact raised by a challenge for such cause the court will practically be called upon to determine whether the nature and strength of the opinion formed are such as in law necessarily to raise the presumption of partiality. The question thus presented is one of mixed law and fact, and to be tried, as far as the facts are concerned, like any other issue of that character, upon the evidence. The finding of the trial court upon that issue ought not to be set aside by a reviewing court, unless the error is manifest. No less stringent rules should be applied by the reviewing court in such a case than those which govern in the consideration of motions for new trial because the verdict is against the evidence. It must be made clearly to appear that upon the evidence the court ought to have found the juror had formed such an opinion that he could not in law be deemed impartial. The case must be one in which it is manifest the law left nothing to the 'conscience or discretion' of the court.

The challenge in this case most relied upon in the argument here is that of Charles Read. He was sworn on his *voire dire;* and his evidence, [FN1] taken as a whole, shows that he 'believed' he had formed an opinion which he had never expressed, but which he did not think would influence his verdict on hearing the testimony. We cannot think this is such a manifestation of partiality as to leave nothing to the 'conscience or discretion' of the triers. The reading of the evidence leaves the impression that the juror had some hypothetical opinion about the case, but it falls far short of raising a manifest presumption of partiality. In considering such questions in a reviewing court, we ought not to be unmindful of the fact we have so often observed in our experience, that jurors not unfrequently seek to excuse themselves on the ground of having formed an opinion, when, on examination, it turns out that no real disqualification exists. In such cases the manner of the ***157** juror while testifying is oftentimes more indicative of the real character of his opinion than his words. That is seen below, but cannot always be spread upon the record. Care should, therefore, be taken in the reviewing court not to reverse the ruling below upon such a question of fact, except in a clear case. The affirmative of the issue is upon the challenger. Unless he shows the actual existence of such an opinion in the mind of the juror as will raise the presumption of partiality, the juror need not necessarily be set aside, and it will not be error in the court to refuse to do so. Such a case, in our opinion, was not made out upon the challenge of Read. The fact that he had not expressed his opinion is important only as tending to show that he had not formed one which disqualified him. If a positive and decided opinion had been formed, he would have been incompetent even though it had not been expressed. Under these circumstances, it is unnecessary to consider the case of Ransohoff, for it was confessedly not as strong as that of Read.

FN1 *Supra*, p. 147.

3. As to the challenges by the government.

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The questions raised upon these assignments of error are not whether the district attorney should have been permitted to interrogate the jurors while under examination upon their *voire dire* as to the fact of their living in polygamy. No objection was made below to the questions, but only to the ruling of the court upon the challenges after the testimony taken in answer to the questions was in. From the testimony it is apparent that all the jurors to whom the challenges related were or had been living in polygamy. It needs no argument to show that such a jury could not have gone into the box entirely free from bias and prejudice, and that if the challenge was not good for principal cause, it was for favor. A judgment will not be reversed simply because a challenge good for favor was sustained in form for cause. As the jurors were incompetent and properly excluded, it matters not here upon what form of challenge they were set aside. In one case the challenge was for favor. In the courts of the United States all challenges are tried by the court without the aid of triers (Rev. Stat. sect. 819), and we are not advised that the practice in the territorial courts of Utah is different.

*158 4. As to the admission of evidence to prove what was sworn to by Amelia Jane Schofield on a former trial of the accused for the same offence but under a different indictment.

The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.

In *Lord Morley's Case* (6 State Trials, 770), as long ago as the year 1666, it was resolved in the House of Lords 'that in case oath should be made that any witness, who had been examined by the coroner and was then absent, was detained by the means or procurement of the prisoner, and the opinion of the judges asked whether such examination might be read, we should answer, that if their lordships were satisfied by the evidence they had heard that the witness was detained by means or procurement of the prisoner, then the examination might be read; but whether he was detained by means or procurement of the prisoner was matter of fact, of which we were not the judges, but their lordships.' This resolution was followed in *Harrison's Case* (12 id. 851), and seems to have been recognized as the law in England ever since. In *Regina* v. *Scaife* (17 Ad. & El. N. S. 242), all the judges agreed that if the prisoner had resorted to a contrivance to keep a witness out of the way, the deposition of the witness, taken before a magistrate and in the presence of the prisoner, might be read. Other cases to the same effect are to be found, and in this country the ruling has been in the same way. *Drayton* v. *Wells*, 1 Nott & M. (S. C.) 409; *Williams* v. *The State*, 19 Ga. 403. So that now, in the leading text-books, it is laid down that if a witness is kept away by the adverse party, *159 his testimony, taken on a former trial between the same parties upon the same issues, may be given in evidence. 1 Greenl. Evid., sect. 163; 1 Taylor, Evid., sect. 446. Mr. Wharton (1 Whart. Evid., sect. 178) seemingly limits the rule somewhat, and confines it to cases where the witness has been corruptly kept away by the party against whom he is to be called, but in reality his statement is the same as that of the others; for in all it is implied that the witness must have been wrongfully kept away. The rule has its foundation in the maxim that no one shall be permitted to take advantage of his own wrong; and, consequently, if there has not been, in legal contemplation, a wrong committed, the way has not been opened for the introduction of the testimony. We are content with this long-established usage, which, so far as we have been able to discover, has rarely been departed from. It is the outgrowth of a maxim based on the principles of common honesty, and, if properly administered, can harm no one.

Such being the rule, the question becomes practically one of fact, to be settled as a preliminary to the admission of secondary evidence. In this respect it is like the preliminary question of the proof of loss of a written instrument, before secondary evidence of the contents of the instrument can be admitted. In *Lord Morley's Case (supra)*, it would seem to have been considered a

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question for the trial court alone, and not subject to review on error or appeal; but without deeming it necessary in this case to go so far as that, we have no hesitation in saying that the finding of the court below is, at least, to have the effect of a verdict of a jury upon a question of fact, and should not be disturbed unless the error is manifest.

The testimony shows that the absent witness was the alleged second wife of the accused; that she had testified on a former trial for the same offence under another indictment; that she had no home, except with the accused; that at some time before the trial a subpoena had been issued for her, but by mistake she was named as Mary Jane Schobold; that an officer who knew the witness personally went to the house of the accused to serve the subpoena, and on his arrival inquired for her, either by the name of Mary Jane Schofield or Mrs. Reynolds; that he was tole by the accused she was not at home; *160 that he then said, 'Will you tell me where she is?' that the reply was 'No; that will be for you to find out;' that the officer then remarked she was making him considerable trouble, and that she would get into trouble herself; and the accused replied, 'Oh, no; she won't, till the subpoena is served upon her,' and then, after some further conversation, that 'She does not appear in this case.'

It being discovered after the trial commenced that a wrong name had been inserted in the subpoena, a new subpoena was issued with the right name, at nine o'clock in the evening. With this the officer went again to the house, and there found a person known as the first wife of the accused. He was told by her that the witness was not there, and had not been for three weeks. He went again the next morning, and not finding her, or being able to ascertain where she was by inquiring in the neighborhood, made return of that fact to the court. At ten o'clock that morning the case was again called; and the foregoing facts being made to appear, the court ruled that evidence of what the witness had sworn to at the former trial was admissible.

In this we see no error. The accused was himself personally present in court when the showing was made, and had full opportunity to account for the absence of the witness, if he would, or to deny under oath that he had kept her away. Clearly, enough had been proven to cast the burden upon him of showing that he had not been instrumental in concealing or keeping the witness away. Having the means of making the necessary explanation, and having every inducement to do so if he would, the presumption is that he considered it better to rely upon the weakness of the case made against him than to attempt to develop the strength of his own. Upon the testimony as it stood, it is clear to our minds that the judgment should not be reversed because secondary evidence was admitted.

This brings us to the consideration of what the former testimony was, and the evidence by which it was proven to the jury.

It was testimony given on a former trial of the same person for the same offence, but under another indictment. It was *161 substantially testimony given at another time in the same cause. The accused was present at the time the testimony was given, and had full opportunity of cross-examination. This brings the case clearly within the well-established rules. The cases are fully cited in 1 Whart. Evid., sect. 177.

The objection to the reading by Mr. Patterson of what was sworn to on the former trial does not seem to have been because the paper from which he read was not a true record of the evidence as given, but because the foundation for admitting the secondary evidence had not been laid. This objection, as has already been seen, was not well taken.

5. As to the defence of religious belief or duty.

On the trial, the plaintiff in error, the accused, proved that at the time of his alleged second marriage he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church 'that it was the duty of male members of said church, circumstances permitting, to practise polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and among others the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to

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practise polygamy by such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come.' He also proved 'that he had received permission from the recognized authorities in said church to enter into polygamous marriage; . . . that Daniel H. Wells, one having authority in said church to perform the marriage ceremony, married the said defendant on or about the time the crime is alleged to have been committed, to some woman by the name of Schofield, and that such marriage ceremony was performed under and pursuant to the doctrines of said church.'

Upon this proof he asked the court to instruct the jury that if they found from the evidence that he 'was married as *162 charged--if he was married--in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be 'not guilty." This request was refused, and the court did charge 'that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right,--under an inspiration, if you please, that it was right,-- deliberately married a second time, having a first wife living, the want of consciousness of evil intent--the want of understanding on his part that he was committing a crime--did not excuse him; but the law inexorably in such case implies the criminal intent.'

Upon this charge and refusal to charge the question is raised, whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted, if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned. The question to be determined is, whether the law now under consideration comes within this prohibition.

The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is, what is the religious freedom which has been guaranteed.

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining *163 heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that State having under consideration 'a bill establishing provision for teachers of the Christian religion,' postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested 'to signify their opinion respecting the adoption of such a bill at the next session of assembly.'

This brought out a determined opposition. Amongst others, Mr. Madison prepared a 'Memorial and Remonstrance,' which was widely circulated and signed, and in which he demonstrated 'that religion, or the duty we owe the Creator,' was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session the proposed bill was not only defeated, but another, 'for establishing religious freedom,' drafted by Mr. Jefferson, was passed. 1 Jeff. Works, 45; 2 Howison, Hist. of Va. 298. In the preamble of this act (12 Hening's Stat. 84) religious freedom is defined; and after a recital 'that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty,' it is declared 'that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order.' In these two sentences is found the

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98 U.S. 145
8 Otto 145, 25 L.Ed. 244
(Cite as: 98 U.S. 145)

true distinction between what properly belongs to the church and what to the State.

In a little more than a year after the passage of this statute the convention met which prepared the Constitution of the United States.' Of this convention Mr. Jefferson was not a member, he being then absent as minister to France. As soon as he saw the draft of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff. Works, 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. *164 1 Jeff. Works, 79. Five of the States, while adopting the Constitution, proposed amendments. Three--New Hampshire, New York, and Virginia--included in one form or another a declaration of religious freedom in the changes they desired to have made, as did also North Carolina, where the convention at first declined to ratify the Constitution until the proposed amendments were acted upon. Accordingly, at the first session of the first Congress the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 id. 113), took occasion to say: 'Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions,--I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.' Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people. At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England polygamy has been treated as an offence against society. After the establishment of the ecclesiastical *165 courts, and until the time of James I., it was punished through the instrumentality of those tribunals, not merely because ecclesiastical rights had been violated, but because upon the separation of the ecclesiastical courts from the civil the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes and offences against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons.

By the statute of 1 James I. (c. 11), the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period re-enacted, generally with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration in a bill of rights that 'all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience,' the legislature of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, 'it hath been doubted whether bigamy or poligamy be punishable by the laws of this Commonwealth.' 12 Hening's Stat. 691. From that day to this we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was

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intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of *166 the people, to a greater or less extent, rests. Professor, Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 Kent, Com. 81, note (*e*). An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? *167 To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. Here the accused knew he had been once married, and that his first wife was living. He also knew that his second marriage was forbidden by law. When, therefore, he married the second time, he is presumed to have intended to break the law. And the breaking of the law is the crime. Every act necessary to constitute the crime was knowingly done, and the crime was therefore knowingly committed. Ignorance of a fact may sometimes be taken as evidence of a want of criminal intent, but not ignorance of the law. The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion: it was still belief, and belief only.

In *Regina* v. *Wagstaff* (10 Cox Crim. Cases, 531), the parents of a sick child, who omitted to call in medical attendance because of their religious belief that what they did for its cure would be effective, were held not to be guilty of manslaughter, while it was said the contrary would have been the result if the child had actually been starved to death by the parents, under the notion that it was their religious duty to abstain from giving it food. But when the offence consists of a positive act which is knowingly done, it would be dangerous to hold that the offender might escape punishment because he religiously believed the law which he had broken ought never to have been made. No case, we believe, can be found that has gone so far.

6. As to that part of the charge which directed the attention of the jury to the consequences of polygamy.

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The passage complained of is as follows: 'I think it not improper, in the discharge of your duties in this case, that you should consider what are to be the consequences to the innocent victims of this delusion. As this contest goes on, they multiply, *168 and there are pure-minded women and there are innocent children,--innocent in a sense even beyond the degree of the innocence of childhood itself. These are to be the sufferers; and as jurors fail to do their duty, and as these cases come up in the Territory of Utah, just so do these victims multiply and spread themselves over the land.'

While every appeal by the court to the passions or the prejudices of a jury should be promptly rebuked, and while it is the imperative duty of a reviewing court to take care that wrong is not done in this way, we see no just cause for complaint in this case. Congress, in 1862 (12 Stat. 501), saw fit to make bigamy a crime in the Territories. This was done because of the evil consequences that were supposed to flow from plural marriages. All the court did was to call the attention of the jury to the peculiar character of the crime for which the accused was on trial, and to remind them of the duty they had to perform. There was no appeal to the passions, no instigation of prejudice. Upon the showing made by the accused himself, he was guilty of a violation of the law under which he had been indicted: and the effort of the court seems to have been not to withdraw the minds of the jury from the issue to be tried, but to bring them to it; not to make them partial, but to keep them impartial.

Upon a careful consideration of the whole case, we are satisfied that no error was committed by the court below.

Judgment affirmed.

MR. JUSTICE FIELD.

I concur with the majority of the court on the several points decided except one,--that which relates to the admission of the testimony of Amelia Jane Schofield given on a former trial upon a different indictment. I do not think that a sufficient foundation was laid for its introduction. The authorities cited by the Chief Justice to sustain its admissibility seem to me to establish conclusively the exact reverse.

NOTE.--At a subsequent day of the term a petition for a rehearing having been filed, MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Since our judgment in this case was announced, a petition for rehearing has been filed, in which our attention is called to the fact that the sentence of the *169 court below requires the imprisonment to be at hard labor, when the act of Congress under which the indictment was found provides for punishment by imprisonment only. This was not assigned for error on the former hearing, and we might on that account decline to consider it now; but as the irregularity is one which appears on the face of the record, we vacate our former judgment of affirmance, and reverse the judgment of the court below for the purpose of correcting the only error which appears in the record, to wit, in the form of the sentence. The cause is remanded, with instructions to cause the sentence of the District Court to be set aside and a new one entered on the verdict in all respects like that before imposed, except so far as it requires the imprisonment to be at hard labor.

98 U.S. 145, 8 Otto 145, 25 L.Ed. 244

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EXHIBIT 15

898 F.Supp. 1169
(Cite as: 898 F.Supp. 1169)

▷

United States District Court,
N.D. Texas,
Dallas Division.

Robyn SANDERS and Cynthia Mullanix, Plaintiffs,
v.
CASA VIEW BAPTIST CHURCH, Defendant, and Shelby Baucum, Defendant and Third-Party Plaintiff.

Civ. A. No. 3-92-CV-1630-P.

Aug. 24, 1995.

Church employees who received marital counseling from minister and had sexual relationship with minister brought action against church and minister, alleging negligence and violations of Title VII. Minister filed cross-claims against church for breach of contract and wrongful discharge. Minister and church moved for summary judgment. The District Court, Solis, J., held that: (1) employees' cause of action against minister for professional negligence with respect to marital counseling was actionable in Texas; (2) issue of fact precluded summary judgment for minister on employees' professional negligence claim; and (3) First Amendment barred minister's cross-claims for breach of contract and wrongful discharge against church.

Motions granted in part and denied in part.

West Headnotes

[1] Federal Civil Procedure ⚿2543
170Ak2543 Most Cited Cases

All reasonable doubts and inferences must be decided in light most favorable to the party opposing summary judgment motion. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[2] Federal Civil Procedure ⚿2544
170Ak2544 Most Cited Cases

Once proper motion for summary judgment is made, nonmovant must direct court's attention to evidence in the record sufficient to establish genuine issue of material fact and to satisfy this burden, nonmovant may not rely on mere allegations in its pleadings without setting forth specific facts establishing genuine issue worthy of trial. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[3] Religious Societies ⚿30
332k30 Most Cited Cases

Action for clergy malpractice cannot be maintained under Texas law because evaluation of such complaint would require court to extensively investigate and evaluate religious tenets and doctrines.

[4] Religious Societies ⚿30
332k30 Most Cited Cases

Tort claims for behavior by cleric that do not require examination of religious doctrine are cognizable under Texas law.

[5] Constitutional Law ⚿84.1
92k84.1 Most Cited Cases

[5] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

Free exercise clause of First Amendment does not relieve individual of the obligation to comply with neutral laws of general applicability nor does it shield clergy from all liability for their wrongs. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⚿84.2
92k84.2 Most Cited Cases

When free exercise clause is raised as a defense, the threshold question is whether conduct of defendant is religious. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

In the spiritual counseling context, free exercise clause is relevant only if defendant can show that conduct that allegedly caused plaintiff's distress was part of the belief and practices of the religious group. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law ⚿84.5(10)
92k84.5(10) Most Cited Cases

[8] Health ⚿813

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198Hk813 Most Cited Cases
(Formerly 299k18.40 Physicians and Surgeons)

Under Texas law, to the extent that counselees' negligence claim was based on minister's holding himself out to provide services of a marriage counselor, counselees' claim was one for professional malpractice by marriage counselor, as opposed to noncognizable claim for clergy malpractice, and court would construe claim as such, even though complaint labeled claim negligence (malpractice in minister's pastoral counseling). Fed.Rules Civ.Proc.Rule 8(f), 28 U.S.C.A.

[9] Negligence ⚿202
272k202 Most Cited Cases
(Formerly 272k1)

In Texas, actionable negligence requires existence of legal duty owed by one person to another, breach of that duty, and damages proximately resulting from breach of that duty.

[10] Negligence ⚿1700
272k1700 Most Cited Cases
(Formerly 272k136(14))

In action for professional negligence under Texas law, the question of whether defendant owed duty to plaintiff is a question of law, but whether duty was breached is a question of fact.

[11] Negligence ⚿322
272k322 Most Cited Cases
(Formerly 272k5)

Under Texas law, professional owes his client duty to use skill and care in the performance of his duties commensurate with requirements of his profession and liability attaches only for failure to exercise reasonable care and skill in accordance with those requirements.

[12] Religious Societies ⚿30
332k30 Most Cited Cases

Counselees' cause of action against minister for professional negligence with respect to marital counseling was actionable in Texas.

[13] Federal Civil Procedure ⚿2515
170Ak2515 Most Cited Cases

Material issues of fact precluded summary judgment for minister with respect to counselees' cause of action for professional negligence with respect to marital counseling under Texas law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[14] Fraud ⚿64(1)
184k64(1) Most Cited Cases

Under Texas law, existence of confidential relationship giving rise to fiduciary duty is usually question of fact.

[15] Federal Civil Procedure ⚿2515
170Ak2515 Most Cited Cases

Material issue of fact as to whether confidential relationships existed between minister and counselees as result of marital counseling precluded summary judgment for minister on counselees' breach of fiduciary duty claims under Texas law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[16] Civil Rights ⚿1183
78k1183 Most Cited Cases
(Formerly 78k167)

To establish actionable Title VII claim of sexual harassment in the work place, plaintiff must show that: she belongs to protected class; she was subject to unwelcome sexual harassment; the harassment was based on sex; harassment affected term, condition, or privilege of employment; and employer knew or should have known of harassment and failed to take prompt remedial action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[17] Civil Rights ⚿1188
78k1188 Most Cited Cases
(Formerly 78k167)

Church employees who had sexual affairs with minister did not establish Title VII sexual harassment claim against minister: employees freely consented to sexual contact with minister; although minister allegedly criticized employees' work performance after sexual relationships had ended, minister never acted on any of his alleged threats to terminate employees; and church, independent of minister, terminated employees because employees had violated church policy by engaging in adulterous activity with minister. Civil

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Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[18] Damages ⇐50.10
115k50.10 Most Cited Cases

To establish claim for intentional infliction of emotional distress (IIED) under Texas law, plaintiffs must prove that defendants acted intentionally or recklessly, defendants' conduct was extreme or outrageous, defendants' actions caused plaintiff emotional distress, and the resulting emotional distress was severe.

[19] Federal Civil Procedure ⇐2515
170Ak2515 Most Cited Cases

Material issues of fact as to whether conduct of minister who had sexual relationship with church employees was extreme or outrageous precluded summary judgment for minister on employees' intentional infliction of emotional distress (IIED) claims under Texas law. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[20] Religious Societies ⇐30
332k30 Most Cited Cases

Under Texas law, church was not vicariously liable for any alleged intentional torts of minister unless church employees could show that minister was acting within the course and scope of his employment.

[21] Principal and Agent ⇐99
308k99 Most Cited Cases

Under Texas law, actual authority is that which principal intentionally confers upon agent, intentionally allows agent to believe that he possesses, or allows agent to believe that he possesses by want of care.

[22] Principal and Agent ⇐99
308k99 Most Cited Cases

Under Texas law, apparent authority is that which binds principal who has acted in such a way that reasonably prudent person would believe that agent had authority to act as he did in the circumstances.

[23] Religious Societies ⇐30
332k30 Most Cited Cases

Under Texas law, minister did not have actual or apparent authority to counsel church employees so as to make church vicariously liable for any alleged intentional torts committed by minister; counseling was not part of minister's job description or within his job authority, pastor informed minister that he was never to counsel, and church official told employee that minister was not supposed to be counseling and employee responded that minister was not counseling her.

[24] Master and Servant ⇐308
255k308 Most Cited Cases

Under Texas law, employer who ratifies tortious conduct of employee may be vicariously liable for such tortious conduct and ratification occurs when employer fails to repudiate the known acts of employee.

[25] Religious Societies ⇐30
332k30 Most Cited Cases

Since church employees who saw minister for marital counseling and who engaged in sexual relations with minister failed to show that church knew or should have known about such conduct, church did not ratify minister's alleged tortious acts so as to be vicariously liable under Texas law.

[26] Religious Societies ⇐30
332k30 Most Cited Cases

Sexual misconduct by member of the clergy is beyond scope of cleric's employment.

[27] Master and Servant ⇐303
255k303 Most Cited Cases

Under Texas law, employers have duty to inquire as to competence and qualifications of those that employer considers for employment.

[28] Master and Servant ⇐303
255k303 Most Cited Cases

To prevail on claim for negligent hiring or supervision under Texas law, plaintiff must show that employer retained in its employment an individual who was incompetent or unfit for job as result of a failure to make reasonable inquiry into individual's competence and qualifications.

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[29] Religious Societies ⚿30
332k30 Most Cited Cases

Church employees who received marital counseling from minister and who had sexual relationship with minister did not establish claims against church for negligent hiring, retention, or supervision under Texas law; church made reasonable inquiry into minister's competence and qualifications in that church contacted minister's references which were favorable and church did not know, nor should it have known, that minister, whose duties did not include counseling, was counseling employees and engaging in sexual relationship with them.

[30] Civil Rights ⚿1544
78k1544 Most Cited Cases
(Formerly 78k382.1)

[30] Civil Rights ⚿1545
78k1545 Most Cited Cases
(Formerly 78k383)

In Title VII case, plaintiff must prove by preponderance of the evidence a prima facie case of discrimination and she may prove her case by direct or circumstantial evidence. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[31] Civil Rights ⚿1549
78k1549 Most Cited Cases
(Formerly 78k387)

Title VII plaintiff makes out prima facie case of sex discrimination by proving that she was discharged, that she was qualified for position, that she was within the protected class at time of discharge, and that she was replaced by someone outside the protected class or otherwise discharged because of her sex. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[32] Civil Rights ⚿1536
78k1536 Most Cited Cases
(Formerly 78k378)

If Title VII plaintiff is successful in making out prima facie case of discrimination, burden shifts to defendant to show legitimate, nondiscriminatory reason for adverse employment action and if defendant does so, then the presumption of discrimination is rebutted and plaintiff must prove that the nondiscriminatory reason was pretext for discrimination. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[33] Civil Rights ⚿1549
78k1549 Most Cited Cases
(Formerly 78k387)

Title VII plaintiffs failed to make out prima facie case of sex discrimination, absent evidence showing that they were replaced by someone outside the protected class or that they were discharged because of their sex. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[34] Civil Rights ⚿1168
78k1168 Most Cited Cases
(Formerly 78k158.1)

Church which terminated employees because employees violated church policy by engaging in adulterous activity with minister was not liable for sex discrimination under Title VII; employees who offered no evidence to show that they were replaced by someone outside of the protected class or that they were discharged because of their sex failed to make out prima facie case of discrimination and even if they had, they produced no evidence to show that church's reasons for terminating them were pretext for discrimination. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[35] Civil Rights ⚿1168
78k1168 Most Cited Cases
(Formerly 78k158.1)

Any difference in the termination package received by church employees who were terminated because they violated church policy by engaging in adulterous activity with minister and that received by minister who accepted church's request to resign was immaterial to proper determination of employees' Title VII sex discrimination claim against church. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[36] Civil Rights ⚿1528
78k1528 Most Cited Cases
(Formerly 78k371)

Church employees could not recover from church for minister's alleged sexual harassment unless they could establish vicarious liability under respondeat superior and to establish such liability, employees

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had to prove that church either knew or should have known of the harassment and failed to take prompt remedial action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[37] Civil Rights ⇐1243
78k1243 Most Cited Cases

[37] Master and Servant ⇐40(1)
255k40(1) Most Cited Cases

To construct prima facie case of retaliation under Title VII, plaintiffs must establish that they engaged in conduct protected under Title VII, that adverse employment action followed, and that causal connection existed between the activity and the adverse action. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[38] Civil Rights ⇐1252
78k1252 Most Cited Cases
(Formerly 78k157)

Church employees failed to establish prima facie case of retaliation under Title VII against church, absent evidence of causal connection between protected activity and their termination. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C.A. § 2000e et seq.

[39] Damages ⇐192
115k192 Most Cited Cases

Church employees who were terminated for violating church policy by engaging in adulterous activity with minister failed to establish intentional infliction of emotional distress (IIED) claim against church under Texas law; when employees informed church of their sexual relationships with minister, church promptly requested minister's resignation and church's conduct by itself, without taking into consideration minister's actions, fell far short of the "extreme or outrageous" conduct necessary for IIED claim.

[40] Constitutional Law ⇐82(3)
92k82(3) Most Cited Cases

First Amendment protects the act of a decision rather than a motivation behind it. U.S.C.A. Const.Amend. 1.

[41] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Civil court review of ecclesiastical decisions of church tribunals, particularly those pertaining to the hiring or firing of clergy, are in themselves an extensive inquiry into religious law and practice and, hence, forbidden by First Amendment. U.S.C.A. Const.Amend. 1.

[42] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Religious bodies may make apparently arbitrary decisions affecting employment status of their clergy members and be free from civil review having done so.

[43] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[43] Religious Societies ⇐27(2)
332k27(2) Most Cited Cases

First Amendment barred minister's breach of contract and wrongful discharge claims against church; minister's claims concerned internal church discipline, faith, and organization, all of which were governed by ecclesiastical rule, custom, and law. U.S.C.A. Const.Amend. 1.

[44] Contracts ⇐47
95k47 Most Cited Cases

Pastor's naked assertion that he would help discharged church minister find job did not constitute a binding contract because it lacked consideration.

[45] Religious Societies ⇐27(2)
332k27(2) Most Cited Cases

Minister who accepted church's request to resign once it was disclosed that minister had sexual relations with women who saw him for marital counseling did not establish breach of contract or wrongful discharge claims against church, even if First Amendment did not bar such claims: if minister had denied church's request to resign, church would have rightfully terminated minister for violating church's policy and although minister alleged that he suffered damages as result of church's failure to honor its oral promise to secure him reemployment without breaching confidences,

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he admitted that he did not give church any confidences to disclose and that pastor did not promise to secure reemployment for him.
*1173 Robert G. Chadwick, Jr., Eric Eisenbraun, Ferrer, Montes, Poirot & Eisenbraun, Dallas, Texas, for plaintiffs.

John E. McFall, Kimberly N. Lonergan, Bryant S. McFall, Dallas, Texas, for defendant Casa View Baptist Church.

Ray Fargason, Harding, Bass, Fargason & Booth, Lubbock, Texas, for defendant Shelby Baucum.

ORDER

SOLIS, District Judge.

Presently before the Court are: 1) Defendant Casa View Baptist Church's ("Casa View's") Motion For Summary Judgment On Shelby Baucum's Cross-Claims filed on April 28, 1995, Baucum's Response filed on June 2, 1995, and Casa View's Reply filed on June 22, 1995; 2) Defendant Casa View's Motion For Summary Judgment On Plaintiffs' Claims filed on May 1, 1995, Plaintiffs' Response filed on May 31, 1995, and Casa View's Reply filed on June 20, 1995; and 3) Shelby Baucum's ("Baucum's") Motion For Summary Judgment filed on May 5, 1995, Plaintiffs' Response filed on June 2, 1995, and Baucum's Reply filed on June 21, 1995.

BACKGROUND

Baucum was a minister at Casa View until he resigned on September 25, 1991. Plaintiff Cynthia Mullanix ("Mullanix") claims that she entered into a marital counseling relationship with Baucum in January of 1991. This counseling relationship led to a sexual relationship between Baucum and Mullanix.

At the time the sexual relationship began, Mullanix was working as a waitress at a restaurant. On March 1, 1991, Mullanix became employed as a receptionist at Casa View. Baucum was her supervisor. On September 8, 1991, Mullanix informed Baucum that she wanted to end the sexual relationship.

Plaintiff Robyn Sanders ("Sanders") claims that she entered into a counseling relationship with Baucum due to her marital problems. On Memorial Day of 1990, Sanders claims that Baucum initiated sexual contact with her, and a sexual relationship between Sanders and Baucum continued periodically until she ended it on September 16, 1991.

On September 22, 1991, Mullanix confessed to Sanders that she was having an affair with Baucum. Sanders informed Mullanix that she too was having an affair with Baucum. On September 23, 1991, Plaintiffs told Joel Steed, deacon and personnel committee chairman of Casa View, about their relationships with Baucum. Baucum confessed to Pastor Smith that he had committed adultery *1174 with Plaintiffs. Baucum accepted Casa View's request to resign.

Plaintiffs were placed on administrative leave with pay pending an investigation and advice from Casa View's insurance carrier regarding potential church liability. Casa View terminated Plaintiffs on December 2, 1991.

STANDARD FOR SUMMARY JUDGMENT

[1][2] Summary Judgment is proper if the pleadings, discovery materials and affidavits "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). All reasonable doubts and inferences must be decided in the light most favorable to the party opposing the motion. *Thornbrough v. Columbus and Greenville R.R. Co.*, 760 F.2d 633, 640 (5th Cir.1985). Once a proper motion for summary judgment is made, the nonmovant must then direct the court's attention to evidence in the record sufficient to establish that there is a genuine issue of material fact. *Thurman v. Sears, Roebuck & Co.*, 952 F.2d 128, 131 (5th Cir.1992). To satisfy this burden, the nonmovant may not rely on "mere allegations in their pleadings without setting forth specific facts establishing a genuine issue worthy of trial." *Topalian v. Ehrman*, 954 F.2d 1125, 1131 (5th Cir.1992).

DISCUSSION

1) BAUCUM'S MOTION FOR SUMMARY JUDGMENT:

Plaintiffs allege the following claims against Baucum: negligence (malpractice in Baucum's pastoral counseling), breach of fiduciary duties, sex

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discrimination in employment pursuant to Title VII, and intentional infliction of emotional distress.

Negligence-Malpractice In Pastoral Counseling

Baucum argues that malpractice in pastoral counseling is not actionable under Texas law. Again, Baucum cites to *Dausch v. Rykse,* 52 F.3d 1425 (7th Cir.1994), in asserting that pastoral counseling is centered on matters of religion, and claims of negligence are not cognizable in civil court. 52 F.3d at 1428.

[3][4][5] The Court agrees with the many decisions that have held that an action for clergy malpractice could not be maintained because the evaluation of such a complaint "would require the court to extensively investigate and evaluate religious tenets and doctrines." *Dausch v. Rykse,* 52 F.3d 1425, 1432 (7th Cir.1994). [FN1] However, "tort claims for behavior by a cleric that does not require the examination of religious doctrine are cognizable." *Schmidt v. Bishop,* 779 F.Supp. 321, 327 (S.D.N.Y.1991). The Free Exercise Clause does not relieve an individual of the obligation to comply with neutral laws of general applicability, *Employment Div., Dep't of Human Resources v. Smith,* 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed.2d 876 (1990), nor does it "shield clergy from all liability for their wrongs." *Dausch,* 52 F.3d at 1435.

> FN1. The Texas legislature has enacted a 1993 statute that covers liability for sexual exploitation in counseling in a professional relationship, including a clergy member's assistance to an individual in resolving emotional, attitudinal, or relationship conflicts. However, the act does not include religious, moral, and spiritual counseling, teaching, and instruction. *See* Tex.Civ.Pract. & Rem.Code § 81.001, *et seq.* This statute is not available for causes of action arising prior to September 1, 1993.

[6][7] In addition, while spiritual counseling, including a cleric's marital counseling, may implicate First Amendment rights, the Court is not convinced that Plaintiffs' allegations permit Baucum to assert a free exercise defense. *See Destefano v. Grabrian,* 763 P.2d 275, 283 (Colo.1988). When the free exercise clause is raised as a defense, the threshold question is whether the conduct of the defendant is religious. *Id;* (citing *Wisconsin v. Yoder,* 406 U.S. 205, 215-18, 92 S.Ct. 1526, 1533-34, 32 L.Ed.2d 15 (1972). In the spiritual counseling context, "the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact part of the belief and practices of the religious group." *Destefano,* 763 P.2d at 283-84.

*1175 [8] If Plaintiffs' allegations are true, Baucum's preying on Plaintiffs, masqueraded in the form of marriage counseling, constitutes conduct that is not subject to First Amendment protection. Certainly such conduct is not part of the beliefs and practices of Casa View. Therefore, to the extent that Plaintiffs' claim is based on Baucum's holding himself out to provide services of a marriage counselor, Plaintiffs' claim under these circumstances is for professional malpractice by a marriage counselor, not clergy malpractice. *Dausch,* 52 F.3d at 1433-34. Although Plaintiffs' 2nd Amended Complaint labels this claim negligence (malpractice in Baucum's pastoral counseling), the Court will construe the claim based on the facts alleged as one for professional malpractice by a marriage counselor. Fed.R.Civ.P. 8(f); *Quality Mercury, Inc. v. Ford Motor Company,* 542 F.2d 466 (8th Cir.1976); *Fitz-Patrick v. Commonwealth Oil Company,* 285 F.2d 726 (5th Cir.1960).

Plaintiffs' 2nd Amended Complaint states that Baucum offered his services to help Plaintiffs with their marital problems. 2nd Amended Comp., pp. 6-7, 9-10, 13. Moreover, Plaintiffs assert that Baucum should be required to exercise that degree of skill and learning normally applied by "secular counselors." 2nd Amended Comp., p. 28. Mullanix specifically states that Baucum offered "to provide me with marital counseling and that he would like to do so." Mullanix Aff., ¶ 3. Furthermore, Mullanix describes the nature and extent of the marriage counseling, and that Baucum bragged about his skills and experience as a marital counselor. Mullanix Aff., pp. 2-3.

Likewise, Sanders made similar accusations with respect to Baucum's counseling of her marital problems. Sanders Aff., pp. 2-3. Thus, although Plaintiffs cannot maintain a claim of negligence in pastoral counseling or clergy malpractice, a viable

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claim for professional malpractice/negligence may exist regarding marriage counseling against Baucum. The next issue for discussion is whether Baucum owed a duty to Plaintiffs.

[9][10] In Texas, actionable negligence requires the existence of a legal duty owed by one person to another, a breach of that duty, and damages proximately resulting from breach of that duty. *Fed'l Sav. and Loan Insurance Corp. v. Texas Real Estate Counselors,* 955 F.2d 261, 265 (5th Cir.1992) ; *El Chico Corp. v. Poole,* 732 S.W.2d 306, 311 (Tex.1987). In an action for professional negligence, the question whether a defendant owed a duty to the plaintiff is a question of law, *Greater Houston Transportation Co. v. Phillips,* 801 S.W.2d 523, 525 (Tex.1990), but whether the duty was breached is a question of fact. *Rudolph v. ABC Pest Control, Inc.,* 763 S.W.2d 930, 933 (Tex.App.--San Antonio 1989, error denied); *Fed'l Sav. and Loan Insurance Corp.,* 955 F.2d at 265. "While all individuals owe a duty to exercise reasonable care to avoid foreseeable injury to others, professionals, by virtue of their special skill and expertise, are held to a higher standard of reasonable care." *Fed'l Sav. and Loan Insurance Corp.,* 955 F.2d at 265.

[11] A professional owes his client a duty to use the skill and care in the performance of his duties commensurate with the requirements of his profession. *Id.* Liability attaches only for failure to exercise reasonable care and skill in accordance with those requirements. *Id.* The Court is of the opinion that these same general standards for professional negligence should apply in this case.

Plaintiffs allege that Baucum held himself out as a skilled and experienced marital counselor with a psychology degree, and undertook to provide such counseling. Mullanix Aff., ¶¶ 3-5, 8-10; Sanders Aff., ¶¶ 5-7, 9, 12. Moreover, Plaintiffs assert that Baucum engaged in a romantic and sexual relationship with them, designed to solicit their affection and emotional dependence for Baucum's benefit rather than for Plaintiffs' benefit during the course of the counselor-counselee relationship. 2nd Amended Comp., pp. 28- 29. Plaintiffs contend that they suffered damages as a result of Baucum's actions during the counselor-counselee relationship.

[12][13] The Court finds that Plaintiffs' cause of action for professional negligence with respect to marital counseling against Baucum is actionable in Texas. Moreover, the Court finds that genuine issues of material fact exist with respect to such claim. Accordingly, *1176 the Court will deny Baucum's Motion For Summary Judgment with respect to Plaintiffs' negligence claim.

Breach Of Fiduciary Duties

Plaintiffs assert that Baucum breached his fiduciary duties to Plaintiffs because by virtue of their relationship, they placed a special confidence and trust in him. Baucum argues that Texas does not recognize a fiduciary relationship between a minister and a member of a congregation. Baucum cites to *Dausch v. Rykse,* 52 F.3d 1425 (7th Cir.1994), in alleging that the position of spiritual and religious advisor does not impose a fiduciary duty or establish a fiduciary relationship.

In finding no fiduciary duty, the *Dausch* Court stated that "because it would require the Court to define the scope of a fiduciary duty owed persons by their clergy, a matter clearly rooted in the tenets and internal organization of a religion, it raises the same constitutional difficulties encountered when defining the standard of care under negligence." *Dausch,* 52 F.3d at 1438. Alleging a breach of fiduciary duty under these circumstances is simply an elliptical way of alleging clergy malpractice. *Id., See also Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.N.Y.1991).

However, the Texas Supreme Court has recognized that certain informal relationships may give rise to a fiduciary duty. *Crim Truck & Tractor Co. v. Navistar International Transportation Corp.,* 823 S.W.2d 591 (Tex.1992). The Texas Supreme Court stated that such "informal fiduciary relationships have also been termed 'confidential relationships' and may arise 'where one person trusts in and relies upon another, whether the relation is a moral, social, domestic or merely personal one." Id. at 594, (citing *Fitz-Gerald v. Hull,* 237 S.W.2d 256, 261 (1951)). The Texas Supreme Court noted that because not every relationship involving a high degree of trust and confidence rises to the stature of a formal fiduciary relationship, "the law recognizes the existence of confidential relationships in those cases 'in which influence has been acquired and abused, in which confidence has been reposed and betrayed.' " *Id.*

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[14] Additionally, the existence of a confidential relationship is usually a question of fact. *Id.* Furthermore, the nature of the marriage counseling relationship between Baucum and Plaintiffs is an issue of fact to be determined at trial. *See Destefano v. Grabrian,* 763 P.2d 275, 283 (Colo.1988). The Court is of the opinion that genuine issues of material fact are present in this case regarding whether confidential relationships existed between Baucum and Plaintiffs "in which influence had been acquired and abused, in which confidence had been reposed and betrayed." Plaintiffs assert that they entered into a counselor-counselee relationship with Baucum based, in part, on Baucum's representations made with respect to his expertise in marriage counseling. Mullanix Aff., ¶¶ 3, 8-10; Sanders Aff., ¶¶ 5, 9-10, 12. Plaintiffs state that Baucum solicited their trust and confidence with his purported ability to help them out with their respective marital situations. 2nd Amended Comp., pp. 6, 10; Mullanix Aff., ¶¶ 4-5, 8, 18; Sanders Aff., ¶¶ 5-7, 9, 16. Moreover, Plaintiffs allege that Baucum made misrepresentations of fact to Plaintiffs for the purpose of seducing the affections and emotional dependence of Plaintiffs for Baucum's benefit rather than for the benefit of Plaintiffs. 2nd Amended Comp., pp. 19-25. In addition, Plaintiffs contend that Baucum breached his fiduciary duty in disclosing their respective confidential information to others. 2nd Amended Comp., pp. 25-27.

[15] As discussed above, if Plaintiffs' allegations are true, the Court would have little difficulty finding that Baucum owed Plaintiffs a fiduciary duty as a marriage counselor to Plaintiffs. *See Destefano v. Grabrian,* 763 P.2d 275, 284 (Colo.1988). His duty would be created by his undertaking to counsel them. *Id.* Moreover, Baucum's alleged undertaking would create a duty to engage in conduct designed to improve Plaintiffs' respective marital relationships. Thus, entering into the sexual relationships would be clear evidence of a breach of Baucum's fiduciary duties. Accordingly, the Court will deny Baucum's Motion with respect to all of Plaintiffs' breach of duty claims because genuine issues of material fact exist as to whether ***1177** Baucum owed fiduciary duties to Plaintiffs pursuant to a confidential relationship as a result of marital counseling.

Title VII-Sexual Harassment

[16] In order to establish an actionable claim of sexual harassment in the work place, a plaintiff must show that:

1) she belongs to a protected class;
2) she was subject to unwelcome sexual harassment;
3) the harassment was based on sex;
4) the harassment affected a term, condition, or privilege of employment; and
5) the employer knew or should have known of the harassment and failed to take prompt remedial action.

Nash v. Electrospace Sys. Inc., 9 F.3d 401 (5th Cir.1993).

Baucum argues that Plaintiffs' assertions do not rise to the level of severity necessary for supporting a claim for sexual harassment. Moreover, Baucum alleges that no evidence has been presented to show that a change in the terms, conditions, or privileges of Plaintiffs' employment occurred because of Baucum's actions during the pertinent time periods.

[17] The Court is of the opinion that Plaintiffs have presented insufficient summary judgment evidence to support a claim of sexual harassment against Baucum. Mullanix consented to the sexual contact with Baucum at least until September 8, 1991, the day she informed him that she wanted to end their sexual relationship. [FN2] Sanders consented to the sexual contact with Baucum at least until September 16, 1991, the day that she informed him that she wanted to end their sexual relationship. Plaintiffs allege that Baucum subjected Plaintiffs to sexual harassment until September 25, 1991.

> FN2. Plaintiffs' argument that they were incapable of giving psychological consent is without merit. The Court finds that Plaintiffs freely consented to their respective adulterous affairs with Baucum.

However, Mullanix claims that the only contact of a sexual nature that occurred after September 8, 1991 constituted Baucum's alleged kissing of Mullanix on the neck. This incident occurred shortly after an extensive sexual relationship between Mullanix and Baucum. Likewise, Sanders claims that Baucum made only one sexual comment to her after September 16, 1991. [FN3]

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FN3. Sanders also claims that Baucum telephoned Sanders at her home stating that he wanted to continue their sexual relationship. This personal call is no evidence of sexual harassment at work.

Furthermore, although Baucum allegedly criticized Plaintiffs' work performance after the sexual relationships ended, Baucum never acted on any of his alleged threats to terminate Plaintiffs. Rather, within a few weeks from the time that Mullanix first informed Baucum that she wanted to end their sexual relationship, Plaintiffs informed Casa View of the surrounding circumstances, and Casa View promptly requested for Baucum's resignation. Casa View, independent of Baucum, subsequently terminated Plaintiffs because Plaintiffs violated church policy by engaging in the adulterous activity with Baucum. Thus, the Court finds that Plaintiffs have produced insufficient evidence to support a claim for sexual harassment against Baucum. Accordingly, the Court will grant Baucum's Motion For Summary Judgment regarding Plaintiffs' Title VII sexual harassment claim.

Intentional Infliction Of Emotional Distress ("IIED")

[18][19] Plaintiffs must prove the following to recover damages for their IIED claim:

1) Defendants acted intentionally or recklessly;
2) Defendants' conduct was extreme or outrageous;
3) Defendants' actions caused Plaintiff emotional distress; and
4) the resulting emotional distress was severe.

Danawala v. Houston Lighting & Power Co., 14 F.3d 251, 256 (5th Cir.1993). In this case, Plaintiffs have supplied enough evidence to raise genuine issues of material fact relating to each element of IIED. Plaintiffs' allegations that Baucum sexually harassed Plaintiffs at work, made graphic sexual comments and gestures, and engaged in a sexual relationship, ***1178** at relatively the same time, with two employees who worked within a few feet of each other, could rise to the level of extreme or outrageous conduct under certain circumstances. Thus, the Court is of the opinion that Baucum's Motion For Summary Judgment should be denied with respect to Plaintiffs' IIED claim.

2) CASA VIEW'S MOTION FOR SUMMARY JUDGMENT:

Plaintiffs allege the following claims against Casa View: Title VII--sex discrimination in employment; breach of fiduciary duties; negligence- malpractice in pastoral counseling, Title VII--sex discrimination in terminations, Title VII--retaliation; negligent hiring; negligent supervision; and intentional infliction of emotional distress.

Breach Of Fiduciary Duties, Negligence, and IIED

[20] The same analysis as discussed above applies with respect to the viability of Plaintiffs' claims for breach of fiduciary duties, negligence, and IIED. However, Plaintiffs claim that Casa View should be vicariously liable for Baucum's intentional torts. Therefore, the Court must determine whether genuine issues of material fact exist in order to hold Casa View vicariously liable for these alleged intentional torts of Baucum. Casa View is not vicariously liable unless Plaintiffs can show that Baucum was acting within the course and scope of his employment. *Country Roads, Inc. v. Witt*, 737 S.W.2d 362, 364 (Tex.App.--Houston [14th Dist.] 1987, no writ).

[21] Initially, Plaintiffs argue that Casa View granted Baucum actual authority to conduct counseling. Actual authority is that which a principal intentionally confers upon an agent, intentionally allows the agent to believe that he possesses, or allows the agent to believe that he possesses by want of care. *Currey v. Lone Star Steel Co.*, 676 S.W.2d 205, 209-10 (Tex.App.--Ft. Worth 1984, no writ).

[22] Alternatively, Plaintiffs allege that Baucum had apparent authority to counsel them. Apparent authority is that which binds a principal who has acted in such a way that a reasonably prudent person would believe that the agent had the authority to act as he did in the circumstances. *Biggs v. U.S. Fire Ins. Co.*, 611 S.W.2d 624, 629 (Tex.1981).

Plaintiffs assert that Baucum had actual authority because an August 28, 1989 Casa View directive stated that "the pastoral/ministerial staff of the church has primary responsibility for the spiritual counseling of the church." Furthermore, Plaintiffs argue that Baucum had actual authority because

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Casa View either intentionally, or through want of care, allowed Baucum to believe that he was authorized to provide counseling.

However, Pastor Smith testified that Baucum was a member of the ministerial staff, not the pastoral/ministerial staff. Smith Depos., pp. 492-93. Thus, the August 28, 1989 directive did not include Baucum as a person with authority to conduct counseling. Moreover, Plaintiffs have not provided sufficient evidence to show that Casa View either knew or should have known that Baucum was providing counseling to Plaintiffs.

For example, Plaintiffs allege that Casa View knew Baucum was counseling Plaintiffs because in the Summer of 1991, Jim Walters, Casa View's Minister of Missions, walked into Baucum's office on one occasion when Baucum was alone with Mullanix. Shortly thereafter, Walters told Mullanix that Baucum was not supposed to be counseling. Mullanix Aff., ¶ 13. However, Walters asked Mullanix directly if Baucum was counseling her, and Mullanix responded, "no." At that point, Walters informed Mullanix that Baucum was not supposed to be counseling. Mullanix Depos., pp. 1702-04. In fact, Mullanix testified that she told Walters that she was not going to Baucum for counseling because Baucum had told her not to tell anyone that she was seeing him for counseling. *Id.* at 1550. Plaintiffs have not presented any evidence to show that Casa View either knew, or should have known, that Baucum was providing marital counseling.

[23] Counseling was not a part of Baucum's job description or within his job authority. Pastor Smith informed Baucum that he was never to counsel. Baucum Depos., pp. 749-55; Smith Depos., pp. 40-41, 396-97. *1179 Mullanix told Walters that Baucum was not counseling her. Therefore, the Court finds that Baucum did not have actual or apparent authority to counsel Plaintiffs.

[24][25] Additionally, Plaintiffs assert that Casa View ratified the tortious conduct of Baucum. An employer who ratifies the tortious conduct of an agent may be vicariously liable for such tortious conduct. *Prunty v. Arkansas Freightways, Inc.*, 16 F.3d 649, 652-53 (5th Cir.1994). Ratification occurs when the employer fails to repudiate the known acts of an employee. *Id.* However, the Court finds that Casa View did not ratify the tortious acts because Plaintiffs have failed to show that Casa View knew or should have known about such conduct.

In an attempt to show that Casa View should have known of Baucum's actions, Plaintiffs supply several examples of other women who "felt uncomfortable" around Baucum. Moreover, Pastor Smith told Baucum that his car was seen parked outside of Mullanix's home. However, this evidence does not show that Casa View knew that Baucum was counseling Plaintiffs, or that he was engaged in a sexual relationship with them. Rather, when Plaintiffs informed Casa View of Baucum's conduct, Casa View promptly requested for Baucum's resignation.

[26] In addition, the Court notes that sexual misconduct by a member of the clergy is, by the weight of the authority, beyond the scope of employment of the cleric. *See Dausch v. Rykse,* 52 F.3d 1425, 1436 (7th Cir.1994). Furthermore, Casa View's policy provided that adultery by any member of the clergy is immediate grounds for dismissal. Steed Aff., ¶ 7. Thus, the Court finds that Casa View should not be held vicariously liable for any intentional torts attributed to Baucum. Accordingly, the Court will grant Casa View's Motion For Summary Judgment with respect to Plaintiffs' claims for breach of fiduciary duties, malpractice, and IIED.

Negligent Hiring/Retention/Supervision

[27][28] In Texas, employers have a duty to inquire as to the competence and qualifications of those the employer considers for employment. *Akins v. Estes,* 888 S.W.2d 35, 42 (Tex.App.--Amarillo 1994, application for writ pending). To prevail on a claim for negligent hiring or supervision, a plaintiff must show that the employer retained in its employment an individual who was incompetent or unfit for the job as a result of a failure to make a reasonable inquiry into the individual's competence and qualifications. *Id.*

The Court finds that Casa View made a reasonable inquiry into Baucum's competence and qualifications. First, Rhea Cathey, a member of the search committee of Casa View, was informed from a friend that Baucum had a good reputation. Cathey Depos., p. 39. Cathey then contacted three references for Baucum from his previous employer,

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First Baptist Church of Plainview ("First Baptist"). All three references had favorable comments regarding Baucum. *Id.* at 18-19. Cathey met with Baucum on one occasion, and Pastor Smith and two other Casa View members met with Baucum on another occasion. *Id.;* Smith Depos., pp. 48-49. Afterwards, Casa View arranged for Baucum and his wife to visit Dallas to meet with all of the members of the search committee. Smith Depos., pp. 56-58.

Carlos Mcleod, the former Pastor at First Baptist, and leader of the Evangelism Division of the Texas Baptist Convention, told Pastor Smith that "I want you to know that if I were to leave denominational work and go back into the pastorate today, that I would do whatever I had to do and pay whatever I had to pay to get Shelby Baucum on my staff as education minister. He's the best there is." Smith Depos., p. 61. Mcleod was Baucum's supervisor for more than ten years at First Baptist.

Moreover, Pastor Smith received a very favorable recommendation from Bernie Spooner, another member of the Texas Baptist Convention. Smith Depos., pp. 63-64. Casa View was only required to conduct a reasonable search, not an exhaustive investigation. Therefore, the Court finds that Casa View did conduct a reasonable search into Baucum's competence and qualifications before it hired him.

***1180** [29] Furthermore, as explained above, Casa View did not know, nor should it have known, that Baucum was counseling Plaintiffs and engaging in a sexual relationship with them. The Court notes that Plaintiffs themselves worked within a few feet of each other without knowing of each other's relationship with Baucum. Thus, the Court will grant Casa View's Motion For Summary Judgment regarding Plaintiffs' negligent hiring/retention/supervision claims.

Title VII-Sex Discrimination

[30][31] In a Title VII case, the plaintiff must first prove by a preponderance of the evidence a *prima facie* case of discrimination. The plaintiff may prove her case by direct or circumstantial evidence. *U.S. Postal Service Bd. of Govs. v. Aikens,* 460 U.S. 711, 714, 103 S.Ct. 1478, 1481, 75 L.Ed.2d 403 (1983). A plaintiff makes out a *prima facie* case of sex discrimination by proving: 1) she was discharged; 2) she was qualified for the position; 3) she was within the protected class at the time of discharge; and 4) she was replaced by someone outside the protected class, or otherwise discharged because of her sex. *Bodenheimer v. PPG Indus., Inc.,* 5 F.3d 955, 957 (5th Cir.1993).

[32] If the Plaintiff is successful in making out a *prima facie* case of discrimination, the burden shifts to the defendant to show a legitimate, nondiscriminatory reason for the adverse employment decision. If the defendant articulates a nondiscriminatory reason of its adverse employment action, then the presumption is rebutted and the Plaintiff must prove that the nondiscriminatory reason was a pretext for discrimination. *St. Mary's Honor Ctr. v. Hicks,* 509 U.S. 502, ---- - ----, ---- - 113, & n. 4, 113 S.Ct. 2742, 2747-49, 2751-53, & n. 4, 125 L.Ed.2d 407 (1993).

[33][34] Plaintiffs have offered no evidence to show that they were replaced by someone outside the protective class, or that they were discharged because of their sex. Thus, Plaintiffs have failed to make out a *prima facie* case of discrimination. In addition, even if Plaintiffs did make out a *prima facie* case of discrimination, Plaintiffs have produced no evidence to show that Casa View's reasons for terminating them were a mere pretext for discrimination.

Rather, after Casa View learned that Plaintiffs and Baucum had entered into adulterous relationships, Casa View placed Plaintiffs on administrative leave with pay pending an investigation and advice from the insurance carrier regarding potential church liability. Steed Depos., pp. 393, 313-314, 429, 441, 448, 491-93, 740-43. Furthermore, Casa View promptly requested to Baucum that he resign. Smith Depos., pp. 423-24, 427-30, 451, 462-63. After Plaintiffs' were placed on leave, Casa View assigned their former duties to incumbent female employees. Williams Aff., ¶ 18.

Casa View's personnel policies provide that any moral conduct that is inconsistent with the Lord's standards is just cause for discharge. Steed Aff., ¶ 7. Plaintiffs do not dispute that entering into an adulterous relationship with Baucum is inconsistent with the Lord's standards. After the investigation was completed, Casa View offered Plaintiffs the opportunity to resign. Steed Depos., pp. 495-505, 538. When Plaintiffs refused to resign, Casa View

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terminated them for violating the personnel policy prohibiting conduct inconsistent with the Lord's standards. Steed Depos., pp. 543-44. Plaintiffs have failed to offer any evidence to show that Casa View's reasons for terminating them were a mere pretext for discrimination. [FN4]

> FN4. Plaintiffs also argue under the mixed motives doctrine as set forth in *Price Waterhouse v. Hopkins,* 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989). However, under either theory, Plaintiffs still fail to offer any evidence that Casa View discriminated against them because of their sex.

As discussed above, Plaintiffs' assertion that they could not consent to the adulterous relations because Baucum seduced them is without merit. The fact remains that they violated Casa View policy and were terminated because of it.

[35] Likewise, Plaintiffs' argument that Baucum received a more favorable termination package is unsupported by the record. Casa View asked Baucum to resign immediately, ***1181** and the church gave him one month severance pay. Casa View placed Plaintiffs on involuntary leave with pay for two months, and paid them for two months of psychiatric counseling. Any difference in the termination package between Plaintiffs and Baucum is immaterial to a proper determination of Plaintiff's sex discrimination claim. Accordingly, because Plaintiffs have offered no evidence to show that Casa View discriminated against them because of their sex, or to show that Casa View's reasons for terminating them were a mere pretext for discrimination, the Court will grant Casa View's Motion For Summary Judgment regarding Plaintiffs' Title VII sex discrimination claim.

Title VII-Sexual Harassment

[36] As discussed above, Plaintiffs have produced insufficient evidence to support a sexual harassment claim. Moreover, even if Plaintiffs could establish sexual harassment against Baucum, Plaintiffs cannot recover from Casa View for Baucum's alleged sexual harassment unless they can establish vicarious liability under *respondeat superior. Nash v. Electrospace Sys., Inc.,* 9 F.3d 401, 404 (5th Cir.1993). To establish such liability, Plaintiffs must prove that Casa View either knew or should have known of the harassment and failed to take prompt remedial action. *Id.* However, as discussed above, the Court has determined that Casa View did not know, nor should it have known of Baucum's conduct. Accordingly, the Court grants Casa View's Motion For Summary Judgment with respect to Plaintiffs' Title VII sexual harassment claim.

Title VII-Retaliation

[37][38] To construct a *prima facie* case of retaliation, Plaintiffs must establish that: 1) they engaged in conduct protected under Title VII; 2) an adverse employment action followed; and 3) a causal connection existed between the activity and the adverse action. *Collins v. Baptist Memorial Geriatric Ctr.,* 937 F.2d 190, 193 (5th Cir.1991), *cert. denied,* 502 U.S. 1072, 112 S.Ct. 968, 117 L.Ed.2d 133 (1992). Plaintiffs cannot show a causal connection between the activity and the adverse action. As discussed above, Plaintiffs have not produced any evidence to show that Casa View's stated reasons were a mere pretext for discrimination. The Court finds that Plaintiff has not met its burden with respect to their retaliation claim, just as they failed regarding their sex discrimination claim. Accordingly, the Court will grant Casa View's Motion For Summary Judgment with respect to Plaintiffs' Title VII retaliation claim.

Intentional Infliction Of Emotional Distress

[39] Plaintiffs also allege a separate claim of IIED against Casa View for its actions toward Plaintiffs. As discussed above, Plaintiffs must prove the following to recover damages for their IIED claim:

1) Defendants acted intentionally or recklessly;
2) Defendants' conduct was extreme or outrageous;
3) Defendants' actions caused Plaintiff emotional distress; and
4) the resulting emotional distress was severe.

Danawala v. Houston Lighting & Power Co., 14 F.3d 251, 256 (5th Cir.1993). However, after considering all the facts and circumstances in this case, the Court is of the opinion that Casa View's conduct by itself, without taking into consideration Baucum's actions, falls far short of "extreme or outrageous." When Plaintiffs approached Casa View and informed it of the relationships, Casa View promptly requested for Baucum's resignation.

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After conducting an investigation into the matter, Casa View requested Plaintiffs' resignations because they violated Casa View policy. Thus, the Court finds such conduct far short of extreme or outrageous. Accordingly, the Court will grant Casa View's Motion For Summary Judgment regarding Plaintiffs' separate IIED claim against Casa View only.

3) CASA VIEW'S SUMMARY JUDGMENT MOTION ON BAUCUM'S CROSS-CLAIMS:

Baucum has filed cross-claims against Casa View alleging that he was entitled to recover damages from Casa View under legal ***1182** theories of breach of contract and wrongful discharge. Baucum alleges that Pastor Smith and church deacon Steed made unkept promises to Baucum that induced Baucum into signing his letter of resignation and letter of repentance. Casa View argues that the First Amendment bars Baucum from bringing his cross-claims.

[40][41][42] The First Amendment to the United States Constitution provides in part that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...." The First Amendment protects the act of a decision rather than a motivation behind it. *Young v. N. Ill. Conf. Of United Methodist Church,* 21 F.3d 184, 186 (7th Cir.1994). Civil court review of ecclesiastical decisions of church tribunals, "particularly those pertaining to the hiring or firing of clergy, are in themselves an 'extensive inquiry' into religious law and practice, and hence forbidden by the First Amendment." *Id.* at 187. *See also Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 717, 96 S.Ct. 2372, 2384, 49 L.Ed.2d 151 (1976). Courts have concluded that "matters touching the relationship between a church and its minister, determination of salary, and assignment of duties and location, are matters of church administration and government and thus purely of ecclesiastical cognizance." *Young,* 21 F.3d at 185; *Natal v. Christian And Missionary Alliance,* 878 F.2d 1575, 1577 (1st Cir.1989). Religious bodies "may make apparently arbitrary decisions affecting the employment status of their clergy members and be free from civil review having done so." *Id.* at 187.

By its very nature, the inquiry which Baucum would have us undertake into the circumstances of his discharge "plunges an inquisitor into a maelstrom of Church policy, administration, and governance. It is an inquiry barred by the Free Exercise Clause." *Natal v. Christian And Missionary Alliance,* 878 F.2d 1575, 1578 (1st Cir.1989).

[43] Baucum argues that this Court can decide this case based on neutral principles because it involves a general contractual dispute. The Sixth Circuit denied a Methodist minister's breach of contract claim against his church after he was forced into retirement. *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir.1986). The Sixth Circuit stated that "the neutral principles" doctrine "has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be." *Id.* at 396. Baucum's claim relates to his employment as a minister of Casa View. Therefore, his claim "concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law." *Id.* Therefore, the Court finds that the First Amendment bars Baucum's cross-claims against Casa View.

[44][45] Alternatively, the Court finds that Baucum has presented insufficient evidence to support a breach of contract claim. Baucum asserts that he suffered damages as a result of Casa View's failure to honor its oral promise to secure him reemployment without breaching confidences. Cross- Claim, ¶ 102. However, Baucum admits that he did not give Casa View any confidences to disclose, and that Pastor Smith did not promise to secure reemployment for Baucum. Baucum Depos., pp. 1306-7, 1313-14. Rather, Pastor Smith stated that he merely would help Baucum find a job. *Id.* This naked assertion does not constitute a binding contract because it lacks consideration. *McCulley Fine Arts Gallery, Inc. v. "X" Partners,* 860 S.W.2d 473, 477 (Tex.App.--El Paso 1993, no writ). Instead, Casa View requested Baucum's resignation upon being informed of the adulterous activity. If he denied the church's request, Casa View would have rightfully terminated Baucum for violating Casa View's policy. Baucum has presented insufficient evidence to support a claim for breach of contract or wrongful discharge.

For the above reasons, the Court grants Casa View's Motion For Summary Judgment regarding Baucum's cross-claims.

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It is hereby **Ordered** that Shelby Baucum's Motion For Summary Judgment is **denied.**

It is further **Ordered** that Casa View Baptist Church's Motion For Summary Judgment On The Claims Of Plaintiffs Robyn Sanders And Cynthia Mullanix is **granted.**

***1183** It is further **Ordered** that Casa View Baptist Church's Motion For Summary Judgment On Shelby Baucum's Cross-Claims is **granted.**

SO ORDERED.

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EXHIBIT 46

▷

United States District Court,
S.D. New York.

Christine SCHMIDT, Plaintiff,
v.
Joseph P. BISHOP, Rye Presbyterian Church,
Presbytery of Hudson River,
Presbyterian Church (USA), Defendants.

No. 91 Civ. 4125 (CLB).

Dec. 6, 1991.

Plaintiff brought action against church pastor and ecclesiastical authorities, alleging that pastor had initiated sexual contact during a counselling relationship. The defendants brought motions to dismiss. The District Court, Brieant, Chief Judge, held that: (1) plaintiff failed to establish claim of breach of fiduciary duty against pastor; (2) plaintiff failed to establish claim of fraud against pastor; (3) claim of malpractice was not actionable under New York law; (4) statute of limitations was not tolled; and (5) action could not be maintained against ecclesiastical authorities.

Motions granted.

West Headnotes

[1] Negligence ⇐201
272k201 Most Cited Cases
(Formerly 272k1)

Under New York law, it is not possible to claim that alleged perpetrator of deliberate sexual abuse injured plaintiff negligently.

[2] Religious Societies ⇐30
332k30 Most Cited Cases

Claim that a church pastor mishandled a counselling relationship with a 12- year-old, including engaging in sexual contact, was properly treated as a claim for malpractice under New York law, rather than as a claim for negligence; conduct involved purported breach of professional standards by ordained minister.

[3] Fraud ⇐7
184k7 Most Cited Cases

While "fiduciary" relationship has been expansively characterized under New York law, not every confidential relationship or joint venture involves "fiduciary" relationship.

[4] Fraud ⇐7
184k7 Most Cited Cases

While term "fiduciary" generally implies existence of professional or commercial relationship under New York law, term also comprehends "informal relations."

[5] Religious Societies ⇐30
332k30 Most Cited Cases

Breach of fiduciary duty claim against church pastor in connection with his alleged sexual contact with 12-year-old during counselling relationship was not actionable under New York law; duty allegedly violated by the pastor was general duty to refrain from violating penal laws, claim of breach of fiduciary duty was merely another way of alleging that pastor grossly abused his pastoral role, that is, that he engaged in malpractice, which was not actionable, and court would be confronted with constitutional difficulties in defining scope of fiduciary duty owed persons by their clergy. U.S.C.A. Const.Amend. 1.

[6] Fraud ⇐41
184k41 Most Cited Cases

In analyzing fraud claims under New York law, courts are instructed to examine closely sufficiency of plaintiff's complaint because statute of limitations for fraud is significantly longer than for other civil claims.

[7] Fraud ⇐58(1)
184k58(1) Most Cited Cases

Evidence failed to establish fraud claim under New York law against church pastor in connection with his alleged sexual contact with 12-year-old during counselling relationship, notwithstanding pastor's misrepresentation that their "relationship was special and acceptable in the eyes of the lord"; injury 12-year-old suffered flowed mostly from alleged criminal sexual abuse perpetrated by the pastor.

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[8] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[8] Religious Societies ⇐30
332k30 Most Cited Cases

Tort claims can be maintained against clergy, for such behavior as negligent operation of Sunday school van, and other misconduct not within purview of First Amendment, because unrelated to religious efforts of cleric. U.S.C.A. Const.Amend. 1 .

[9] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[9] Religious Societies ⇐30
332k30 Most Cited Cases

Malpractice claim against church pastor in connection with his alleged sexual contact with plaintiff beginning when she was 12 alleged malpractice of clergymen, which was not actionable under New York law; any effort to instruct jury as to duty of care which clergymen should exercise would require court and jury to consider perspective and approach to counselling inherent in denomination's beliefs and practices, which would foster unconstitutionally excessive entanglement with religion. U.S.C.A. Const.Amend. 1.

[10] Limitation of Actions ⇐95(4.1)
241k95(4.1) Most Cited Cases
(Formerly 241k95(4))

A "delayed discovery rule," providing that claim accrues only when plaintiff knows or should have known of injury, did not apply under New York law to cause of action brought against church pastor in connection with his alleged sexual contact with plaintiff beginning when she was 12, despite fact that case involved child sexual abuse.

[11] Limitation of Actions ⇐13
241k13 Most Cited Cases

Church pastor would not be equitably estopped from pleading statute of limitations in case brought by plaintiff in which she alleged sexual contact with the church pastor beginning when she was 12, despite plaintiff's contention that she relied to her detriment on pastor's misrepresentation that his behavior was appropriate; plaintiff was affected by and during consequences of alleged abuse, and brought suit 31 years after commencement of relationship and two years after termination of relationship. N.Y.McKinney's General Obligations Law § 17-103, subd. 4, par. b.

[12] Limitation of Actions ⇐97
241k97 Most Cited Cases

Limitations period for bringing of claim against church pastor in connection with his alleged sexual contact with plaintiff beginning when she was 12 would not be tolled under New York law on basis that plaintiff was under duress; duress was apparently not an element of the plaintiff's claim, and even if it were, it was doubtful whether any reasonable juror could find that the plaintiff was under constant legal duress for the entire 31-year period of the relationship.

[13] Religious Societies ⇐30
332k30 Most Cited Cases

Ecclesiastical authorities could not be found liable on respondeat superior claims asserted against them arising out of alleged sexual contact of church pastor with 12-year-old under New York law; the pastor was entitled to dismissal of action brought against him.

[14] Religious Societies ⇐30
332k30 Most Cited Cases

Church could not be regarded as supervising or retaining clergyman who came under discipline of different and competing denomination, despite fact that the clergyman continued to serve the church as "pastor emeritus," receiving proceeds of trust fund established by church's parishioners.

[15] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[15] Religious Societies ⇐30
332k30 Most Cited Cases

Claim against ecclesiastical authorities arising out of church pastor's alleged sexual contact with plaintiff beginning when she was 12 was not actionable under New York law; it would be inappropriate and unconstitutional for court to determine after fact that the authorities negligently supervised or retained the pastor. U.S.C.A.

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Const.Amend. 1.
*323 Jeffrey R. Anderson, Reinhart & Anderson, St. Paul, Minn., for Christine Schmidt.

Barry Strutt, Keegan, Keegan & Associates, White Plains, N.Y., for Joseph P. Bishop.

Henry Weisburg, Shearman & Sterling, New York City, for Rye Presbyterian Church.

Lawrence T. D'Aloise, Jr., Clark, Gagliardi & Miller, White Plains, N.Y., for Presbytery of Hudson River.

Mark Seisel, David E. Worby, P.C., White Plains, N.Y., for Presbyterian Church (USA).

MEMORANDUM AND ORDER

BRIEANT, Chief Judge.

In this diversity case controlled by New York law, defendants moved to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(6), on various grounds. Because affidavits and other information were received and considered, the Court on October 9, 1991 converted the motion into a motion for summary judgment pursuant to Fed.R.Civ.P. 56, and opened the record to further submissions from the parties.

The complaint pleads four separate claims against the individual defendant, Joseph P. Bishop, framed as claims for negligence (count I), malpractice (count II), breach of fiduciary duty (count III) and fraud (count IV).

The complaint also charges the remaining defendants (the "Church Defendants") with (Count V) responsibility for the wrongful conduct of Bishop under the doctrine of *respondeat superior,* with (Count VI) negligent placement, retention or supervision of Bishop and (Count VII) with simple negligence.

FACTUAL BACKGROUND

Our analysis must be based on the facts well pleaded as amplified by the affidavits, without regard to the legal theories or labels attached by the pleader. The facts, denied by defendants, but assumed to be true for purposes of the motion, are found *324 in the plaintiff's complaint and in her affidavit docketed October 1, 1991.

Ms. Schmidt was born in 1948 and became a member of the Rye Presbyterian Church in 1957. Complaint at ¶¶ 8-9. Three years later, when she was twelve years old, her parents brought her to the defendant Bishop for "emotional, spiritual and familial counseling". Schmidt Affidavit at ¶ 2. At that time Rev. Bishop was the pastor of the Rye Presbyterian Church. Thereafter, Schmidt alleges, she became emotionally dependent on Bishop, since he gave her the "emotional support and guidance" which she believed she needed. Schmidt Affidavit at ¶ 3.

Shortly after the counseling relationship began, she asserts that Joseph Bishop initiated "sexual contact". The contact, described in some detail, did not involve rape or sexual intercourse, but essentially reflects the crime of sexual abuse in the second degree, in violation of New York Penal Law § 130.60 as presently in effect. This statute, adopted as part of a comprehensive revision by the legislature in 1965, was derived from former §§ 483-a and 483-b of the Penal Law of 1909.

According to Ms. Schmidt's affidavit, Bishop invoked God as supporting the conduct in which he allegedly engaged, and informed her that "the relationship was special and acceptable in the eyes of the Lord" and that "it was not something [she could] share with others...." Schmidt Affidavit at ¶ 5. Although plaintiff left Rye in 1977, the counseling relationship between plaintiff and defendant Bishop continued until June 17, 1989, because plaintiff "continued to believe that the relationship with Joseph Bishop was a special relationship and that there was nothing wrong with it...." Schmidt Affidavit at ¶ 6.

The reason that the relationship was ultimately terminated was that Ms. Schmidt had entered psychotherapy in January 1988. According to her affidavit, it was in the fall of 1989 that, as a result of her therapy, she "began to understand that the contact with Joseph Bishop was wrong, that he sexually abused me and that I suffered severe damage as a result of that abuse." Schmidt Affidavit at ¶ 6.

The nature of the relationship between Ms. Schmidt and defendant Bishop, as well as her

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failure to perceive the wrongfulness of Bishop's actions until she was forty-one years old, is addressed in the affidavit of Dorothy Miller. Ms. Miller, a licensed clinical social worker and Ms. Schmidt's primary treating therapist, avers that Ms. Schmidt "believed [Bishop] to be her sole confidant", that she therefore "was incapable of pulling away from Joseph Bishop" and "was necessarily forced to succumb to Joseph Bishop's wishes." Miller Affidavit at ¶¶ 5-6.

Ms. Schmidt filed this action on June 17, 1991, and defendant Bishop answered the complaint on July 17, 1991.

Analysis of the Complaint against Bishop

The facts alleged in this complaint support clearly an action for a battery or some similar intentional tort, for which the statute of limitations is one year, N.Y.Civ.Prac.L. & R. § 215(3) (McKinney 1990); it is equally clear that had the plaintiff or her family notified the authorities in a timely fashion--specifically, within two years of the initial incident--the defendant Bishop might well have been prosecuted for criminal sexual abuse. N.Y.Penal Law § 130.60 (McKinney 1987); N.Y.Crim.Proc.Law § 30.10(2)(c) (McKinney 1981)

Count I of the complaint, however, pleads a negligence claim against defendant Bishop, alleging specifically that he breached a duty owed her by entering into the relationship at all, knowing of his propensities, and that he breached that duty further by engaging in sexual exploitation of her and failing to reveal the wrongful nature of that conduct. Complaint at ¶ 20.

[1] Even if the Court were to invite a trial jury to engage in the Constitutionally dubious task of setting a standard of reasonable care for clergymen engaged in counseling, the obstacle remains that New York courts have rejected uniformly such attempts to transmogrify intentional torts into "negligence". *See, e.g., *325Rafferty v. Arnot Ogden Memorial Hospital,* 140 A.D.2d 911, 913, 528 N.Y.S.2d 729, 730 (3d Dep't 1988) (rejecting claim of negligent assault in sexual molestation case); *Mazzaferro v. Albany Motel Enterprises, Inc.,* 127 A.D.2d 374, 375, 515 N.Y.S.2d 631, 632 (3d Dep't 1987) ("New York has adopted the prevailing modern view that, once intentional offensive contact has been established, the actor is liable for assault and not negligence ..."); *Trott v. Merit Department Store,* 106 A.D.2d 158, 160, 484 N.Y.S.2d 827, 829 (1st Dep't 1985) (same). It is thus legally impossible to claim that the alleged perpetrator of deliberate sexual abuse injured the plaintiff negligently.

[2] Similarly, to the extent that the plaintiff's negligence claim is founded on Bishop's mishandling of the counseling relationship generally, that claim is properly treated as one for malpractice, *see infra* at 326-328. This particular aspect of defendant's conduct involves a purported breach of *professional* standards by an ordained minister, and as such is cognizable only as a malpractice claim. *Papa v. Brunswick General Hospital,* 132 A.D.2d 601, 517 N.Y.S.2d 762 (2d Dep't 1987) (discussing distinctions between simple negligence and malpractice actions against physicians).

Count III of the complaint charges Bishop with a breach of fiduciary duty. In perhaps the most widely quoted and far-reaching New York case on the definition of a "fiduciary" relationship, the court held:

> "Broadly stated, a fiduciary relationship is one founded upon trust or confidence reposed by one person in the integrity and fidelity of another. It is said that the relationship exists in all cases in which influence has been acquired and betrayed. The rule embraces both technical fiduciary relations and those informal relations which exist whenever one man trusts in, and relies upon, another.... Such a relationship might be found to exist, in appropriate circumstances, between close friends ... or even where confidence is based on prior business dealings...."

Penato v. George, 52 A.D.2d 939, 942, 383 N.Y.S.2d 900, 902 (2d Dep't 1976), *appeal dismissed,* 42 N.Y.2d 908, 366 N.E.2d 1358, 397 N.Y.S.2d 1004 (1977). *See also* Restatement (Second) of Torts § 874 comment a.

[3] Despite this expansive characterization of the term, it is clear that not every confidential relationship or joint venture involves as a "fiduciary" relationship. *See, e.g., Don King Productions, Inc. v. Douglas,* 742 F.Supp. 741, 769 (S.D.N.Y.1990) (generally no fiduciary relationship between boxer and promoter); *Kirkland v.*

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American Title Insurance Co., 692 F.Supp. 153, 157 (E.D.N.Y.1988) (no fiduciary relationship between property owners and title insurance company); *Sobol v. E.P. Dutton, Inc.*, 112 F.R.D. 99, 104 (S.D.N.Y.1986) (Weinfeld, J.) (no fiduciary relationship between author and publisher).

[4] On the other hand, although the term generally implies the existence of a professional or commercial relationship, [FN1] the term as defined in New York also comprehends "informal relations". *Compare MacDonald v. Clinger*, 84 A.D.2d 482, 446 N.Y.S.2d 801 (4th Dep't 1982) (psychiatrist owed patient fiduciary duty) *with DiMaio v. State*, 135 Misc.2d 1021, 517 N.Y.S.2d 675 (Ct.Cl.1987) (State Division of Veterans Affairs counselor owed no fiduciary duty to Vietnam veteran being counseled) *and Hector M. v. Commissioner of Social Services*, 102 Misc.2d 676, 425 N.Y.S.2d 199 (Fam.Ct.1980) (social worker owed no fiduciary duty to client on facts presented).

> FN1. Such an assumption would also seem to inhere in then Judge Cardozo's famous holding that a fiduciary "is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is the standard of behavior." *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928).

[5] Irrespective of whether the pastoral relationship may generally be characterized as a "fiduciary" relationship, the Court is persuaded that defendant Bishop should prevail on this count. First, the duty allegedly violated by the defendant was not so much a special "fiduciary" duty, which may *326 be imposed on an individual as a matter of social policy, *Apple Records, Inc. v. Capitol Records, Inc.*, 137 A.D.2d 50, 55, 529 N.Y.S.2d 279, 282 (1st Dep't 1988), but rather the general duty to refrain from violating the penal laws.

Second, in analyzing and defining the scope of a fiduciary duty owed persons by their clergy, the Court would be confronted by the same constitutional difficulties encountered in articulating the generalized standard of care for a clergyman required by the law of negligence. *See infra* at pp. 326 *et seq.* Third, as with her negligence claim, Ms. Schmidt's fiduciary duty claim is merely another way of alleging that the defendant grossly abused his pastoral role, that is, that he engaged in *malpractice*. *MacDonald, supra*, 446 N.Y.S.2d at 805-06 (Simons, J., concurring) (plaintiff's claim of unauthorized disclosure of confidences by psychiatrist was claim for malpractice rather than for breach of fiduciary duty).

[6] Plaintiff's fourth claim is for fraud. To state a claim for fraud in New York, a plaintiff must allege:

> "(1) that the defendant made a misrepresentation, (2) as to a material fact, (3) which was false, (4) and known to be false by the defendant, (5) that the representation was made for the purpose of inducing the other party to rely upon it, (6) that the other party rightfully did so rely, (7) in ignorance of its falsity, (8) to his injury."

Computerized Radiological Services v. Syntex Corp., 786 F.2d 72, 76 (2d Cir.1986) (quoting *Brown v. Lockwood*, 76 A.D.2d 721, 730, 432 N.Y.S.2d 186, 193 (2d Dep't 1980)). In analyzing fraud claims under New York law, courts are instructed to examine closely the sufficiency of plaintiff's complaint, since the statute of limitations for fraud is significantly longer than for other civil claims. *Von Bulow ex rel. Auersperg v. Von Bulow*, 657 F.Supp. 1134, 1140 (S.D.N.Y.1987).

[7] Even assuming that the plaintiff has pleaded fraud with the requisite particularity, her claim under this count suffers from deficiencies similar to those of her fiduciary duty claim. A claim for fraud most often contemplates both a commercial relationship and a *pecuniary* loss flowing from a misrepresentation made in the course of that relationship. *E.g., Stich v. Oakdale Dental Center, P.C.*, 120 A.D.2d 794, 795, 501 N.Y.S.2d 529, 531 (3d Dep't 1986) ("actual pecuniary injury" was "sole compensable form of damages in a fraud action") (citations omitted). Furthermore, the injury plaintiff has suffered in this case flows not so much from Bishop's misrepresentation that their "relationship was special and acceptable in the eyes of the Lord", Schmidt Affidavit at ¶ 5, as from the independently tortious, indeed criminal, sexual abuse allegedly perpetrated by the defendant. It should also be noted that where, as here, there is also a claim of malpractice:

> "It is only when the alleged fraud occurs separately from and subsequent to the malpractice that a plaintiff is entitled to allege and prove a a

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cause of action for intentional tort ... and then only where the fraud claim gives rise to damages separate and distinct from those flowing from the malpractice."

Spinosa v. Weinstein, 168 A.D.2d 32, 42, 571 N.Y.S.2d 747, 753 (2d Dep't 1991) (quoting *Coopersmith, infra*). *See also Bassile v. Covenant House,* 152 Misc.2d 88, 575 N.Y.S.2d 233 (Sup.Ct.) (dismissing fraud claim of plaintiff who had allegedly been sexually abused by defendant priest); *Coopersmith v. Gold,* 172 A.D.2d 982, 983, 568 N.Y.S.2d 250, 252 (3d Dep't 1991) (dismissing fraud claim of plaintiff who allegedly had sexual relations with defendant psychiatrist during counseling relationship). Plaintiff's fraud claim, therefore, also fails.

Count II of the complaint charges "malpractice". Plaintiff has deliberately avoided asserting that the case involves *clergy* malpractice, but rather styles this claim artfully as one for malpractice by a "youth worker and counselor". Complaint at ¶ 23. By this standard, a medical malpractice action against a surgeon might well be characterized as one for "counseling malpractice", since surgeons often engage in pre- and post-operative "counseling". It is a fact conceded in the complaint that plaintiff's *327 parents brought her to defendant Bishop because he was their clergyman. That the complaint is founded on this relationship is confirmed by the pleading of a *respondeat superior* claim against the Rye Presbyterian Church, of which Rev. Bishop was then pastor. *Respondeat superior* is founded on agency, and the agency relationship, if there were any, was that of pastor, or clergy.

The Court must address the real issue here--clergy malpractice--rather than plaintiff's rather fanciful characterization of the claim as "counseling malpractice". Whether an independant tort denominated "clergy malpractice" exists has become a frequently litigated issue in the courts of this Nation. *See, e.g., Byrd v. Faber,* 57 Ohio St.3d 56, 565 N.E.2d 584 (1991); *Nally v. Grace Community Church of the Valley,* 47 Cal.3d 278, 253 Cal.Rptr. 97, 763 P.2d 948 (1988), *cert. denied,* 490 U.S. 1007, 109 S.Ct. 1644, 104 L.Ed.2d 159 (1989); *Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988) (en banc); *Hester v. Barnett,* 723 S.W.2d 544 (Mo.App.1987). The issue has generated a growing body of scholarly commentary. *See, e.g., Nally v. Grace Community Church of the Valley: Clergy Malpractice--A Threat to Both Liberty and Life,* 11 Pace L.Rev. 137 (1990); *Clergy Malpractice: Should Pennsylvania Recognize a Cause of Action for Improper Counseling by a Clergyman?* 192 Dick.L.Rev. 223 (1987); Ericsson, *Clergyman Malpractice: Ramifications of a New Theory,* 16 Val.U.L.Rev. 163 (1981).

Although the Court has reviewed these authorities, this Court must respect and apply the law of New York as it exists now. And the fact is that neither the legislature nor the courts of New York have upheld or authorized a claim for clergy malpractice. *New York Public Interest Research Group v. The Insurance Information Institute,* 140 Misc.2d 920, 927, 531 N.Y.S.2d 1002, 1007 (Sup.Ct.N.Y.County 1988) ("Petitioners contend, and defendants do not dispute that, in fact, no member of the clergy has ever been held liable for clerical malpractice"), *aff'd,* 161 A.D.2d 204, 554 N.Y.S.2d 590 (1st Dep't 1990). Nor is this likely in New York.

[8][9] Defendants concede, as they must, that tort claims can be maintained against clergy, for such behavior as negligent operation of the Sunday School van, and other misconduct not within the purview of the First Amendment, because unrelated to the religious efforts of a cleric. *Cantwell v. Connecticut,* 310 U.S. 296, 303-04, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). Claims of malpractice stand on a different footing. While the clergy of most denominations do provide counseling to youths and other members of their congregations, when they do so it is normally part of their religious activities; in so doing, they do not thereby become subject to the same standards of liability for professional malpractice which would apply, for example, to a state-licensed psychiatrist or a social worker, *Coopersmith v. Gold,* 172 A.D.2d 982, 568 N.Y.S.2d 250 (3d Dep't 1991). That there is no recorded instance of a New York court upholding an action for clergy malpractice, in this most litigious of states, speaks to this point, and loudly.

It would be impossible for a court or jury to adjudicate a typical case of clergy malpractice, without first ascertaining whether the cleric, in this case a Presbyterian pastor, performed within the level of expertise expected of a similar professional (the hypothetical "reasonably prudent Presbyterian pastor"), following his calling, or practicing his

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profession within the community. *See* Restatement (Second) of Torts § 299A. As the California Supreme Court has held in *Nally v. Grace Community Church of the Valley:*

> "Because of the differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of a particular denomination or ecclesiastical teachings of the religious entity."

Nally, 253 Cal.Rptr. at 109, 763 P.2d at 960.

***328** This Court agrees with *Nally,* and regards the unconstitutionality as more than possible. It is real. The Supreme Court, in the much maligned case of *Lemon v. Kurtzman,* 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971), forbade the state to "foster excessive government entanglement with religion", *Id.* at 614-15, 91 S.Ct. at 2112, as violative of the First Amendment. This is the so-called "third prong" of *Lemon,* which does not appear to be the subject of apparent reconsideration by the Supreme Court in *Weisman v. Lee,* 908 F.2d 1090 (1st Cir.1990), *cert. granted,* 499 U.S. 918, 111 S.Ct. 1305, 113 L.Ed.2d 240 (1991), argued November 6, 1991, and awaiting decision. Any effort by this Court to instruct the trial jury as to the duty of care which a clergyman should exercise, would of necessity require the Court or jury to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community. This in turn would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion.

It may be argued that it requires no excessive entanglement with religion to decide that reasonably prudent clergy of any sect do not molest children. The difficulty is that this Court, and the New York courts whose authority we exercise here, must consider not only this case, but the next case to follow, and the ones after that, before we embrace the newly invented tort of clergy malpractice. This places us clearly on the slippery slope and is an unnecessary venture, since existing laws against battery, and the criminal statute against sexual abuse if timely invoked, provide adequate protection for society's interests. Where could we stop? Assume a severely depressed person consults a storefront preacher, unaffiliated with any of the mainstream denominations, but with them, equally protected by the First Amendment. The cleric consults with our hypothetical citizen, reminds him of his slothful life, and that he is a miserable sinner; recommends prayer and fasting and warns of the Day of Judgment. Our depressed person becomes more so, and kills himself and a few more people. These deaths are followed by lawsuits. As to a licensed psychiatrist or social worker, our lay courts should have no trouble adjudicating a claim of professional malpractice on these facts. As to a clergyman, it would be both impossible and unconstitutional to attempt to do so. *See Destefano v. Grabrian,* 763 P.2d 275 (Colo.1988) (en banc) (dismissing "negligent marital counseling" count in action against defendant priest).

Since the malpractice alleged in support of count II is the malpractice of a clergyman and not actionable in New York, the defendants are entitled to summary judgment in their favor on that count.

The Statute of Limitations

Since the conduct alleged against Bishop is obviously actionable as an intentional tort, our reader may wonder why the pleading has been cast in the forms described. The answer is simple. The intentional tort claims are clearly time barred. Even assuming that a battery occurred at plaintiff's last encounter with defendant Bishop on June 17, 1989, [FN2] the statute of limitations has long since run. The same is true, of course, with respect to any battery claims that might have been based on the earlier incidents alleged, as plaintiff's toll for infancy expired in 1972.

> FN2. At the oral argument of this motion, plaintiff's counsel elliptically described this encounter as involving "an attempted seduction".

Even as actually framed, the complaint is vulnerable to a statute of limitations defense. For example, the limitations period for negligence and most professional malpractice claims in New York

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is three years, or less for physicians, with the cause of action ordinarily accruing at the time of the injury. Although, the breach of fiduciary duty claim is possibly subject to a longer limitations period, *329 *Frank Management, Inc. v. Weber,* 145 Misc.2d 995, 997-1000, 549 N.Y.S.2d 317, 319-321 (Sup.Ct.N.Y.County 1989), it is readily apparent that such claims, too, would ordinarily be time-barred on the facts of this case.

Plaintiff, recognizing that even as pleaded, her claims are subject to a statute of limitations defense, argues both that a different accrual rule should be used in this class of cases, and that various equitable doctrines should be applied to toll the statute.

Delayed Discovery

[10] Plaintiff first urges the Court to apply the "delayed discovery" doctrine, which essentially provides that a claim accrues only when the "plaintiff knows or should have known of the injury and the defendant's role in causing that injury." [FN3] Plaintiff's Memorandum at 330. Although New York courts have adhered fairly strictly to traditional accrual rules, *see infra* at 329, the legislature has on occasion enacted "discovery" rules with respect to certain specific tort claims. *See, e.g.,* N.Y.Civ.Prac.L. & R. § 214-c (McKinney 1987) (toxic tort cases). The rationale for such enactments is that it is unfair to deny a day in court to persons who, due to the lengthy latent period of their injuries, may be unaware of those injuries until long after the limitations period has expired. *Enright v. Eli Lilly & Co.,* 77 N.Y.2d 377, 382-383, 570 N.E.2d 198, 200-201, 568 N.Y.S.2d 550, 552-53 (1991); *Johnson v. Johnson,* 701 F.Supp. 1363, 1368 (N.D.Ill.1988) (quoting *Lincoln-Way Community v. Village of Frankfort,* 51 Ill.App.3d 602, 606, 9 Ill.Dec. 884, 889, 367 N.E.2d 318, 323 (3d Dist.1977)).

> FN3. As noted above, plaintiff has sought to take advantage of the lengthy statute of limitations for fraud, arguing that since she only discovered the wrongfulness of defendant Bishop's conduct in the fall of 1989, her claim is timely pursuant to the alternative "two years of discovery" limitations period for that tort. *See* N.Y.Civ.Prac.L. & R. §§ 203(f), 213(8) (McKinney 1987). As the Court has already determined that the defendants are entitled to judgment as a matter of law on this count, we need not address this argument.

It is precisely this concern that has led some courts and legislatures to adopt a discovery rule in child sex abuse cases. *See, e.g., Simmons v. United States,* 805 F.2d 1363 (9th Cir.1986); *Osland v. Osland,* 442 N.W.2d 907 (N.D.1989). *See also* Cal.Civ.Proc.Code § 340.1[a] (West 1989); Wash.Rev.Code § 4.16. (1988). The argument for a discovery rule in this context, simply stated, is that victims of child sexual abuse often do not realize until years later either that they have been abused at all or the scope of their injuries. *Johnson,* 701 F.Supp. at 1369-70.

Persuasive though this argument may be, there is no authority for the adoption of such a rule in child sex abuse cases in New York. As a leading commentator has stated:

> "... the New York Court of Appeals has steadfastly declined to alter the traditional New York rule that the statute of limitations commences to run when the cause of action accrues, even though the plaintiff is unaware that he has a cause of action."

N.Y.Civ.Prac.L. & R. § 203 Practice Commentary at 140 (McKinney 1987). *See also Rizk v. Cohen,* 73 N.Y.2d 98, 104 n. 3, 535 N.E.2d 282, 285 n. 3, 538 N.Y.S.2d 229, 232 n. 3 (1989) ("... this court has consistently refused to judicially adopt the so-called 'discovery' rule ...").

In *Bassile v. Covenant House,* 152 Misc.2d 88, 575 N.Y.S.2d 233 (Sup.Ct.N.Y.County), a case which also involved the alleged sexual abuse of a minor by a member of the clergy, Justice Baer conducted a thorough review of the policies underlying the statute of limitations, as well as the reluctance of New York courts towards varying its literal terms. *Id.* Although sensitive to the obstacles to filing a timely complaint in child sex abuse cases, he concluded that there was no discovery rule in this class of cases, and also observed aptly that "... where the courts of this state, especially the highest, have declared with consistency what the law is, it is not the province of the trial judge to opt for something different." *Id. Cf.* N.Y.Civ.Prac.L. & R.

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§ 201 (McKinney 1987) ("No court shall extend the time limited by law *330 for the commencement of an action"). Believing it unwise and unjustified to do so, this Court declines to work a total revision of the state's policy in this area, and accordingly declines to invent a delayed discovery doctrine for this case.

Equitable Estoppel

[11] Plaintiff also urges that defendant Bishop be equitably estopped from pleading the statute of limitations. *See* N.Y.Gen.Oblig.L. 17- 103(4)(b) (McKinney 1989 & Supp.1991). New York law provides that "a defendant may be estopped from pleading the statute of limitations where plaintiff was induced by fraud, misrepresentations or deception from filing a timely action." *Simcuski v. Saeli,* 44 N.Y.2d 442, 448-49, 377 N.E.2d 713, 716, 406 N.Y.S.2d 259, 262 (1978). Plaintiff alleges that she relied to her detriment on defendant Bishop's misrepresentation that his behavior was appropriate, and was therefore "unable to appreciate the improper, exploitative and harmful nature of her relationship with defendant Bishop...." Complaint at ¶ 16.

Just such an argument, however, was recently rejected by Justice Baer in *Bassile, supra:*

> "... what really stopped plaintiff from suit in this case was his alleged failure to comprehend the reality and meaning of what had happened. Plaintiff, in other words, was affected by the enduring consequences of the alleged abuse.... this is better viewed as a basis for the invocation of a discovery rule rather than equitable estoppel or fraudulent concealment."

Id. See also Gallas v. Greek Orthodox Archdiocese of North and South America, N.Y.L.J. July 19, 1991 at 21 (Sup.Ct.N.Y.County) (rejecting plaintiff's equitable estoppel claim in child sexual abuse case); *Smith v. Smith,* 830 F.2d 11, 13 (2d Cir.1987) (doctrine applies only "when some conduct by a defendant after his initial wrongdoing has prevented the plaintiff from discovering or suing upon the initial wrong").

Plaintiff relies on *Coopersmith v. Gold,* 172 A.D.2d 982, 568 N.Y.S.2d 250 (3d Dep't 1991). In that case, the plaintiff patient brought an action for fraud, malpractice and battery against her former psychiatrist, alleging that the psychiatrist had abused the physician/patient relationship by having sexual relations with her. 568 N.Y.S.2d at 251. The court found that though the plaintiff's action would ordinarily have been time-barred, the plaintiff had raised fact issues regarding her defense of equitable estoppel which precluded summary judgment on the malpractice claim. In particular, the court recognized that abuse of the "transference" phenomenon--whereby a patient transfers feelings about matters and persons being discussed to the counselor-- could justify an estoppel. *Id.*

Coopersmith, though, is distinguishable from the instant case, in that it involved *medical* malpractice, a recognized cause of action to which the doctrine of equitable estoppel has been applied. Furthermore, the plaintiff in that case brought suit six years after the commencement of treatment and six months from the termination of the parties' relationship; the comparable time periods in this case are thirty-one years and two years.

In a related aspect of her estoppel claim, plaintiff argues that defendant Bishop should also be estopped due to his fraudulent concealment of the nature of his acts. Once again, however, the cases establish that there must be some active concealment which is distinct from the initial wrong, an element lacking in this case. *E.g., Rizk v. Cohen,* 73 N.Y.2d 98, 535 N.E.2d 282, 538 N.Y.S.2d 229, 233 (1989) (fraudulent concealment claim fails when "plaintiff relies on the same act which forms the basis of his negligence claim"). Accordingly, defendant Bishop is not estopped from pleading the statute of limitations.

Duress

[12] Lastly, plaintiff contends that the statute is tolled because she was under duress. Plaintiff's Memorandum at 16-19. *See also* Miller Affidavit at ¶ 7 (explaining coercion inherent in sexual abuse). For this doctrine to apply, duress must be "an element of the cause of action asserted", *331 *Cullen v. Margiotta,* 811 F.2d 698, 722 (2d Cir.), *cert. denied,* 483 U.S. 1021, 107 S.Ct. 3266, 97 L.Ed.2d 764 (1987).

This requirement has been applied strictly; courts confronted by facts which might suggest to the layman that "duress" is present have routinely refused to apply the doctrine. *See, e.g., Baratta v.*

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Kozlowski, 94 A.D.2d 454, 464 N.Y.S.2d 803 (2d Dep't 1983) (death threat does not toll statute); *Stadtman v. Cambere,* 73 A.D.2d 501, 422 N.Y.S.2d 102 (1st Dep't 1979) (threat of discharge does not toll statute). *But see Cullen, supra,* 811 F.2d at 722- 24 (duress toll potentially available since plaintiffs' underlying claim was extortion). Indeed, the cases are replete with statements like that in *Baratta, supra,* to the effect that "[t]he statute begins to run irrespective of ... whether [the party seeking to avoid it] has enough of courage and independence to resist a hostile influence and assert his rights or not." *Baratta,* 94 A.D.2d at 459, 464 N.Y.S.2d at 807 (quoting *Piper v. Hoard,* 107 N.Y. 67, 71, 13 N.E. 632 (1887)).

Furthermore, similar claims of duress extending the statute of limitations were recently rejected in three New York Supreme Court cases in which a victim of child sex abuse brought untimely actions against the alleged perpetrator. *See Bassile, supra; Gallas, supra,* at col. 5; *Burpee v. Burpee,* 152 Misc.2d 466, 578 N.Y.S.2d 359 (Sup.Ct.Nassau County). In light of these authorities, it appears that duress is not an element of Ms. Schmidt's claim. Even if it were, it is extremely doubtful whether any reasonable juror could find that Ms. Schmidt was under constant legal duress for a thirty-one year period, during most of which she lived half a continent away from the defendant Bishop. Thus, the doctrine of tolling by duress will not prevent summary judgment in this case.

For all the foregoing reasons, summary judgment is granted defendant Bishop.

The Church Defendants

Plaintiff has also named the Rye Presbyterian Church, the Presbytery of the Hudson River and the Presbyterian Church USA as defendants (the "Church Defendants"), on theories of *respondeat superior* (Count V), negligent placement, retention and supervision (Count VI) and negligence (Count VII).

[13] These parties also seek summary judgment in their favor on various theories. To the extent that their liability is essentially vicarious, dismissal in favor of Bishop must of necessity end the case as to the Church Defendants. As summary judgment is being granted defendant Bishop, the Church Defendants are entitled to judgment as a matter of law on the *respondeat superior* claim. N.Y.Jur.2d Employment Relations § 337 at 447 (1986). *See also Turcotte v. Fell,* 68 N.Y.2d 432, 442, 502 N.E.2d 964, 970, 510 N.Y.S.2d 49, 55 (1986) ("... the dismissal of the complaint against Fell, [the defendant's] employee, mandates dismissal of the complaint against the employer") (citations omitted).

The affidavits submitted on behalf of these defendants--and Plaintiff's complaint itself--all confirm that defendant Bishop resigned as pastor of the Rye Presbyterian Church in the summer of 1982, and subsequently left both the Presbytery of the Hudson River (March 1983) and withdrew from the Presbyterian Church itself in 1984 when he joined another denomination, again as a clergyman.

[14] However, in an affidavit submitted after argument on the motion, plaintiff shows that defendant Bishop continued to serve the Rye Church as "pastor emeritus", receiving the proceeds of a trust fund established by the Church's parishioners. Hawkins Affidavit at ¶¶ 4-6. In support of this allegation, they append to their affidavit a copy of a Rye Church Bulletin which they received in March 1991, in which defendant Bishop is listed among the officials as "pastor emeritus".

The Court regards this as a mere honorific. As a matter of law, these Church Defendants cannot be regarded as in fact supervising, or retaining, after 1984, a clergyman who in that year came under the discipline of a different and competing denomination. There being no such supervision after 1984, any claims based on negligent *332 hiring, supervision or retention of Bishop are of necessity time-barred.

[15] Furthermore, any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement discussed above, which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. He may not demit his charge nor be removed by the session, without the consent of the presbytery, functioning essentially as an ecclesiastical court. The traditional denominations each have their own

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intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millenia. As the Supreme Court stated long before the *Lemon* formulation was developed:

> It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

Watson v. Jones, 13 Wall. 679, 729, 20 L.Ed. 666 (1871). *See also St. Nicholas Cathedral of Russian Orthodox Church of North America v. Kedroff,* 302 N.Y. 1, 13, 96 N.E.2d 56 (1950) *rev'd on other grounds,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952). It would therefore also be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant Bishop. Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause. U.S. Const. amend. I.

Accordingly, summary judgment is granted the Church Defendants as well.

The Clerk of the Court shall enter final judgment for the defendants.

SO ORDERED.

779 F.Supp. 321

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EXHIBIT 47

96 S.Ct. 2372
49 L.Ed.2d 151
(Cite as: 426 U.S. 696, 96 S.Ct. 2372)

Supreme Court of the United States

The SERBIAN EASTERN ORTHODOX DIOCESE FOR the UNITED STATES OF AMERICA AND CANADA et al., Petitioners,
v.
Dionisije MILIVOJEVICH et al.

No. 75-292.

Argued March 22, 1976.
Decided June 21, 1976.
Rehearing Denied Oct. 4, 1976.

See 429 U.S. 873, 97 S.Ct. 191.

A Circuit Court in Illinois entered judgment determining that a bishop's defrockment was proper, that division of the American-Canadian diocese of a hierarchical church into three new dioceses was illegal and unenforceable, and that amendments to the constitution of the dioceses were without force or effect. The Illinois Supreme Court, 60 Ill.2d 477, 328 N.E.2d 268, affirmed in part and reversed in part and remanded, holding that the proceedings of the mother church respecting the bishop were procedurally and substantively defective under the internal regulations of the mother church and were therefore arbitrary and invalid. The Illinois Supreme Court also invalidated the diocesan reorganization. On grant of certiorari, the Supreme Court, Mr. Justice Brennan, held that the state court's "detailed review" of the evidence was impermissible under the First and Fourteenth Amendments, and the court's error was compounded by error in evaluating evidence, error in delving into various church constitutional provisions and error in sanctioning circumvention of tribunals set up to resolve internal church disputes. Although the defrocked diocesan bishop controlled a monastery and was the principal officer of property-holding corporations, the civil courts were required to accept that consequence as the incidental effect of an ecclesiastical determination which was not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resided.

Opinion on remand, 6 Ill.Dec. 792, 363 N.E.2d 606.

Reversed.

Mr. Chief Justice Burger concurred in the judgment.

Mr. Justice White filed a concurring opinion.

Mr. Justice Rehnquist dissented and filed opinion in which Mr. Justice Stevens joined.

West Headnotes

[1] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[1] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

Consistently with First and Fourteenth Amendments, civil courts do not inquire whether relevant hierarchical church governing body has power under religious law to decide religious disputes; to permit civil courts to probe deeply enough into allocation of power within hierarchical church so as to decide religious law governing church polity would violate First Amendment in much same manner as civil determination of religious doctrine. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[2] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

Where resolution of religious disputes cannot be made without extensive inquiry by civil courts into religious law and polity, First and Fourteenth Amendments mandate that civil courts not disturb decisions of highest ecclesiastical tribunal within church of hierarchical polity but, rather, accept such decisions as binding on them, in their application to religious issues of doctrine or polity before them. U.S.C.A.Const. Amends. 1, 14.

[3] Constitutional Law ⇐84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

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Even when rival church factions seek resolution of church property dispute in civil courts there is substantial danger that state will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs, and First Amendment therefore severely circumscribes role that civil courts may play in resolving church property disputes. U.S.C.A.Const. Amend. 1.

[4] Constitutional Law ⇦84.5(9)
92k84.5(9) Most Cited Cases
(Formerly 92k84)

Principle that First Amendment commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine applies with equal force to church disputes over church polity and church administration. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

Whether or not there is room for "marginal civil court review" under narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, no "arbitrariness" exception, in sense of inquiry whether decisions of highest ecclesiastical tribunal of hierarchical church complied with church laws and regulations is consistent with constitutional mandate that civil courts are bound to accept decisions of highest judicatory of religious organization of hierarchical polity on matters of discipline, faith, internal organization or ecclesiastical custom or law. U.S.C.A.Const. Amends. 1, 14.

[6] Religious Societies ⇦14
332k14 Most Cited Cases

General rule is that religious controversies are not proper subject of civil court inquiry, and that civil court must accept ecclesiastical decisions of church tribunals as it finds them. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law ⇦84.5(10)
92k84.5(10) Most Cited Cases
(Formerly 92k84)

[7] Constitutional Law ⇦274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

State court's "detailed review" of evidence in challenge to proceedings resulting in removal and defrockment of bishop of hierarchical church by religious bodies in whose sole discretion the authority to make such ecclesiastical decisions was vested was impermissible under First and Fourteenth Amendments, and court's error was compounded by error in evaluating evidence, error in delving into various church constitutional provisions and error in sanctioning circumvention of tribunals set up to resolve internal church disputes; in summary, state court unconstitutionally undertook resolution of quintessentially religious controversies committed by First Amendment exclusively to highest ecclesiastical tribunals of the hierarchical church. U.S.C.A.Const. Amends. 1, 14.

[8] Religious Societies ⇦14
332k14 Most Cited Cases

Although diocesan bishop controlled monastery and was principal officer of property-holding corporations, civil courts were required to accept that consequence as incidental effect of ecclesiastical determination which resulted in defrocking of diocesan bishop but which was not subject to judicial abrogation, having been reached by final judicatory in which authority to make the decision resided. U.S.C.A.Const. Amends. 1, 14.

[9] Constitutional Law ⇦84.5(7.1)
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[9] Constitutional Law ⇦274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

First and Fourteenth Amendments forbade action of state court, asked to pass upon validity of action of mother church in hierarchical organization in separating one diocese into three, in substituting court's own interpretation of diocesan and mother church constitutions for that of highest ecclesiastical tribunals in which church law vested authority to make such interpretation. U.S.C.A.Const. Amends. 1, 14.

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[10] Religious Societies ⇐14
332k14 Most Cited Cases

Constitutional provisions of American-Canadian diocese of hierarchical church were not so express that civil courts could enforce them, even on purported "neutral principles" for resolving property disputes, without engaging in searching, and therefore impermissible, inquiry into church polity. U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law ⇐**84.5(7.1)**
92k84.5(7.1) Most Cited Cases
(Formerly 92k84.5(7), 92k84)

[11] Constitutional Law ⇐**274(3.1)**
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters; when this choice is exercised and ecclesiastical tribunals are created to decide disputes over government and direction of subordinate bodies, Constitution requires that civil courts accept their decisions as binding upon them. U.S.C.A.Const. Amends. 1, 14.

**2374 Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*696 During the course of a protracted dispute over the control of the Serbian Eastern Orthodox Diocese for the United States and Canada, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church) suspended and ultimately removed and defrocked the Bishop, respondent Dionisije, and appointed petitioner Firmilian as Administrator of the Diocese, which the Mother Church then reorganized into three Dioceses. The Serbian Orthodox Church is a hierarchical church, and the sole power to appoint and remove its Bishops rests in the Holy Assembly and Holy Synod. Dionisije filed suit in the Illinois courts seeking to enjoin petitioners from interfering with Diocesan assets of respondent not-for-profit Illinois corporations and to have himself declared the true Diocesan Bishop. After a lengthy trial, the trial court resolved most of the disputed issues in favor of petitioners. The Supreme Court of Illinois affirmed in part and reversed in part, holding that Dionisije's removal and defrockment had to be set aside as "arbitrary" because the proceedings against him had not in its view been conducted in accordance with the Church's constitution and penal code, and that the Diocesan reorganization was invalid because it exceeded the scope of the Mother Church's authority to effectuate such changes without Diocesan approval. Held :

1. The holding of the Illinois Supreme Court constituted improper judicial interference with the decisions of a hierarchical church and in thus interposing its judgment into matters of ecclesiastical cognizance and polity, the court contravened the First and Fourteenth Amendments. Pp. 2380-2387.

(a) "(W)henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of (the) church judicatories to which the **2375 matter has been carried, the legal tribunals must accept such decisions as final, and as binding . . .." Watson v. Jones, 13 Wall. 679, 727, 20 L.Ed. 666. Pp. 2380-2381.

(b) Under the guise of "minimal" review of the Mother *697 Church's decisions that the Illinois Supreme Court deemed "aitrary" that court has unconstitutionally undertaken the adjudication of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church. Pp. 2382-2385.

2. Though it did not rely on the "fraud, collusion, or arbitrariness" exception to the rule requiring recognition by civil courts of decisions by hierarchical tribunals, but rather on purported "neutral principles" for resolving property disputes in reaching its conclusion that the Mother Church's reorganization of the American-Canadian Diocese into three Dioceses was invalid, that conclusion also

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contravened the First and Fourteenth Amendments. The reorganization of the Diocese involves solely a matter of internal church government, an issue at the core of ecclesiastical affairs. Religious freedom encompasses the "power (of religious bodies) to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120. Pp. 2385-2387.

60 Ill.2d 477, 328 N.E.2d 268, reversed.

Albert E. Jenner, Jr., Chicago, Ill., for petitioners.

Leo J. Sullivan, III, Waukegan, Ill., for respondents.

Mr. Justice BRENNAN delivered the opinion of the Court.

In 1963, the Holy Assembly of Bishops and the Holy Synod of the Serbian Orthodox Church (Mother Church) ***698** suspended and ultimately removed respondent Dionisije Milivojevich (Dionisije) as Bishop of the American- Canadian Diocese of that Church, and appointed petitioner Bishop Firmilian Ocokoljich (Firmilian) as Administrator of the Diocese, which the Mother Church then reorganized into three Dioceses. In 1964 the Holy Assembly and Holy Synod defrocked Dionisije as a Bishop and cleric of the Mother Church. In this civil action brought by Dionisije and the other respondents in Illinois Circuit Court, the Supreme Court of Illinois held that the proceedings of the Mother Church respecting Dionisije were procedurally and substantively defective under the internal regulations of the Mother Church and were therefore arbitrary and invalid. The State Supreme Court also invalidated the Diocesan reorganization into three Dioceses. 60 Ill.2d 477, 328 N.E.2d 268 (1975). [FN1] We granted certiorari to determine whether the actions of the Illinois Supreme Court constituted improper judicial interference with decisions of the highest authorities of a hierarchical church in violation of the First and Fourteenth Amendments. 423 U.S. 911, 96 S.Ct. 770, 46 L.Ed.2d 634 (1975). We hold that the inquiries made by the Illinois Supreme Court into matters of ecclesiastical cognizance and polity and the court's actions pursuant thereto contravened the First and Fourteenth Amendments. We therefore reverse.

FN1. The opinion of the Illinois Appellate Court in an earlier appeal is reported sub nom. Serbian Orthodox Diocese v. Ocokoljich, 72 Ill.App.2d 444, 219 N.E.2d 343 (1966).

I

The basic dispute is over control of the Serbian Eastern Orthodox Diocese for the United States of America and Canada (American-Canadian Diocese), its property and assets. Petitioners are Bishops Firmilian, Gregory Udicki, and Sava Vukovich, and the Serbian Eastern ***699** Orthodox Diocese for the United States of America and Canada (the religious body in this country). Respondents are Bishop Dionisije, the Serbian Orthodox Monastery of St. Sava, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada, an ****2376** Illinois religious corporation. A proper perspective on the relationship of these parties and the nature of this dispute requires some background discussion.

The Serbian Orthodox Church, one of the 14 autocephalous, hierarchical churches which came into existence following the schism of the universal Christian church in 1054, is an episcopal church whose seat is the Patriarchate in Belgrade, Yugoslavia. Its highest legislative, judicial, ecclesiastical, and administrative authority resides in the Holy Assembly of Bishops, a body composed of all Diocesan Bishops presided over by a Bishop designated by the Assembly to be Patriarch. The Church's highest executive body, the Holy Synod of Bishops, is composed of the Patriarch and four Diocesan Bishops selected by the Holy Assembly. The Holy Synod and the Holy Assembly have the exclusive power to remove, suspend, defrock, or appoint Diocesan Bishops. The Mother Church is governed according to the Holy Scriptures, Holy Tradition, Rules of the Ecumenical Councils, the Holy Apostles, the Holy Faiths of the Church, the Mother Church Constitution adopted in 1931, and a "penal code" adopted in 1961. These sources of law are sometimes ambiguous and seemingly inconsistent. Pertinent provisions of the Mother Church Constitution provide that the Church's

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"main administrative division is composed of dioceses, both in regard to church hierarchical and church administrative aspect," Art. 12, and that "(d)ecisions of establishing, naming, liquidating, reorganizing, and the seat of the dioceses, and establishing or eliminating of position of vicar bishops, *700 is decided upon by the (Holy Assembly), in agreement with the Patriarchal Council," Art. 16.

During the late 19th century, migrants to North America of Serbian descent formed autonomous religious congregations throughout this country and Canada. These congregations were then under the jurisdiction of the Russian Orthodox Church, but that Church was unable to care for their needs and the congregations sought permission to bring themselves under the jurisdiction of the Serbian Orthodox Church.

In 1913 and 1916, Serbian priests and laymen organized a Serbian Orthodox Church in North America. The 32 Serbian Orthodox congregations were divided into 4 presbyteries, each presided over by a Bishop's Aide, and constitutions were adopted. In 1917, the Russian Orthodox Church commissioned a Serbian priest, Father Mardary, to organize an independent Serbian Diocese in America. Four years later, as a result of Father Mardary's efforts, the Holy Assembly of Bishops of the Mother Church created the Eastern Orthodox Diocese for the United States of America and Canada and designated a Serbian Bishop to complete the formal organization of a Diocese. From that time until 1963, each bishop who governed the American-Canadian Diocese was a Yugoslav citizen appointed by the Mother Church without consultation with Diocesan officials.

In 1927, Father Mardary called a Church National Assembly embracing all of the known Serbian Orthodox congregations in the United States and Canada. The Assembly drafted and adopted the constitution of the Serbian Orthodox Diocese for the United States of America and Canada, and submitted the constitution to the Mother Church for approval. The Holy Assembly made changes to provide for appointment of the Diocesan Bishop by the Holy Assembly and to require Holy Assembly *701 approval for any amendments to the constitution, and with these changes approved the constitution. The American-Canadian Diocese was the only diocese of the Mother Church with its own constitution.

Article 1 of the constitution provides that the American-Canadian Diocese "is considered ecclesiastically-judicially as an organic part of the Serbian Patriarchate in the Kingdom of Yugoslavia," and Art. 2 provides that all "statutes and rules which regulate the ecclesiastical-canonical authority and position of the Serbian Orthodox Church in the Kingdom of Yugoslavia are also compulsory for" the American-Canadian **2377 Diocese. Article 3 states that the "jurisdiction of the . . . Diocese . . . includes the entire political territory of the United States of America and Canada, which as such by its geographical location enjoys full administrative freedom and accordingly, it can independently regulate and rule the activities of its church, school and other diocesan institutions and all funds and beneficiencies, through its organs . . . ." Article 9 provides that the Bishop of the Diocese "is appointed by the Holy Assembly of Bishops of the Serbian Patriarchate"; various provisions of the constitution accord that Bishop extensive powers with respect to both religious matters and control of Diocesan property. The constitution also provides for such Diocesan organs as a Diocesan National Assembly, which exercises considerable legislative and administrative authority within the Diocese.

In 1927, Father Mardary also organized a not-for-profit corporation, the Serbian Eastern Orthodox Council for the United States and Canada, under the laws of Illinois. The corporation was to hold title to 30 acres of land in Libertyville, Ill., that Father Mardary had personally purchased in 1924. The charter of that corporation was allowed to lapse, and Father Mardary organized *702 another Illinois not-for-profit corporation, respondent Serbian Eastern Orthodox Diocese for the United States and Canada, under Illinois laws governing incorporation of hierarchical religious organizations. In 1945, respondent not-for-profit monastery corporation, the Monastery of St. Sava, was organized under these same Illinois laws, and title to the Libertyville property was transrred to it. Similar secular property-holding corporations were subsequently organized in New York, California, and Pennsylvania.

Respondent Bishop Dionisije was elected Bishop of the American-Canadian Diocese by the Holy

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Assembly of Bishops in 1939. He became a controversial figure; during the years before 1963, the Holy Assembly received numerous complaints challenging his fitness to serve as Bishop and his administration of the Diocese.

During his tenure, however, the Diocese grew so substantially that Dionisije requested that the Patriarch and Holy Assembly appoint bishops to assist him but to serve under his supervision. Eventually, the Diocese sought its elevation by the Holy Assembly to the rank of Metropolia, that South America be added to the Diocese, and that several assistant bishops be appointed under Dionisije. Dionisije specifically recommended that petitioners Firmilian and Gregory Udicki, and one Stefan Lastavica be named assistant bishops. A delegation from the Diocese was sent to the May 1962 meeting of the Holy Assembly in Belgrade to urge adoption of these reorganization proposals, and on June 12, 1962, the Holy Synod appointed a delegation to visit the United States and study the proposals. The delegation was also directed to confer with Dionisije concerning the complaints made against him and his administration over the years.

The delegation remained in the United States for three *703 months, visiting parishes throughout the Diocese and discusng both the reorganization proposals and the complaints against Dionisije. After completion of its survey, the delegation suggested to the Holy Synod the assignment of vicar bishops to the Diocese and recommended that a commission be appointed to conduct a thorough investigation into the complaints against Dionisije. However, the Holy Assembly on May 10, 1963, instead recommended that the Holy Synod institute disciplinary proceedings against Dionisije. The Holy Synod thereupon met immediately and suspended Dionisije pending investigation and disposition of the complaints. The Holy Synod appointed petitioner Firmilian, Dionisije's chief episcopal deputy since 1955 and one of Dionisije's candidates for assistant bishop, as Administrator of the Diocese pending completion of the proceedings.

The Holy Assembly thereafter reconvened and, acting under Art. 16 of the constitution of the Mother Church, reorganized **2378 the American-Canadian Diocese into three new dioceses the Middle Western, the Western and the Eastern whose boundaries were roughly those of the episcopal districts previously created by Dionisije. [FN2] The final fixing of boundaries for the new dioceses and all other organizational and administrative matters were left to be determined by the officials of the old American-Canadian Diocese. Dionisije was appointed Bishop of the Middle Western Diocese and, seven days later, petitioners Archimandrites Firmilian, Gregory, and Stefan [FN3] were appointed temporary administrators for the new Dioceses.

FN2. The Mother Church decided against creation of a "Metropolia" because it had not employed that organizational system and had not required one Bishop to serve under another.

FN3. Stefan has since died, and the Holy Assembly appointed petitioner Sava Vukovich in his place.

*704 Dionisije's immediate reaction to these decisions of the Mother Church was to refuse to accept the reorganization on the ground that it contravened the administrative autonomy of the Diocese guaranteed by the Diocesan constitution, and to refuse to accept his suspension on the ground that it was not effectuated in compliance with the constitution and laws of the Mother Church. On May 25, 1963, he prepared and mailed a circular to all American- Canadian parishes stating his refusal to recognize these actions, and on May 27 he issued a press release stating his refusal to recognize his suspension and his intent to litigate it in the civil courts. This refusal to recognize the Diocesan reorganization and his suspension as Bishop was again stated by Dionisije in a circular issued on June 3 and addressed to the Patriarch, the Holy Assembly, the Holy Synod, all clergy, congregations, Diocesan committees, and all Serbians in North America. He also continued to officiate as Bishop, refusing to turn administration of the Diocese over to Firmilian; in a May 30 letter to Firmilian, Dionisije repeated this refusal, asserted that he no longer recognized the decisions of the Holy Assembly and Holy Synod, and charged those bodies with being "communistic."

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The Diocesan Council met on June 6, and Dionisije reaffirmed his refusal to turn over administration of the Diocese to Firmilian; he also announced that he had discharged two of his vicars general because of their loyalty to the Mother Church. The Council resolved at the meeting to advise the Holy Synod that the proposal to reorganize the Diocese into three dioceses would be submitted to the Diocesan National Assembly in August for acceptance or rejection. The Council also requested that the Holy Assembly promptly send a committee to investigate the complaints against Dionisije.

On June 13, the Holy Synod appointed such a commission, *705 composed of two Bishops and the Secretary of the ly Synod. On July 5, the commission met with Dionisije, who reiterated his refusal to recognize his suspension or the Diocesan reorganization, and who demanded all accusations in writing. The commission refused to give Dionisije the written accusations on the ground that defiance of decisions of higher church authorities itself established wrongful conduct, and advised him that the Holy Synod would appoint a Bishop as court prosecutor to prepare an indictment against him.

On the basis of the commission's report and recommendations, which recited Dionisije's refusal to accept the decisions of the Holy Synod and Holy Assembly and his refusal to recognize the court of the Holy Synod or its competence to try him, the Holy Assembly met on July 27, 1963, and voted to remove Dionisije as Bishop. The minutes of the Holy Assembly meeting and the Patriarch's letter to Dionisije informing him of the Holy Assembly's actions made clear that the removal was based solely on his acts of defiance subsequent to his May 10, 1963, suspension, and his violation of his oath and loss of certain qualifications for Bishop under Art. 104 of the constitution of the Mother Church.

**2379 The Diocesan National Assembly, with Dionisije presiding despite his removal, met in August 1963 and issued a resolution repudiating the division of the Diocese into three Dioceses and demanding a revocation by the Mother Church of the decisions concerning that division. When the Holy Assembly refused to reconsider, the Diocesan National Assembly in November 1963 declared the Diocese completely autonomous and reinstated the provisions of the Diocesan constitution that provided for election of the Bishop of the Diocese itself and for amendments without the approval of the Holy Assembly.

Meanwhile, the Holy Synod in October 1963 forwarded *706 to Dionisije a formal written indictment bad on the charges of canonical misconduct. In November 1963, Dionisije responded with a demand for the verified reports and complaints referred to in the indictment and for a six-month extension to answer the indictment. The Holy Assembly granted a 30-day extension in which to answer, but declined to furnish verified charges on the grounds that they were described in the indictment, that additional details would be evidentiary in nature, and that there was no legal or canonical basis for forwarding such material to an accused Bishop.

Dionisije returned the indictment in January, refusing to answer without the verified charges, denouncing the Holy Assembly and Holy Synod as schismatic and pro-Communist, and asserting that the Mother Church was proceeding in violation of its penal code and constitution.

The Holy Synod, on February 25, 1964, declared that it could not proceed further without Dionisije and referred the matter to the Holy Assembly, which tried Dionisije as a default case on March 5, 1964, because of his refusal to participate. The indictment was also amended at that time to include charges based on Dionisije's acts of rebellion such as those committed at the November meeting of the National Assembly which had declared the Diocese separate from the Mother Church. Considering the original and amended indictments, the Holy Assembly unanimously found Dionisije guilty of all charges and divested him of his episcopal and monastic ranks.

Even before the Holy Assembly had removed Dionisije as Bishop, he had commenced what eventually became this protracted litigation, now carried on for almost 13 years. Acting upon the threat contained in his May 27, 1963, press release, Dionisije filed suit in *707 the Circuit Court of Lake County, Ill., on July 26, 1963, seeking to enjoin petitioners from interfering with the assets of respondent corporations and to have himself declared the true Diocesan Bishop. Petitioners countered with a separate complaint, which was

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coolidated with the original action, seeking declaratory relief that Dionisije had been removed as Bishop of the Diocese and that the Diocese had been properly reorganized into three Dioceses, and injunctive relief granting petitioner Bishops control of the reorganized Dioceses and their property. After the trial court granted summary judgment for respondents and dismissed petitioners' countercomplaint, the Illinois Appellate Court reversed and remanded for a hearing on the merits. Serbian Orthodox Diocese v. Ocokoljich, 72 Ill.App.2d 444, 219 N.E.2d 343, appeal denied, 34 Ill.2d 631 (1966). [FN4]

> FN4. The Appellate Court initially held that the suspension, removal, and defrockment of Dionisije were valid and binding upon the civil courts but on rehearing directed that Dionisije should be afforded the opportunity at trial to prove that these were the result of fraud, collusion, or arbitrariness.

Following a lengthy trial, the trial court filed an unreported memorandum opinion and entered a final decree which concluded that "no substantial evidence was produced . . . that fraud, collusion or arbitrariness existed in any of the actions or decisions preliminary to or during the final proceedings of the decision to defrock Bishop Dionisije made by the highest Hierarchical bodies of the Mother Church," Pet. for Cert., App. 44; that the property held by ****2380** respondent corporations is held in trust for all members of the American-Canadian Diocese; that it was "improper and beyond the power of the Mother Church to take its action in dividing the whole American Diocese into three new Dioceses, changing its boundaries, and in appointing new bishops for ***708** said so-called new Dioceses," *id.*, at 46; and that "Firmilian was validly appointed by the Holy Episcopal Synod as temporary Administrator of the whole American Diocese in place of the defrocked Bishop Dionisije," *ibid.*

On appeal, the Supreme Court of Illinois affirmed in part and reversed in part, essentially holding that Dionisije's removal and defrockment had to be set aside as "arbitrary" because the proceedings resulting in those actions were not conducted according to the Illinois Supreme Court's interpretation of the Church's constitution and penal code, and that the Diocesan reorganization was invalid because it was beyond the scope of the Mother Church's authority to effectuate such changes without Diocesan approval. 60 Ill.2d 477, 328 N.E.2d 268 (1975). Although the court denied rehearing, it amended its original opinion to hold that, although Dionisije had been properly suspended, that suspension terminated by operation of church law when he was not validly tried within one year of his indictment. Thus, the court purported in effect to reinstate Dionisije as Diocesan Bishop.

II

[1][2] The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry into church polity and resolutions based thereon of those disputes. Consistently with the First and Fourteenth Amendments "civil courts do not inquire whether the relevant (hierarchical) church governing body has power under religious law (to decide such disputes). . . . Such a determination . . . frequently necessitates the interpretation of ambiguous religious law and usage. ***709** To permit civil courts to probe deeply enough into the allocation of power within ahierarchical) church so as to decide . . . religious law (governing church polity) . . . would violate the First Amendment in much the same manner as civil determination of religious doctrine." Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 369, 90 S.Ct. 499, 500, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring). For where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them. Ibid.

[3][4] Resolution of the religious disputes at issue here affects the control of church property in addition to the structure and administration of the

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American-Canadian Diocese. This is because the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations. Resolution of the religious dispute over Dionisije's defrockment therefore determines control of the property. Thus, this case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. Even when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs. Because of this danger, "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." Presbyterian Church v. Hull Church, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969). "First **2381 Amendment *710 values are plainly jeopardized when church property litigation is made turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. . . . (T)he (First) Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine." Ibid. This principle applies with equal force to church disputes over church polity and church administration.

The principles limiting the role of civil courts in the resolution of religious controversies that incidentally affect civil rights were initially fashioned in Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872), a diversity case decided before the First Amendment had been rendered applicable to the States through the Fourteenth Amendment. [FN5] With respect to hierarchical churches, Watson held:

> FN5. Since Watson predated Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), it was based on general federal law rather than the state law of the forum in which it was brought.

> "(T)he rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." Id., at 727, 20 L.Ed. 666.

In language having "a clear constitutional ring," Presbyterian Church v. Hull Church, supra, 393 U.S. at 446, 89 S.Ct. 601, Watson reasoned:

> "The law knows no heresy, and is committed to the *711 support of no dogma, the establishment of no sect. he right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for." 13 Wall., at 728-729, 20 L.Ed. 666 (emphasis supplied).

Gonzalez v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), applied this principle in a case involving dispute over entitlement to certain income under a will that turned upon an ecclesiastical determination as to whether an individual would be appointed to a chaplaincy in the Roman Catholic Church. The Court, speaking through Mr. Justice Brandeis, observed:

> "Because the appointment (to the chaplaincy) is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of

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the proper church *712 tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise." *Id.*, at 16, 50 S.Ct. at 7.

**2382 Thus, although Watson had left civil courts no role to play in reviewing ecclesiastical decisions during the course of resolving church property disputes, Gonzalez first adverted to the possibility of "marginal civil court review," Presbyterian Churgh v. Hull Church, supra, 393 U.S. at 447, 89 S.Ct. at 605, in cases challenging decisions of ecclesiastical tribunals as products of "fraud, collusion, or arbitrariness." However, since there was "not even a suggestion that (the Archbishop) exercised his authority (in making the chaplaincy decision) arbitrarily," 280 U.S., at 18, 50 S.Ct., at 8, the suggested "fraud, collusion, or arbitrariness" exception to the Watson rule was dictum only. And although references to the suggested exceptions appear in opinions in cases decided since the Watson rule has been held to be mandated by the First Amendment, [FN6] no decision of this Court has given concrete content to or applied the "exception." However, it was the predicate for the Illinois Supreme Court's decision in this case, and we therefore turn to the question whether reliance upon it in the circumstances of this case was consistent with the prohibition of the First and Fourteenth Amendments against rejection of the decisions of the Mother Church upon the religious disputes in issue.

FN6. See Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 115-116, 73 S.Ct. 143, 154, 97 L.Ed. 120, and n. 23 (1952); Presbyterian Church v. Hull Church, 393 U.S. 440, 447, 450-451, 89 S.Ct. 601, 605, 606-607, 21 L.Ed.2d 658, and n. 7 (1969); Md. & Va. Churches v. Sharpsburg Church, 396 U.S. 367, 369 n. 3, 90 S.Ct. 499, 501, 24 L.Ed.2d 582 (1970) (Brennan, J., concurring).

[5][6] The conclusion of the Illinois Supreme Court that the decisions of the Mother Church were "arbitrary" was grounded upon an inquiry that persuaded the Illinois Supreme *713 Court that the Mother Church had not followed its own laws and procedures in arriving at those decisions. We have concluded that whether or not there is room for "marginal civil court review " under the narrow rubrics of "fraud" or "collusion" when church tribunals act in bad faith for secular purposes, [FN7] no "arbitrariness" exception in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary " must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them. Watson itself requires our conclusion in its rejection of the analogous argument that ecclesiastical decisions of the highest church judicatories need only be accepted if the subject matter of the dispute is within their "jurisdiction."

FN7. No issue of "fraud" or "collusion" is involved in this case.

"But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character, a matter over which the civil courts *714 exercise no jurisdiction, in a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them, becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding

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adopted; and, in a **2383 sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that If the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we have depicted as attendant upon the doctrine of Lord Eldon, And would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions." 13 Wall., at 733-734, 20 L.Ed. 666. (Emphasis supplied.)

Indeed, it is the essence of religious faith that ecclesiastical decisions are reached and are to be accepted as matters of faith [FN8] whether or not rational or measurable by *715 objective criteria. Constitutional conces of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance.

FN8. Civil judges obviously do not have the competence of ecclesiastical tribunals in applying the "law" that governs ecclesiastical disputes, as Watson cogently remarked, 13 Wall., at 729, 20 L.Ed. 666:
"Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so."

The constitutional evils that attend upon any "arbitrariness" exception in the sense applied by the Illinois Supreme Court to justify civil court review of ecclesiastical decisions of final church tribunals are manifest in the instant case. The Supreme Court of Illinois recognized that all parties agree that the Serbian Orthodox Church is a hierarchical church, and that the sole power to appoint and remove Bishops of the Church resides in its highest ranking organs, the Holy Assembly and the Holy Synod. [FN9] Indeed, final authority with respect to **2384 the *716 promulgation and interpretation of *all* maers of church discipline and internal organization rests with the Holy Assembly, and even the written constitution of the Mother Church expressly provides:

FN9. "Plaintiffs argue and defendant Bishop Dionisije does not dispute that the Serbian Orthodox Church is a hierarchical and episcopal church. Moreover, the parties agree that in cases involving hierarchical churches the decisions of the proper church tribunals on questions of discipline, faith or ecclesiastical rule, though affecting civil rights, are accepted as conclusive in disputes before the civil courts. . . . All parties maintain that the sole limitation on this rule, when civil courts may entertain the 'narrowest kind of review,' occurs when the decision of the church tribunal is claimed to have resulted from fraud, collusion or arbitrariness." 60 Ill.2d 477, 501, 328 N.E.2d 268, 280 (1975).
Respondents conceded as much at oral argument. Tr. of Oral Arg. 24-25, 39- 40. The hierarchical nature of the relationship between the American- Canadian Diocese and the Mother Church is confirmed by the fact that respondent corporations were

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> organized under the provisions of the Illinois Religious Corporations Act governing the incorporation of religious societies that are subordinate parts of larger church organizations. Similarly, the Diocese's subordinate nature was manifested in resolutions of the Diocese which Dionisije supported, and by Dionisije's submission of corporate bylaws, proposed constitutional changes, and final judgments of the Diocesan Ecclesiastical Court to the Holy Synod or Holy Assembly for approval. Moreover, when Dionisije was originally elevated to Bishop, he signed an Episcopal-Hierarchical Oath by which he swore that he would "always be obedient to the Most Holy Assembly" and:
>
> "Should I transgress against whatever I promised here, or should I be disobedient to the Divine Ordinances and Order of the Eastern Orthodox Church, or to the Most Holy Assembly (of Bishops) I, personally, will become a schismatic and should I make the Diocese entrusted to me in any manner to become disobedient to the most Holy Assembly (of Bishops), may I, in that case, be defrocked of my rank and divested of the (episcopal) authority without any excuse or gainsay, and (may I) become an alien to the heavenly gift which is being given unto me by the Holy Spirit through the Consecration of the Laying of Hands." App. 1088.
>
> Finally, the hierarchical relationship was confirmed by provisions in the constitutions of both the Diocese and the Mother Church.

"The Holy Assembly of Bishops, as the highest hierarchical body, is legislative authority in the matters of faith, officiation, church order (discipline) and internal organization of the Church, as well as the highest church juridical authority within its jurisdiction (Article 69 sec. 28)." Art. 57.

"All the decisions of the Holy Assembly of Bishops *717 and of the Holy Synod of Bishops of canonical d church nature, in regard to faith, officiation, church order and internal organization of the church, are valid and final." Art. 64.

"The Holy Assembly of Bishops, whose purpose is noted in Article 57 of this Constitution:

"9) interprets canonical-ecclesiastical rules, those which are general and obligatory, and particular ones, and publishes their collections;

"12) prescribes the ecclesiastical-judicial procedure for all Ecclesiastical Courts;

"26) settles disputes of jurisdiction between hierarchical and church-self governing organs;

"27) ADJUDGES:

"A) In first and in final instances:

"a) disagreements between bishops and the Holy Synod, and between the bishops and the Patriarch;

"b) canonical offenses of the Patriarch;

"B) In the second and final instance:

"All matters which the Holy Synod of Bishops judged in the first instance." Art. 69.

Nor is there any dispute that questions of church discipline and the composition of the church hierarchy are at the core of ecclesiastical concern; the bishop of a church is clearly one of the central figures in such a hierarchy and the embodiment of the church within his Diocese, and the Mother Church constitution states that "(h)e is, according to the church canonical regulations, chief representative and guiding leader of all church spiritual life and church order in the diocese." Art. 13.

[7][8] Yet having recognized that the Serbian Orthodox Church is hierarchical and that the decisions to suspend and *718 defrock respondent Dionisije were made by the religious bodies in whose sole discretion the authority to make thosecclesiastical decisions was vested, the Supreme Court of Illinois nevertheless invalidated the decision to defrock Dionisije on the ground that it was "arbitrary" because a "detailed review of the evidence discloses that the proceedings resulting in Bishop Dionisije's removal and defrockment were not in accordance with the prescribed procedure of the constitution and the penal code of the Serbian Orthodox Church." 60 Ill.2d, at 503, 328 N.E.2d at 281. Not only was this "detailed review" impermissible under the First and Fourteenth Amendments, but in reaching this conclusion, the court evaluated conflicting testimony concerning internal church procedures and rejected the interpretations of relevant procedural provisions by the Mother Church's highest tribunals. Id., at 492-500, 328 N.E.2d at 276-280. The court also

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failed to take cognizance of the fact that the church judicatories were also guided by other sources of law, such as canon law, which are admittedly not always consistent, and it rejected the testimony of **2385 petitioners' five expert witnesses [FN10] that church procedures were properly followed, denigrating the testimony of one witness as "contradictory" and discounting that of another on the ground that it was "premised upon an assumption which did not consider the penal code," even though there was some question whether that code even applied to discipline of Bishops. [FN11] The court *719 accepted, on the other hand, the testimony of respondents' sole expert witness that the Church's procedures had been contravened in various specifics. We need not, and under the First Amendment cannot, demonstrate the propriety or impropriety of each of Dionisije's procedural claims, but we can note that the state court even rejected petitioners' contention that Dionisije's failure to participate in the proceedings undermined all procedural contentions because Arts. 66 and 70 of the penal code specify that if a person charged with a violation fails to participate or answer the indictment, the allegations are admitted and due process will be concluded without his participation; the court merely asserted that "application of this provision . . . must be viewed from the perspective that Bishop Dionisije refused to participate because he maintained that the proceedings against him were in violation of the constitution and the penal code of the Serbian Orthodox Church." 60 Ill.2d, at 502, 328 N.E.2d, at 281. The court found no support in any church dogma for this judicial rewriting of church law, and compounded further the error of this intrusion into a religious thicket by declaring that although Dionisije had, even under the court's analysis, been properly suspended and replaced by Firmilian as temporary administrator, he had to be reinstated as Bishop because church law mandated a trial on ecclesiastical charges within one year of the indictment. Yet the only reason more time then that had expired was due to Dionisije's decision to resort to the civil courts for redress without attempting to vindicate himself by pursuing available *720 remedies within the church. Indeed, the Illinois Supreme Court overlooked the clear substantive canonical violations for which the Church disciplined Dionisije, violations based on Dionisije's conceded open defiance and rebellion against the church hierarchy immediately after the Holy Assembly's decision to suspend him (a decision which even the Illinois courts deemed to be proper) and Dionisije's decision to litigate the Mother Church's authority in the civil courts rather than participate in the disciplinary proceedings before the Holy Synod and the Holy Assembly. Instead, the Illinois Supreme Court would sanction this circumvention of the tribunals set up to resolve internal church disputes and has ordered the Mother Church to reinstate as Bishop one who espoused views regarded by the church hierarchy to be schismatic and which the proper church tribunals have already determined merit seversanctions. In short, under the guise of "minimal" review under the umbrella of "arbitrariness," the Illinois Supreme Court has unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church. And although the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations, the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject **2386 to judicial abrogation, having been reached by the final church judicatory in which authority to make the decision resides.

FN10. Three of these witnesses, including the author of the Church penal code, were members of the Holy Assembly of Bishops, one was the Secretary of the Holy Synod, and one was a recognized expert in the field of ecclesiastical law.

FN11. Indeed Dionisije, who does not dispute the power of the Holy Assembly to discipline him for the substantive charges in his indictment, nevertheless inconsistently insists that the Holy Assembly must be bound by procedures which were not extant when he executed his Episcopal- Hierarchical Oath, see n. 9, Supra, and which were promulgated within a year of the beginning of this controversy, although at the same time he agrees that the Holy Assembly could formalize and promulgate any procedures it desired for the conduct of disciplinary action.

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III

Similar considerations inform our resolution of the second question we must address the constitutionality of the Supreme Court of Illinois' holding that the Mother Church's reorganization of the American-Canadian Dioceseinto*721 three Dioceses was invalid because it was "'in clear and palpable excess of its own jurisdiction.' " Essentially, the court premised this determination on its view that the early history of the Diocese "manested a clear intention to retain independence and autonomy in its administrative affairs while at the same time becoming ecclesiastically and judicially an organic part of the Serbian Orthodox Church," and its interpretation of the constitution of the American-Canadian Diocese as confirming this intention. It also interpreted the constitution of the Serbian Orthodox Church, which was adopted after the Diocesan constitution, in a manner consistent with this conclusion. 60 Ill.2d, at 506-507, 328 N.E.2d, at 283-284.

[9] This conclusion was not, however, explicitly based on the "fraud, collusion, or arbitrariness" exception. Rather, the Illinois Supreme Court relied on purported "neutral principles" for resolving property disputes which would "not in any way entangle this court in the determination of theological or doctrinal matters." Id., at 505, 328 N.E.2d, at 282. Nevertheless the Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid.

[10] We will not delve into the various church constitutional provisions relevant to this conclusion, for that would repeat the error of the Illinois Supreme Court. It suffices to note that the reorganization of the Diocese involves a matter of internal church government, an issue at the core of ecclesiastical affairs; Arts. 57 and 64 of the Mother Church constitution commit such questions of church polity to the final province of the Holy Assembly. Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 116, 73 S.Ct. 143, 154, 97 L.Ed. 120 (1952), stated that religious freedom encompasses the *722 "power (of religious bodies) to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." The subordination of the Diocese to the Mother Church in such matters, which are not only "administrative" but also "hierarchical," [FN12] was provided, and the power of the Holy Assembly to reorganize the Diocese is expressed in the Mother Church constitution. [FN13] Contrary to the interpretation of the Illinois court, the church judicatories interpreted the provisions of the Diocesan constitution **2387 not to interdict or govern this action, but only to relate to the day-to-day administration of Diocesan property. [FN14] *723 The constitutional provisions of the American- Canadian Diocese were not so express that the civil courts could enforce them without engaging in a searching and therefore impermissible inquiry into church polity. See Md. & Va. Churches v. Sharpsburg Church, 396 U.S. at 368-370, 90 S.Ct., at 500-501 (Brennan, J., concurring). [FN15]

FN12. See Art. 12, quoted Supra at 2376. Various provisions of the Diocesan constitution reaffirm the subordinate status of the Diocese. E. g., Arts. 1, 2, 10, 12, 23, 53. Moreover, the Mother Church exerts almost complete authority over most Diocesan matters through the Diocesan Bishop, and there is no question that the Diocese has no voice whatever in the appointment of the Bishop.

FN13. See Art. 16, quoted Supra, at 2376. In rejecting the Holy Assembly's interpretation of this provision, the Illinois court treated the creation and reorganization of dioceses as purely administrative, without recognizing the central role of a diocese in the hierarchical structure of the Church. In particular, the Illinois court noted that Art. 14 of the Mother Church constitution states "(t)hese are the Dioceses in the Serbian Orthodox Church," and lists only the Dioceses within Yugoslavia. In Art. 15, on the other hand, were listed Dioceses "under the jurisdiction of the Serbian Orthodox Church in spiritual and hierarchical aspect," including the American-Canadian Diocese. Although nothing in the constitution restricted the Mother Church's power with respect to reorganizing the

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Dioceses listed in Art. 15, the Illinois courts simply asserted that Art. 16 was only intended to apply to Dioceses named in Art. 14. Yet even the Diocese itself recognized the Holy Assembly's powers when it sought approval for institution of the "Metropolia" system.

FN14. The Illinois court, in refusing to follow the Holy Assembly's interpretation of these religious documents, relied primarily on Art. 3 of the Diocesan constitution, quoted Supra, at 2376. However, the Holy Assembly's construction of that provision limits its application to administration of property within the Diocese, and as not restricting alterations in the Diocese itself.

FN15. No claim is made that the "formal title" doctrine by which church property disputes may be decided in civil courts is to be applied in this case. See Md. & Va. Churches v. Sharpsburg Church, 396 U.S. at 370, 90 S.Ct., at 501 (Brennan, J., concurring). Indeed, the Mother Church decisions defrocking Dionisije and reorganizing the Diocese in no way change formal title to all Diocesan property, which continues to be in the respondent property-holding corporations in trust for all members of the reorganized Dioceses; only the identity of the trustees is altered by the Mother Church's ecclesiastical determinations.

The control of Diocesan property may be little affected by the changes; respondents' allegation that the reorganization was a fraudulent subterfuge to divert Diocesan property from its intended beneficiaries has been rejected by the Illinois courts. Formal title to the property remains in respondent property-holding corporations, to be held in trust for all members of the new Dioceses. The boundaries of the reorganized Dioceses generally conform to the episcopal districts which the American-Canadian Diocese had already employed for its internal government, and the appointed administrators of the new Dioceses were the same individuals nominated by Dionisije as assistant bishops to govern similar divisions under him. Indeed, even the Illinois courts' rationale that the reorganization would effectuate an abrogation of the Diocesan constitution has no support in the record, which establishes rather that the details of the reorganization and any decisions pertaining to a distribution of *724 the property among the three Dioceses were expressly left for the Diocesan National Assembly to determine. In response to inquiries from the Diocese, the Holy Assembly assured Bishop Firmilian:

"1. That all the rights of the former American-Canadian Diocese, as they relate to the autonomy in the administrative sense, remain unchanged. The only exception is the forming of three dioceses and

"2. That the Constitution of the former American-Canadian Diocese remains the same and that the Dioceses in America and Canada will not, in an administrative sense (the management (Or direction) of the properties) be managed (Or directed) in the same manner as those in Yugoslavia." App. 1446.

As a practical matter the effect of the reorganization is a tripling of the Diocesan representational strength in the Holy Assembly and a decentralization of hierarchical authority to permit closer attention to the needs of individual congregations within each of the new Dioceses, a result which Dionisije and Diocesan representatives had already concluded was necessary. Whether corporate bylaws or other documents governing the individual property-holding corporations may affect any desired disposition of the Diocesan property is a question not before us.

IV

[11] In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over *725 the government and direction of subordinate bodies, the Constitution requires **2388 that civil courts accept their decisions as binding upon them.

Reversed.

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THE CHIEF JUSTICE concurs in the judgment.

Mr. Justice WHITE, concurring.

Major predicates for the Court's opinion are that the Serbian Orthodox Church is a hierarchical church and the American-Canadian Diocese, involved here, is part of that Church. These basic issues are for the courts' ultimate decision, and the fact that church authorities may render their opinions on them does not foreclose the courts from coming to their independent judgment. I do not understand the Court's opinion to suggest otherwise and join the views expressed therein.

Mr. Justice REHNQUIST, with whom Mr. Justice STEVENS joins, dissenting.

The Court's opinion, while long on the ecclesiastical history of the Serbian Orthodox Church, is somewhat short on the procedural history of this case. A casual reader of some of the passages in the Court's opinion could easily gain the impression that the State of Illinois had commenced a proceeding designed to brand Bishop Dionisije as a heretic, with appropriate pains and penalties. But the state trial judge in the Circuit Court of Lake County was not the Bishop of Beauvais, trying Joan of Arc for heresy; the jurisdiction of his court was invoked by petitioners themselves, who sought an injunction establishing their control over property of the American-Canadian Diocese of the church located in Lake County.

The jurisdiction of that court having been invoked *726 for such a purpose by both petitioners and respondents,ontesting claimants to Diocesan authority, it was entitled to ask if the real Bishop of the American-Canadian Diocese would please stand up. The protracted proceedings in the Illinois courts were devoted to the ascertainment of who that individual was, a question which the Illinois courts sought to answer by application of the canon law of the church, just as they would have attempted to decide a similar dispute among the members of any other voluntary association. The Illinois courts did not in the remotest sense inject their doctrinal preference into the dispute. They were forced to decide between two competing sets of claimants to church office in order that they might resolve a dispute over real property located within the State. Each of the claimants had requested them to decide the issue. Unless the First Amendment requires control of disputed church property to be awarded solely on the basis of ecclesiastical paper title, I can find no constitutional infirmity in the judgment of the Supreme Court of Illinois.

Unless civil courts are to be wholly divested of authority to resolve conflicting claims to real property owned by a hierarchical church, and such claims are to be resolved by brute force, civil courts must of necessity make some factual inquiry even under the rules the Court purports to apply in this case. We are told that "a civil court must accept the ecclesiastical decisions of church tribunals as it finds them," Ante, at 2382. But even this rule requires that proof be made as to what these decisions are, and if proofs on that issue conflict the civil court will inevitably have to choose one over the other. In so choosing, if the choice is to be a rational one, reasons must be adduced as to why one proffered decision is to prevail over another. Such reasons will *727 obviously be based on the canon law by which the disputants have agreed to bind themselves, but they must also represent a preference for one view of that law over another.

If civil courts, consistently with the First Amendment, may do that much, the question arises why they may not do what the Illinois courts did here regarding the defrockment of Bishop Dionisije, and conclude, on the basis of testimony from experts on the canon law at issue, that the decision of the religious tribunal involved **2389 was rendered in violation of its own stated rules of procedure. Suppose the Holy Assembly in this case had a membership of 100; its rules provided that a bishop could be defrocked by a majority vote of any session at which a quorum was present, and also provided that a quorum was not to be less than 40. Would a decision of the Holy Assembly attended by 30 members, 16 of whom voted to defrock Bishop Dionisije, be binding on civil courts in a dispute such as this? The hypothetical example is a clearer case than the one involved here, but the principle is the same. If the civil courts are to be bound by any sheet of parchment bearing the ecclesiastical seal and purporting to be a decree of a church court, they can easily be converted into handmaidens of

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arbitrary lawlessness.

The cases upon which the Court relies are not a uniform line of authorities leading inexorably to reversal of the Illinois judgment. On the contrary, they embody two distinct doctrines which have quite separate origins. The first is a common-law doctrine regarding the appropriate roles for civil courts called upon to adjudicate church property disputes a doctrine which found general application in federal courts prior to Erie R. Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), but which has never had any application to our review of a state-court *728 decision. The other is derived from the First Amendment to the Federal Constitution, and is of course applicable to thisase; it, however, lends no more support to the Court's decision than does the common-law doctrine.

The first decision of this Court regarding the role of civil courts in adjudicating church property disputes was Watson v. Jones, 13 Wall. 679, 20 L.Ed. 666 (1872). There the Court canvassed the American authorities and concluded that where people had chosen to organize themselves into voluntary religious associations, and had agreed to be bound by the decisions of the hierarchy created to govern such associations, the civil courts could not be availed of to hear appeals from otherwise final decisions of such hierarchical authorities. The bases from which this principle was derived clearly had no constitutional dimension; there was not the slightest suggestion that the First Amendment or any other provision of the Constitution was relevant to the decision in that case. Instead the Court was merely recognizing and applying general rules as to the limited role which civil courts must have in settling private intraorganizational disputes. While those rules, and the reasons behind them, may seem especially relevant to intrachurch disputes, adherence or nonadherence to such principles was certainly not thought to present any First Amendment issues. For as the Court in Watson observed:

> "Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." Id., at 714, 20 L.Ed. 666.

The Court's equation of religious bodies with other private voluntary associations makes it clear that the principles *729 discussed in that case were not dependent upon those embodied in the First Amendment.

Less than a year later Watson's observations about the roles of civil courts were followed in Bouldin v. Alexander, 15 Wall. 131, 21 L.Ed. 69 (1872), where the Court held that the appointed trustees of the property of a congregational church

> "cannot be removed from their trusteeship by a minority of the church society or meeting, without warning, and acting without charges, without citation or trial, and in direct contravention of the church rules." Id., at 140, 21 L.Ed. 69.

Again, there was nothing to suggest that this was based upon anything but commonsense rules for deciding an intraorganizational dispute: in an organization which has provided for majority rule through certain procedures, a minority's attempt to usurp that rule and those procedures need be given no effect by civil courts.

**2390 In Gonzalez v. Archbishop, 280 U.S. 1, 50 S.Ct. 5, 74 L.Ed. 131 (1929), the Court again recognized the principles underlying Watson in upholding a decision of the Supreme Court of the Philippine Islands that the petitioner was not entitled to the chaplaincy which he claimed because the decision as to whether he possessed the necessary qualifications for that post was one committed to the appropriate church authorities. In dicta which the Court today conveniently truncates, Mr. Justice Brandeis observed:

> "In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, Because the parties in interest made them so by contract or otherwise. Under like circumstances, effect is given in the courts to the determinations of the judicatory bodies established *730 by clubs and civil associations." Id., *at 16-17, 50 S.Ct., at 7-8 (emphasis supplied; footnotes omitted).*

Gonzalez clearly has no more relevance to the meaning of the First Amendment than do its two predecessors.

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The year 1952 was the first occasion on which this Court examined what limits the First and Fourteenth Amendments might place upon the ability of the States to entertain and resolve disputes over church property. In Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952), the Court reversed a decision of the New York Court of Appeals which had upheld a statute awarding control of the New York property of the Russian Orthodox Church to an American group seeking to terminate its relationships with the hierarchical Mother Church in Russia. The New York Legislature had concluded that the Communist government of Russia was actually in control of the Mother Church and that " 'the Moscow Patriarchate was no longer capable of functioning as a true religious body, but had become a tool of the Soviet Government primarily designed to implement its foreign policy,' " Id., at 107 n. 10, 73 S.Ct., at 150, quoting from 302 N.Y. 1, 32-33, 96 N.E.2d 56, 73-74 (1950), and the New York Court of Appeals sustained the statute against the constitutional attack. This Court, however, held the statute was a violation of the Free Exercise Clause, noting:

> "By fiat it displaces one church administrator with another. It passes the control of matters strictly ecclesiastical from one church authority to another. It thus intrudes for the benefit of one segment of a church the power of the state into the forbidden area of religious freedom contrary to the principles of the First Amendment." 344 U.S., at 119, 73 S.Ct., at 156.

On remand from the decision in Kedroff, the New York Court of Appeals again held that the American *731 group was entitled to the church property at issue. This ti relying upon the common law of the State, the Court of Appeals ruled that the Patriarch of Moscow was so dominated by the secular government of Russia that his appointee could not validly occupy the Church's property. On appeal, this Court reversed summarily, Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960), noting in its Per curiam opinion that

> "the decision now under review rests on the same premises which were found to have underlain the enactment of the statute struck down in Kedroff." Id., at 191, 80 S.Ct., at 1038.

Nine years later, in Presbyterian Church v. Hull Church, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969), the Court held that Georgia's common law, which implied a trust upon local church property for the benefit of the general church only on the condition that the general church adhere to its tenets of faith and practice existing at the time of affiliation by the local churches, was inconsistent with the First and Fourteenth Amendments and therefore could not be utilized to resolve church property disputes. The Georgia law was held impermissible because

> **2391 "(u)nder (the Georgia) approach, property rights do not turn on a church decision as to church doctrine. The standard of departure-from-doctrine, though it calls for resolution of ecclesiastical questions, is a creation of state, not church, law." Id., at 451, 89 S.Ct., at 607.

Finally, in Md. & Va. Church v. Sharpsburg Church, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970), the Court considered an appeal from a judgment of the Court of Appeals of Maryland upholding the dismissal of two actions brought by the Eldership seeking to prevent two of its local churches from withdrawing from that general religious association. The Eldership had also claimed the rights to select the *732 clergy and to control the property of the two local churches, but the Maryland courts, relying "upon provisions of state statutory law governing the holding of property by religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, *and upon pvisions in the constitution of the General Eldership pertinent to the ownership and control of church property," Ibid. (emphasis supplied; footnote omitted), concluded that the Eldership had no right to invoke the State's authority to compel their local churches to remain within the fold or to succeed to control of their property. This Court dismissed the Eldership's contention that this judgment violated the First Amendment for want of a substantial federal question.*

Despite the Court's failure to do so, it does not seem very difficult to derive the operative constitutional principle from this line of decisions. As should be clear from even this cursory study, Watson, Bouldin, and Gonzalez have no direct relevance [FN*] to the question before us today: *733 whether the First Amendment, as me

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applicable to the States by the Fourteenth, prohibits Illinois from permitting its civil courts to settle religious property disputes in the manner presented to us on this record. I think it equally clear that the only cases which Are relevant to that question Kedroff, Kreshik, Hull, and Md. & Va. Churches require that this question be answered in the negative. The rule of those cases, one which seems fairly implicit in the history of our First Amendment, is that the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet, or sect. That is what New York attempted to do in Kedroff and Kreshik, albeit perhaps for nonreligious reasons, and the Court refused to permit it. In Hull, the State transgressed the line drawn by the First Amendment when it applied a state-created rule of law based upon "departure from doctrine" to prevent the national hierarchy of the Presbyterian Church in the United States from seeking to reclaim possession and use of two local churches. When the Georgia courts themselves required an examination into whether there had been a departure from the doctrine of the church in order to apply this state-created rule, they went beyond mere application of neutral principles of law to such a dispute.

> FN* I am far from persuaded, moreover, that these decisions would require the result reached today even if we were reviewing a federal decision rather than that of a state court. As demonstrated in the text, Supra, these cases were applications of the general principle that persons who have contractually bound themselves to adhere to the decisions of the ruling hierarchy in a private association may not obtain relief from those decisions in a civil court. Here the underlying question addressed by the Illinois courts is the one assumed in Watson et al.: whether the members of the American-Canadian Diocese Had bound themselves to abide by the decisions of the Mother Church in the matters at issue here. The Illinois courts concluded that in regard to some of these matters they had agreed to be bound only if certain procedures were followed and that as to others there had been no agreement to submit to the authority of the Belgrade Patriarchate at all. If these conclusions are correct, and there is little to indicate they are not, then the "Watson rule" which the Court brandishes so freely today properly would have no application to these facts even if this case had arisen in federal court.

There is nothing in this record to indicate that the Illinois courts have been instruments **2392 of any such impermissible intrusion by the State on one side or the other of a religious dispute. There is nothing in the Supreme Court of Illinois' opinion indicating that it placed its thumb on the scale in favor of the respondents. Instead that opinion appears to be precisely what it purports *734 to be: an application of neutral principles of law consistent with the decisions of this Court. Indeed, petitioners make absolutely no claim to the contrary. They agree that the Illinois courts *should* have decided the issues which *they* presented; but they contend that in doing so those courts should have deferred entirely to the representations of the announced represeatives of the Mother Church. Such blind deference, however, is counseled neither by logic nor by the First Amendment. To make available the coercive powers of civil courts to rubber-stamp ecclesiastical decisions of hierarchical religious associations, when such deference is not accorded similar acts of secular voluntary associations, would, in avoiding the free exercise problems petitioners envision, itself create far more serious problems under the Establishment Clause.

In any event the Court's decision in Md. & Va. Churches demonstrates that petitioners' position in this regard is untenable. And as I read that decision, it seems to me to compel affirmance of at least that portion of the Illinois court's decision which denied petitioners' request for the aid of the civil courts in enforcing its desire to divide the American-Canadian Diocese. See Ante, at 2385-2387 (Part III). I see no distinction between the Illinois courts' refusal to place their weight behind the representatives of the Serbian Mother Church who sought to prevent portions of their American congregation from splitting off from that body and the Maryland courts' refusal to do the same thing for the Eldership of the Church of God. The Court today expressly eschews any explanation for its failure to follow Md. & Va. Churches, see

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Ante, at 2386, contenting itself with this conclusory statement:

> "The constitutional provisions of the American-Canadian Diocese were not so express that the civil *735 courts could enforce them without engaging in a searching and therefore impermissible inquiry into crch polity." Ante, at 2386.

But comparison of the relevant discussions by the state tribunals regarding their consideration of church documents makes this claimed distinction seem quite specious. Compare Md. & Va. Churches v. Sharpsburg Church, 254 Md. 162, 170, 254 A.2d 162, 168 (1969), with Serbian Orthodox Diocese v. Ocokoljich, 72 Ill.App.2d 444, 458-462, 219 N.E.2d 343, 350-353 (1966).

In conclusion, while there may be a number of good arguments that civil courts of a State should, as a matter of the wisest use of their authority, avoid adjudicating religious disputes to the maximum extent possible, they obviously cannot avoid all such adjudications. And while common-law principles like those discussed in Watson, Bouldin, and Gonzalez may offer some sound principles for those occasions when such adjudications are required, they are certainly not rules to which state courts are required to adhere by virtue of the Fourteenth Amendment. The principles which that Amendment, through its incorporation of the First, Does enjoin upon the state courts that they remain neutral on matters of religious doctrine have not been transgressed by the Supreme Court of Illinois.

96 S.Ct. 2372, 426 U.S. 696, 49 L.Ed.2d 151

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EXHIBIT 4/8

83 S.Ct. 1790
10 L.Ed.2d 965, 9 Fair Empl.Prac.Cas. (BNA) 1152
(Cite as: 374 U.S. 398, 83 S.Ct. 1790)

Supreme Court of the United States

Adell H. SHERBERT, Appellant,
v.
Charlie V. VERNER et al., as members of South Carolina Employment Security Commission, and Spartan Mills.

No. 526.

Argued April 24, 1963.
Decided June 17, 1963.

Proceeding on claim for unemployment compensation benefits. From a judgment of the Common Pleas Court, Spartanburg County, South Carolina, the claimant appealed. The Supreme Court of South Carolina, 240 S.C. 286, 125 S.E.2d 737, affirmed, and certiorari was granted. The Supreme Court, Mr. Justice Brennan, held that South Carolina could not constitutionally apply eligibility provisions of unemployment compensation statute so as to deny benefits to claimant who had refused employment, because of her religious beliefs, which would require her to work on Saturday.

Reversed and remanded.

Mr. Justice Harlan and Mr. Justice White dissented.

West Headnotes

[1] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

Door of Free Exercise Clause of the First Amendment stands tightly closed against any governmental regulation of religious beliefs as such. U.S.C.A.Const. Amends. 1, 14.

[2] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k4)

Government may neither compel affirmation of repugnant religious belief, nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to authorities, nor employ taxing power to inhibit dissemination of particular religious views. U.S.C.A.Const. Amends. 1, 14.

[3] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

Even when overt action is in accord with one's religious convictions, it is not totally free from legislative restrictions, but actions so regulated have invariably posed some substantial threat to public safety, peace or order. U.S.C.A.Const. Amends. 1, 14.

[4] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

Conscientious objection, on grounds of religious belief, by unemployment compensation claimant to Saturday work constituted no conduct prompted by religious principles of kind within reach of state legislature. Code S.C. 1962, §§ 68-1 to 68-404, 68-113(3), 68-114(2), (3)(a, b); U.S.C.A.Const. Amends. 1, 14.

[5] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

Disqualification of unemployment compensation claimant from benefits because of her refusal, based on religious beliefs, to accept employment which would require her to work on Saturday, imposed a burden on the free exercise of her religion. Code S.C.1962, §§ 68-1 to 68-404, 68-113(3), 68-114(2), (3) (a, b); U.S.C.A.Const. Amends. 1, 14.

[6] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

If purpose or effect of law is to impede observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though burden may be characterized as being only indirect. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law ⇐274(3.1)

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92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

Liberties of religion and expression may be infringed by denial of or by placing conditions on benefit or privilege. U.S.C.A.Const. Amends. 1, 14.

[8] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

To condition availability of unemployment compensation benefits on claimant's willingness to violate cardinal principle of her religious faith by accepting Saturday work effectively penalizes free exercise of her constitutional liberties. U.S.C.A.Const. Amends. 1, 14.

[9] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

No showing of mere rational relationship to some colorable state interest would justify substantial infringement of party's constitutional right to free exercise of religion. U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3), 92k274)

There was no showing of a compelling state interest enforced in the eligibility provisions of South Carolina unemployment compensation statutes which would justify denial of benefits to claimant who refused, because of religious beliefs to accept employment that would require her to work on Saturday. U.S.C.A.Const. Amends. 1, 14; Code S.C.1962, §§ 68-1 to 68-404, 68-113(3), 68-114(2), (3)(a, b).

[11] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

South Carolina could not constitutionally apply eligibility provisions of its unemployment compensation statutes so as to deny benefits to claimant who refused Saturday employment because of her religious beliefs. U.S.C.A.Const. Amends. 1, 14; Code S.C.1962, §§ 68-1 to 68-404, 68-113(3), 68-114(2), (3)(a, b).

[12] Constitutional Law ⇐274(3.1)
92k274(3.1) Most Cited Cases
(Formerly 92k274(3))

No state may exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving benefits of public welfare legislation. U.S.C.A.Const. Amends. 1, 14.
****1791 *398** William D. Donnelly, Bethesda, Md., for appellant.

***399** Daniel R. McLeod, Columbia, S.C., for appellees.

Mr. Justice BRENNAN delivered the opinion of the Court.

Appellant, a member of the Seventh-day Adventist Church was discharged by her South Carolina employer because she would not work on Saturday, the Sabbath Day of her faith. [FN1] When she was unable to obtain other employment because from conscientious scruples she would not take Saturday work, [FN2] she filed a claim for ***400** unemployment compensation benefits under the South Carolina Unemployment Compensation Act. [FN3] That ****1792** law provides that, to be eligible for benefits, a claimant must be 'able to work and * * * is available for work'; and, further, ***401** that a claimant is ineligible for benefits '(i)f * * * he has failed, without good cause * * * to accept available suitable work when offered him by the employment office or the employer * * *.' The appellee Employment Security Commission, in administrative proceedings under the statute, found that appellant's restriction upon her availability for Saturday work brought her within the provision disqualifying for benefits insured workers who fail, without good cause, to accept 'suitable work when offered * * * by the employment office or the employer * * *.' The Commission's finding was sustained by the Court of Common Pleas for Spartanburg County. That court's judgment was in turn affirmed by the South Carolina Supreme Court, which rejected appellant's contention that, as applied to her, the disqualifying provisions of the South Carolina statute abridged her right to the free exercise of her religion secured under the Free

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Exercise Clause of the First Amendment through the Fourteenth Amendment. The State Supreme Court held specifically that appellant's ineligibility infringed no constitutional liberties because such a construction of the statute 'places no restriction upon the appellant's freedom of religion nor does it in any way prevent her in the exercise of her right and freedom to observe her religious beliefs in accordance with the dictates of her conscience.' 240 U.S. 286, 303--304, 125 S.E.2d 737, 746. [FN4] We noted probable ***402** jurisdiction of appellant's appeal.371 ****1793** U.S. 938, 83 S.Ct. 321, 9 L.Ed.2d 273. We reverse the judgment of the South Carolina Supreme Court and remand for further proceedings not inconsistent with this opinion.

FN1. Appellant became a member of the Seventh-day Adventist Church in 1957, at a time when her employer, a textile-mill operator, permitted her to work a five-day week. It was not until 1959 that the work week was changed to six days, including Saturday, for all three shifts in the employer's mill. No question has been raised in this case concerning the sincerity of appellant's religious beliefs. Nor is there any doubt that the prohibition against Saturday labor is a basic tenet of the Seventh-day Adventist creed, based upon that religion's interpretation of the Holy Bible.

FN2. After her discharge, appellant sought employment with three other mills in the Spartanburg area, but found no suitable five-day work available at any of the mills. In filing her claim with the Commission, she expressed a willingness to accept employment at other mills, or even in another industry, so long as Saturday work was not required. The record indicates that of the 150 or more Seventh-day Adventists in the Spartanburg area, only appellant and one other have been unable to find suitable non- Saturday employment.

FN3. The pertinent sections of the South Carolina Unemployment Compensation Act (S.C.Code, Tit. 68, ss 68--1 to 68--404) are as follows:
's 68--113. Conditions of eligibility for benefits.--An unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that: * * *
'(3) He is able to work and is available for work, but no claimant shall be considered available for work if engaged in self-employment of such nature as to return or promise remuneration in excess of the weekly benefit amounts he would have received if otherwise unemployed over such period of time. * * *
's 68--114. Disqualification for benefits.--Any insured worker shall be ineligible for benefits: * * *
'(2) Discharge for misconduct.--If the Commission finds that he has been discharged for misconduct connected with his most recent work prior to filing a request for determination of insured status or a request for initiation of a claim series within an established benefit year, with such ineligibility beginning with the effective date of such request, and continuing not less than five nor more than the next twenty-two consecutive weeks (in addition to the waiting period), as determined by the Commission in each case according to the seriousness of the misconduct * * * '(3) Failure to accept work.--(a) If the Commission finds that he has failed, without good cause, (i) either to apply for available suitable work, when so directed by the employment office or the Commission, (ii) to accept available suitable work when offered him by the employment office or the employer or (iii) to return to his customary self-employment (if any) when so directed by the Commission, such ineligibility shall continue for a period of five weeks (the week in which such failure occurred and the next four weeks in addition to the waiting period) as determined by the Commission according to the circumstances in each case * * *.
'(b) In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and

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morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation and the distance of the available work from his residence.'

FN4. It has been suggested that appellant is not within the class entitled to benefits under the South Carolina statute because her unemployment did not result from discharge or layoff due to lack of work. It is true that unavailability for work for some personal reasons not having to do with matters of conscience or religion has been held to be a basis of disqualification for benefits. See, e.g., Judson Mills v. South Carolina Unemployment Compensation Comm., 204 S.C. 37, 28 S.E.2d 535; Stone Mfg. Co. v. South Carolina Employment Security Comm., 219 S.C. 239, 64 S.E.2d 644. But appellant claims that the Free Exercise Clause prevents the State from basing the denial of benefits upon the 'personal reason' she gives for not working on Saturday. Where the consequence of disqualification so directly affects First Amendment rights, surely we should not conclude that every 'personal reason' is a basis for disqualification in the absence of explicit language to that effect in the statute or decisions of the South Carolina Supreme Court. Nothing we have found in the statute or in the cited decisions, cf. Lee v. Spartan Mills, 7 CCH Unemployment Ins.Rep.S.C. 8156 (C.P. 1944), and certainly nothing in the South Carolina Court's opinion in this case so construes the statute. Indeed, the contrary seems to have been that court's basic assumption, for if the eligibility provisions were thus limited, it would have been unnecessary for the court to have decided appellant's constitutional challenge to the application of the statute under the Free Exercise Clause.
Likewise, the decision of the State Supreme Court does not rest upon a finding that appellant was disqualified for benefits because she had been 'discharged for misconduct'--by reason of her Saturday absences--within the meaning of s 68--114(2). That ground was not adopted by the South Carolina Supreme Court, and the appellees do not urge in this Court that the disqualification rests upon that ground.

I.

[1][2][3] The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious beliefs as such, Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213. Government may neither compel affirmation of a repugnant belief, Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982; nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities, Fowler v. Rhode Island, 345 U.S. 67, 73 S.Ct. 526, 97 L.Ed. 828; nor employ the taxing power to inhibit the dissemination of particular religious views, Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292; Follett v. McCormick, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938; cf. Grosjean v. American Press Co., 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660. On the other hand, ***403** the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for 'even when the action is in accord with one's religious convictions, (it) is not totally free from legislative restrictions.' Braunfeld v. Brown, 366 U.S. 599, 603, 81 S.Ct. 1144, 1146, 6 L.Ed.2d 563. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, e.g., Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244; Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643; Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645; Cleveland v. United States, 329 U.S. 14, 67 S.Ct. 13, 91 L.Ed. 12.

[4] Plainly enough, appellant's conscientious objection to Saturday work constitutes no conduct prompted by religious principles of a kind within the reach of state legislation. If, therefore. the decision of the South Carolina Supreme Court is to withstand appellant's constitutional challenge, it must be either because her disqualification as a beneficiary represents no infringement by the State

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of her constitutional rights of free exercise, or because any incidental burden on the free exercise of appellant's religion may be justified by a 'compelling state interest in the regulation of a subject within the State's constitutional power to regulate * * *.' NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 341, 9 L.Ed.2d 405.

II.

[5][6] We turn first to the question whether the disqualification for benefits **1794 imposes any burden on the free exercise of appellant's religion. We think it is clear that it does. In a sense the consequences of such a disqualification to religious principles and practices may be only an indirect result of welfare legislation within the State's general competence to enact; it is true that no criminal sanctions directly compel appellant to work a six-day week. But this is only the beginning, not the end, of our *404 inquiry. [FN5] For '(i)f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.' Braunfeld v. Brown, supra, 366 U.S., at 607, 81 S.Ct., at 1148. Here not only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

FN5. In a closely analogous context, this Court said:
'* * * the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect 'discouragements' undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes. A requirement that adherents of particular religious faiths or political parties wear identifying armbands, for example, is obviously of this nature.' American Communications Ass'n v. Douds, 339 U.S. 382, 402, 70 S.Ct. 674, 686, 94 L.Ed. 925. Cf. Smith v. California, 361 U.S. 147, 153--155, 80 S.Ct. 215, 218--219, 4 L.Ed.2d 205.

[7][8] Nor may the South Carolina court's construction of the statute be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellant's 'right' but merely a 'privilege.' It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege. [FN6] *405American Communications Ass'n v. Douds, 339 U.S. 382, 390, 70 S.Ct. 674, 679, 94 L.Ed. 925; Wieman v. Updegraff, 344 U.S. 183, 191--192, 73 S.Ct. 215, 218--219, 97 L.Ed. 216; Hannegan v. Esquire, Inc., 327 U.S. 146, 155--156, 66 S.Ct. 456, 461, 90 L.Ed. 586. For example, in Flemming v. Nestor, 363 U.S. 603, 611, 80 S.Ct. 1367, 1373, 4 L.Ed.2d 1435, the Court recognized with respect to Federal Social Security benefits that '(t)he interest of a covered employee under the Act is of sufficient substance to fall within the protection from arbitrary governmental **1795 action afforded by the Due Process Clause.' In Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed.2d 1460, we emphasized that conditions upon public benefits cannot be sustained if they so operate, whatever their purpose, as to inhibit or deter the exercise of First Amendment freedoms. We there struck down a condition which limited the availability of a tax exemption to those members of the exempted class who affirmed their loyalty to the state government granting the exemption. While the State was surely under no obligation to afford such an exemption, we held that the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights of expression and thereby threatened to 'produce a result which the State could not command directly.' *406357 U.S., at 526, 78 S.Ct., at 1342. 'To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech.' Id., 357 U.S., at 518, 78 S.Ct., at 1338. Likewise, to condition the availability of benefits upon this appellant's

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willingness to violate a cardinal principle of her religious faith effectively penalizes the free exercise of her constitutional liberties.

FN6. See for examples of conditions and qualifications upon governmental privileges and benefits which have been invalidated because of their tendency to inhibit constitutionally protected activity, Steinberg v. United States, 163 F.Supp. 590, 143 Ct.Cl. 1; Syrek v. California Unemployment Ins. Board, 54 Cal.2d 519, 7 Cal.Rptr. 97, 354 P.2d 625; Fino v. Maryland Employment Security Board, 218 Md. 504, 147 A.2d 738; Chicago Housing Authority v. Blackman, 4 Ill.2d 319, 122 N.E.2d 522; Housing Authority of Los Angeles v. Cordova, 130 Cal.App.2d Supp. 883, 279 P.2d 215; Lawson v. Housing Authority of Milwaukee, 270 Wis. 269, 70 N.W.2d 605; Danskin v. San Diego Unified School District, 28 Cal.2d 536, 171 P.2d 885; American Civil Liberties Union v. Board of Education, 55 Cal.2d 167, 10 Cal.Rptr. 647, 359 P.2d 45; cf. City of Baltimore v. A. S. Abell Co., 218 Md. 273, 145 A.2d 111. See also Willcox, Invasions of the First Amendment Through Conditioned Public Spending, 41 Cornell L.Q. 12 (1955); Emerson, Toward a General Theory of the First Amendment, 72 Yale L.J. 877, 942--943 (1963); 36 N.Y.U.L.Rev. 1052 (1961); 9 Kan.L.Rev. 346 (1961); Note, Unconstitutional Conditions, 73 Harv.L.Rev. 1595, 1599--1602 (1960).

Significantly South Carolina expressly saves the Sunday worshipper from having to make the kind of choice which we here hold infringes the Sabbatarian's religious liberty. When in times of 'national emergency' the textile plants are authorized by the State Commissioner of Labor to operate on Sunday, 'no employee shall be required to work on Sunday * * * who is conscientiously opposed to Sunday work; and if any employee should refuse to work on Sunday on account of conscientious * * * objections he or she shall not jeopardize his or her seniority by such refusal or be discriminated against in any other manner.' S.C.Code, s 64--4. No question of the disqualification of a Sunday worshipper for benefits is likely to arise, since we cannot suppose that an employer will discharge him in violation of this statute. The unconstitutionality of the disqualification of the Sabbatarian is thus compounded by the religious discrimination which South Carolina's general statutory scheme necessarily effects.

III.

[9][10] We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '(o)nly the gravest abuses, endangering paramount interest, give occasion for permissible limitation,' Thomas v. Collins, 323 U.S. 516, 530, 65 S.Ct. 315, 323, 89 L.Ed. 430. ***407** No such abuse or danger has been advanced in the present case. The appellees suggest no more than a possibility that the filing of fraudulent claims by unscrupulous claimants feigning religious objections to Saturday work might not only dilute the unemployment compensation fund but also hinder the scheduling by employers of necessary Saturday work. But that possibility is not apposite here because no such objection appears to have been made before the South Carolina Supreme Court, and we are unwilling to assess the importance of an asserted state interest without the views of the state court. Nor, if the contention had been made below, would the record appear to sustain it; there is no proof whatever to warrant such fears of malingering or deceit as those which the respondents now advance. Even if consideration of such evidence is not foreclosed by the prohibition against judicial inquiry into the truth or falsity of religious beliefs, United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 --a question as to which we intimate no view since it is not before us--it is highly ****1796** doubtful whether such evidence would be sufficient to warrant a substantial infringement of religious liberties. For even if the possibility of spurious claims did threaten to dilute the fund and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no

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alternative forms of regulation would combat such abuses without infringing First Amendment rights. [FN7] Cf. *408Shelton v. Tucker, 364 U.S. 479, 487--490, 81 S.Ct. 247, 251--253, 5 L.Ed.2d 231; Talley v. California, 362 U.S. 60, 64, 80 S.Ct. 536, 538, 4 L.Ed.2d 559; Schneider v. State of New Jersey, 308 U.S. 147, 161, 60 S.Ct. 146, 150, 84 L.Ed. 155; Martin v. Struthers, 319 U.S. 141, 144--149, 63 S.Ct. 862, 863--866, 87 L.Ed. 1313.

FN7. We note that before the instant decision, state supreme courts had, without exception, granted benefits to persons who were physically available for work but unable to find suitable employment solely because of a religious prohibition against Saturday work. E.g., In re Miller, 243 N.C. 509, 91 S.E.2d 241; Swenson v. Michigan Employment Security Comm., 340 Mich. 430, 65 N.W.2d 709; Tary v. Board of Review, 161 Ohio St. 251, 119 N.E.2d 56. Cf. Kut v. Albers Super Markets, Inc., 146 Ohio St. 522, 66 N.E.2d 643, appeal dismissed sub nom. Kut v. Bureau of Unemployment Compensation, 329 U.S. 669, 67 S.Ct. 86, 91 L.Ed. 590. One author has observed, 'the law was settled that conscientious objections to work on the Sabbath made such work unsuitable and that such objectors were nevertheless available for work. * * * A contrary opinion would make the unemployment compensation law unconstitutional, as a violation of freedom of religion. Religious convictions, strongly held, are so impelling as to constitute good cause for refusal. Since availability refers to suitable work, religious observers were not unavailable because they excluded Sabbath work.' Altman, Availability for Work: A Study in Unemployment Compensation (1950), 187. See also Sanders, Disqualification for Unemployment Insurance, 8 Vand.L.Rev. 307, 327--328 (1955); 34 N.C.L.Rev. 591 (1956); cf. Freeman, Able To Work and Available for Work, 55 Yale L.J. 123, 131 (1945). Of the 47 States which have eligibility provisions similar to those of the South Carolina statute, only 28 appear to have given administrative rulings concerning the eligibility of persons whose religious convictions prevented them from accepting available work. Twenty-two of those States have held such persons entitled to benefits, although apparently only one such decision rests exclusively upon the federal constitutional ground which constitutes the basis of our decision. See 111 U. of Pa.L.Rev. 253, and n. 3 (1962); 34 N.C.L.Rev. 591, 602, n. 60 (1956).

In these respects, then, the state interest asserted in the present case is wholly dissimilar to the interests which were found to justify the less direct burden upon religious practices in Braunfeld v. Brown, supra. The Court recognized that the Sunday closing law which that decision sustained undoubtedly served 'to make the practice of (the Orthodox Jewish merchants') religious beliefs more expensive,' 366 U.S., at 605, 81 S.Ct., at 1147. But the statute was nevertheless saved by a countervailing factor which finds no equivalent in the instant case--a strong state interest in providing one uniform day of rest for all workers. That secular objective could be achieved, the Court found, only by declaring Sunday to be that day of rest. Requiring exemptions for Sabbatarians, while theoretically possible, appeared to present an administrative *409 problem of such magnitude, or to afford the exempted class so great a competitive advantage, that such a requirement would have rendered the entire statutory scheme unworkable. [FN8] In the present case no such justifications underlie the determination of the state court that appellant's religion makes her ineligible to receive benefits. [FN9]

FN8. See Note, State Sunday Laws and the Religious Guarantees of the Federal Constitution, 73 Harv.L.Rev. 729, 741--745 (1960).

FN9. These considerations also distinguish the quite different case of Flemming v. Nestor, supra, upon which appellees rely. In that case the Court found that the compelling federal interests which underlay the decision of Congress to

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impose such a disqualification justified whatever effect the denial of social security benefits may have had upon the disqualified class. See 363 U.S., at 612, 80 S.Ct., at 1373. And compare Torcaso v. Watkins, supra, in which an undoubted state interest in ensuring the veracity and trustworthiness of Notaries Public was held insufficient to justify the substantial infringement upon the religious freedom of applicants for that position which resulted from a required oath of belief of God. See 74 Harv.L.Rev. 611, 612--613 (1961); 109 U. of Pa.L.Rev. 611, 614--616 (1961).

**1797 IV.

[11][12] In holding as we do, plainly we are not fostering the 'establishment' of the Seventh-day Adventist religion in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. See School District of Abington Township v. Schempp, 374 U.S. 203, 83 S.Ct. 1560. Nor does the recognition of the appellant's right to unemployment benefits under the state statute serve to abridge any other person's religious liberties. Nor do we, by our decision today, declare the existence of a constitutional right to unemployment benefits on the part *410 of all persons whose religious convictions are the cause of their unemployment. This is not a case in which an employee's religious convictions serve to make him a nonproductive member of society. See note 2, supra. Finally, nothing we say today constrains the States to adopt any particular form or scheme of unemployment compensation. Our holding today is only that South Carolina may not constitutionally apply the eligibility provisions so as to constrain a worker to abandon his religious convictions respecting the day of rest. This holding but reaffirms a principle that we announced a decade and a half ago, namely that no State may 'exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation.' Everson v. Board of Education, 330 U.S. 1, 16, 67 S.Ct. 504, 512, 91 L.Ed. 711.

In view of the result we have reached under the First and Fourteenth Amendments' guarantee of free exercise of religion, we have no occasion to consider appellant's claim that the denial of benefits also deprived her of the equal protection of the laws in violation of the Fourteenth Amendment.

The judgment of the South Carolina Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion. It is so ordered.

Reversed and remanded.

Mr. Justice DOUGLAS, concurring.

The case we have for decision seems to me to be of small dimensions, though profoundly important. The question is whether the South Carolina law which denies unemployment compensation to a Seventh-day Adventist, who, because of her religion, has declined to work on her Sabbath, is a law 'prohibiting the free exercise' of religion as those words are used in the First Amendment. *411 It seems obvious to me that this law does run afoul of that clause.

Religious scruples of Moslems require them to attend a mosque on Friday and to pray five times daily. [FN1] Religious scruples of a Sikh require him to carry a regular or a symbolic sword. Rex v. Singh, 39 A.I.R. 53 (Allahabad, 1952). Religious scruples of a Jehovah's Witness teach him to be a colporteur, going from **1798 door to door, from town to town, distributing his religious pamphlets. See Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292. Religious scruples of a Quaker compel him to refrain from swearing and to affirm instead. See King v. Fearson, Fed.Cas. No. 7,790, 14 Fed.Cas. 520; 1 U.S.C. s 1; Federal Rules of Civil Procedure, Rule 43(d); United States v. Schwimmer, 279 U.S. 644, 655, 49 S.Ct. 448, 451, 73 L.Ed. 889 (dissenting opinion). Religious scruples of a Buddhist may require him to refrain from partaking of any flesh, even of fish. [FN2]

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FN1. See Shorter Encyclopaedia of Islam (Cornell Press, 1953), 336, 493.

FN2. See Narasu, The Essence of Buddhism (3d ed. 1948), 52--55; 6 Encyclopaedia of Religion and Ethics (1913), 63--65.

The examples could be multiplied, including those of the Seventh-day Adventist whose Sabbath is Saturday and who is advised not to eat some meats. [FN3]

FN3. See Seventh-day Adventists Answer Questions on Doctrine (1957), 149--153, 622--624; Mitchell, Seventh-Day Adventists (1st ed. 1958), 127, 176--178.

These suffice, however, to show that many people hold beliefs alien to the majority of our society--beliefs that are protected by the First Amendment but which could easily be trod upon under the guise of 'police' or 'health' regulations reflecting the majority's views.

Some have thought that a majority of a community can, through state action, compel a minority to observe their particular religious scruples so long as the majority's rule can be said to perform some valid secular function. ***412** That was the essence of the Court's decision in the Sunday Blue Law Cases (Gallagher v. Crown Kosher Market, 366 U.S. 617, 81 S.Ct. 1122, 6 L.Ed.2d 536; Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563; McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101, 6 L.Ed.2d 393), a ruling from which I then dissented (McGowan v. Maryland, supra, 366 U.S. pp. 575--576, 81 S.Ct. pp. 1225--1226) and still dissent. See Arlan's Dept. Store v. Kentucky, 371 U.S. 218, 83 S.Ct. 277, 9 L.Ed.2d 264.

That ruling of the Court travels part of the distance that South Carolina asks us to go now. She asks us to hold that when it comes to a day of rest a Sabbatarian must conform with the scruples of the majority in order to obtain unemployment benefits.

The result turns not on the degree of injury, which may indeed be nonexistent by ordinary standards. The harm is the interference with the individual's scruples or conscience--an important area of privacy which the First Amendment fences off from government. The interference here is as plain as it is in Soviet Russia, where a churchgoer is given a second-class citizenship, resulting in harm though perhaps not in measurable damages.

This case is resolvable not in terms of what an individual can demand of government, but solely in terms of what government may not do to an individual in violation of his religious scruples. The fact that government cannot exact from me a surrender of one iota of my religious scruples does not, of course, mean that I can demand of government a sum of money, the better to exercise them. For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government.

Those considerations, however, are not relevant here. If appellant is otherwise qualified for unemployment benefits, payments will be made to her not as a Seventh-day Adventist, but as an unemployed worker. Conceivably these payments will indirectly benefit her church, ***413** but no more so than does the salary of any public employee. Thus, this case does not involve the problems of direct or indirect state assistance to a religious ****1799** organization--matters relevant to the Establishment Clause, not in issue here.

Mr. Justice STEWART, concurring in the result.

Although fully agreeing with the result which the Court reaches in this case, I cannot join the Court's opinion. This case presents a double-barreled dilemma, which in all candor I think the Court's opinion has not succeeded in papering over. The dilemma ought to be resolved.

I.

Twenty-three years ago in Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213, the Court said that both the Establishment Clause and the Free Exercise Clause of the First Amendment were made wholly applicable to the States by the Fourteenth Amendment. In the

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intervening years several cases involving claims of state abridgment of individual religious freedom have been decided here--most recently Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563, and Torcaso v. Watkins, 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982. During the same period 'cases dealing with the specific problems arising under the 'Establishment' Clause which have reached this Court are few in number.' [FN1] The most recent are last Term's Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601, and this Term's Schempp and Murray cases, 374 U.S. 203, 83 S.Ct. 1560.

FN1. McGowan v. Maryland, 366 U.S. 420, 442, 81 S.Ct. 1101, 1114, 6 L.Ed.2d 393.

I am convinced that no liberty is more essential to the continued vitality of the free society which our Constitution guarantees than is the religious liberty protected by the Free Exercise Clause explicit in the First Amendment and imbedded in the Fourteenth. And I regret that on ***414** occasion, and specifically in Braunfeld v. Brown, supra, the Court has shown what has seemed to me a distressing insensitivity to the appropriate demands of this constitutional guarantee. By contrast I think that the Court's approach to the Establishment Clause has on occasion, and specifically in Engel, Schempp and Murray, been not only insensitive, but positively wooden, and that the Court has accorded to the Establishment Clause a meaning which neither the words, the history, nor the intention of the authors of that specific constitutional provision even remotely suggests.

But my views as to the correctness of the Court's decisions in these cases are beside the point here. The point is that the decisions are on the books. And the result is that there are many situations where legitimate claims under the Free Exercise Clause will run into head-on collision with the Court's insensitive and sterile construction of the Establishment Clause. [FN2] The controversy now before us is clearly such a case.

FN2. The obvious potentiality of such collision has been studiously ignored by the Court, but has not escaped the perception of commentators. See, e.g., Katz, Freedom of Religion and State Neutrality, 20 U. of Chi.L.Rev. 426, 428 (1953); Kauper, Prayer, Public Schools and the Supreme Court, 61 Mich.L.Rev. 1031, 1053 (1963).

Because the appellant refuses to accept available jobs which would require her to work on Saturdays, South Carolina has declined to pay unemployment compensation benefits to her. Her refusal to work on Saturdays is based on the tenets of her religious faith. The Court says that South Carolina cannot under these circumstances declare her to be not 'available for work' within the meaning of its statute because to do so would violate her constitutional right to the free exercise of her religion.

Yet what this Court has said about the Establishment Clause must inevitably lead to a diametrically opposite result. If the appellant's refusal to work on Saturdays ***415** were based on indolence, or on a compulsive desire to watch the Saturday television programs, no one would say ****1800** that South Carolina could not hold that she was not 'available for work' within the meaning of its statute. That being so, the Establishment Clause as construed by this Court not only permits but affirmatively requires South Carolina equally to deny the appellant's claim for unemployment compensation when her refusal to work on Saturdays is based upon her religious creed. For, as said in Everson v. Board of Education, 330 U.S. 1, 11, 67 S.Ct. 504, 509, 91 L.Ed. 711, the Establishment Clause bespeaks 'a government * * * stripped of all power * * * to support, or otherwise to assist any or all religions * * *,' and no State 'can pass laws which aid one religion * * *.' Id., 330 U.S., at 15, 67 S.Ct., at 511. In Mr. Justice Rutledge's words, adopted by the Court today in Schempp, 374 U.S., p. 217, 83 S.Ct., p. 1568, the Establishment Clause forbids 'every form of public aid or support for religion.' 330 U.S., at 32, 67 S.Ct., at 519. In the words of the Court in Engel v. Vitale, 370 U.S., at 431, 82 S.Ct., at 1267, reaffirmed today in the Schempp case, 374 U.S., p. 221, 83 S.Ct., p. 1571, the Establishment Clause forbids the 'financial support of government' to be 'placed behind a particular religious belief.'

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To require South Carolina to so administer its laws as to pay public money to the appellant under the circumstances of this case is thus clearly to require the State to violate the Establishment Clause as construed by this Court. This poses no problem for me, because I think the Court's mechanistic concept of the Establishment Clause is historically unsound and constitutionally wrong. I think the process of constitutional decision in the area of the relationships between government and religion demands considerably more than the invocation of broad-brushed rhetoric of the kind I have quoted. And I think that the guarantee of religious liberty embodied in the Free Exercise Clause affirmatively requires government to create an atmosphere of hospitality and accommodation ***416** to individual belief or disbelief. In short, I think our Constitution commands the positive protection by government of religious freedom--not only for a minority, however small--not only for the majority, however large--but for each of us.

South Carolina would deny unemployment benefits to a mother unavailable for work on Saturdays because she was unable to get a babysitter. [FN3] Thus, we do not have before us a situation where a State provides unemployment compensation generally, and singles out for disqualification only those persons who are unavailable for work on religious grounds. This is not, in short, a scheme which operates so as to discriminate against religion as such. But the Court nevertheless holds that the State must prefer a religious over a secular ground for being unavailable for work--that state financial support of the appellant's religion is constitutionally required to carry out 'the governmental obligation of neutrality in the face of religious differences * * *.'

> FN3. See Judson Mills v. South Carolina Unemployment Compensation Comm., 204 S.C. 37, 28 S.E.2d 535; Hartsville Cotton Mill v. South Carolina Employment Security Comm., 224 S.C. 407, 79 S.E.2d 381.

Yet in cases decided under the Establishment Clause the Court has decreed otherwise. It has decreed that government must blind itself to the differing religious beliefs and traditions of the people. With all respect, I think it is the Court's duty to face up to the dilemma posed by the conflict between the Free Exercise Clause of the Constitution and the Establishment Clause as interpreted by the Court. It is a duty, I submit, which we owe to the people, the States, and the Nation, and a duty which we owe to ourselves. For so long as the resounding but fallacious fundamentalist rhetoric of some of our Establishment Clause opinions remains on our books, to be disregarded at will as in the present ****1801** case, ***417** or to be undiscriminatingly invoked as in the Schempp case, 374 U.S. 203, 83 S.Ct. 1560, so long will the possibility of consistent and perceptive decision in this most difficult and delicate area of constitutional law be impeded and impaired. And so long, I fear, will the guarantee of true religious freedom in our pluralistic society be uncertain and insecure.

II.

My second difference with the Court's opinion is that I cannot agree that to day's decision can stand consistently with Braunfeld v. Brown, supra. The Court says that there was a 'less direct burden upon religious practices' in that case than in this. With all respect, I think the Court is mistaken, simply as a matter of fact. The Braunfeld case involved a state criminal statute. The undisputed effect of that statute, as pointed out by Mr. Justice BRENNAN in his dissenting opinion in that case, was that "Plaintiff, Abraham Braunfeld, will be unable to continue in his business if he may not stay open on Sunday and he will thereby lose his capital investment.' In other words, the issue in this case--and we do not understand either appellees or the Court to contend otherwise--is whether a State may put an individual to a choice between his business and his religion.' 366 U.S., at 611, 81 S.Ct., at 1150.

The impact upon the appellant's religious freedom in the present case is considerably less onerous. We deal here not with a criminal statute, but with the particularized administration of South Carolina's Unemployment Compensation Act. Even upon the unlikely assumption that the appellant could not find suitable non-Saturday employment, [FN4] the appellant at the worst would be denied ***418** a maximum of 22 weeks of compensation payments. I agree with the Court that the possibility of that denial is enough to infringe upon the appellant's

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constitutional right to the free exercise of her religion. But it is clear to me that in order to reach this conclusion the court must explicitly reject the reasoning of Braunfeld v. Brown. I think the Braunfeld case was wrongly decided and should be overruled, and accordingly I concur in the result reached by the Court in the case before us.

> FN4. As noted by the Court, 'The record indicates that of the 150 or more Seventh-day Adventists in the Spartanburg area, only appellant and one other have been unable to find suitable non-Saturday employment.' Ante, p. 1791, n. 2.

Mr. Justice HARLAN, whom Mr. Justice WHITE joins, dissenting.

Today's decision is disturbing both in its rejection of existing precedent and in its implications for the future. The significance of the decision can best be understood after an examination of the state law applied in this case.

South Carolina's Unemployment Compensation Law was enacted in 1936 in response to the grave social and economic problems that arose during the depression of that period. As stated in the statute itself:

> 'Economic insecurity due to unemployment is a serious menace to health, morals and welfare of the people of this State; involuntary unemployment is therefore a subject of general interest and concern * * *; the achievement of social security requires protection against this greatest hazard of our economic life; this can be provided by encouraging the employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.' s 68--38. (Emphasis added.)

*419 Thus the purpose of the legislature was to tide people over, and to avoid social and economic chaos, during periods when work was unavailable. But at the same **1802 time there was clearly no intent to provide relief for those who for purely personal reasons were or became unavailable for work. In accordance with this design, the legislature provided, in s 68--113, that '(a)n unemployed insured worker shall be eligible to receive benefits with respect to any week only if the Commission finds that * * * (h)e is able to work and is available for work * * *.' (Emphasis added.)

The South Carolina Supreme Court has uniformly applied this law in conformity with its clearly expressed purpose. It has consistently held that one is not 'available for work' if his unemployment has resulted not from the inability of industry to provide a job but rather from personal circumstances, no matter how compelling. The reference to 'involuntary unemployment' in the legislative statement of policy, whatever a sociologist, philosopher, or theologian might say, has been interpreted not to embrace such personal circumstances. See, e.g., Judson Mills v. South Carolina Unemployment Compensation Comm., 204 S.C. 37, 28 S.E.2d 535 (claimant was 'unavailable for work' when she became unable to work the third shift, and limited her availability to the other two, because of the need to care for her four children); Stone Mfg. Co. v. South Carolina Employment Security Comm., 219 S.C. 239, 64 S.E.2d 644; Hartsville Cotton Mill v. South Carolina Employment Security Comm., 224 S.C. 407, 79 S.E.2d 381.

In the present case all that the state court has done is to apply these accepted principles. Since virtually all of the mills in the Spartanburg area were operating on a six-day week, the appellant was 'unavailable for work,' and thus ineligible for benefits, when personal considerations *420 prevented her from accepting employment on a full-time basis in the industry and locality in which she had worked. The fact that these personal considerations sprang from her religious convictions was wholly without relevance to the state court's application of the law. Thus in no proper sense can it be said that the State discriminated against the appellant on the basis of her religious beliefs or that she was denied benefits because she was a Seventh-day Adventist. She was denied benefits just as any other claimant would be denied benefits who was not 'available for work' for personal reasons. [FN1]

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FN1. I am completely at a loss to understand note 4 of the Court's opinion. Certainly the Court is not basing today's decision on the unsupported supposition that some day, the South Carolina Supreme Court may conclude that there is some personal reason for unemployment that may not disqualify a claimant for relief. In any event, I submit it is perfectly clear that South Carolina would not compensate persons who became unemployed for any personal reason, as distinguished from layoffs or lack of work, since the State Supreme Court's decisions make it plain that such persons would not be regarded as 'available for work' within the manifest meaning of the eligibility requirements. Not can I understand what this Court means when it says that 'if the eligibility provisions were thus limited, it would have been unnecessary for the (South Carolina) court to have decided appellant's constitutional challenge * * *.'

With this background, this Court's decision comes into clearer focus. What the Court is holding is that if the State chooses to condition unemployment compensation on the applicant's availability for work, it is constitutionally compelled to carve out an exception--and to provide benefits--for those whose unavailability is due to their religious convictions. [FN2] Such a holding has particular significance in two respects.

FN2. The Court does suggest, in a rather startling disclaimer, ante, p. 1797, that its holding is limited in applicability to those whose religious convictions do not make them 'nonproductive' members of society, noting that most of the Seventh-day Adventists in the Spartanburg area are employed. But surely this disclaimer cannot be taken seriously, for the Court cannot mean that the case would have come out differently if none of the Seventh-day Adventists in Spartanburg had been gainfully employed, or if the appellant's religion had prevented her from working on Tuesdays instead of Saturdays. Nor can the Court be suggesting that it will make a value judgment in each case as to whether a particular individual's religious convictions prevent him from being 'productive.' I can think of no more inappropriate function for this Court to perform.

**1803 *421 First, despite the Court's protestations to the contrary, the decision necessarily overrules Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563, which held that it did not offend the 'Free Exercise' Clause of the Constitution for a State to forbid a Sabbatarian to do business on Sunday. The secular purpose of the statute before us today is even clearer than that involved in Braunfeld. And just as in Braunfeld--where exceptions to the Sunday closing laws for Sabbatarians would have been inconsistent with the purpose to achieve a uniform day of rest and would have required case-by-case inquiry into religious beliefs--so here, an exception to the rules of eligibility based on religious convictions would necessitate judicial examination of those convictions and would be at odds with the limited purpose of the statute to smooth out the economy during periods of industrial instability. Finally, the indirect financial burden of the present law is far less than that involved in Braunfeld. Forcing a store owner to close his business on Sunday may well have the effect of depriving him of a satisfactory livelihood if his religious convictions require him to close on Saturday as well. Here we are dealing only with temporary benefits, amounting to a fraction of regular weekly wages and running for not more than 22 weeks. See ss 68--104, 68--105. Clearly, any differences between this case and Braunfeld cut against the present appellant. [FN3]

FN3. The Court's reliance on South Carolina Code, s 64--4, ante, p. 1795, to support its conclusion with respect to free exercise, is misplaced. Section 64--4, which is not a part of the Unemployment Compensation Law, is an extremely narrow provision that becomes operative only during periods of national emergency and thus has no bearing in the circumstances of the present case. And plainly under our decisions in the 'Sunday law' cases, appellant can derive no support

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for her position from the State's general statutory provisions setting aside Sunday as a uniform day of rest.

*422 Second, the implications of the present decision are far more troublesome than its apparently narrow dimensions would indicate at first glance. The meaning of today's holding, as already noted, is that the State must furnish unemployment benefits to one who is unavailable for work if the unavailability stems from the exercise of religious convictions. The State, in other words, must single out for financial assistance those whose behavior is religiously motivated, even though it denies such assistance to others whose identical behavior (in this case, inability to work no Saturdays) is not religiously motivated.

It has been suggested that such singling out of religious conduct for special treatment may violate the constitutional limitations on state action. See Kurland. Of Church and State and The Supreme Court, 29 U. of Chi.L.Rev. 1; cf. Cammarano v. United States, 358 U.S. 498, 515, 79 S.Ct. 524, 534, 3 L.Ed.2d 462 (concurring opinion). My own view, however, is that at least under the circumstances of this case it would be a permissible accommodation of religion for the State, if it chose to do so, to create an exception to its eligibility requirements for persons like the appellant. The constitutional obligation of 'neutrality,' see School District of Abington Township v. Schempp, 372 U.S., p. 222, 83 S.Ct., p. 1571, is not so narrow a channel that the slightest deviation from an absolutely straight course leads to condemnation. There are too many instances in which no such course can be charted, too many areas in which the pervasive activities of the State justify **1804 some special provision for religion to prevent it from being submerged by an all-embracing secularism. The State violates its obligation of neutrality *423 when, for example, it mandates a daily religious exercise in its public schools, with all the attendant pressures on the school children that such an exercise entails. See Engel v. Vitale, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601; School District of Abington Township v. Schempp, supra. But there is, I believe, enough flexibility in the Constitution to permit a legislative judgment accommodating an unemployment compensation law to the exercise of religious beliefs such as appellant's.

For very much the same reasons, however, I cannot subscribe to the conclusion that the State is constitutionally compelled to carve out an exception to its general rule of eligibility in the present case. Those situations in which the Constitution may require special treatment on account of religion are, in my view, few and far between, and this view is amply supported by the course of constitutional litigation in this area. See, e.g., Braunfeld v. Brown, supra; Cleveland v. United States, 329 U.S. 14, 67 S.Ct. 13, 91 L.Ed. 12; Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645; Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643; Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244. Such compulsion in the present case is particularly inappropriate in light of the indirect, remote, and insubstantial effect of the decision below on the exercise of appellant's religion and in light of the direct financial assistance to religion that today's decision requires.

For these reasons I respectfully dissent from the opinion and judgment of the Court. [FN4]

FN4. Since the Court states, ante, p. 1797, that it does not reach the appellant's 'equal protection' argument, based upon South Carolina's emergency Sunday-work provisions, ss 64--4, 64--6, I do not consider it appropriate for me to do so.

83 S.Ct. 1790, 374 U.S. 398, 10 L.Ed.2d 965, 9 Fair Empl.Prac.Cas. (BNA) 1152

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EXHIBIT 49

▷

United States District Court,
D. Rhode Island.

Kenneth SMITH
v.
Rev. William C. O'CONNELL, et al.
Michael KELLY
v.
Robert MARCANTONIO, et al.
Stephen KELLY
v.
Robert MARCANTONIO, et al.

Nos. 93-615-T, 93-660-T, 93-661-T.

Nov. 25, 1997.

Actions were brought against priests, diocesan officials, and churches to recover damages for sexual assaults allegedly committed by priests against minors. Diocesan officials and churches moved to dismiss claims against them for lack of subject matter jurisdiction. The District Court, Torres, J., held that: (1) district court had jurisdiction, at least over negligent supervision claim, as claim could be decided based on neutral tort law principles of general application without the need to interpret religious doctrine; (2) subjecting diocesan officials to liability would not interfere with their religious activities so as to violate Free Exercise Clause; and (3) such liability could constitutionally be imposed, even if it burdened exercise of religious beliefs, as it was derived from neutral tort law principles of general application.

Motion denied.

West Headnotes

[1] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

First Amendment prohibits secular courts from intervening in internal affairs of hierarchical churches by deciding what, essentially, are religious matters. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[2] Religious Societies ⇐30
332k30 Most Cited Cases

First Amendment principle prohibiting secular courts from interfering in internal affairs of hierarchical courts by deciding religious matters did not divest federal district court of jurisdiction over claims against church and church officials for negligently failing to prevent sexual abuse of minors by priests; claims did not involve an internal dispute within church and did not require interpretations of religious doctrine or ecclesiastical law. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[3] Religious Societies ⇐30
332k30 Most Cited Cases

Subjecting church officials to potential tort liability for failing to prevent sexual abuse of minors by priests did not interfere with religious activities so as to violate Free Exercise Clause of First Amendment; while officials were limited by canon law in actions they could take to punish priests who had sexually abused children, there was nothing in canon law to prevent officials from taking appropriate action to prevent such abuse. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

Law establishing standards of conduct does not implicate Free Exercise Clause of First Amendment unless adherence to those standards interferes with some religious activity. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[5] Religious Societies ⇐30
332k30 Most Cited Cases

Holding church officials liable for negligently failing to prevent sexual abuse of minors by priests would not impermissibly burden those officials' right to free exercise of religion, even if their failure to prevent abuse was in accordance with church doctrine, as tort principles being applied were both neutral and generally applicable and any burden on particular religious practices was incidental.

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U.S.C.A. Const.Amend. 1.

[6] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases

First Amendment protects both the freedom to hold a religious belief and the freedom to act in accordance with that belief; however, freedom to believe is absolute while freedom to act upon those beliefs is not. U.S.C.A. Const.Amend. 1.

[7] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

Neutral laws of general application do not violate First Amendment simply because they have incidental effect of burdening particular religious practice. U.S.C.A. Const.Amend. 1.

[8] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases

If a law is not religiously neutral and of general application, it must be shown to serve a compelling governmental interest and to be narrowly tailored to advance that interest. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[9] Religious Societies ⇐30
332k30 Most Cited Cases

Federal district court's exercise of jurisdiction over negligent supervision claims against church officials in connection with alleged sexual abuse of minors by priests did not constitute excessive entanglement in affairs of church so as to be prohibited under First Amendment. U.S.C.A. Const.Amend. 1.

[10] Master and Servant ⇐303
255k303 Most Cited Cases

Under Rhode Island law, employer may be liable for misconduct of an employee attributable to employer's negligent failure to supervise employee.
***74** Richard Daniel Prentiss, McGovern, Noel & Benik, Providence, RI, Carl P. DeLuca, DeLuca & DeLuca, Providence, RI, Richard A. Cappalli, Woonsocket, RI, Timothy J. Conlon, Providence, RI, for Kenneth Smith.

Thomas R. Bender, William A. Curran, James T. Murphy, Hanson, Curran, Parks & Whitman, Providence, RI, William T. Murphy, Providence, RI, for William C. O'Connell, St. Mary's Church Corp.

Thomas R. Bender, James T. Murphy, Hanson, Curran, Parks & Whitman, Providence, RI, William T. Murphy, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Kenneth Angell, Daniel P. Reilly.

Thomas R. Bender, William A. Curran, James T. Murphy, Mark W. Dana, Hanson, Curran, Parks & Whitman, Providence, RI, William T. Murphy, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Louis A. Gelineau.

Thomas R. Bender, Hanson, Curran, Parks & Whitman, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Church of the Holy Ghost North Tiverton.

Thomas R. Bender, James T. Murphy, Mark W, Dana, Hanson, Curran, Parks & Whitman, Providence, RI, William T. Murphy, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Roman Catholic Bishop of Providence.

***75** Susan E. McGuirl, Richard C. Bicki, Cerilli, McGuirl & Bicki, Providence, RI, Lise M. Iwon, Laurence and Iwon, Wakefield, RI, for Michael Kelly, Stephen Kelly.

Gerald C. DeMaria, Paul S. Callaghan, Higgins, Cavanaugh & Cooney, Providence, RI, for Robert Marcantonio.

James T. Murphy, Mark W, Dana, Hanson, Curran, Parks & Whitman, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Louis E. Gelineau.

William T. Murphy, Providence, RI, R. Christopher Barden, R.C. Barden & Associates, Plymouth, MN, Charles H. Wilson, Washington, DC, for Daniel P. Reilly, St. John Vianney Church, Raymond A. Beaulieu.

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MEMORANDUM AND ORDER

TORRES, District Judge.

The plaintiffs in these consolidated cases seek to recover damages for sexual assaults allegedly committed by two Roman Catholic priests serving in the Diocese of Providence. The defendants are the priests, various diocesan officials and the churches where the alleged assaults occurred. The diocesan officials and the churches (collectively referred to as the "hierarchy defendants") have moved, under Fed.R.Civ.P. 12(b)(1) to dismiss the claims against them for lack of subject matter jurisdiction.

The issue presented is whether the First Amendment divests secular courts of jurisdiction over claims against officials of hierarchial churches where liability is predicated upon the officials' alleged failure to take appropriate action to prevent sexual assaults by clergy subject to their authority. Under the circumstances presented in this case, I answer that question in the negative. Accordingly, the motion to dismiss is denied.

Background

It is neither necessary nor useful to provide a detailed account of the allegations set forth in the complaints or the multitude of legal theories upon which the plaintiffs' claims are based. Each complaint exceeds 100 pages, in length, and contains nineteen counts asserting causes of action that run the gamut from breach of fiduciary duty to premises liability. Some of the claims may raise legitimate First Amendment concerns and other claims may not be viable under negligence law. However, because the motions to dismiss are not directed specifically at individual counts, the Court will focus on what appear to be the plaintiffs' core claims.

At the heart of these cases are allegations that, during the 1970's and early 1980's, when the plaintiffs were minors, they were sexually molested by the defendant priests. It is further alleged, *inter alia,* that prior to such molestation, the hierarchy defendants knew that the priests were pedophiles and not only failed to take appropriate preventative action, but also actively concealed the priests' sexual misconduct.

The hierarchy defendants argue that the First Amendment bars adjudication of these claims for several reasons. First, they contend that entertaining these suits would constitute the kind of interference with the internal affairs of a hierarchical church that is prohibited by what the hierarchy defendants call the "religious autonomy doctrine". In addition, the hierarchy defendants assert that holding them liable for failing to conform to tort law standards of conduct would infringe upon their First Amendment rights because those standards conflict with the standards established by Roman Catholic doctrine and practices. Finally, the hierarchy defendants suggest that litigating these claims would require the Court to become "excessively entangled" in religious matters.

Rule 12(b)(1) Standard

When subject matter jurisdiction is challenged, the plaintiff has the burden of establishing that jurisdiction exists. *Bank One, Texas, N.A. v. Montle,* 964 F.2d 48, 50 (1st Cir.1992). In determining whether that burden has been met, the Court, initially, must treat all of the well-pleaded facts alleged in the complaint as true and must draw all reasonable inferences favorable to the plaintiff. *Murphy v. United States,* 45 F.3d 520, 522 (1st Cir.) , *cert. denied,* 515 U.S. 1144, 115 S.Ct. 2581, 132 L.Ed.2d 831 (1995). However, in contrast to a Rule 12(b)(6) motion to *76 dismiss for failure to state a claim, the Court, in deciding a Rule 12(b)(1) motion, is not limited to the allegations in the complaint. Evidence challenging and/or supplementing the jurisdictional allegations also may be considered. *Aversa v. United States,* 99 F.3d 1200, 1210 (1st Cir.1996); *see* 2 James Wm. Moore et al., *Moore's Federal Practice* ¶ 12.30[3] (3d ed.1997).

In these cases, the complaints allege sufficient facts to establish subject matter jurisdiction. The hierarchy defendants' jurisdictional challenge is based upon several affidavits describing religious doctrines and practices of the Roman Catholic Church. The plaintiffs have been afforded an opportunity to conduct discovery with respect to those doctrines and practices but have not challenged the statements contained in the affidavits.

Discussion

I. *The "Religious Autonomy Doctrine"*

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[1] It is well established that the First Amendment prohibits secular courts from intervening in the internal affairs of hierarchical churches by deciding what, essentially, are religious matters. *See, e.g., Serbian E. Orthodox Diocese for the United States and Canada v. Milivojevich,* 426 U.S. 696, 708-10, 96 S.Ct. 2372, 2380-81, 49 L.Ed.2d 151 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658 (1969). The hierarchy defendants refer to this principle as the "religious autonomy doctrine."

This prohibition derives from cases arising out of disputes between parties within a church in which an interpretation of ecclesiastical law or church doctrine was required. For example, in *Milivojevich* it was held that the First Amendment barred a state court from invalidating, as arbitrary, the removal of a Serbian Orthodox Bishop by an ecclesiastical court. The court stated:

> [C]ivil courts are bound to accept the decisions of the highest judiciaries of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense "arbitrary" must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church judicatory to follow, or else in to the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.

Milivojevich, 426 U.S. at 713, 96 S.Ct. at 2382.

Similarly, in *Presbyterian Church,* it was held that a civil court had no authority to decide whether local churches that withdrew from a hierarchical church organization were entitled to property previously used by the local churches because resolution of the dispute turned upon whether the hierarchical church had abandoned or departed from its tenets of faith and practice. The Court explained that:

> First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice.... [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions.

Presbyterian Church, 393 U.S. at 449, 89 S.Ct. at 606.

Most, if not all, of the other cases citing the so-called "religious autonomy doctrine" as a bar to jurisdiction also have dealt either with challenges by clergy to disciplinary action taken against them, *see Natal v. Christian and Missionary Alliance,* 878 F.2d 1575 (1st Cir.1989); *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir.), *cert. denied,* *77479 U.S. 885, 107 S.Ct. 277, 93 L.Ed.2d 253 (1986), or with disagreements among factions within a church regarding the ownership or possession of church property, *see Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601; *Kedroff v. St. Nicholas Cathedral of Russ. Orthodox Church in N. Am.,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952). Moreover, in each case, resolution of the dispute would have required the Court to interpret what, essentially, was a religious doctrine or ecclesiastical law.

These cases do not stand for the proposition that a secular court lacks jurisdiction over a case simply because it involves a dispute over church property or because it calls into question the conduct of someone who is a church official. They hold only that the First Amendment prohibits judicial interference with internal church matters that require an interpretation of religious doctrine. In the words of the *Presbyterian Church* Court:

> [N]ot every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded.

Presbyterian Church, 393 U.S. at 449, 89 S.Ct. at

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606.

[2] In this case, the matter at issue is not an *internal* church matter. What is alleged is that church officials conducted themselves in a manner that allowed several minors to be sexually abused. The dispute is not one between factions within the church or between the church and its clergy or employees. Rather, it is a dispute between church officials and third persons who allege that they were seriously injured by the negligence of the church officials. Such a dispute hardly can be characterized as a dispute involving an *internal* church matter.

Nor does this dispute turn on interpretations of religious doctrine or ecclesiastical law. Determining whether the hierarchy defendants negligently failed to take appropriate preventative action is a matter governed by tort law. Making that determination will not require the Court to resolve any "controversies over religious doctrine and practice." *Id.*

In short, the so-called "religious autonomy doctrine" does not divest the Court of jurisdiction over this case, at least insofar as the plaintiffs' core claims are concerned. That brings the Court to the next question which is whether the application of tort law principles would interfere with the hierarchy defendants' free exercise rights.

II. *The Free Exercise Clause*

[3] The First Amendment prohibits Congress from making any "law respecting an establishment of religion or prohibiting the free exercise thereof...." Const. Amend. I. The Fourteenth Amendment makes that prohibition equally applicable to the states. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* 508 U.S. 520, 531, 113, S.Ct. 2217, 2225, 124 L.Ed.2d 472 (1993) (*citing Cantwell v. Connecticut,* 310 U.S. 296, 303, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940)); *Employment Div., Dep't of Human Resources of Or. v. Smith,* 494 U.S. 872, 876-77, 110 S.Ct. 1595, 1599, 108 L.Ed.2d 876 (1990). Moreover, the prohibition extends to common law provisions as well as statutory enactments. *See, e.g., Natal,* 878 F.2d at 1576-77 (free exercise clause prohibits clergy member from maintaining wrongful termination action against church).

In this case, the hierarchy defendants argue, in essence, that subjecting them to potential tort liability would infringe on their free exercise rights because conforming to the standard of conduct that tort law demands of employers would require them to deviate from "church doctrine." That argument rests on two premises. The first is that the standards to which an employer must adhere in order to avoid tort liability for the acts of an employee conflict with the duties imposed on the hierarchy defendants by Roman Catholic doctrine. The second premise is that, to the extent that the hierarchy defendants' conduct was religiously motivated, *78 the free exercise clause insulates them from civil liability. Neither of these premises withstands scrutiny.

A. *Re the Alleged Conflict Between Tort Law and Church Doctrine*

[4] A law establishing standards of conduct does not implicate the free exercise clause unless adherence to those standards interferes with some religious activity. *Lukumi Babalu Aye,* 508 U.S. at 532, 113 S.Ct. at 2226. Accordingly, the threshold inquiry is whether there is a conflict between conduct that is required by the law and conduct that is prescribed or prohibited by religious principles.

Here, there is no indication that the reasonably prudent person standard established by tort law and the requirements of Roman Catholic doctrine are incompatible. The hierarchy defendants do not claim that the Roman Catholic Church either condones or tolerates sexual abuse of children. On the contrary, they have made it clear that the Catholic Church considers such conduct to be opprobrious. Rather, the hierarchy defendants argue that the two standards of conduct conflict because church doctrine restricts their ability to take the kind of preventative action required by tort law.

In support of that argument, the hierarchy defendants have submitted several affidavits describing the limitations that canon law places upon their authority to *discipline* priests. However, nothing in those affidavits suggests that canon law precludes hierarchical officials from taking appropriate action to *prevent* priests, who are known pedophiles, from sexually abusing children. The affidavits make no reference to any limitation on the Bishop's power to determine a priest's assignment or to closely monitor and supervise the priest's activities. On the contrary, the affidavit of

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Father Morrisey states that, when appropriate proof of sexual abuse is obtained, "the bishop may ... [temporarily] restrict [a priest's] right to function as a priest so as to protect the common good.... "(Morrisey Aff. ¶ 31.) In addition, the affidavit states that the Bishop is empowered to "issue a specific directive to the cleric suspected of misconduct to avoid particularly described circumstances, such as participating in group activities with children." (*Id.* ¶ 33.)

The affidavits also refer to the belief in redemption and the forgiveness of sin as fundamental precepts of the Catholic faith that prohibit church officials from summarily taking action to *punish* priests who sexually abuse children. However, once again, there is nothing to indicate that these principles preclude action that would *prevent* such abuse.

Finally, the affidavits describe the restrictions that canon law places on disclosure of "confidential" information revealed during "confession"; "internal forum" (i.e., discussions regarding matters upon which moral or spiritual guidance is sought) or investigations with respect to clerical misconduct. However, the affidavits fail to explain how that prohibition would have prevented the hierarchy defendants from exercising reasonable care to prevent priests under their jurisdiction from sexually abusing children.

The affidavits do not assert that the hierarchy defendants, in fact, receive any "confidential" information relevant to these cases. Even if it was assumed that such information was received, the affidavits do not establish that the prohibition against disclosure barred the hierarchy defendants from considering it for the limited purpose of determining whether preventative measures were warranted.

The hierarchy defendants appear to suggest that the obligation of confidentiality impairs their ability to defend against the plaintiffs' claims; but, once again, they do not explain how. Indeed, with the possible exception of the failure to warn claim, it is difficult to see any way that tort liability could be predicated upon the hierarchy defendants' past failure to reveal any "confidential" information that they may have received. Moreover, the priest penitent privilege makes it doubtful that any "confidential" information received by the hierarchy defendants could be obtained through discovery or presented at trial. *See* Fed.R.Evid. 501; R.I. Gen. Laws § 9-17-23.

*79 It is equally difficult to see how the hierarchy defendants would be prejudiced by any present inability to disclose "confidential" information previously imparted to them. Since any such information presumably would relate to alleged misconduct by the priests, it is unlikely that the information would be helpful in defending against the plaintiffs' claims.

Briefly stated, there is no indication that, by taking the kind of preventative action required by tort law, the hierarchy defendants would have violated any "doctrine, practice or law" of the Roman Catholic Church. In the absence of such a conflict, subjecting the hierarchy defendants to potential tort liability does not violate their right to the free exercise of their religion.

B. *Re Neutral Laws of General Application*

[5] Even if it is assumed, *arguendo,* that tort law and canon law prescribe incompatible standards of conduct for preventing priests from sexually abusing minors, this Court would not necessarily be deprived of subject matter jurisdiction. The hierarchy defendants argue, in essence, that holding them civilly liable for their alleged failure to adhere to common law negligence standards would violate their free exercise rights because it would punish them for acting in accordance with church doctrine.

[6] That argument overlooks the distinction between the freedom to hold a religious belief and the freedom to act in accordance with that belief. Both freedoms are protected by the free exercise clause. However, the freedom to believe is absolute but the freedom to act upon those beliefs is not. *Smith,* '494 U.S. at 877-79, 110 S.Ct. at 1599-1600; *Moses v. Diocese of Colo.,* 863 P.2d 310, 319 (Colo.1993) (*citing Cantwell,* 310 U.S. at 303-04, 60 S.Ct. at 903), *cert. denied,* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994).

[7][8] This distinction is reflected in the well-established principle that neutral laws of general application do not violate the First Amendment simply because they have the incidental effect of burdening a particular religious practice. *City of Boerne v. Flores,* 521 U.S. 507, ---, 117 S.Ct. 2157, 2161, 138 L.Ed.2d 624 (1997);

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Lukumi Babalu Aye, 508 U.S. at 531, 113 S.Ct. at 2226; *Smith,* 494 U.S. at 882, 110 S.Ct. at 1602. Indeed, such laws have been upheld even in the absence of any showing that they serve some compelling governmental interest. [FN1] *Smith,* 494 U.S. at 885, 110 S.Ct. at 1603.

> FN1. If a law is not religiously neutral and of general application, it must be shown to serve a compelling governmental interest and to be narrowly tailored to advance that interest. *Lukumi Babalu Aye,* 508 U.S. at 531-32, 113 S.Ct. at 2226.

In *Smith,* the Supreme Court expressly rejected the argument that the First Amendment protects all conduct prompted by religious beliefs. *Id.* at 882, 110 S.Ct. at 1602. The *Smith* Court held that the free exercise clause does not prevent a state from applying criminal laws prohibiting drug use to smoking peyote during a religious rite. The Court stated:

> Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now.

Id.

Smith recognized that the free exercise clause prohibits a state from regulating conduct because of the religious beliefs that it represents. However, the Court declined to extend that prohibition to neutral laws of general application merely because they establish standards of conduct that conflict with a particular religious belief.

> Respondents in the present case, however, seek to carry the meaning of "prohibiting the free exercise [of religion]" one large step further. They contend that their religious motivation for using peyote places them beyond the reach of a criminal law that is not specifically directed at their religious practice, and that is concededly constitutional as applied to those who use the drug for other reasons. They assert, in other words, that "prohibiting the free exercise [of religion]" includes requiring *80 any individual to observe a generally applicable law that requires (or forbids) the performance of an act that his religious belief forbids (or requires). As a textual matter, we do not think the words must be given that meaning.

Id. at 878, 110 S.Ct. at 1599.

As explained in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979), "[t]he neutral-principles approach cannot be said to 'inhibit' the free exercise of religion, any more than do other neutral provisions of state law governing the manner in which churches own property, hire employees or purchase goods." *Id.* at 606, 99 S.Ct. at 3027.

If, as the hierarchy defendants urge, conduct is put beyond the reach of secular laws merely because it is based upon a religious doctrine or practice, the result would be what has been termed an unacceptable "anomaly in the law, a constitutional right to ignore neutral laws of general applicability." *Boerne,* 521 U.S. at ----, 117 S.Ct. at 2161 (*citing Smith,* 494 U.S. at 887, 110 S.Ct. at 1604).

It is easy to envision the kinds of "anomalies" that could result from such an absolutist interpretation of the free exercise clause. For example, laws prohibiting murder would have no application to human sacrifices performed pursuant to some religious practice.

Clearly, the framers of our Constitution did not intend religious liberty to extend that far. Indeed, permitting some individuals to engage in conduct proscribed by neutral laws that must be observed by everyone else simply because that conduct emanates from a religious belief might be viewed as the kind of official recognition of a religion that is prohibited by the establishment clause. *See Boerne,* 521 U.S. at ----, 117 S.Ct. at 2172 (Stevens, J., concurring).

In this case, there is no question that the principles of tort law, at issue, are both neutral and generally applicable. It is not even alleged that they are directed at or were designed to suppress the religious practices of the Roman Catholic Church or that they selectively burden religiously-inspired conduct. *Cf. Lukumi Babalu Aye,* 508 U.S. at 545-46, 113 S.Ct. at 2233 (holding ordinance prohibiting animal sacrifice unconstitutional because it was motivated by a desire to suppress the practices of a particular religion and did not apply

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equally to the killing of animals for non-religious purposes). On the contrary, it is clear that these principles have evolved without regard to the practices of any religion and that they are uniformly applicable whether the conduct in question is religiously inspired or not. Consequently, judging the hierarchy defendants' liability in accordance with these principles does not violate their free exercise rights.

III. *Excessive Entanglement*

[9] The hierarchy defendants cite a number of decisions holding that the First Amendment divests a court of jurisdiction over claims against church officials arising out of sexual misconduct by their clergy. *See, e.g., Schmidt v. Bishop,* 779 F.Supp. 321, 332 (S.D.N.Y.1991); *Swanson v. Roman Catholic Bishop of Portland,* 692 A.2d 441, 445 (Me.1997); *Pritzlaff v. Archdiocese of Milwaukee,* 194 Wis.2d 302, 533 N.W.2d 780, 790 (1995), *cert. denied,* 516 U.S. 1116, 116 S.Ct. 920, 133 L.Ed.2d 849 (1996). However, there is a split of authority on this issue.

Some courts have found jurisdiction lacking on the ground that adjudication of the claims would require interpretation of church doctrine. *See, e.g., Schmidt,* 779 F.Supp. at 332 (First Amendment prevents courts from adjudicating claims of negligent hiring/supervision because courts may be required to make "sensitive judgments" about supervision of clergy in light of religious beliefs); *Pritzlaff,* 533 N.W.2d at 790 (First Amendment bars negligent hiring claim because determining what makes one competent to serve as priest requires interpretation of church doctrine and practices); *H.R.B. v. J.L.G.,* 913 S.W.2d 92, 99 (Mo.Ct.App.1995) (First Amendment bars breach of fiduciary duty claim against church because Court must inquire into religious aspects of relationship between church authorities and parishioner); *see also Swanson,* 692 A.2d at 445 (First Amendment bars negligent supervision claim because use of civil standard conflicts *81 with standard established by ecclesiastical authorities).

Some of these courts have employed what appears to be an establishment clause analysis. Thus, they express concern that adjudicating such claims would result in "excessive entanglement" between church and state. *See, e.g., Schmidt,* 779 F.Supp. at 332; *L.L.N. v. Clauder,* 209 Wis.2d 674, 563 N.W.2d 434, 440 (1997). Others have applied the "religious autonomy" cases' admonition against deciding "religious matters." *See, e.g., Isely v. Capuchin Province,* 880 F.Supp. 1138, 1150 (E.D.Mich.1995); *Swanson,* 692 A.2d at 444-45; *Pritzlaff,* 533 N.W.2d at 791. In either event, the implicit assumption of these cases is that the interpretation of church doctrine is necessary to determine liability.

On the other hand, a number of courts have upheld jurisdiction on the ground that such claims can be adjudicated by applying neutral principles of law and do not require any interpretation of church doctrine. *See, e.g., Doe v. Hartz,* 970 F.Supp. 1375, 1431-32 (N.D.Iowa 1997) (First Amendment does not bar negligent supervision claim against church defendants because claim can be assessed applying neutral principles of law); *Isely,* 880 F.Supp. at 1151 (court has jurisdiction to decide negligent supervision claim because " 'neutral' principles of law can be applied without determining underlying questions of church law and policies"); *Moses,* 863 P.2d at 320-21 (First Amendment does not bar suit against hierarchy defendants for negligent hiring/supervision and breach of fiduciary duty because deciding claims does "not require interpreting or weighing church doctrine and neutral principles of law can be applied."); *see also Jones v. Trane,* 153 Misc.2d 822, 591 N.Y.S.2d 927, 931 (N.Y.Sup.Ct.1992) (because it is "conduct, and not creed, that underlies plaintiffs' actions," First Amendment does not bar negligent hiring/supervision action against church officials where it is alleged that officials knew or should have known that priest was likely to commit sexual abuse and yet placed him in position where he could commit such acts).

In general, this Court finds the cases upholding jurisdiction to be more persuasive. Arguably, there might be some circumstances under which it could be difficult to determine the tort liability of church officials for the sexual misconduct of clergy without first deciding questions of religious doctrine. For example, when such a claim rests on a breach of fiduciary duty theory, an examination of church doctrine might be required in order to ascertain the nature of any fiduciary relationship between the church officials and the victim. In fact, there is a split of authority on this precise question. *Compare H.R.B.,* 913 S.W.2d at 98-99 (First Amendment bars fiduciary duty claims because their

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adjudication inevitably requires inquiry into the religious aspects of the relationship between priests, parishes, dioceses and parishioners), *with Moses,* 863 P.2d at 321 (First Amendment does not bar plaintiff's claims, including breach of fiduciary duty claim, because court is not required to interpret or weigh church doctrine).

[10] In this case, although breach of fiduciary duty is one of a multitude of claims made by the plaintiffs, there is no need to analyze every one of those claims for the purpose of determining whether they require an interpretation of church doctrine. As already noted, the motion to dismiss amounts to a general challenge to the Court's subject matter jurisdiction and is not directed at particular claims. Moreover, the plaintiffs' core claim, namely, that the hierarchy defendants failed to take appropriate action to prevent the alleged sexual assaults, is governed by neutral tort law principles of general application. More specifically, Rhode Island law recognizes that an employer may be liable for the misconduct of an employee attributable to the employer's negligent failure to supervise the employee. *See Welsh Mfg., Div. of Textron, Inc. v. Pinkerton's, Inc.,* 474 A.2d 436, 441 (R.I.1984).

Here, adjudication of, at least, the negligent supervision claim does not require any interpretation of religious doctrine. A determination with respect to whether the hierarchy defendants exercised reasonable care in supervising the priests subject to their authority can be made solely in accordance with well established tort law principles. Unlike some breach of fiduciary duty claims, there is no need to interpret church doctrine in order to establish the nature of the duty owed to the plaintiffs. Consequently, it is unlikely ***82** that exercising jurisdiction over this case will result in any "excessive entanglement" between church and state.

Conclusion

For all of the foregoing reasons, the hierarchy defendants' motion to dismiss for' lack of subject matter jurisdiction is denied.

IT IS SO ORDERED,

986 F.Supp. 73

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EXHIBIT 50

495 S.E.2d 395
72 Empl. Prac. Dec. P 45,165, 13 IER Cases 1228
(Cite as: 128 N.C.App. 490, 495 S.E.2d 395)

Court of Appeals of North Carolina.

Debbie F. SMITH, Cathy Cahall and Tracy Newman, Plaintiffs,
v.
William Edward PRIVETTE, individually; White Plains United Methodist Church; the Raleigh District of the North Carolina Conference of the United Methodist Church, and the North Carolina Conference of the United Methodist Church, Defendants.

No. COA97-199.

Feb. 3, 1998.

Former church employees brought action alleging negligent retention and supervision claims against church and church organizations arising out of alleged sexual misconduct by church minister. The Superior Court, Wake County, Henry V. Barnette, Jr., J., granted defendants' motion to dismiss for lack of subject matter jurisdiction. Employees appealed. The Court of Appeals, Greene, J., held that resolution of employees' claims for negligent retention and supervision did not require court to interpret or weigh church or religious doctrine, and, thus, did not implicate establishment clause of First Amendment.

Reversed and remanded.

West Headnotes

[1] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

[1] Religious Societies ⇐30
332k30 Most Cited Cases

Resolution of former church employees' claims for negligent retention and supervision against church and church organizations based on sexual misconduct of cleric towards employees did not require court to interpret or weigh church or religious doctrine, and, thus, did not implicate establishment clause of First Amendment, as claims merely raised issue of whether church officials knew or had reason to know of cleric's propensity to engage in sexual misconduct. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Establishment clause of First Amendment does not grant religious organizations absolute immunity from tort liability. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law ⇐84.5(7.1)
92k84.5(7.1) Most Cited Cases

Establishment clause of First Amendment does not prohibit application of secular standard to secular conduct by religious organization that is tortious.

[4] Master and Servant ⇐303
255k303 Most Cited Cases

To support claim of negligent retention and supervision against employer, plaintiff must prove that incompetent employee committed tortious act resulting in injury to plaintiff and that prior to act, employer knew or had reason to know of employee's incompetency.

[5] Constitutional Law ⇐84.5(10)
92k84.5(10) Most Cited Cases

Decision to hire or discharge religious clergy is inextricable from religious doctrine and protected by establishment clause of First Amendment from judicial inquiry. U.S.C.A. Const.Amend. 1.
****395 *491** Appeal by plaintiffs from order and judgment filed 31 October 1996 by Judge Henry V. Barnette, Jr. in Wake County Superior Court. Heard in the Court of Appeals 17 November 1997.

Joyce L. Davis and Associates by Joyce L. Davis, Zoe G. Mahood, and Dorothy Powers, Raleigh, for plaintiffs-appellants.

Nicholls & Crampton, P.A. by Robin Adams Anderson, Raleigh, for defendant- appellee White Plains United Methodist Church.

Elrod Lawing & Sharpless, P.A. by Frederick K. Sharpless, Greensboro, for defendants-appellees the Raleigh District of the North Carolina Conference of the United ****396** Methodist Church and the

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North Carolina Conference of the United Methodist Church.

GREENE, Judge.

Debbie F. Smith (Plaintiff Smith), Cathy Cahall (Plaintiff Cahall), and Tracy Newman (Plaintiff Newman) (collectively referred to herein as Plaintiffs) appeal from an order and judgment dismissing their negligent retention and supervision claim because of lack of subject matter jurisdiction against the White Plains United Methodist Church of Cary (Defendant White Plains), the Raleigh District of the North Carolina Conference of the United Methodist Church (Defendant District), and the North Carolina Conference of the United Methodist Church (Defendant Conference) (Defendant White Plains, Defendant District, and Defendant Conference being collectively referred to herein as the "Church Defendants").

William E. Privette (Privette) and the Church Defendants filed a motion under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure seeking to have the complaint dismissed for lack of subject matter jurisdiction, contending that the claims stated in the complaint are barred by the First Amendment of the United States Constitution, which prohibits any "law respecting an establishment of religion, or prohibiting the free exercise thereof...." U.S. Const. amend. I. At the hearing on the motions to dismiss, the trial court considered the pleadings and the affidavit of Kermit Braswell.

***492** The complaint contains allegations that the Plaintiffs were employed in clerical positions at the Defendant White Plains, where Privette was the Senior Pastor; that Privette was ordained by the Defendant Conference; that the Defendant Conference and the Defendant District were responsible for the placement and oversight of Privette, and that they assigned him to the Defendant White Plains and the Defendant White Plains paid his salary; that Privette committed inappropriate, unwelcome, offensive and nonconsensual acts of a sexual nature against the Plaintiffs, variously hugging, kissing and touching them, and made inappropriate, unwelcome, offensive and nonconsensual statements of a sexually suggestive nature to them; that Privette's acts and statements toward the Plaintiffs amount to sexual harassment and assault and battery, causing the Plaintiffs emotional distress, embarrassment, humiliation, and damage to their reputations, professional standing, and career potential. The complaint further states that the Church Defendants knew or should have known of Privette's propensity for sexual harassment of and assault and battery upon female employees and that they failed to take any actions to warn or protect the Plaintiffs from Privette's tortious activity.

Kermit Braswell, District Superintendent of the Raleigh District of the Church Defendants, affirmed in his affidavit that the episcopacy and principle of itinerant general superintendency prescribed by the Constitution of the United Methodist Church are fundamental to the faith of the church; that the appointment and assignment of ordained ministers to local churches by the bishop of the Defendant Conference is part of the principle of itinerant general superintendency; and that the *Book of Discipline,* prescribed by the United Methodist Church Constitution, governs the internal affairs of the United Methodist Church, the procedure for the assignment of ministers to local churches and their supervision, and the procedure for filing grievances against ministers and the disciplining thereof.

The trial court entered an order dismissing Plaintiffs' claims against the Church Defendants for lack of subject matter jurisdiction. The trial court's Memorandum of Decision stated that because the Plaintiffs contend that the Church Defendants were negligent in supervising Privette and not providing a safe working environment, "[i]t follows then that the only effective means of achieving both objectives was for the Conference when first notified of his alleged wrongful acts to have removed Reverend Privette as senior pastor of White Plains"; that the power to discipline and assign or unassign a Methodist minister is within the principle of itinerant general superintendency***493** and the exclusive power of episcopacy; and that the power of a secular court to "second guess that power to assign or unassign clergy or to second guess the discipline of clergy is an intrusion into ****397** matters of church governance and discipline ... [and] would constitute an excessive entanglement between church and state thereby violating 'the free exercise of religion' clause of the First Amendment of the United States Constitution." The trial court

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denied Privette's motion to dismiss.

[1] The dispositive issue is whether the First Amendment precludes the filing of a negligent retention and supervision claim against a religious organization, when that claim is based on the conduct of a cleric of that organization.

Lack of subject matter jurisdiction challenges the court's statutory or constitutional power to adjudicate a claim and can be raised at any level of the proceeding. N.C.G.S. § 1A-1, Rule 12(h)(3) (1990); *see Burgess v. Gibbs,* 262 N.C. 462, 465, 137 S.E.2d 806, 808 (1964). "[U]nlike a Rule 12(b)(6) dismissal, the court need not confine its evaluation [of a Rule 12(b)(1) motion] to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing." 2 James W. Moore et al., *Moore's Federal Practice,* § 12.30[3] (3rd ed.1997) [hereinafter 2 *Moore's Federal Practice*]; *see Cline v. Teich,* 92 N.C.App. 257, 264, 374 S.E.2d 462, 466 (1988). If the evaluation is confined to the pleadings, the court must "accept the plaintiff's allegations as true, construing them most favorably to the plaintiff." 2 *Moore's Federal Practice,* § 12.30[4]. Unlike a Rule 12(b)(6) motion, consideration of matters outside the pleadings "does not convert the Rule 12(b)(1) motion to one for summary judgment...." *Id.* An appellate court's review of an order of the trial court denying or allowing a Rule 12(b)(1) motion is *de novo,* except to the extent the trial court resolves issues of fact and those findings are binding on the appellate court if supported by competent evidence in the record. 2 *Moore's Federal Practice,* § 12.30[5].

In this case the Church Defendants argue that the trial court is without subject matter jurisdiction to adjudicate the Plaintiffs' claims against them because the trial court's resolution of these claims necessarily requires inquiry into their religious doctrine and that such an inquiry is not permitted under the First Amendment to the United States Constitution. We disagree.

The First Amendment to the United States Constitution prohibits any "law respecting an establishment of religion, or prohibiting the *494 free exercise thereof...." U.S. Const. amend. I. The United States Supreme Court has interpreted this clause to mean that the civil courts cannot decide disputes involving religious organizations where the religious organizations would be deprived of interpreting and determining their own laws and doctrine. *See Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871) (establishing doctrine of judicial abstention in matters which involved interpretation of religious law and doctrine); *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) (state law which placed ownership of church property in one faction of the Russian Orthodox Church was unconstitutional as it impeded on the authority of the church leaders to decide the issue themselves); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969) (civil courts may intervene in internal church property dispute when neutral principles of law could be applied without interpreting and determining religious doctrine).

[2][3] The First Amendment, however, does not grant religious organizations absolute immunity from liability. For example, claims against religious organizations have long been recognized for premises liability, breach of a fiduciary duty, and negligent use of motor vehicles. Carl H. Esbeck, *Tort Claims Against Churches* and Ecclesiastical Officers: *The First Amendment Considerations,* 89 W.Va. L.Rev. 1, 76 (1986); *Moses v. Diocese of Colorado,* 863 P.2d 310, 319 (Colo.Sup.Ct.1993), *cert. denied* 511 U.S. 1137, 114 S.Ct. 2153, 128 L.Ed.2d 880 (1994). Indeed, the "[a]pplication of a secular standard to secular conduct that is tortious is not prohibited by the Constitution." *Moses,* 863 P.2d at 320; see also *Employment Div., Dept. of Human Res. v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990) (finding that even religiously motivated conduct does not have complete immunity from neutral **398 laws which are generally applied). The dispositive question is whether resolution of the legal claim requires the court to interpret or weigh church doctrine. If not, the First Amendment is not implicated and neutral principles of law are properly applied to adjudicate the claim. *See Serbian Eastern Orthodox Diocese for United States of America and Canada v. Milivojevich,* 426 U.S. 696, 710, 96 S.Ct. 2372, 2381, 49 L.Ed.2d 151, 163 (1976).

[4] North Carolina recognizes a cause of action for negligent supervision and retention as an

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independent tort based on the employer's liability to third parties. *Braswell v. Braswell,* 330 N.C. 363, 373, 410 S.E.2d 897, 903 (1991). To support a claim of negligent retention and supervision against an employer, the plaintiff must prove that "the incompetent employee committed a tortious act resulting in injury to ***495** plaintiff and that prior to the act, the employer knew or had reason to know of the employee's incompetency." *Graham v. Hardee's Food Systems,* 121 N.C.App. 382, 385, 465 S.E.2d 558, 560 (1996) (quoting *Hogan v. Forsyth Country Club Co.,* 79 N.C.App. 483, 495, 340 S.E.2d 116, 124, *disc. review denied,* 317 N.C. 334, 346 S.E.2d 140 (1986)).

[5] We acknowledge that the decision to hire or discharge a minister is inextricable from religious doctrine and protected by the First Amendment from judicial inquiry. We do not accept, however, that resolution of the Plaintiffs' negligent retention and supervision claim requires the trial court to inquire into the Church Defendants' reasons for choosing Privette to serve as a minister. The Plaintiffs' claim, construed in the light most favorable to them, instead presents the issue of whether the Church Defendants knew or had reason to know of Privette's propensity to engage in sexual misconduct, *see Bear Valley Church of Christ v. DeBose,* 928 P.2d 1315, 1323 (Colo.Sup.Ct.1996), *cert. denied,* 520 U.S. 1241, 117 S.Ct. 1846, 137 L.Ed.2d 1049 (1997), conduct that the Church Defendants do not claim is part of the tenets or practices of the Methodist Church. Thus, there is no necessity for the court to interpret or weigh church doctrine in its adjudication of the Plaintiffs' claim for negligent retention and supervision. It follows that the First Amendment is not implicated and does not bar the Plaintiffs' claim against the Church Defendants. Certainly,

> a contrary holding--that a religious body must be held free from any responsibility for wholly predictable and foreseeable injurious consequences of personnel decisions, although such decisions incorporate no theological or dogmatic tenets--would go beyond First Amendment protection and cloak such bodies with an exclusive immunity greater than that required for the preservation of the principles constitutionally safeguarded.

Jones v. Trane, 153 Misc.2d 822, 591 N.Y.S.2d 927, 932 (1992).

The trial court thus erred in granting the Rule 12(b)(1) dismissal and this case must be remanded to the trial court.

Reversed and remanded.

ARNOLD, C.J., and McGEE, J., concur.

495 S.E.2d 395, 128 N.C.App. 490, 72 Empl. Prac. Dec. P 45,165, 13 IER Cases 1228

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EXHIBIT 51

101 S.Ct. 1425
67 L.Ed.2d 624, 25 Fair Empl.Prac.Cas. (BNA) 629, 25 Empl. Prac. Dec. P 31,662
(Cite as: 450 U.S. 707, 101 S.Ct. 1425)

Briefs and Other Related Documents

Supreme Court of the United States

Eddie C. THOMAS, Petitioner,
v.
REVIEW BOARD OF the INDIANA EMPLOYMENT SECURITY DIVISION et al.

No. 79-952.

Argued Oct. 7, 1980.
Decided April 6, 1981.

The Indiana Employment Security Review Board denied claim for unemployment compensation, and claimant appealed. The Indiana Court of Appeals, 381 N.E.2d 888, ordered Board to extend benefits to claimant. The Indiana Supreme Court, 391 N.E.2d 1127, vacated decision of Court of Appeals and denied claimant benefits, and claimant petitioned for certiorari. The Supreme Court, Chief Justice Burger, held that Indiana's denial of unemployment compensation benefits to claimant, who terminated his job because his religious beliefs forbade participation in production of armaments, violated his First Amendment right to free exercise of religion.

Reversed.

Justice Blackmun concurred in part and concurred in the result.

Justice Rehnquist filed a dissenting opinion.

Opinion on remand, 421 N.E.2d 642.

West Headnotes

[1] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Only beliefs rooted in religion are protected by the free exercise clause, which, by its terms, gives special protection to the exercise of religion. U.S.C.A.Const. Amend. 1.

[2] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Resolution of question of what is a religious belief or practice protected by the free exercise clause does not turn upon judicial perception of particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent or comprehensible to others in order to merit First Amendment protection. U.S.C.A.Const. Amend. 1.

[3] Social Security and Public Welfare ⇐403
356Ak403 Most Cited Cases

Claimant, who terminated his employment when he was transferred from roll foundry to department that produced turrets for military tanks, who claimed that his religious beliefs prevented him from participating in production of war materials, and whose statements concerning his previous work revealed no more than that he found work in roll foundry sufficiently insulated from producing weapons of war, terminated his employment for religious reasons and his beliefs should not have been dissected to determine his eligibility for unemployment compensation because he was "struggling" with his position or because his beliefs were not articulated precisely. IC 22-4-15-1 (1976 Ed.); U.S.C.A.Const. Amend. 1.

[4] Constitutional Law ⇐82(3)
92k82(3) Most Cited Cases

A person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. U.S.C.A.Const. Amend. 1.

[5] Constitutional Law ⇐84.2
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

When state conditions receipt of important benefit upon conduct proscribed by religious faith, or when it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on adherent to modify his behavior and to violate his beliefs, a burden upon religion exists; while the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. U.S.C.A.Const. Amend. 1.

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[6] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Mere fact that a person's religious practice is burdened by governmental program does not mean that exemption accommodating his practice must be granted but, rather, state may justify an inroad on religious liberty by showing that it is least restrictive means of achieving some compelling state interest; however, only those interests of highest order can overbalance legitimate claims to free exercise of religion. U.S.C.A.Const. Amend. 1.

[7] Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases
(Formerly 92k84)

In absence of evidence indicating that number of people who find themselves in predicament of choosing between unemployment benefits and religious beliefs creates widespread unemployment or even seriously affects unemployment, and in absence of any evidence indicating detailed inquiry by employers into applicants' religious beliefs, Indiana's alleged interests in support of unemployment compensation disqualifying provision for individuals who have voluntarily left employment without good cause were not sufficiently compelling to justify burden upon religious liberty of claimant, who was denied unemployment compensation benefits after he terminated his job because his religious beliefs forbade his participation in production of armaments. U.S.C.A.Const. Amend. 1; IC 22-4-15-1 (1976 Ed.).

[8] Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases
(Formerly 92k84)

Compelling payment of unemployment benefits to claimant, who terminated his job because of his religious beliefs after he was transferred from roll foundry to department that produced turrets for military tanks, would not involve state in fostering religious belief in violation of the establishment clause. U.S.C.A.Const. Amend. 1; IC 22-4-15-1 (1976 Ed.).

[9] Constitutional Law ⇐84.5(12)
92k84.5(12) Most Cited Cases
(Formerly 92k84)

Indiana's denial of unemployment compensation benefits to claimant, who terminated his job because of his religious beliefs after he was transferred from roll foundry to department that produced military tanks, under statutory provision disqualifying individuals who voluntarily leave their employment without good cause violated claimant's First Amendment right to free exercise of religion. IC 22-4-15-1 (1976 Ed.); U.S.C.A.Const. Amend. 1.

***1426 Syllabus** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***707** Petitioner, a Jehovah's Witness, was initially hired to work in his employer's roll foundry, which fabricated sheet steel for a variety of industrial uses, but when the foundry was closed he was transferred to a department that fabricated turrets for military tanks. Since all of the employer's remaining departments to which transfer might have been sought were engaged directly in the production of weapons, petitioner asked to be laid off. When that request was denied, he quit, asserting that his religious beliefs prevented him from participating in the production of weapons. He applied for unemployment compensation benefits under the Indiana Employment Security Act, and testified at an administrative hearing that he believed that contributing to the production of arms violated his religion, although he could, in good conscience, engage indirectly in the production of materials that might be used ultimately to fabricate arms. The hearing referee found that petitioner had terminated his employment because of his religious convictions, but held that petitioner was not entitled to benefits because his voluntary termination was not based upon a "good cause [arising] in connection with [his] work," as required by the Indiana statute. Respondent Review Board affirmed, but the Indiana Court of Appeals reversed, holding that the Indiana statute, as applied, improperly burdened petitioner's right to the free exercise of his religion. The Indiana Supreme Court vacated the Court of Appeals' decision and denied petitioner benefits, holding that he had quit

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voluntarily for personal reasons, his belief being more "personal philosophical choice" than religious belief. The court also concluded that in any event a termination motivated by religion is not for "good cause" objectively related to the work, as required by the Indiana statute, and that denying benefits created only an **1427 indirect burden on petitioner's free exercise right, which burden was justified by legitimate state interests.

Held: The State's denial of unemployment compensation benefits to petitioner violated his First Amendment right to free exercise of religion under *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965. Pp. 1430- 1433.

(a) The Indiana Supreme Court improperly relied on the facts that petitioner was "struggling" with his beliefs and that he was not able *708 to "articulate" his belief precisely. Courts should not undertake to dissect religious beliefs on such grounds. The Indiana court also erred in apparently giving significant weight to the fact that another Jehovah's Witness with whom petitioner consulted had no scruples about working on tank turrets. The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect. The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because such work was forbidden by his religion. The record shows that petitioner terminated his employment for religious reasons. Pp. 1430-1431.

(b) A person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. It is true that the Indiana law does not *compel* a violation of conscience, but where the state conditions receipt of an important benefit upon conduct prescribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial. Pp. 1431-1432.

(c) The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest. However, when the inquiry is properly narrowed to focus only on the threat to state interests, neither of the purposes urged to sustain the disqualifying provision of the Indiana statute--to avoid the widespread unemployment and consequent burden on the fund resulting if people were permitted to leave jobs for "personal" reasons, and to avoid a detailed probing by employers into job applicants' religious beliefs--is sufficiently compelling to justify the burden upon petitioner's religious liberty. Pp. 1432-1433.

(d) Payment of benefits to petitioner would not involve the State in fostering a religious faith in violation of the Establishment Clause. The extension of benefits reflects no more than the governmental obligation of neutrality, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall. P. 1433.

Ind., 391 N.E.2d 1127, reversed.

*709 Blanca Bianchi de la Torre, Gary, Ind., for petitioner.

William E. Daily, Indianapolis, Ind., for respondents.

Chief Justice BURGER delivered the opinion of the Court.

We granted certiorari to consider whether the State's denial of unemployment compensation benefits to the petitioner, a Jehovah's Witness who terminated his job because his religious beliefs forbade participation in the production of armaments, constituted a violation of his First Amendment right to free exercise of religion. 444 U.S. 1070, 100 S.Ct. 1012, 62 L.Ed.2d 751 (1980).

I

Thomas terminated his employment in the Blaw-Knox Foundry & Machinery Co. when he was transferred from the roll foundry to a department that produced turrets for military tanks. He claimed his religious beliefs prevented him from participating in the production of war materials.

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**1428 The respondent Review Board denied him unemployment compensation benefits by applying disqualifying provisions of the Indiana Employment Security Act. [FN1]

FN1. Indiana Code § 22-4-15-1 (Supp.1978) provides:
"With respect to benefit periods including extended benefit periods established subsequent to July 6, 1974, and before July 3, 1977, an individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of ten (10) weeks. The weeks of a disqualification period remaining at the expiration of an individual's benefit period will be carried forward to an extended benefit period or to the benefit period of a subsequent claim only if the first week of such extended benefit period or subsequent benefit period falls within ten (10) consecutive weeks from the beginning of the disqualification period imposed on the prior claim."

*710 Thomas, a Jehovah's Witness, was hired initially to work in the roll foundry at Blaw-Knox. The function of that department was to fabricate sheet steel for a variety of industrial uses. On his application form, he listed his membership in the Jehovah's Witnesses, and noted that his hobbies were Bible study and Bible reading. However, he placed no conditions on his employment; and he did not describe his religious tenets in any detail on the form.

Approximately a year later, the roll foundry closed, and Blaw-Knox transferred Thomas to a department that fabricated turrets for military tanks. On his first day at this new job, Thomas realized that the work he was doing was weapons related. He checked the bulletin board where in-plant openings were listed, and discovered that all of the remaining departments at Blaw-Knox were engaged directly in the production of weapons. Since no transfer to another department would resolve his problem, he asked for a layoff. When that request was denied, he quit, asserting that he could not work on weapons without violating the principles of his religion. The record does not show that he was offered any nonweapons work by his employer, or that any such work was available.

Upon leaving Blaw-Knox, Thomas applied for unemployment compensation benefits under the Indiana Employment Security Act. [FN2] At an administrative hearing where he was *711 not represented by counsel, he testified that he believed that contributing to the production of arms violated his religion. He said that when he realized that his work on the tank turret line involved producing weapons for war, he consulted another Blaw-Knox employee--a friend and fellow Jehovah's Witness. The friend advised him that working on weapons parts at Blaw-Knox was not "unscriptural." Thomas was not able to "rest with" this view, however. He concluded that his friend's view was based upon a less strict reading of Witnesses' principles than his own.

FN2. Ind. Code § 22-4-1-1 *et seq.* (1976 and Supp.1978).

When asked at the hearing to explain what kind of work his religious convictions would permit, Thomas said that he would have no difficulty doing the type of work that he had done at the roll foundry. He testified that he could, in good conscience, engage indirectly in the production of materials that might be used ultimately to fabricate arms--for example, as an employee of a raw material supplier or of a roll foundry. [FN3]

FN3. It is reasonable to assume that some of the sheet steel processed in the roll foundry may have found its way into tanks or other weapons; the record, however, contains no evidence or finding on this point.

The hearing referee found that Thomas' religious

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beliefs specifically precluded him from producing or directly aiding in the manufacture of items used in warfare. [FN4] He **1429 also found that Thomas had terminated his employment because of these religious convictions. The referee reported:

> FN4. The referee indicated, App. to Pet. for Cert. 2a:
> "The evidence reveals that approximate [*sic*] two to three weeks prior to claimant's date of leaving, the 'Roll Foundry' was closed permanently and claimant was transferred to the terret [*sic*] line. [He], at this time, real [*sic*] realized that all of the other functions at the Blaw-Knox Company were engaged in producing arms for the Armament Industry. Claimant's religious beliefs specifically exempts [*sic*] claimant from producing or aiding in the manufacture of items used in the advancement of war."

"Claimant continually searched for a transfer to another department which would not be so armament related; *712 however, this did not materialize, and prior to the date of his leaving, claimant requested a layoff, which was denied; and on November 6, 1975, *claimant did quit due to his religious convictions*." [FN5]

> FN5. *Id.*, at 2a-3a (emphasis added by petitioner).

The referee concluded nonetheless that Thomas' termination was not based upon a "good cause [arising] in connection with [his] work," as required by the Indiana unemployment compensation statute. Accordingly, he was held not entitled to benefits. The Review Board adopted the referee's findings and conclusions, and affirmed the denial of benefits. [FN6]

> FN6. The Review Board, like the referee, found that Thomas had left his job for religious reasons, *id.*, at 5a:
> "The evidence of record indicates that claimant ... left his employment voluntarily because his religious beliefs ... would not allow him to continue to work producing arms...."

The Indiana Court of Appeals, accepting the finding that Thomas terminated his employment "due to his religious convictions," reversed the decision of the Review Board, and held that § 22-4-15-1, as applied, improperly burdened Thomas' right to the free exercise of his religion. Accordingly, it ordered the Board to extend benefits to Thomas. *Thomas v. Review Board*, Ind.App., 65 Ind.Dec. 238, 381 N.E.2d 888 (1978).

The Supreme Court of Indiana, dividing 3-2, vacated the decision of the Court of Appeals, and denied Thomas benefits. Ind., 391 N.E.2d 1127 (1979). With reference to the Indiana unemployment compensation statute, the court said:

> "It is not intended to facilitate changing employment or to provide relief for those who quit work voluntarily for personal reasons. Voluntary unemployment is not compensable under the purpose of the Act, which is to provide benefits for persons unemployed through no fault of their own.
> "Good cause which justifies voluntary termination must *713 be job-related and objective in character." Ind., 391 N.E.2d, at 1129 (footnotes omitted).

The court held that Thomas had quit voluntarily for personal reasons, and therefore did not qualify for benefits. Ind., 391 N.E.2d, at 1130.

In discussing the petitioner's free exercise claim, the court stated: "A personal philosophical choice rather than a religious choice, does not rise to the level of a first amendment claim." Ind., 391 N.E.2d, at 1131. The court found the basis and the precise nature of Thomas' belief unclear--but it concluded that the belief was more "personal philosophical choice" than religious belief. Nonetheless, it held that, even assuming that Thomas quit for religious reasons, he would not be entitled to benefits: under Indiana law, a termination motivated by religion is not for "good cause" objectively related to the work.

The Indiana court concluded that denying Thomas benefits would create only an indirect burden on his free exercise right and that the burden was justified by the legitimate state interest in preserving the integrity of the insurance fund and maintaining a

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stable work force by encouraging workers not to leave their jobs for personal reasons.

Finally, the court held that awarding unemployment compensation benefits to a person who terminates employment voluntarily for religious reasons, while denying such benefits to persons who terminate for other personal but nonreligious reasons, would violate the Establishment Clause of the First Amendment.

**1430 The judgment under review must be examined in light of our prior decisions, particularly *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

II

[1][2] Only beliefs rooted in religion are protected by the Free Exercise Clause, which, by its terms, gives special protection to the exercise of religion. *Sherbert v. Verner, supra; *714Wisconsin v. Yoder*, 406 U.S. 205, 215-216, 92 S.Ct. 1526, 1533, 32 L.Ed.2d 15 (1972). The determination of what is a "religious" belief or practice is more often than not a difficult and delicate task, as the division in the Indiana Supreme Court attests. [FN7] However, the resolution of that question is not to turn upon a judicial perception of the particular belief or practice in question; religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.

FN7. See, *e. g., Torcaso v. Watkins*, 367 U.S. 488, 495, 81 S.Ct. 1680, 1683, 6 L.Ed.2d 982 (1961); *United States v. Ballard*, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944).

In support of his claim for benefits, Thomas testified:

"Q. And then when it comes to actually producing the tank itself, hammering it out; that you will not do....

"A. That's right, that's right when ... I'm daily faced with the knowledge that these are tanks....

* * *

"A. I really could not, you know, conscientiously continue to work with armaments. It would be against all of the ... religious principles that ... I have come to learn...." Ind., 391 N.E.2d, at 1132.

Based upon this and other testimony, the referee held that Thomas "quit due to his religious convictions." [FN8] The Review Board adopted that finding, [FN9] and the finding is not challenged in this Court.

FN8. See n. 4, and text at n. 5, *supra*.

FN9. See n. 6, *supra*.

The Indiana Supreme Court apparently took a different view of the record. It concluded that "although the claimant's reasons for quitting were described as religious, it was unclear what his belief was, and what the religious basis of his belief was." [FN10] In that court's view, Thomas had made a merely "personal philosophical choice rather than a religious choice." [FN11]

FN10. Ind., 391 N.E.2d, at 1133.

FN11. *Id.*, 391 N.E.2d, at 1131.

[3] *715 In reaching its conclusion, the Indiana court seems to have placed considerable reliance on the facts that Thomas was "struggling" with his beliefs and that he was not able to "articulate" his belief precisely. It noted, for example, that Thomas admitted before the referee that he would not object to

"working for United States Steel or Inland Steel ... produc[ing] the raw product necessary for the production of any kind of tank ... [because I] would not be a direct party to whoever they shipped it to [and] would not be ... chargeable in ... conscience...." Ind., 391 N.E.2d, at 1131.

The court found this position inconsistent with Thomas' stated opposition to participation in the production of armaments. But Thomas' statements reveal no more than that he found work in the roll foundry sufficiently insulated from producing weapons of war. We see, therefore, that Thomas drew a line, and it is not for us to say that the line he drew was an unreasonable one. Courts should not

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undertake to dissect religious beliefs because the believer admits that he is "struggling" with his position or because his beliefs are not articulated with the clarity and precision that a more sophisticated person might employ.

The Indiana court also appears to have given significant weight to the fact that another Jehovah's Witness had no scruples about working on tank turrets; for that other Witness, at least, such work was "scripturally" acceptable. Intrafaith differences **1431 of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences in relation to the Religion Clauses. One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but that is not the case here, and the guarantee of free exercise is not limited to beliefs which are shared by all of the members *716 of a religious sect. Particularly in this sensitive area, it is not within the judicial function and judicial competence to inquire whether the petitioner or his fellow worker more correctly perceived the commands of their common faith. Courts are not arbiters of scriptural interpretation.

The narrow function of a reviewing court in this context is to determine whether there was an appropriate finding that petitioner terminated his work because of an honest conviction that such work was forbidden by his religion. Not surprisingly, the record before the referee and the Review Board was not made with an eye to the microscopic examination often exercised in appellate judicial review. However, judicial review is confined to the facts as found and conclusions drawn. On this record, it is clear that Thomas terminated his employment for religious reasons.

III
A

[4] More that 30 years ago, the Court held that a person may not be compelled to choose between the exercise of a First Amendment right and participation in an otherwise available public program. A state may not

> "exclude individual Catholics, Lutherans, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, because of their faith, or lack of it, from receiving the benefits of public welfare legislation." *Everson v. Board of Education*, 330 U.S. 1, 16, 67 S.Ct. 504, 511, 91 L.Ed. 711 (1947) (emphasis deleted).

Later, in *Sherbert*, the Court examined South Carolina's attempt to deny unemployment compensation benefits to a Sabbatarian who declined to work on Saturday. In sustaining her right to receive benefits, the Court held:

> "The ruling [disqualifying Mrs. Sherbert from benefits because of her refusal to work on Saturday in violation of her faith] forces her to choose between following the *717 precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [her] for her Saturday worship." 374 U.S., at 404, 83 S.Ct., at 1794.

The respondent Review Board argues, and the Indiana Supreme Court held, that the burden upon religion here is only the indirect consequence of public welfare legislation that the State clearly has authority to enact. "Neutral objective standards must be met to qualify for compensation." Ind., 391 N.E.2d, at 1130. Indiana requires applicants for unemployment compensation to show that they left work for "good cause in connection with the work." *Ibid.*

A similar argument was made and rejected in *Sherbert*, however. It is true that, as in *Sherbert*, the Indiana law does not *compel* a violation of conscience. But, "this is only the beginning, not the end, of our inquiry." 374 U.S., at 403-404, 83 S.Ct., at 1794. In a variety of ways we have said that "[a] regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S., at 220, 92 S.Ct., at 1535. Cf. *Walz v. Tax Comm'n*, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970).

[5] Here, as in *Sherbert*, the employee was put to a choice between fidelity to **1432 religious belief or cessation of work; the coercive impact on

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Thomas is indistinguishable from *Sherbert*, where the Court held:

> "[N]ot only is it apparent that appellant's declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego, that practice is unmistakable." 374 U.S., at 404, 83 S.Ct., at 1794.

Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies *718 such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

The respondents also contend that *Sherbert* is inapposite because, in that case, the employee was dismissed by the employer's action. But we see that Mrs. Sherbert was dismissed because she refused to work on Saturdays after the plant went to a 6-day workweek. Had Thomas simply presented himself at the Blaw-Knox plant turret line but refused to perform any assigned work, it must be assumed that he, like Sherbert, would have been terminated by the employer's action, if no other work was available. In both cases, the termination flowed from the fact that the employment, once acceptable, became religiously objectionable because of changed conditions.

B

[6] The mere fact that the petitioner's religious practice is burdened by a governmental program does not mean that an exemption accommodating his practice must be granted. The state may justify an inroad on religious liberty by showing that it is the least restrictive means of achieving some compelling state interest. However, it is still true that "[t]he essence of all that has been said and written on the subject is that only those interests of the highest order . . . can overbalance legitimate claims to the free exercise of religion." *Wisconsin v. Yoder, supra*, 406 U.S., at 215, 92 S.Ct., at 1533.

[7] The purposes urged to sustain the disqualifying provision of the Indiana unemployment compensation scheme are twofold: (1) to avoid the widespread unemployment and the consequent burden on the fund resulting if people were permitted to leave jobs for "personal" reasons; [FN12] and (2) to *719 avoid a detailed probing by employers into job applicants' religious beliefs. These are by no means unimportant considerations. When the focus of the inquiry is properly narrowed, however, we must conclude that the interests advanced by the State do not justify the burden placed on free exercise of religion.

> FN12. A similar interest--the integrity of the insurance fund--was advanced and rejected in *Sherbert v. Verner*, 374 U.S. 398, 407, 83 S.Ct. 1790, 1795, 10 L.Ed.2d 965 (1963).

There is no evidence in the record to indicate that the number of people who find themselves in the predicament of choosing between benefits and religious beliefs is large enough to create "widespread unemployment," or even to seriously affect unemployment--and no such claim was advanced by the Review Board. Similarly, although detailed inquiry by employers into applicants' religious beliefs is undesirable, there is no evidence in the record to indicate that such inquiries will occur in Indiana, or that they have occurred in any of the states that extend benefits to people in the petitioner's position. Nor is there any reason to believe that the number of people terminating employment for religious reasons will be so great as to motivate employers to make such inquiries.

Neither of the interests advanced is sufficiently compelling to justify the burden upon Thomas' religious liberty. Accordingly, Thomas is entitled to receive benefits unless, as the respondents contend and the Indiana court held, such payment would violate the Establishment Clause.

**1433 IV

[8] The respondents contend that to compel benefit payments to Thomas involves the State in fostering a religious faith. There is, in a sense, a "benefit" to Thomas deriving from his religious beliefs, but this manifests no more than the tension between the two Religious Clauses which the Court resolved in *Sherbert:*

> "In holding as we do, plainly we are not fostering

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> the 'establishment' of the Seventh-day Adventist religion *720 in South Carolina, for the extension of unemployment benefits to Sabbatarians in common with Sunday worshippers reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall." *Sherbert v. Verner*, 374 U.S., at 409, 83 S.Ct., at 1796.

See also *Wisconsin v. Yoder*, 406 U.S., at 220-221, 92 S.Ct., at 1535- 1536; *Walz v. Tax Comm'n*, 397 U.S., at 668-669, 90 S.Ct., at 1411; *O'Hair v. Andrus*, 198 U.S.App.D.C. 198, 201-204, 613 F.2d 931, 934-937 (1979) (Leventhal, J.).

[9] Unless we are prepared to overrule *Sherbert, supra*, Thomas cannot be denied the benefits due him on the basis of the findings of the referee, the Review Board, and the Indiana Court of Appeals that he terminated his employment because of his religious convictions.

Reversed.

Justice BLACKMUN joins Parts I, II, and III of the Court's opinion. As to Part IV thereof, he concurs in the result.

Justice REHNQUIST, dissenting.

The Court today holds that the State of Indiana is constitutionally required to provide direct financial assistance to a person solely on the basis of his religious beliefs. Because I believe that the decision today adds mud to the already muddied waters of First Amendment jurisprudence, I dissent.

I

The Court correctly acknowledges that there is a "tension" between the Free Exercise and Establishment Clauses of the First Amendment of the United States Constitution. Although the relationship of the two Clauses has been the subject of much commentary, the "tension" is a fairly recent *721 vintage, unknown at the time of the framing and adoption of the First Amendment. The causes of the tension, it seems to me, are threefold. First, the growth of social welfare legislation during the latter part of the 20th century has greatly magnified the potential for conflict between the two Clauses, since such legislation touches the individual at so many points in his life. Second, the decision by this Court that the First Amendment was "incorporated" into the Fourteenth Amendment and thereby made applicable against the States, *Stromberg v. California*, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 (1931); *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940), similarly multiplied the number of instances in which the "tension" might arise. The third, and perhaps most important, cause of the tension is our overly expansive interpretation of *both* Clauses. By broadly construing both Clauses, the Court has constantly narrowed the channel between the Scylla and Charybdis through which any state or federal action must pass in order to survive constitutional scrutiny.

None of these developments could have been foreseen by those who framed and adopted the First Amendment. The First Amendment was adopted well before the growth of much social welfare legislation and at a time when the Federal Government was in a real sense considered a government of limited delegated powers. Indeed, the principal argument against adopting the Constitution *without* a "Bill of Rights" was not that such an enactment would be *undesirable* but that it was *unnecessary* because of the limited nature of the Federal Government. So long as the Government enacts little social welfare legislation, **1434 as was the case in 1791, there are few occasions in which the two Clauses may conflict. Moreover, as originally enacted, the First Amendment applied only to the Federal Government, not the government of the States. *Barron v. Baltimore*, 7 Pet. 243, 8 L.Ed. 672 (1833). The Framers could hardly anticipate *Barron* being superseded by the "selective incorporation" doctrine adopted by the Court, a decision which greatly expanded the number of statutes *722 which would be subject to challenge under the First Amendment. Because those who drafted and adopted the First Amendment could not have foreseen either the growth of social welfare legislation or the incorporation of the First Amendment into the Fourteenth Amendment, we simply do not know how they would view the scope of the two Clauses.

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II

The decision today illustrates how far astray the Court has gone in interpreting the Free Exercise and Establishment Clauses of the First Amendment. Although the Court holds that a State is constitutionally required to provide direct financial assistance to persons solely on the basis of their religious beliefs and recognizes the "tension" between the two Clauses, it does little to help resolve that tension or to offer meaningful guidance to other courts which must decide cases like this on a day-by-day basis. Instead, it simply asserts that there is no Establishment Clause violation here and leaves the tension between the two Religion Clauses to be resolved on a case-by-case basis. As suggested above, however, I believe that the "tension" is largely of this Court's own making, and would diminish almost to the vanishing point if the Clauses were properly interpreted.

Just as it did in *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), the Court today reads the Free Exercise Clause more broadly than is warranted. As to the proper interpretation of the Free Exercise Clause, I would accept the decision of *Braunfeld v. Brown*, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961), and the dissent in *Sherbert*. In *Braunfeld*, we held that Sunday closing laws do not violate the First Amendment rights of Sabbatarians. Chief Justice Warren explained that the statute did not make unlawful any religious practices of appellants; it simply made the practice of their religious beliefs more expensive. We concluded that "[t]o strike down, without the most critical scrutiny, legislation which imposes only an indirect burden on the exercise of religion, *i. e.* legislation which does not*723 make unlawful the religious practice itself, would radically restrict the operating latitude of the legislature." 366 U.S., at 606, 81 S.Ct., at 1147. Likewise in this case, it cannot be said that the State discriminated against Thomas on the basis of his religious beliefs or that he was denied benefits *because* he was a Jehovah's Witness. Where, as here, a State has enacted a general statute, the purpose and effect of which is to advance the State's secular goals, the Free Exercise Clause does not in my view require the State to conform that statute to the dictates of religious conscience of any group. As Justice Harlan recognized in his dissent in *Sherbert v. Verner, supra*: "Those situations in which the Constitution may require special treatment on account of religion are ... few and far between." *Id.*, at 423, 83 S.Ct., at 1804. Like him I believe that although a State could choose to grant exemptions to religious persons from state unemployment regulations, [FN1] a State is not constitutionally **1435 compelled to do so. *Id.*, at 422-423, 83 S.Ct., at 1803-1804. [FN2]

FN1. Even if I were to agree that *Sherbert* was correctly decided, I still would dissent on the grounds that today's decision unjustifiably extends *Sherbert*. The Indiana Employment Security Act, Ind.Code § 22-4-15-1 (Supp.1978), provides that an "individual who has voluntarily left his employment without good cause in connection with his employment" is disqualified from receiving benefits. In this case, the Supreme Court of Indiana "found the basis and the precise nature of Thomas' belief unclear" and concluded that the belief was more "personal philosophical choice" than religious belief. *Ante*, at 1429. The Court's failure to make clear whether it accepts or rejects this finding by the Indiana Supreme Court, the highest court of the State, suggests that a person who leaves his job for purely "personal philosophical choices" will be constitutionally entitled to unemployment benefits. If that is true, the implications of today's decision are enormous. Persons will then be able to quit their jobs, assert they did so for personal reasons, and collect unemployment insurance. We could surely expect the State's limited funds allotted for unemployment insurance to be quickly depleted.
In addition, the Court's opinion in *Sherbert*, 374 U.S., at 401, n.4, 83 S.Ct., at 1792, n.4, seems to suggest by negative implication that where a State makes every "personal reason" for leaving a job a basis for disqualification from unemployment benefits, the State need not grant an exemption to persons such as Sherbert who do quit for "personal reasons." In this case, the Indiana Supreme Court *has* construed the State's unemployment statute to make

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every personal subjective reason for leaving a job a basis for disqualification. *E. g., Geckler v. Review Bd. of the Indiana Employment Security Div.*, 244 Ind. 473, 193 N.E.2d 357 (1963). This case is thus distinguishable from *Sherbert.* Because Thomas left his job for a personal reason, the State of Indiana should not be prohibited from disqualifying him from receiving benefits.

FN2. To the extent *Sherbert* was correctly decided, it might be argued that cases such as *McCollum v. Board of Education*, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948); *Engel v. Vitale*, 370 U.S. 421, 82 S.Ct. 1261, 8 L.Ed.2d 601 (1962); *Abington School District v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed.2d 844 (1963); *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971); and *Committee for Public Education v. Nyquist*, 413 U.S. 756, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973), were wrongly decided. The "aid" rendered to religion in these latter cases may not be significantly different, in kind or degree, than the "aid" afforded Mrs. Sherbert or Thomas. For example, if the State in *Sherbert* could not deny compensation to one refusing work for religious reasons, it might be argued that a State may not deny reimbursement to students who choose for religious reasons to attend parochial schools. The argument would be that although a State need not allocate any funds to education, once it has done so, it may not require any person to sacrifice his religious beliefs in order to obtain an equal education. See *Lemon, supra*, 403 U.S., at 665, 91 S.Ct., at 2137 (opinion of WHITE, J.); *Nyquist, supra*, 413 U.S., at 798-805, 93 S.Ct., at 2978-2992 (opinion of BURGER, C. J.). There can be little doubt that to the extent secular education provides answers to important moral questions without reference to religion or teaches that there are no answers, a person in one sense sacrifices his religious belief by attending secular schools. And even if such "aid" were not constitutionally compelled by the Free Exercise Clause, Justice Harlan may well have been right in *Sherbert* when he found sufficient flexibility in the Establishment Clause to permit the States to voluntarily choose to grant such benefits to individuals.

*724 The Court's treatment of the Establishment Clause issue is equally unsatisfying. Although today's decision requires a State to provide direct financial assistance to persons solely on the basis of their religious beliefs, the Court nonetheless blandly assures us, just as it did in *Sherbert*, that its decision "plainly" does not foster the "establishment" of religion. *Ante*, at 1433. I would agree that the Establishment Clause, properly interpreted, would not be violated if Indiana voluntarily *725 chose to grant unemployment benefits to those persons who left their jobs for religious reasons. But I also believe that the decision below is inconsistent with many of our prior Establishment Clause cases. Those cases, if faithfully applied, would require us to hold that such voluntary action by a State *did* violate the Establishment Clause.

Justice STEWART noted this point in his concurring opinion in *Sherbert*, 374 U.S., at 414-417, 83 S.Ct., at 1799-1801. He observed that decisions like *Sherbert*, and the one rendered today, squarely conflict with the more extreme language of many of our prior Establishment Clause cases. In *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1949), the Court stated that the Establishment Clause bespeaks a "government ... stripped of all power ... to support, or otherwise to assist any or all religions ...," and no State "can pass laws which aid one religion ... [or] all religions." *Id.*, at 11, 15, 67 S.Ct., at 509, 511. In *Torcaso v. Watkins*, 367 U.S. 488, 495, 81 S.Ct. 1680, 1683, 6 L.Ed.2d 982 (1961), the Court asserted that the government cannot "constitutionally pass laws or impose requirements which aid all religions as against non- believers." And in **1436*Abington School District v. Schempp*, 374 U.S. 203, 217, 83 S.Ct. 1560, 1568, 10 L.Ed.2d 844 (1963), the Court adopted Justice Rutledge's words in *Everson* that the Establishment Clause forbids " 'every form of public aid or support for religion.' " See also *Engel v. Vitale*, 370 U.S. 421, 431, 82 S.Ct. 1261, 1267, 8 L.Ed.2d 601 (1962).

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In recent years the Court has moved away from the mechanistic "no-aid-to- religion" approach to the Establishment Clause and has stated a three-part test to determine the constitutionality of governmental aid to religion. See *Lemon v. Kurtzman*, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971); *Committee for Public Education v. Nyquist*, 413 U.S. 756, 772-773, 93 S.Ct. 2955, 2965, 37 L.Ed.2d 948 (1973). First, the statute must serve a secular legislative purpose. Second, it must have a "primary effect" that neither advances nor inhibits religion. And third, the State and its administration must avoid excessive entanglement with religion. *Walz v. Tax Comm'n*, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970).

*726 It is not surprising that the Court today makes no attempt to apply those principles to the facts of this case. If Indiana were to legislate what the Court today requires--an unemployment compensation law which permitted benefits to be granted to those persons who quit their jobs for religious reasons--the statute would "plainly" violate the Establishment Clause as interpreted in such cases as *Lemon* and *Nyquist*. First, although the unemployment statute as a whole would be enacted to serve a secular legislative purpose, the proviso would clearly serve only a religious purpose. It would grant financial benefits for the sole purpose of accommodating religious beliefs. Second, there can be little doubt that the primary effect of the proviso would be to "advance" religion by facilitating the exercise of religious belief. Third, any statute including such a proviso would surely "entangle" the State in religion far more than the mere grant of tax exemptions, as in *Walz*, or the award of tuition grants and tax credits, as in *Nyquist*. By granting financial benefits to persons solely on the basis of their religious beliefs, the State must necessarily inquire whether the claimant's belief is "religious" and whether it is sincerely held. Otherwise any dissatisfied employee may leave his job without cause and claim that he did so because his own particular beliefs required it.

It is unclear from the Court's opinion whether it has temporarily retreated from its expansive view of the Establishment Clause, or wholly abandoned it. I would welcome the latter. Just as I think that Justice Harlan in *Sherbert* correctly stated the proper approach to free exercise questions, I believe that Justice STEWART, dissenting in *Abington School District v. Schempp, supra*, accurately stated the reach of the Establishment Clause. He explained that the Establishment Clause is limited to "government support of proselytizing activities of religious sects by throwing the weight of secular authorit[ies] behind the dissemination of religious tenets." *Id.*, at 314, 83 S.Ct., at 1619. See *McCollum v. Board of Education*, 333 U.S. 203, 248, 68 S.Ct. 461, 483, 92 L.Ed. 649 (1948) (Reed, J., dissenting) *727 (impermissible aid is only "purposeful assistance directly to the church itself or to some religious group ... performing ecclesiastical functions"). Conversely, governmental assistance which does not have the effect of "inducing" religious belief, but instead merely "accommodates" or implements an independent religious choice does not impermissibly involve the government in religious choices and therefore does not violate the Establishment Clause of the First Amendment. I would think that in this case, as in *Sherbert*, had the State voluntarily chosen to pay unemployment compensation benefits to persons who left their jobs for religious reasons, such aid would be constitutionally permissible because it redounds directly to the benefit of the individual. Accord, *Wolman v. Walter*, 433 U.S. 229, 97 S.Ct. 2593, 53 L.Ed.2d 714 (1977) (upholding various disbursements made to pupils in parochial schools).

**1437 In sum, my difficulty with today's decision is that it reads the Free Exercise Clause too broadly and it fails to squarely acknowledge that such a reading conflicts with many of our Establishment Clause cases. As such, the decision simply exacerbates the "tension" between the two Clauses. If the Court were to construe the Free Exercise Clause as it did in *Braunfeld* and the Establishment Clause as Justice STEWART did in *Schempp*, the circumstances in which there would be a conflict between the two Clauses would be few and far between. Although I heartily agree with the Court's tacit abandonment of much of our rhetoric about the Establishment Clause, I regret that the Court cannot see its way clear to restore what was surely intended to have been a greater degree of flexibility to the Federal and State Governments in legislating consistently with the Free Exercise Clause. Accordingly, I would affirm the judgment of the Indiana Supreme Court.

101 S.Ct. 1425, 450 U.S. 707, 67 L.Ed.2d 624, 25

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Fair Empl.Prac.Cas. (BNA) 629, 25 Empl. Prac. Dec. P 31,662

Briefs and Other Related Documents (Back to top)

- 1980 WL 339245 (Appellate Brief) Reply Brief (Sep. 29, 1980)

- 1980 WL 339244 (Appellate Brief) Brief of Respondent, The Review Board of the Indiana Employment Security Division (May. 05, 1980)

- 1980 WL 339246 (Appellate Brief) Motion of the American Civil Liberties Union for Leave to File and Brief, Amicus Curiae (Apr. 04, 1980)

- 1980 WL 339248 (Appellate Brief) Motion for Leave to File Brief Amicus Curiae and Brief of the American Jewish Congress, Amicus Curiae (Apr. 04, 1980)

- 1980 WL 339250 (Appellate Brief) Motion for Leave to File Amicus Curiae Brief and Brief of Americans United for Separation of Church and State Fund, Inc. as Amicus Curiae (Apr. 04, 1980)

- 1980 WL 339252 (Appellate Brief) Motion for Leave to File Brief Amici Curiae and Brief of Jewish Peace Fellowship and Fellowship of Reconciliation, Amici Curiae (Apr. 04, 1980)

- 1980 WL 339241 (Appellate Brief) Brief for the Petitioner (Apr. 03, 1980)

END OF DOCUMENT

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EXHIBIT 52

102 S.Ct. 1051
71 L.Ed.2d 127, 49 A.F.T.R.2d 82-802, 82-1 USTC P 9205
(Cite as: 455 U.S. 252, 102 S.Ct. 1051)

Briefs and Other Related Documents

Supreme Court of the United States

UNITED STATES, Appellant
v.
Edwin D. LEE.

No. 80-767.

Argued Nov. 2, 1981.
Decided Feb. 23, 1982.

Employer, a member of the Old Order Amish who employed several other Amish to work on his farm and in his carpentry shop, sued for refund of taxes, claiming that imposition of social security taxes violated his First Amendment free exercise rights and those of his Amish employees. The United States District Court for the Western District of Pennsylvania, 497 F.Supp. 180, held that statutes requiring employer to pay social security and unemployment insurance taxes were unconstitutional as applied, and direct appeal was taken. The Supreme Court, Chief Justice Burger, held that: (1) exemption provided by statute for self-employed members of religious groups who oppose social security taxes is available only to self-employed individuals and does not apply to employers or employees, and thus Amish employer and his employees were not within exemption statute; (2) because payment of taxes or receipt of benefits violated Amish religious beliefs, compulsory participation in social security system interfered with their free exercise rights; but (3) religious belief in conflict with payment of taxes affords no basis for resisting tax imposed on employers to support social security system, which must be applied uniformly to all except as Congress provides explicitly otherwise.

Reversed and remanded.

Justice Stevens filed an opinion concurring in the judgment.

West Headnotes

[1] Internal Revenue ⇐4371
220k4371 Most Cited Cases

Statutory exemption from social security taxes for self-employed Amish and self-employed members of other religious groups with similar beliefs opposing national social security system is available only to self-employed individuals and does not apply to employers or employees, and consequently Amish employer and his employees were not within express provisions of exemption statute. 26 U.S.C.A. § 1402(g).

[2] Constitutional Law ⇐84.5(8)
92k84.5(8) Most Cited Cases
(Formerly 92k84)

[2] Internal Revenue ⇐4352
220k4352 Most Cited Cases

Payment of social security taxes and receipt of social security benefits violated Amish religious belief in obligation to provide for their fellow members because of assistance contemplated by social security system, and thus compulsory participation in social security system interfered with Amish's free exercise rights. 26 U.S.C.A. §§ 3101, 3102(b), 3111, 3301; U.S.C.A.Const.Amend. 1.

[3] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Not all burdens on religion are unconstitutional and state may justify limitation on religious liberty by showing that it is essential to accomplish overriding government interests. U.S.C.A.Const.Amend. 1.

[4] Internal Revenue ⇐4352
220k4352 Most Cited Cases

Since government's interest in assuring mandatory and continuous participation in and contribution to social security system is very high, and since tax system could not function if denominations were allowed to challenge tax system because tax payments were spent in manner that violated their religious beliefs, imposition of social security taxes is constitutional as applied to persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public

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insurance funds. U.S.C.A.Const.Amend. 1; 26 U.S.C.A. §§ 3101, 3102(b), 3111, 3301.

[5] Constitutional Law ⚖84.5(8)
92k84.5(8) Most Cited Cases
(Formerly 92k84)

[5] Internal Revenue ⚖4352
220k4352 Most Cited Cases

[5] Internal Revenue ⚖4371
220k4371 Most Cited Cases

Although self-employed Amish are exempt from social security taxes, when followers of particular sect enter into commercial activity as matter of choice, limits they accept on their own conduct as matter of conscience and faith are not to be superimposed on statutory scheme binding on others in that activity, and thus, since tax imposed on employers to support social security system must be uniformly applicable to all except as Congress provides explicitly otherwise, Amish employer could not avoid payment of social security taxes on theory that imposition of taxes violated his First Amendment free exercise rights. U.S.C.A.Const.Amend. 1; 26 U.S.C.A. §§ 1402(g), 3101, 3102(b), 3111, 3301.

***1052 *252** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Appellee, a farmer and carpenter, is a member of the Old Order Amish, who believe that there is a religiously based obligation to provide for their fellow members the kind of assistance contemplated by the social security system. During certain years when he employed other Amish to work on his farm and in his carpentry shop, appellee failed to withhold social security taxes from his employees or to pay the employer's share of such taxes because he believed that payment of the taxes and receipt of benefits would violate the Amish faith. After the Internal Revenue Service assessed him for the unpaid taxes, appellee paid a certain amount and then sued in Federal District Court for a refund, claiming that imposition of the taxes violated his First Amendment free exercise of religion rights and those of his employees. The District Court held the statutes requiring appellee to pay social security taxes unconstitutional as applied, basing its holding on both 26 U.S.C. § 1402(g), which exempts from social security taxes, on religious grounds, self-employed Amish and others, and the First Amendment.

Held:

1. The exemption provided by § 1402(g), being available only to self- employed individuals, does not apply to employers or employees, and hence appellee **1053 and his employees are not within its provisions. Pp. 1054- 1055.

2. The imposition of social security taxes is not unconstitutional as applied to such persons as appellee who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds. Pp. 1055-1057.

(a) While there is a conflict between the Amish faith and the obligations imposed by the social security system, not all burdens on religion are unconstitutional. The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. P. 1055.

(b) Widespread individual voluntary coverage under social security would undermine the soundness of the social security system, and would make such system almost a contradiction in terms and difficult, if not impossible, to administer. Pp. 1055-1056.

*253 c) It would be difficult to accommodate the social security system with myriad exceptions flowing from a wide variety of religious beliefs such as the Amish. *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, distinguished. There is no principled way for purposes of this case to distinguish between general taxes and those imposed under the Social Security Act. The tax system could not function if denominations were allowed to challenge it because tax payments were spent in a manner that violates their religious belief. Because the broad public interest in maintaining a sound tax system is of such a high order, religious

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belief in conflict with the payment of taxes affords no basis for resisting the tax. P. 1056.

(d) Congress in § 1402(g) has accommodated, to the extent compatible with a comprehensive national program, the practices of those who believe it a violation of their faith to participate in the social security system. When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes that are binding on others in that activity. Granting an exemption from social security taxes to an employer operates to impose the employer's religious faith on the employees. The tax imposed on employers to support the social security system must be uniformly applicable to all, except as Congress explicitly provides otherwise. Pp. 1056-1057.

497 F.Supp. 180, reversed and remanded.

Lawrence G. Wallace, Washington, D. C., for appellant.

Francis X. Caiazza, New Castle, Pa., for appellee.

***254** Chief Justice BURGER delivered the opinion of the Court.

We noted probable jurisdiction to determine whether imposition of social security taxes is unconstitutional as applied to persons who object on religious grounds to receipt of public insurance benefits and to payment of taxes to support public insurance funds. 450 U.S. 993, 101 S.Ct. 1693, 68 L.Ed.2d 192 (1981). The District Court, 497 F.Supp. 180, concluded that the Free Exercise Clause prohibits forced payment of social security taxes when payment of taxes and receipt of benefits violate the taxpayer's religion. We reverse.

I

Appellee, a member of the Old Order Amish, is a farmer and carpenter. From 1970 to 1977, appellee employed several other Amish to work on his farm and in his carpentry shop. He failed to file the quarterly social security tax returns required of employers, withhold social security tax from his employees, or pay the employer's share of social security taxes. [FN1]

FN1. The Social Security Act and its subsequent amendments provide a system of old-age and unemployment benefits. 26 U.S.C. § 3101 *et seq.* (1976 ed. and Supp.III). These benefits are supported by various taxes, including, relevant to this appeal, the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) taxes. The FICA tax is a tax paid in part by employees through withholding, 26 U.S.C. § 3101 (1976 ed., Supp.III), and in part by employers through an excise tax. 26 U.S.C. § 3111 (1976 ed., Supp.III). The FUTA tax is an excise tax imposed only on employers. 26 U.S.C. § 3301. Both taxes are based on the wages paid to employees, and the recordkeeping and transmittal of funds are obligations of the employer. Only the FICA tax is collected from self-employed individuals.
In this case appellee failed to pay the employer's portion of the FICA taxes and FUTA taxes and failed to withhold his employee's contributions to the FICA taxes. An employer is liable for payment of the employee's share of FICA taxes whether or not he withholds the required amount of the employee's contribution. 26 U.S.C. § 3102(b).

****1054** In 1978, the Internal Revenue Service assessed appellee in excess of $27,000 for unpaid employment taxes; he paid $91--***255** the amount owed for the first quarter of 1973--and then sued in the United States District Court for the Western District of Pennsylvania for a refund, claiming that imposition of the social security taxes violated his First Amendment free exercise rights and those of his Amish employees. [FN2]

FN2. Appellee also requested injunctive relief to prevent the Commissioner of Internal Revenue from attempting to collect the unpaid balance of the assessments. Under the Internal Revenue

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Code, injunctive relief is to be granted sparingly and only in exceptional circumstances. 26 U.S.C. § 7421(a) (1976 ed., Supp.III). The District Court therefore denied injunctive relief, but noted that should the Government attempt to collect the remaining payments "further Court relief could be requested." 497 F.Supp. 180, 184 (1980).

The District Court held the statutes requiring appellee to pay social security and unemployment insurance taxes unconstitutional as applied. 497 F.Supp. 180 (1980). The court noted that the Amish believe it sinful not to provide for their own elderly and needy and therefore are religiously opposed to the national social security system. [FN3] The court also accepted appellee's contention that the Amish religion not only prohibits the acceptance of social security benefits, but also bars all contributions by Amish to the social security system. The District Court observed that in light of their beliefs, Congress has accommodated self-employed Amish and self-employed members of other religious groups with similar beliefs by providing exemptions from social security taxes. 26 U.S.C. § 1402(g). [FN4] The court's holding was based on both ***256** the exemption statute for the self-employed and the First Amendment; appellee and others "who fall within the carefully circumscribed definition provided in 1402(g) are relieved from paying the employer's share of [social security taxes] as it is an unconstitutional infringement upon the free exercise of their religion." [FN5] 497 F.Supp., at 184.

FN3. Appellee indicates that his scriptural basis for this belief was: "But if any provide not ... for those of his own house, he hath denied the faith, and is worse than an infidel." (I Timothy 5: 8.)

FN4. Title 26 U.S.C. § 1402(g) provides, in part:
"(1) Exemption
Any individual may file an application ... for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act)."
In order to qualify for the exemption, the applicant must waive his right to all social security benefits and the Secretary of Health and Human Services must find that the particular religious group makes sufficient provision for its dependent members.

FN5. The precise basis of the District Court opinion is not clear. The court recognized that on its face § 1402(g) does not apply to appellee because he is not a self-employed individual. The District Court nonetheless used the language of § 1402(g) to provide an exemption for appellee. The court's decision to grant appellee an exemption, however, appears to be based on its view that the statute was unconstitutional as applied. Consequently, this Court has jurisdiction under 28 U.S.C. § 1252 to hear the appeal. See also *United States v. American Friends Service Committee*, 419 U.S. 7, 9, n. 4, 95 S.Ct. 13, 14, n. 4, 42 L.Ed.2d 7 (1974).

****1055** Direct appeal from the judgment of the District Court was taken pursuant to 28 U.S.C. § 1252.

II

[1] The exemption provided by § 1402(g) is available only to self- employed individuals and does not apply to employers or employees. Consequently, appellee and his employees are not within the express provisions of § 1402(g). Thus any exemption from payment of the employer's share of social security taxes must come from a

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constitutionally required exemption.

A

[2] The preliminary inquiry in determining the existence of a constitutionally required exemption is whether the payment *257 of social security taxes and the receipt of benefits interferes with the free exercise rights of the Amish. The Amish believe that there is a religiously based obligation to provide for their fellow members the kind of assistance contemplated by the social security system. Although the Government does not challenge the sincerity of this belief, the Government does contend that payment of social security taxes will not threaten the integrity of the Amish religious belief or observance. It is not within "the judicial function and judicial competence," however, to determine whether appellee or the Government has the proper interpretation of the Amish faith; "[c]ourts are not arbiters of scriptural interpretation." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 716, 101 S.Ct. 1425, 1431, 67 L.Ed.2d 624 (1981). [FN6] We therefore accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their free exercise rights.

> FN6. This is not an instance in which the asserted claim is "so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause." *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S., at 715, 101 S.Ct., at 1431. At least one other religious organization has sought an exemption under § 1402(g). See also *Henson v. Commissioner*, 66 T.C. 835 (1976) (member of Sai Baba denied exemption because although opposed to insurance on religious grounds, the faith did not provide for its dependent members).

[3] The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, *e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (1879). The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. **258 Thomas, supra; Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); *Gillette v. United States*, 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971); *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

B

[4] Because the social security system is nationwide, the governmental interest is apparent. The social security system in the United States serves the public interest by providing a comprehensive insurance system with a variety of benefits available to all participants, with costs shared by employers and employees. [FN7] The social security **1056 system is by far the largest domestic governmental program in the United States today, distributing approximately $11 billion monthly to 36 million Americans. [FN8] The design of the system requires support by mandatory contributions from covered employers and employees. This mandatory participation is indispensable to the fiscal vitality of the social security system. "[W]idespread individual voluntary coverage under social security ... would undermine the soundness of the social security program." S.Rep.No. 404, 89th Cong., 1st Sess., pt. 1, p. 116 (1965), U.S.Code Cong. & Admin.News (1965), pp. 1943, 2056. Moreover, a comprehensive national social security system providing for voluntary participation would be almost a contradiction in terms and difficult, if not impossible, to administer. Thus, the Government's interest in assuringmandatory *259 and continuous participation in and contribution to the social security system is very high. [FN9]

> FN7. The Social Security Act was enacted in 1935 to provide supplementary retirement benefits. Over the following 45 years coverage has broadened, and the cost of the system has increased dramatically. See A. Abraham & D. Kopelman, Federal

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Social Security (1979). In 1939 the Act was amended to provide insurance benefits for retired workers, auxiliaries of retired workers and survivors of deceased workers. In 1950 coverage was extended to self-employed workers and to select other employees previously excluded. In 1954 and 1956 disability benefits were added and in 1965 Medicare benefits were made available to participants in the system.

FN8. National Commission on Social Security, Social Security in America's Future 5 (1981).

FN9. The fiscal soundness of the social security system has been the subject of several studies and of congressional concern. See, *e.g.*, Congressional Budget Office, Paying for Social Security: Funding Options for the Near Term (1981).

C

The remaining inquiry is whether accommodating the Amish belief will unduly interfere with fulfillment of the governmental interest. In *Braunfeld v. Brown*, 366 U.S. 599, 605, 81 S.Ct. 1144, 1146, 6 L.Ed.2d 563 (1961), this Court noted that "to make accommodation between the religious action and an exercise of state authority is a particularly delicate task ... because resolution in favor of the State results in the choice to the individual of either abandoning his religious principle or facing ... prosecution." The difficulty in attempting to accommodate religious beliefs in the area of taxation is that "we are a cosmopolitan nation made up of people of almost every conceivable religious preference." *Braunfeld, supra*, at 606, 81 S.Ct., at 1147. The Court has long recognized that balance must be struck between the values of the comprehensive social security system, which rests on a complex of actuarial factors, and the consequences of allowing religiously based exemptions. To maintain an organized society that guarantees religious freedom to a great variety of faiths requires that some religious practices yield to the common good. Religious beliefs can be accommodated, see, *e.g., Thomas, supra; Sherbert, supra*, but there is a point at which accommodation would "radically restrict the operating latitude of the legislature." *Braunfeld, supra*, at 606, 81 S.Ct., at 1147. [FN10]

FN10. See, *e.g., Follett v. Town of McCormick*, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938 (1944) (preacher not entitled to be free from taxes); *Murdock v. Pennsylvania*, 319 U.S. 105, 112, 63 S.Ct. 870, 874, 87 L.Ed. 1292 (1943) (same).

Unlike the situation presented in *Wisconsin v. Yoder, supra*, it would be difficult to accommodate the comprehensive ***260** social security system with myriad exceptions flowing from a wide variety of religious beliefs. The obligation to pay the social security tax initially is not fundamentally different from the obligation to pay income taxes; the difference--in theory at least--is that the social security tax revenues are segregated for use only in furtherance of the statutory program. There is no principled way, however, for purposes of this case, to distinguish between general taxes and those imposed under the Social Security Act. If, for example, a religious adherent believes war is a sin, and if a certain percentage of the federal budget can be identified as devoted to war-related activities, such individuals would have a similarly valid claim to be exempt from paying that percentage of the income tax. The tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief. See, ****1057** e.g., Lull v. Commissioner*, 602 F.2d 1166 (CA4 1979), cert. denied, 444 U.S. 1014, 100 S.Ct. 664, 62 L.Ed.2d 643 (1980); *Autenrieth v. Cullen*, 418 F.2d 586 (CA9 1969), cert. denied, 397 U.S. 1036, 90 S.Ct. 1353, 25 L.Ed.2d 647 (1970). Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax.

III

[5] Congress has accommodated, to the extent compatible with a comprehensive national program, the practices of those who believe it a violation of

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their faith to participate in the social security system. In § 1402(g) Congress granted an exemption, on religious grounds, to self- employed Amish and others. [FN11] Confining the § 1402(g) exemption to the self-*261 employedprovided for a narrow category which was readily identifiable. Self-employed persons in a religious community having its own "welfare" system are distinguishable from the generality of wage earners employed by others.

> FN11. The District Court read this as extending to the present claims. We need not decide whether the Free Exercise Clause compelled an exemption as provided by § 1402(g); Congress' grant of the exemption was an effort toward accommodation. Nor do we need to decide whether, if Congress had, as the District Court believed, intended § 1402(g) to reach this case, conflicts with the Establishment Clause would arise.

Congress and the courts have been sensitive to the needs flowing from the Free Exercise Clause, but every person cannot be shielded from all the burdens incident to exercising every aspect of the right to practice religious beliefs. When followers of a particular sect enter into commercial activity as a matter of choice, the limits they accept on their own conduct as a matter of conscience and faith are not to be superimposed on the statutory schemes which are binding on others in that activity. Granting an exemption from social security taxes to an employer operates to impose the employer's religious faith on the employees. Congress drew a line in § 1402(g), exempting the self-employed Amish but not all persons working for an Amish employer. The tax imposed on employers to support the social security system must be uniformly applicable to all, except as Congress provides explicitly otherwise. [FN12]

> FN12. We note that here the statute compels contributions to the system by way of taxes; it does not compel anyone to accept benefits. Indeed, it would be possible for an Amish member, upon qualifying for social security benefits, to receive and pass them along to an Amish fund having parallel objectives. It is not for us to speculate whether this would ease or mitigate the perceived sin of participation.

Accordingly, the judgment of the District Court is reversed, and the case is remanded for proceedings consistent with this opinion.

Reversed and remanded.

Justice STEVENS, concurring in the judgment.

The clash between appellee's religious obligation and his civic obligation is irreconcilable. He must violate either an Amish belief or a federal statute. According to the Court, the religious duty must prevail unless the Government shows ***262** that enforcement of the civic duty "is essential to accomplish an overriding governmental interest." *Ante*, at 1055. That formulation of the constitutional standard suggests that the Government always bears a heavy burden of justifying the application of neutral general laws to individual conscientious objectors. In my opinion, it is the objector who must shoulder the burden of demonstrating that there is a unique reason for allowing him a special exemption from a valid law of general applicability.

Congress already has granted the Amish a limited exemption from social security taxes. See 26 U.S.C. § 1402(g). As a matter of administration, it would be a relatively simple matter to extend the exemption to the taxes involved in this case. As a matter of fiscal policy, an enlarged exemption ****1058** probably would benefit the social security system because the nonpayment of these taxes by the Amish would be more than offset by the elimination of their right to collect benefits. In view of the fact that the Amish have demonstrated their capacity to care for their own, the social cost of eliminating this relatively small group of dedicated believers would be minimal. Thus, if we confine the analysis to the Government's interest in rejecting the particular claim to an exemption at stake in this case, the constitutional standard as formulated by the Court has not been met.

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The Court rejects the particular claim of this appellee, not because it presents any special problems, but rather because of the risk that a myriad of other claims would be too difficult to process. The Court overstates the magnitude of this risk because the Amish claim applies only to a small religious community with an established welfare system of its own. [FN1] *263 Nevertheless, I agree with the Court's conclusion that the difficulties associated with processing other claims to tax exemption on religious grounds justify a rejection of this claim. [FN2] I believe, however, that this reasoning supports the adoption of a different constitutional standard than the Court purports to apply.

FN1. The Amish claim is readily distinguishable from the typical claim to an exemption from general tax obligations on the ground that the taxpayer objects to the government's use of his money; in the typical case the taxpayer is not in any position to supply the government with an equivalent substitute for the objectionable use of his money.

FN2. In my opinion, the principal reason for adopting a strong presumption against such claims is not a matter of administrative convenience. It is the overriding interest in keeping the government-- whether it be the legislature or the courts--out of the business of evaluating the relative merits of differing religious claims. The risk that governmental approval of some and disapproval of others will be perceived as favoring one religion over another is an important risk the Establishment Clause was designed to preclude.

The Court's analysis supports a holding that there is virtually no room for a "constitutionally required exemption" on religious grounds from a valid tax law that is entirely neutral in its general application. [FN3] **1059 Because I agree with that holding, I concur in the judgment.

FN3. Today's holding is limited to a claim to a tax exemption. I believe, however, that a standard that places an almost insurmountable burden on any individual who objects to a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes) better explains most of this Court's holdings than does the standard articulated by the Court today. See, *e.g., Gillette v. United States*, 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (selective service laws); *Braunfeld v. Brown*, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (Sunday closing laws); *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (child labor laws); *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (compulsory vaccination laws); *Reynolds v. United States*, 98 U.S. 145, 25 L.Ed. 244 (polygamy law). The principal exception is *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, in which the Court granted the Amish an exemption from Wisconsin's compulsory school-attendance law by actually applying the subjective balancing approach it purports to apply today. The Court's attempt to distinguish *Yoder* is unconvincing because precisely the same religious interest is implicated in both cases, and Wisconsin's interest in requiring its children to attend school until they reach the age of 16 is surely not inferior to the federal interest in collecting these social security taxes.
There is also tension between this standard and the reasoning in *Thomas v. Review Bd. of Indiana Employment Security Div.*, 101 S.Ct. 1425, 450 U.S. 707, 67 L.Ed.2d 624, and *Sherbert v. Verner*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965. Arguably, however, laws intended to provide a benefit to a limited class of otherwise disadvantaged persons should be judged by a different standard than that appropriate for the enforcement of neutral laws of general applicability. Cf. *Harris v. McRae*, 448 U.S. 297, 349-357, 100 S.Ct. 2671, 2712-16, 65 L.Ed.2d 784 (STEVENS, J., dissenting). A tax exemption entails no cost to the claimant;

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> if tax exemptions were dispensed on religious grounds, every citizen would have an economic motivation to join the favored sects. No comparable economic motivation could explain the conduct of the employees in *Sherbert* and *Thomas*. In both of those cases changes in work requirements dictated by the employer forced the employees to surrender jobs that they would have preferred to retain rather than accept unemployment compensation. In each case the treatment of the religious objection to the new job requirements as though it were tantamount to a physical impairment that made it impossible for the employee to continue to work under changed circumstances could be viewed as a protection against unequal treatment rather than a grant of favored treatment for the members of the religious sect. In all events, the decision in *Thomas* was clearly compelled by *Sherbert*.

102 S.Ct. 1051, 455 U.S. 252, 71 L.Ed.2d 127, 49 A.F.T.R.2d 82-802, 82-1 USTC P 9205

Briefs and Other Related Documents (Back to top)

- 1981 WL 389832 (Appellate Brief) Reply Brief for the United States (Oct. 21, 1981)

- 1981 WL 389833 (Appellate Brief) Brief Amicus Curiae of National Committee for Amish Religious Freedom (Aug. 13, 1981)

- 1981 WL 389831 (Appellate Brief) Brief for Appellee Edwin D. Lee (Aug. 11, 1981)

- 1981 WL 389829 (Appellate Brief) Brief for the United States (Jun. 05, 1981)

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EXHIBIT 53

80 U.S. 679 (Mem)
20 L.Ed. 666, 13 Wall. 679
(Cite as: 80 U.S. 679)

Supreme Court of the United States.

WATSON
v.
JONES.

December Term, 1871

APPEAL from a decree of the Circuit Court for the District of Kentucky, made May 11th, 1869.*681

This was a litigation which grew out of certain disturbances in what is known as the 'Third or Walnut Street Presbyterian Church,' of Louisville, Kentucky, and which resulted in a division of its members into two distinct bodies, each claiming the exclusive use of the property held and owned by that local church. The case was thus:

The Presbyterian Church in the United States is a voluntary religious organization, which has been in existence for more than three-quarters of a century. It has a written Confession of Faith, Form of Government, Book of Discipline, and Directory for Worship. The government of the church is exercised by and through an ascending series of 'judicatories,' known as Church Sessions, Presbyteries, Synods, and a General Assembly.

The Church Session, consisting of the pastor and ruling elders of a particular congregation, is charged with maintaining the spiritual government of the congregation, for which purpose they have various powers, among which is the power to receive members into the church, and to concert the best measures for promoting the spiritual interests of the congregation. [FN1] This body, which thus controls in each local church, is composed of the pastor and ruling elders. The number of elders is variable, and a majority of the Session governs. It acts, however, but as representing the congregation which elects it. The elders, so far as the church edifice is concerned, have no power to dispose of its use except as members of the Session.

West Headnotes

Abatement and Revival ⇦8(2)
2k8(2) Most Cited Cases

On a plea of the pendency of a prior action, it must appear that the parties, the relief sought, and the case made were identical, so that, if judgment were recovered, it would be a bar to a subsequent action for the same cause.

Abatement and Revival ⇦16
2k16 Most Cited Cases

On a plea of a prior action pending, the proceedings on appeal are to be considered as part of such action, and orders made by the appellate court, to be enforced by the lower court, are also a part of the case in the first suit, which may be relied upon as lis pendens in reference to the second suit.

Religious Societies ⇦12(5)
332k12(5) Most Cited Cases

In the case of a religious congregation which is itself part of a large and general organization of some religious denomination with which it is more or less intimately connected by religious views and ecclesiastical government, questions of discipline, or of faith, or ecclesiastical rule, custom or law which have been decided by the highest of the church judicatories to which the matter has been carried, must be accepted as final and as binding by legal tribunals.

Religious Societies ⇦14
332k14 Most Cited Cases

Where property is dedicated by way of trust for the purpose of sustaining, supporting and propagating definite religious doctrines or principles, it is the duty of the court to see that such property is not diverted from such trust so long as there are persons qualified within the meaning of the original dedication who are willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court.

Religious Societies ⇦17
332k17 Most Cited Cases

An individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite

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religious doctrines or principles, provided that in doing so they violate no law of morality and give to the instrument by which their purpose is evidenced, the formalities which the laws require.

Religious Societies ⇐23(3)
332k23(3) Most Cited Cases

In the case of schism in an independent congregation, the right to its property claimed by the opposing factions is to be determined by the majority of the society, or by such organization of the society as, by its own rules, constitutes its governing power.

Religious Societies ⇐23(3)
332k23(3) Most Cited Cases

Where there is a schism in a church of a strictly congregational or independent organization governed solely within itself, leading to a separation into distinct and conflicting bodies, the rights of such bodies to the use of such property must be determined by the ordinary principles which govern voluntary associations.

Religious Societies ⇐23(3)
332k23(3) Most Cited Cases

Where property is confided in trust to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of the congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine.

Religious Societies ⇐24
332k24 Most Cited Cases

Where a right of property in a civil court is dependent upon a question of ecclesiastical cognizance within an associated religious denomination having an ascending series of judicatories, and it has been decided by the highest tribunal within that organization having jurisdiction of the case, such decision will be accepted as conclusive by the civil court.

Religious Societies ⇐24
332k24 Most Cited Cases

Controversies in the civil courts concerning property rights of religious societies are generally to be decided by inquiring-First, was the property or fund in question devoted by the express terms of the gift, grant, or sale by which it was acquired, to the support of any specific religious doctrine or belief, or was it acquired for the general use of the society for religious purposes with no other limitation? And, second, is the society which owned it of the strictly congregational or independent form of church government, owing no submission to any organization outside the congregation, or is it one of a number of societies united to form a more general body of churches subject to ecclesiastical control, invested in the general association over the members and societies of which it is composed?

Religious Societies ⇐24
332k24 Most Cited Cases

Where property is devoted to a specific doctrine, the court will, when necessary to protect the trust to which the property has been devoted, inquire into the religious faith or practice of the parties claiming its use or control, and will see that it shall not be diverted from that trust.

Religious Societies ⇐24
332k24 Most Cited Cases

If the property was acquired in the ordinary way of purchase or gift, for the use of a religious society, the court will inquire who constitute that society, or its legitimate successors, and award to them the use of the property.

Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84)

In the United States everyone has the full and free right to entertain religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights, and the law knows no heresy and is committed to the support of no dogma and the establishment of no sect.

Courts ⇐494
106k494 Most Cited Cases

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When the pendency of a suit in a court of concurrent jurisdiction is set up to defeat a suit, the case must be the same and there must be the same parties, or at least such as represent the same interest, and the same rights must be asserted and the same relief prayed for, and such relief must be founded on the same facts and the title or essential basis of the relief sought must be the same.

Courts ⇐494
106k494 Most Cited Cases
General.

As between courts of concurrent jurisdiction, the court which has first obtained jurisdiction in a given case must retain it exclusively until it disposes of it by a final judgment or a decree.

Courts ⇐508(1)
106k508(1) Most Cited Cases

The circuit court of the United States will not issue an injunction which will in any way interfere with the jurisdiction of a state court having concurrent jurisdiction with the federal court over the subject-matter in litigation, where the state court obtained jurisdiction prior to the federal court.

Injunction ⇐110
212k110 Most Cited Cases

Orders made by the appellate court of a state, to be enforced by a court of primary jurisdiction, are, while unexecuted, a part of the cause in the lower court; and hence, where an unexecuted order of this kind had been made by a state court to restore possession of property to parties who had been deprived thereof by a decree which had been reversed, injunction could not be granted by a federal court, interfering in any way with the execution of such order.

FN1 Form of Government, chap. 9, § 6.

Connected with each local church, and apparently without any functions in essence ecclesiastical, are what are called the 'Trustees;' three persons usually, in whom is vested for form's sake, the legal title to the church edifice and other property; the equitable power of management of the property being with the Session. These Trustees are usually elected biennially; they are subject to the Session, and may be removed by the congregation.

The Presbytery, consisting of all the ministers and one *682 ruling elder from each congregation within a certain district, has various powers, among them the power to visit particular churches for the purpose of inquiring into their state, and redressing the evils which may have arisen in them; to ordain, and install, remove, and judge ministers; and, in general, power to order whatever pertains to the spiritual welfare of the churches under their care. [FN2]

FN2 Form of Government, chap. 10, § 8.

The Synod, consisting of all the ministers and one ruling elder from each congregation in a larger district, has various powers, among them the power to receive and issue all appeals from Presbyteries; to decide on all references made to them; to redress whatever has been done by Presbyteries contrary to order; and generally to take such order with respect to the Presbyteries, Sessions, and people under their care as may be in conformity with the world of God and the established rules, and which tend to promote the edification of the church. [FN3]

FN3 Ib., chap. 11, § 4.

The General Assembly, consisting of ministers and elders commissioned from each Presbytery under its care, is the highest judicatory of the Presbyterian Church, representing in one body all of the particular churches of the denomination. Besides the power of receiving and issuing appeals and references from inferior judiciatories, to review the records of Synods, and to give them advice and instruction in all cases submitted to them in conformity with the constitution of the church, it is declared that it 'shall constitute the bond of union, peace, correspondence, and mutual confidence among all our churches.' [FN4] 'To the General Assembly also belongs the power of deciding in all controversies respecting doctrine and discipline; of reproving, warning, or hearing testimony against any error in doctrine or immorality in practice, in any Church, Presbytery, or Synod; . . . of

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supperintending the concerns of the whole church; . . . of suppressing schismatical contentions and disputations; and, in general, of recommending and attempting reformation of *683 manners, and the promotion of charity, truth, and holiness through all the churches under their care.' [FN5]

FN4 Ib., chap. 12, §§ 1, 2, and 3.

FN5 Form of Government, chap. 12, § 5.

The Walnut Street Presbyterian Church, of which we have spoken, was organized about 1842, under the authority and as a part of the Presbyterian Church in the United States, and, with the assent of all its members, was received into connection with and under the jurisdiction of the Presbytery of Louisville and the Synod of Kentucky. It remained in such connection and under such jurisdiction, without any distribance among its members, until the year 1865, when certain events took place in Kentucky which will be stated presently.

After the organization, to wit, in 1853, the said local church purchased a lot of ground in Louisville, and a conveyance was made to the church's trustees to have and to hold to them, and to their successors, to be chosen by the congregation.

In 1854 the trustees of the church were incorporated with power to hold any real estate then owned by it; the property to pass to them and their successors in office. By the act it was declared that the trustees, to be elected by the members of the congregation, should continue in office two years, and until their successors were elected, 'unless they shall sooner resign, or refuse to act, or cease to be members of the said church.' The trustees were charged by the act with the duty of providing for the comfort and convenience of the congregation, the preservation of the property, and passing such regulations relative to the government and control of the church property as they might think proper, not inconsistent with the Constitution of the United States and the laws of Kentucky.

Though neither the deed nor charter said this in terms, it was admitted that both contemplated the connection of the local church with the general Presbyterian one, and subjected both property and trustees alike to the operation of its fundamental laws.*684

We now pass to some history of the disturbances to which we have referred as matter to be related.

With the outbreak of the war of the insurrection, and the action of it upon the subject of slavery, a very excited condition of things, originating with and influenced by that subject, manifested itself in the Walnut Street Church. One of the earliest exhibitions of the matter was in reference to the re-engagement as minister of a certain Reverend *Mr. McElroy*. The members of the church were asked by a majority of the Session, at this time composed of three persons, named *Watson, Galt*, and Avery, [FN6] to make a call upon *Mr. McElroy* to become the pastor, but at a congregational meeting the majority of the members declined to make the call. The majority of the Session (that is to say, *Watson* and *Galt*) renewed, notwithstanding, the engagement of *Mr. McElroy* for six months. In August, 1865, the majority of the congregation asked the Session that on the expiration of the then current six months of *Mr. McElroy's* engagement no further renewal thereof should be made. In connection with these efforts of the majority of the Session (*Watson* and *Galt*) to maintain *Mr. McElroy* as preacher, charges were preferred against three members of the congregation, named B. F. Avery, T. J. Hackney, and D. McNaughtan, who had co-operated with the majority of it in the movements to obtain another minister. And about the same time, by way of counteraction, apparently, charges were preferred by some of the majority against *Watson* and *Galt*. While these troubles were existing, some of the members of the church appealed to the Synod of Kentucky, which body, on the 20th of October, 1865, appointed a committee to visit the contregation, 'with power to call a congregational meeting for the purpose of electing *additional* ruling elders, calling a *685 pastor, or choosing a stated supply, and doing any other business competent to a congregational meeting that may appear to them, the said congregation, necessary for their best interests.' The synoldical committee thus appointed called a congregational meeting for the purpose of the election, in January, 1866. *Watson* and *Galt* refused to open the church for the meeting, but the majority organizing themselves on the sidewalk, elected a certain J. A.

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Leach, with B. F. Avery and D. McNaughtan (which last two names have already appeared in our history), additional ruling elders, who went through what they deemed a valid process of ordination and instalment. The other admitted elders were *Watson, Galt*, and Hackney. They trustees of the church were *Henry Farley, George Fulton*, and B. F. Avery, and they had they actual possession of the church property. *Fulton* and *Farley*, uniting with *Watson* and *Galt*, denied the validity of the election of Avery, Leach, and McNaughtan, and refused to allow them any participation *as elders* in the control of the church property. Hackney admitted the validity of such election, and recognized Avery, Leach, and McNaughtan as lawful elders.

> FN6 To assist the reader, as far as possible, in a controversy and case perplexed by a multitude of names, to keep in his mind a distinct conception of who were on one side and who on the other, the Reporter, all through his statement of the case, has put the names of those who were on one side (and which for mere convenience may be distinguished as the pro- slavery or conservative side), in *italic* letter, and those on the other in Roman.

In this state of things, Avery and his associates filed a bill, on the 1st of Februar, 1866, in the Louisville Chancery Court, against *Watson, Galt, Fulton*, and *Farley*, for the purpose of asserting the right of Avery, Leach, and McNaughtan, *as elders*, to participate with the other elders in the management of the church property for purposes of religious worship.

In the progress of that case the three trustees, *Farley, Fulton*, and Avery, were appointed, on the 20th of March, 1866, receivers 'to take charge of the church building, and all property belonging to the said church,' during the pendency of the suit, or until the further order of the court; and they were 'ordered to keep and preserve the said property, and keep it in repair to the best of their ability, and to open the various portions of the building ready for worship, and others services of said church, according to the laws and usages of the Presbyterian Church; and not to prevent any ***686** part of the congregation from attendance upon the meetings of said church, and enjoying the use thereof according to their rights and privileges as members thereof.'

At a subsequent date--June 15th, 1866--the chancellor delivered an opinion recognizing Avery, Leach, and McNaughtan as elders, and entered an order that the trustees, *Farley, Fulton*, and Avery, now receivers, open the church for divine worship and congregational meetings whenever ordered to do so by the Session of the church, constituted of the said Avery, Hackney, and McNaughtan, Leach, *Watson*, and *Galt*, or a majority thereof.

The execution of this order was, apparently, so far interfered with by *Watson, Galt, Fulton*, and *Farley* as practically to prevent religious services in the church edifice. At all events, on the 23d of July, 1866, it was ordered:

'That the MARSHAL OF THIS COURT do take possession of the church property until the further order of the court, and that the same be opened: 1. For Sunday-schools and other like purposes. 2. For the meeting of the Session when notified thereof. 3. For public worship, and such using of the pulpit and the house generally as the Session shall order. And it is ordered that he be respectful to the order of the Session, as this court said on the 15th of June. The Session, according to the decision of the General Assembly, at Peoria, Illinois, has control of the church buildings, &c. The keys of the church, &c., are ordered to be delivered to the marshal.'

The marshal took possession by virtue of this order. Thenceforward *Watson, Galt, Fulton*, and *Farley* abandoned connection with the property and participation in its control.

Thus matters stood, so far as the church property was concerned, up to the final decree in *Avery et al.* v. *Watson et al.*, made May 7th, 1867, when it was decreed that Leach, Avery, and McNaughtan, *with* Hackney, *Watson*, and *Galt*, were ruling elders that constituted the Session of the Walnut Street Church, and the management of the said property for the purpose of worship and other religious service *was committed to their care, under the regulations of the Presbyterian Church in the United States of American;* and it was ordered ***687** that the defendants, *Watson* and *Galt*, pay to the plaintiffs their costs.

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It will be observed that the marshal was not, by the terms of the decree, directed to give up his possession; nor was any motion or order afterwards made requiring him to give up or discharging him as receiver. Nor did he, *in fact*, so far as appeared from the record, ever *abandon possession*, although the property continued, as it had been since July 23d, 1866, subject to the exclusive *control* of Avery and his associates.

From this final decree an appeal was taken to the Court of Appeals of Kentucky, but *Watson and his friends* did not supersede that decree, nor take other step to prevent its immediate execution.

The decree of the chancellor was reversed by the Court of Appeals of Kentucky. [FN7] The language of the order of reversal was thus:

FN7 2 Bush, 363.

'And the judgment of the chancellor, *which commits the management and control of said church property* to said Avery, McNaughtan, and Leach, in conjunction with said *Watson, Galt*, and Hackney, is therefore deemed erroneous. Wherefore the judgment is reversed, and the cause remanded for proper corrective proceedings respecting the possession, control, and use of the church property, and for final judgment in conformity to this opinion.'

As to the nature of the issues in this case of *Avery* v. *Watson*, the Court of Appeals of Kentucky said: [FN8]

FN8 Ib. 346.

'As suggested in the argument, and apparently conceded on both sides, this is *not* a case of *division or schism in a church*, nor *is there any question as to which of* TWO BODIES *should be recognized as the Third or Walnut Street Presbyterian Church;* nor is there any controversy as to the authority of *Watson* and *Galt* to act as ruling elders; but the *sole* inquiry to which we are *restricted*, as we conceive, is whether Avery, McNaughtan, and Leach are ALSO ruling elders, and therefore members of the Session of the church.'***688**

On the 21st of February, 1868, the opinion and mandate of the Court of Appeals was filed in the Louisville Chancery Court, and the defendants moved the court 'to restore to them, and those entitled under the said opinion, the possession, use, and control of the church building and property, which was taken from them by the marshal of the court, under orders of court, during the pendency of the action, and to dismiss the plaintiffs' petition with costs.'

On the 28th of February, 1868, the complainants in the case of *Avery* v. *Watson* filed a petitioner in equity against the defendants, and moved the court for an injunction 'enjoining them from any further prosecution of their said motion made on the 21st of February, 1868, and from all proceeding by motion, suit, or otherwise to obtain possession, control, or use of the property of the Walnut Street Presbyterian Church of Louisville.'

The petition in equity thus presented averred that subsequent to the original decree of the chancellor, *Watson, Galt, and the others adhering to them*, had voluntarily withdrawn from the Walnut Street Presbyterian Church, and from the Presbyterian Church in the United States of America, and had thereby ceased to be members of the said church, or to have any interest in the property held by that church; that the plaintiffs in that injunction suit, together with those united in interest with them, constituted at that time the only beneficiaries of the trust property; and that therefore the attempt of *Watson and his friends*, under a mere order of *restitution*, based upon the reversal by the appellate court of the chancellor's decree, to obtain the possession of the property, *as elders and trustees*, was a fraud upon the rights of the beneficiaries of the property. And it charged that *Watson and his friends* intended to use the property as the property exclusively of their party and to deny the rights of all others as members.

On the 20th day of March, 1868, the chancellor granted upon this petition an injunction against the defendants in the action, enjoining them from any further proceeding on their motion made on February 21st, 1868; the former decree ***689** being at the same time so far reversed that *the original petition was dismissed*, and costs awarded to the defendants.

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Watson and his friends now obtained from the Court of Appeals of Kentucky a summons against the chancellor of the Louisville Chancery Court 'to appear and show cause why he has refused to carry into effect the mandate of said court,' and the chancellor having appeared, an opinion upon the rule was delivered. [FN9]

FN9 3 Bush, 646.

In the last-named case it was decided:

1. That the opinion and mandate in the previous decision in the appellate court, [FN10] imported a direction to restore to the defendants such rights of possession, control, and use of the property as the former judgment had erroneously taken or withheld from them.

FN10 2 Id. 348.

2. That 'no undecided question was reserved for further litigation in the court below.'

3. That the Chancery Court must enter the proper order directed by the Court of Appeals; and 'if there be any equitable reason for not coercing the order or decree for *restitution*, it should be made available as a ground for *enjoining*, and not for preventing or modifying, the *order of restitution*.'

4. That the petition in equity of Avery and others, although intended to operate both as a written defence to the action of the court sought by the defendants in the old suit, and at the same time as the initial pleading in a new one, was to be regarded, so far as the action of the chancellor was concerned, as a response of the plaintiffs, interposed to prevent the rendering of a judgment in conformity to the decision and mandate of this court.

5. That if any equitable reasons existed for not enforcing restitution, they should be asserted in a *new suit*, enjoining the enforcement of the order of restitution after such order had been entered.

Accordingly the Court of Appeals, June 26th, 1868, on this rule against the chancellor, ordered that the latter make an *690 order 'restoring the possession, use, and control of the church building and property to the parties entitled thereto *according to the said opinion*, and so far as they were deprived thereof by the marshal of the Chancery Court under its orders.'

The parties in whose favor, according to the opinion, the order of restitution was to be made were of course *Watson, Galt*, and Hackney, ELDERS, and *Fulton, Forley*, and Avery, TRUSTEES.

After this last decision of the Kentucky Court Appeals, the petition for injunction filed in the Louisville Chancery Court on the 28th of February, 1868, was, on *the motion of those who filed it*, dismissed without prejudice.

The present suit in the Circuit Court was begun July 17th, 1868.

Subsequently, on the 18th of September, 1868, the chancellor directed the marshal of the Chancery Court 'to restore the possession, use, and control of the church building and property . . . to *Farley, Fulton*, and Avery, or a majority of them, *as trustees*, and to *Watson, Galt*, and Hackney, or a majority of them, as *ruling elders* of the said church, and to report how he had executed the order;' reserving the case for such further order as might be necessary to enforce full obedience.

Thus far as to the controversy in the Walnut Street Church, involved in the particular case of *Watson* v. *Avery*, in the State courts of Kentucky.

We have already adverted to the war of the insurrection, its action on the subject of slavery, and the feeling engendered by this action in the special congregation of the Walnut Street Church.

We now speak of the same subject of the war, of slavery, &c., in its more general relation with the judicatories above that local church, and of the way in which this local church was affected by and identified itself with the action of the more general church. From the beginning of the war to its close, the General Assembly of the Presbyterian Church at its annual meetings expressed in Declaratory Statements *691 or Resolutions, its sense of the obligation of all good citizens to support the

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Federal government in that struggle; and when, by the proclamation of President Lincoln, emancipation of the slaves of the States in insurrection was announced, that body also expressed views favorable to emancipation, and adverse to the institution of slavery. At its meeting in Pittsburg in May, 1865, instructions were given to the Presbyteries, the Board of Missions, and to the Sessions of the churches, that when any person from the Southern States should make application for employment as missionary or for admission as members, or ministers of churches, inquiry should be made as to their sentiments in regard to loyalty to the government and on the subject of slavery; and if it was found that they had been guilty of voluntarily aiding the war of the rebellion, or held the doctrine announced by the large body of the churches in the insurrectionary States which had organized a new General Assembly, that 'the system of negro slavery in the South is a divine institution, and that it is the peculiar mission of the Southern church to conserve that institution,' they should be required to repent and forsake these sins before they could be received.

In the month of September thereafter the Presbytery of Louisville, under whose immediate jurisdiction was the Walnut Street Church, adopted and published in pamphlet form, what it called '*A Declaration and Testimony against the erroneous and heretical doctrines and practices which have obtained and been propagated in the Presbyterian Church of the United States during the last five years*.' This Declaration denounced, in the severest terms, the action of the General Assembly in the matters we have just mentioned, declared an intention to refuse to be governed by that action, and invited the co-operation of all members of the Presbyterian Church who shared the sentiments of the Declaration, in a concerted resistance to what they called 'the usurpation of authority' by the Assembly.

The General Assembly of 1866, denounced in turn the Declaration and Testimony and declared that every Presbytery ***692** which refused to obey its order should be *ipso facto* dissolved, and called to answer before the next General Assembly; giving the Louisville Presbytery an opportunity for repentance and conformity. The Louisville Presbytery divided, and the adherents of the Declaration and Testimony sought and obtained admission, in 1868, into 'the Presbyterian Church of the Confederate States,' a body which had several years previously withdrawn from the General Assembly of the United States and set up a new organization.

In January, 1866, the congregation of the Walnut Street Church became divided in the manner stated above, each asserting that *it* constituted the church, although the issue as to membership was not distinctly made in the chancery suit of *Avery* v. *Watson* already so fully described. Both parties at this time recognized the same superior church judicatories.

On the 19th June, 1866, the Synod of Kentucky became divided, the opposing party in each asserting respectively that *it* constituted the true Presbytery and the true Synod; each meanwhile recognizing and professing to adhere to the same General Assembly. Of these contesting bodies *Watson and his party* adhered to one, those whom he opposed to the other. The Presbytery and Synod to which these last, that is to say, Avery or Hackney and his party, adhered, being known respectively as the McMillan Presbytery and the Lapsley Synod.

On the 1st of June, 1867, the Presbytery and Synod recognized by *Watson and his party*, were declared by the General Assembly to be 'in no sense a true and lawful Synod and Presbytery in connection with and under the care and authority of the General Assembly of the Presbyterian Church in the United States of America;' and were permanently excluded from connection with or representation in the Assembly. By the same resolution the Synod and Presbytery adhered to by those whom *Watson and his party* opposed were declared to be the true and lawful Presbytery of Louisville, and Synod of Kentucky.***693**

The Synod of Kentucky thus excluded, by a resolution adopted the 28th June, 1867, declared 'that in its future action it will be governed by this recognized sundering of all its relations to the aforesaid revolutionary body (the General Assembly) by the acts of that body itself.' The Presbytery took substantially the same action.

In this final severance of Presbytery and Synod from the General Assembly, *Watson and his friends* on the one side, and those whom he opposed on the other, continued to adhere to those bodies at first

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recognized by them respectively. This latter party now included, among many others, a certain William Jones, with his wife, and one Eleanor Lee, who had been admitted into membership by the Hackney, &c., Session.

The reader will now readily perceive, if he have not done so before, how in the earliest stages of this controversy it was found that a majority of the members of the Walnut Street Church concurred with the action of the General Assembly, while *Watson* and *Galt* as ruling elders, and *Fulton* and *Farley* as trustees, constituting in each case a majority of the Session and of the trustees, with *Mr. McElroy* the pastor, sympathized with the party of the Declaration and Testimony of the Louisville Presbytery. And how this led to efforts by each party to exclude the other from participation in the Session of the church and the use of the church property; as well as to all that followed.

The grounds on which the Court of Appeals reversed the chancellor's decision were, of course, that the General Assembly, Synod, and Presbytery of the Presbyterian Church, were all subject, in the exercise of their functions, to Constitutions (the standards mentioned at the beginning of this report); that when they violated these, their acts were beyond their jurisdiction and void; that whether they had violated them or not, was a matter which the civil courts, on an examination of the Constitutions, could properly pass on; and deciding further and finally as fact, after an examination by the court itself of these standards, that in their Declaratory Statements and Resolutions and other ***694** deliverances enforcing loyalty, they had violated them; and that their acts were accordingly void.

Thus things stood in July, 1868; and the term for which the old trustees had, in more peaceful times, been elected having expired, the persons worshipping in the Walnut Street Church and so in possession, elected as new ones three persons whose names now first figure on our report. These persons were named McDougall, McPherson, and Ashcraft.

The newly elected elders and the majority of the congregation adhered to and had been recognized by the General Assembly as the regular and lawful Walnut Street Church and officers. *Galt* and *Watson, Fulton* and *Farley*, and a minority of the members, had cast their fortunes with those who adhered to the party of the Declaration and Testimony.

In this state of things, Jones, his wife, and Lee, *on the* 21st July, 1868, *three months before the mandate of September* 18th to the Chancery Court, mentioned at page 690, filed a bill in chancery in the Circuit Court of the United States for the District of Kentucky against *Watson* and *Galt*, [FN11] *Fulton, Farley*, [FN12] and Avery, the church corporation, and McDougall, McPherson, and Ashcraft, as trustees. The complainants alleged that they were citizens of Indiana; and that each of the natural persons already named were residents of Louisville and citizens of Kentucky, and that the church corporation was a corporation created by Kentucky and doing business in that State. They alleged further that they were members in good and regular standing of the said church, attending its religious exercises under the pastorship of the Rev. J. S. Hays, and that the defendants, *Fulton* and *Farley*, who pretended without right to be trustees of the church, supported and recognized as such by the defendants, *Watson* and *Galt*, who also pretended without right to be ruling elders, were threatening, preparing, and about to take unlawful possession ***695** of the house of worship and grounds belonging to the church and to prevent Hays, who was the rightful pastor, from ministering therein, refusing to recognize him as pastor, and to recognize as ruling elder, Hackney, who was the sole lawful ruling elder; and that when they should obtain such possession they would oust Hays and Hackney, and those who attended their ministrations, among whom the complainants represented themselves to be.

FN11 Watson and Galt, the reader will remember, had been declared by the Court of Appeals of Kentucky elders of the church.

FN12 The same court had declared these two persons to be trustees.

They further alleged that Hackney, whose duty it was as elder, and McDougall, McPherson, and

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Ashcraft, whose duty it was as trustees to protect the rights thus threatened, by such a proceeding in the courts as would prevent the execution of the threats and designs of the other defendants, refused to take any steps to that end.

They further alleged that the Walnut Street Church, of which they were members, now formed and had ever since its organization in the year 1842, formed a part of the Presbyterian Church of the United States of America, known as the Old School, which was governed by a written consfitution that included the Confession of Faith, Form of Government, Book of Discipline, and Directory for Worship; and that the governing bodies of the general church above the Walnut Street Church, were, in successive order, the Presbytery of Louisville, the Synod of Kentucky, and the General Assembly of the Presbyterian Church of the United States; that while the complainants and about 115 members who worshipped with them, and Mr. Hays (the pastor), Hackney (the ruling elder), and McDougall, McPherson, and Ashcraft (the trustees), were now in full membership and relation with the lawful General Presbyterian Church aforesaid, *Watson* and *Galt, Fulton* and *Farley,* with about 30 persons formerly members of the said church, worshipping under one *Dr. Yandell* as pastor, had seceded and withdrawn themselves from the Walnut Street Church, and from the General Presbyterian Church in the United States, and had voluntarily connected themselves with and were now members of another religious society, and that they had repudiated and did now repudiate and renounce the authority ***696** and jurisdiction of the various judicatories of the Presbyterian Church of the United States and acknowledge and recognize the authority of other church judicatories which were disconnected from the Presbyterian Church of the United States and from the Walnut Street Church. And they alleged that *Watson* and *Galt* had been, by the order of the General Assembly of the said church, dropped from the roll of elders in said church for having so withdrawn and renounced its jurisdiction, and that the Assembly had declared the organization to which the plaintiffs adhered as the true and only Walnut Street Presbyterian Church of Louisville.

The prayer of the bill was that '*Watson, Galt, Fulton* , and *Farley* be restrained by an injunction issuing out of the Circuit Court, from taking, or attempting to take, possession of the house of worship and other property of the Walnut Street Church, and from interfering with REV. J. S. HAYS PREACHING IN SAID HOUSE OF WORSHIP; also that *Watson* and *Galt* be restrained in like manner from controlling, or attempting to control or manage, the said property in the capacity of elders of the church; also, that *Fulton* and *Farley* be restrained in like manner from controlling, or attempting to control or manage, the said property as trustees of said church; . . . and that the complainants have generally *such other and further relief as the nature of their case required.*'

The answer having alleged that pending the final process in the Chancery Court two persons, named Heeter and Given, had been elected additional ruling elders, and that one Polk had been elected trustee, in the place of Avery, the complainants amended their bill accordingly, and by agreement the answer of the original defendants was made the answer of the new parties.

The defendants, Hackney, McDougall, McPherson, and Ashcraft, answered, admitting the allegations of the bill, and that though requested they had refused to prosecute legal proceedings in the matter, because as they thought any effort to that end in the courts of the State of Kentucky would prove useless. ***697**

The defendants *Watson* and *Galt, Fulton* and *Farley* , answered, and after declaring their belief that the complainants were lately citizens of Kentucky and that their citizenship in Indiana was merely for the purpose of filing this bill in the Federal court, denied almost every allegation of the bill. They set up that though they had been deprived of their former actual possession of the church edifice and property by the illegal and now overruled decree of the Louisville Chancery Court, they had nevertheless maintained and kept up a regular and valid organization of the Walnut Street Presbyterian Church--the only regular and valid organization that had been kept up; that *they* were the lawful officers of that church, and that they and those whom they represented were its true members. They denied having withdrawn from either the local or the general church, and denied that the action of the General Assembly cutting them off was within its constitutional authority. They represented that the plaintiffs were not and never had been lawfully admitted to membership in the Walnut Street

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Church, and had no such interest in it as would sustain this suit, and they set up and relied upon the suit in the Chancery Court of Louisville, which they represented was still pending, and which they stated involved the same subject-matter, and was between the same parties in interest as the present one. They alleged that in that suit they had been decreed to be the only true and lawful trustees and elders of the Walnut Street Church, and that an order had been made to place them in possession of the church property, which order remained unexecuted, and that the property was still in the possession of the marshal of that court as its receiver. These facts were relied on in bar to the present suit.

The case coming on to be heard, the Circuit Court declared that it seemed to it that the complainants were members of the Third or Walnut Street Presbyterian Church in Louisville, and as such had a beneficial interest in the church building and other property in the pleadings mentioned.

That the Reverend J. S. Hays was pastor; Hackney, Avery, McNaughtan, and Leach, ruling elders; and McDougall, ***698** McPherson, and Ashcraft, trustees; and that they were respectively entitled to exercise whatever authority in the said church, or over its members or property, rightfully belonged to pastor, elders, and trustees, respectively, in churches in connection with 'The Presbyterian Church in the United States of America,' Old School, and according to the regulations and usages of that church.

That McDougall, McPherson, and Ashcraft, trustees, were in regular succession from the trustees named in the deed of conveyance of the church property in 1853, and likewise in regular succession from the trustees named in the act of incorporation, and that as such trustees they were entitled to the exclusive control of the church building and other property of said church for the purposes of worship by the members of the said church, in accordance with the regulations and usages of the Presbyterian Church in the United States.

That those only were to be recognized as members of the Walnut Street Church who adhered to and recognized the authority of the Presbyterian Church in the United States of America, and the various church judicatories which submit to its jurisdiction; and in determining what was the true Presbytery of Louisville, and true Synod of Kentucky, having jurisdiction over the said Walnut Street Presbyterian Church, its officers and members, *this court and all other civil tribunals were concluded by the action of the General Assembly of said Presbyterian Church in the United States of America.*

That those members of the Walnut Street Church who worshipped statedly at the church edifice [position in the city of Louisville described], in said city, who had as their pastor the Reverend J. S. Hays, and who recognized Hackney, Avery, Leach, and McNaughtan as ruling elders, and McDougall and McPherson as trustees, including all those connected with them, who had been received into said church since January 1st, 1866, under Hackney, Avery, Leach, and McNaughtan as elders, or under the ministration of Hays as pastor, constituted the Third or Walnut Street Presbyterian Church in Louisville, and the sole beneficiaries ***699** for whose use the property mentioned in the pleadings was dedicated; and that the said persons, together with their pastor, elders, and trustees, had the exclusive right to use the same according to the regulations and usages of the Presbyterian Church of the United States of America.

It seemed further to the court that the *Rev. Dr. Yandell* was not pastor of the said Third or Walnut Street Presbyterian Church, nor were *Galt, Watson, Heeter*, and *Given*, or either of them, elders in the said church. And that *Fulton, Farley*, and *Polk* were not trustees.

That all those persons who pretended to be members of the said church, but who did not recognize Hays as paster, or Hackney, Avery, Leach, and McNaughtan as elders, or McDougall, McPherson, and Ashcraft as trustees, and who recognized *Watson, Galt, Given*, and *Heeter* as elders, and *Fulton, Farley*, and *Polk* as trustees, and worshipped separately and apart from those hereinbefore declared to be the sole beneficiaries of said property, and who denied the authority of Hays as pastor, and also the ecclesiastical authority of the McMillan Presbytery of Louisville, and of the Lapsley Synod of Kentucky, did not have any connection with, nor were they members of, the Third or Walnut Street Presbyterian Church, for whose use the property in question was conveyed and dedicated, nor had the said persons, or any of

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them, any beneficial interest in it, nor were they entitled to the use of it in any way whatever as members of the said church.

It was thereupon decreed:

1st. That the defendants, *Heeter, Given*, and *Polk*, be enjoined from taking possession of, and from using or controlling the church edifice and other property of the Walnut Street Church, except as they, or any one of them, may choose to attend religious worship, or other religious exercises, in the same manner as other persons not officers or members of said church.

2d. That the defendants *Watson, Galt, Fulton, Heeter, Given, Polk, Farley*, and all others, be enjoined from so using or controlling the said church edifice, or other property of the ***700** church, as in any wise to interfere with the ministrations therein of Hays as pastor, or with the exercise by him and by Hackney, and others, recognized as elders in the said church by those herein declared to be sold beneficiaries of said property, of any authority in the said church or over its property or members which rightfully belongs to the pastors and elders of the churches in connection with and according to the usages of the Presbyterian Church of the United States of America.

3d. That the defendants *Watson, Galt, Heeter, Given, Fulton, Farley*, and *Polk*, and all others, be enjoined from using or controlling the church edifice and property in any other manner than as the property exclusively of the persons hereinbefore declared to be the Third or Walnut Street Presbyterian Church of Louisville, and the sole beneficiaries of said property, having Hays as pastor, and recognizing Hackney, Avery, Leach, and McNaughtan as elders, and McDougall, McPherson, and Ashcraft as trustees. And that they, and all others, be enjoined from interfering in any manner with the use of the said property by the members of the said church hereinbefore declared to be such, and by such as might be hereafter admitted into said church according to its forms, and who are or might become connected with and under the care and authority of the General Assembly of the Presbyterian Church in the United States of America, and the several judicatories which submit to the authority of said Assembly; and from hindering or preventing any one from worshipping in said church, or participating in any of its religious exercises according to the usages of said church.

From this decree *Watson and the other defendants* appealed.

Mr. T. W. Bullitt, for the appellants:

I. The Circuit Court had no jurisdiction, because,

1. The complainants had no such interest in the subject of litigation as would enable them to maintain the suit. Membership in the Walnut Street Church is of course essential to give the requisite interest. But they are not members. ***701** By the constitution of the Presbyterian Church the Session admits to membership. In *Avery* v. *Watson* the direct issue was whether Avery, Leach, and McNaughtan were elders; and it was decided that they were not. The body which, if they *had* been elders, would have been a Session, was, from the fact that they were not elders, not a Session.

But the Circuit Court had no jurisdiction, because,

2. The Louisville Chancery Court had exclusive jurisdiction over the property in controversy, and over the present parties. A series of cases involving the relations of State and Federal courts have established this rule, to wit: that where property has been once lawfully taken possession of under process of a court, such court has exclusive jurisdiction over the *thing*, and that this jurisdiction extends to every question or claim of title, interest or use touching such property, of whatever nature or origin, *or in whose hands soever it may subsist*. It is not material that such claim be wholly different from or that it is prior or subsequent in date, or even paramount to any or all the claims pending before the court. The jurisdiction is exclusive over the thing itself, and such claim must be asserted, if at all, in the court having such possession and jurisdiction. Conceding that the matters alleged in the present bill constitute a controversy different from and subsequent in date to that made before the chancellor, yet, so long as the chancellor's possession or exclusive jurisdiction of the property or *thing in controversy continued*, and decree by the Circuit Court touching that property was without authority and void. Any alleged claims touching that property should have been asserted before the

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chancellor or their assertion delayed, until by execution of final process he had voluntarily and completely yielded up his jurisdiction over it.

In *Hagan* v. *Lucas,* [FN13] the claim asserted by the claimant in the Federal court was wholly different from and independent of the controversy pending in the State court. In *Peck* v. *Jenness,* [FN14] the case was similar. In *Taylor* v. *Carryl,* [FN15] the ***702** plaintiffs claimed under a *maritime lien* for seamen's wages. The claims were not only asserted by strangers, but were conceded by this court to be paramount to all claims pending before the State court; and yet, in each case, by reason of the possession of the State court through its officers, it was declared to have exclusive jurisdiction of the thing, capable alone of entertaining any question touching its possession, title, or use, and that the process of the Federal court was void. *Freeman* v. *Howe* [FN16] is in coincidence with all these cases.

FN13 10 Peters, 402.

FN14 7 Howard, 624.

FN15 20 Id. 594.

FN16 24 Howard, 450.

But independently of this, the delivery to the trustees and elders of the body of which the Avery or Jones party are members, of the possession of the church building cannot be granted in this suit, nor can the other side be enjoined from taking possession as prayed for in the bill, because the property is in the actual possession of the marshal of the Louisville Chancery Court as its receiver, and because there is an unexecuted decree of that court ordering him to deliver the possession to the defendants.

The marshal did never in form or fact abandon his possession. The only argument could be that his possession was that of a receiver, and that his appointment was superseded by the final decree. But it is text-book law that a receiver is never discharged by final decree. [FN17] It is unimportant, however, whether the marshal did or did not either under order of court or otherwise abandon his possession. The just construction of the rule we conceive to be, that property once taken possession of by a court, and disposed of under its order, remains in custody of the law, subject to the exclusive jurisdiction of the court (into whose hands soever it may pass), until by the execution of its final decree, the jurisdiction of the court is completely exhausted.

FN17 Daniel's Chancery Practice, 2003.

II. We come then to the great question of the case; one touching the character and extent of jurisdiction vested by our law in those voluntary associations sometimes called ***703** ecclesiastical courts, and how far they are independent of control by the civil,--a question of magnitude every way; one which determines the relations of the church to the state in this country, and whether the church in relation to its civil interests is organized under the authority of law or above it.

The case shows two contesting organizations, each asserting itself to be the true Walnut Street Church mentioned in the deed and charter. The question for decision, therefore, is strictly one of identity and of lawful organic succession.

A number of cases of church litigation are reported in New York and New England; but they are inapplicable to the questions arising herein, because in New England the cases refer to congregational or independent churches, and in New York to incorporated religious *societies*, wherein the whole body of the congregation, whether *members of the church* or not, are members of the corporation; and where disputed questions touching property or other rights are determined strictly on the principles applicable to corporations. [FN18]

FN18 See Petty *v.* Tooker, 21 New York, 267; Burrell *v.* Associated Ref. Synod, 44 Barbour, 282; Robertson *v.* Bullions, 9 Id. 64.

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The Pennsylvania cases of *Presbyterian Congregation* v. *Johnston*, and *Commonwealth* v. *Green*, [FN19] present some points of contrast with the questions in this cause, especially the latter, which relates mainly to questions of property held by the governing body as distinguished from that of a congregation part of a larger organization.

FN19 1 Watts & Sergeant, 37 4 Wharton, 603.

In Kentucky, *Gibson* v. *Armstrong*, [FN20] gives a case which assists us. *Shannon* v. *Frost*, [FN21] is inapplicable in this cause, by reason of the *congregational* character of the Baptist Church in which it arose.

FN20 7 B. Monroe, 481.

FN21 3 Id. 256.

The great field for litigation of this nature has undoubtedly been Scotland, the native home of the Presbyterian faith and form of church government.

Prior to about the year 1813 the courts seemed not to ***704** have settled upon any definite rule by which church controversies were to be adjudged. Their unwillingness, however, coupled with doubts as to their power to handle ecclesiastical matters inclined them generally to refer every question involving such matters exclusively to the decision of the Church itself. But there were difficulties in the application of the principle, and a confused idea that in case of schism the organic *succession* necessarily remained with the majority of the local society, counterbalanced by the idea that its *identity* could not be preserved except in connection with the general body of which it formed a part, caused a singular vacillation in judicial decision. The earlier decisions, accepting as a conclusive test of right the action of a majority of the local congregation, afforded an easy and simple rule, so long as applied to independent churches; but when it came to be applied to societies organized as a part of larger bodies, where the majorities in the local and general organizations might be different, it was found not to be founded on just or practicable principles. For a time the courts vacillated in its application, as their views happened to lean most strongly towards congregational independence or towards ecclesiastical connection and subordination. Finally, about the year 1813, came up the case of *Craigdallie* v. *Aikman*, [FN22] a case bearing in some points a striking analogy to the present. In it both of these conceptions were brought out at different times; and an appeal to the House of Lords drew from Lord Eldon an announcement of the principle which was at once recognized and has since been uniformly accepted as the true governing rule in all cases of this nature.

FN22 2 Bligh, 529; 1 Dow., 1.

In the case we speak of, property had been acquired and was held in trust for a congregation forming part of a larger body known as Burgher Seceders, the highest judicatory in the church being the Synod. That body having passed certain resolutions alleged to be a departure from one of the articles of their confession, a minority protested, congregations became divided, and among other cases, the question ***705** arose as to which of the two parties in this congregation was entitled to its property. It was made a test case and received the most careful consideration. Upon its first hearing in the Scotch Court of Session, the 'majority (in interest) in the congregation' were held to be entitled. But under the forms of their proceeding the cause came again before the court, and some of the judges being changed, it was now declared that the property was held for a 'society of persons, . . . such persons *always . . . continuing in communion with and subject to the ecclesiastical discipline* of a body of dissenting Protestants calling themselves the Associate Presbytery and Synod of Burgher Seceders.' The effect of these decisions was to make the question of identity or organic succession, in the one case to attach solely to a majority of the local congregation, in the other to depend upon a continued connection with the general body. On appeal to the House of Lords both of these views were rejected and the following principle, first announced by Lord Eldon, was adopted, viz.: That property conveyed for the use of a society for purposes of religious worship, is a *trust*, which is to be enforced *for the purpose of maintaining that*

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religious worship for which the property was devoted, and in the event of schism (the deed making no provision for such case), its uses are to be enforced, not in behalf of a majority of the congregation, nor yet exclusively in behalf of the party adhering to the general body, but in favor of that part of the society *adhering to and maintaining the original principles upon which it was founded*.

This case, followed and recognized by that of *Attorney-General* v. *Pearson*, [FN23] has been accepted in all cases of this nature in England, Scotland, and America.

FN23 3 Merivale, 353.

The principle of this case, so simple and just in itself, was yet not so fully or clearly expressed as to remove all difficulty in its application. Several important questions were at once presented; and,

1. To the maintenance of which of the various principles ***706** of the society does the implied trust especially refer? Does it relate mainly to the fundamental doctrines of religious truth, the standards of faith, or does it embrace equally all the principles of doctrine, form, and order? Does it bind the society permanently and exclusively to the same principles and to the same connections with and relations to other societies which existed at the date of conveyance, or does it recognize the right of change inherent in the body by general consent, or perhaps incorporated as an original principle in the fundamental law of the organization? Does it recognize that by unforeseen events beyond the control of the society, its original connections may be changed or broken up without its own act or assent? All of these questions under varying forms and circumstances have been presented, and discussed, and adjudged; and this general principle may be considered as settled, viz.: That where property is conveyed 'for the use' or 'benefit' of a designated 'church,' or 'religious society' (the deed containing no special limitations), such property, by operation of the law of trusts, is held for the use of such society, *subject to the entire body or system* of doctrines, rules, or principles, whether of faith, form, or order, held and recognized by the society at the time of conveyance; that it binds such society to a permanency of religious faith and a continuance of subsisting connections, or recognizes a right of change in doctrine, or a lawful severance of its connections, *so far and no farther* than it is bound to or released from such permanent or continuing state, by or in accordance with the fundamental laws of the organization; that wherever the use or control of property depends upon adherence to or a change from original doctrines, or upon a continuance or severance of connections with a particular judicatory, or upon an alleged title to office in the church, or upon any act, judgment, or proceeding of an ecclesiastical tribunal, in every case the exclusive standard by which the conflicting claims are to be judged is the CONSTITUTION of the church itself.

These views are recognized and brought out with force in ***707** the American cases of *Gibson* v. *Armstrong* and *Sutter* v. *The First Reformed Church* . [FN24]

FN24 *Supra*, 703. To the same effect, see Smith *v.* Nelson, 18 Vermont, 511; Kniskern *v.* Lutheran Church, 1 Sandford's Chancery, 439; Miller *v.* Gable, 2 Denio, 492.

2. Another question, more serious and difficult than the last, remained in determining the application of this rule of the law of trusts, viz.: In these matters of religious doctrine, discipline, and church order, who is to be the judge? Who has the right to say conclusively, in case of controversy, that one or the other party has departed from the doctrines of the church? Who shall determine upon the validity of an act or judgment of a church court; upon the status of a member or officer; upon the legality or otherwise of a voluntary or enforced severance of a part from the body of the general organization?

This question was promptly raised upon the earliest application of the principle stated by Lord Eldon, and has been decided with a frequency and uniformity rarely met with upon any important question. Yet the court below assumed that these matters, being of an ecclesiastical nature or arising upon a construction of the law of the church, are subject to exclusive cognizance and jurisdiction by the ecclesiastical courts, whose judgments thereon must be accepted as conclusive by the civil courts.

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The position assumed does not stop with assering that, *if* the decision of the question in controversy has been committed by the constitution of the church to a particular tribunal, or *if* the act or judgment in question has been performed by such tribunal in pursuance of a power vested in it by the constitution, *in such case* the act or judgment is conclusive on the civil court. It asserts an exclusive right in the General Assembly to determine conclusively the extent of its own powers and duties under the constitution; to determine in every case, whether it has itself violated the constitution or abandoned the principles of the faith. It asserts that the announcement of a particular doctrine or the imposition of a duty on the church, or ***708** the performance, rendering, or approval of an act or judgment by the General Assembly, is itself a conclusive evidence, *probatio probata*, that such doctrine or duty, act or judgment, has been imposed, rendered, or performed, in accordance with the constitution of the church; and that the church itself and the civil courts have no power to examine or question what has been so settled by the supreme tribunal of the church.

If the principle of the decree herein is affirmed, it sweeps away all limitations imposed upon church courts by their fundamental laws and renders it impossible that churches can be organized under rules or limitations which shall bind the judicatories of their own creation.

Hitherto the question has received but one solution. It devolves upon this court authoritatively to settle it. Let us examine the history of judicial decision.

In *Galbraith* v. *Smith* [FN25] (the first case coming before the Scotch Court of Session after the judgment of the House of Lords in *Craigdallie* v. *Aikman*), the position contended for by the appellees was accepted and announced from the bench. Lord Meadowbank, construing that judgment, said that it would have been competent for the party adhering to the Synod to have shown as matter of fact that it having been a fundamental rule of the sect that in the supreme judicatory alone was vested the power of determining all questions of doctrine and discipline, so the judgment of the Synod was to be received as *probatio probata* of their adherence to their original principles; it being incompetent for the civil court to review the decisions in such matters of the ecclesiastical judicatories. He then stated as a general proposition, that

FN25 15 Shaw, 808, decided A. D. 1837.

'It is a legal object of such a trust, that it may profess to be constituted with a view to perpetuity, even by placing in the hands of a recognized body the right of controlling and modifying those rules and regulations in conformity with the fundamental principles of the sect of dissenting Christians to which ***709** those constituting the trust may have professed to adhere; and that the civil court will not take cognizance of the proceedings and determinations of those judicatories, as they may be termed, upon matters of doctrine and discipline, but hold them to be *probatio probata* of the principles of the sect.'

This was manifestly throwing the question back upon the doctrine of the second judgment in the Craigdallie case. Accordingly, on the next occasion calling for a review of the principle by the Court of Session, the view taken in *Galbraith* v. *Smith* was overruled. The court say that the principle of the judgment of the House of Lords had been 'wholly misunderstood;' that Lord Meadowbank's view 'takes adherence to the Synod as *conclusive* and *excludes* inquiry into the original opinions or doctrines, if opposed to the declaration made by the Synod, as to what those doctrines are, and is precisely the error in the Craigdallie case again brought out and in more absolute terms.' The error, the court say, was 'founded on the assumption that connection with a dissenting Synod was as decisive a criterion by which to determine property and civil rights as adherence to the established church. The mistake consisted in taking as decisive what was only one element, and it might be an element of no importance in the inquiry, what was the original trust and which party maintains the principles;' and in answer to the suggestion that 'submission to the judicatories may be one of the original principles,' the court say 'then you must prove that. It is not *probatio probata*. It is not even a presumption of law.' [FN26]

FN26 Craigie v. Marshall, 12 Dunlop, 523, A.D. 1850.

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The cases above referred to, relate especially to the power of the civil courts, to examine and decide (as matter of fact) upon questions of *doctrinal differences* where rights of property depend upon adherence to doctrines. But the great contest for complete ecclesiastical independence and exclusive jurisdiction was made upon another point, viz.: as to the right of the civil court to examine and pass directly upon the title of persons claiming *official status* in the church, or *710 upon the validity of proceedings in church courts, where civil rights may depend on such status, or may be affected by such proceedings. This contest, beginning about the year 1838, in the Scotch Court of Session, several times brought before the House of Lords, may be considered as terminating in the celebrated Cardross Case. [FN27] Its great importance and the deep interest excited by it, occasioned the most profound investigation into the principles which should regulate civil courts in their relations to the churches; and the results have been valuable to the law. An examination of them will show these general principles to have been settled:

FN27 See McMillan *v.* General Assembly of the Presbyterian Church, 22 D., 270, decided 23d Dec., 1859.

i. That the church (non-established) stands before the law, in relation to all civil interests acquired or claimed by it, precisely as every other voluntary society for moral or scientific or other purposes, subject in the same manner and extent to the jurisdiction of civil authority.

ii. That in so far as the law can regard them, the powers of the church judicatories are derived solely from the consent of the members of the church, as expressed in their fundamental law; that they are not 'courts' and have no 'jurisdiction' in the strict sense of the terms--these terms necessarily implying the existence of a power conferred by and vested in functionaries of the state. They are not 'courts' except of the parties' own choosing.

iii. That in so far as the fundamental laws of the church confer powers on its tribunals, the civil courts will recognize them, and where civil rights are involved, will give effect to their exercise without inquiring into the motives or grounds of action of the ecclesiastical tribunal; and will enforce with the same respect the action of the inferior tribunal acting within its sphere, as they will that of the supreme court of the church.

iv. That the jurisdiction of civil courts being confined to 'civil actions,' they may not take cognizance of purely spiritual or ecclesiastical questions, *as such;* just as they may not take cognizance of any moral or scientific questions for the purpose of determining upon their abstract truth; but that in every case *711 of controversy, where a right of property depends upon an adherence to religious doctrine, or is affected by an act or judgment of an ecclesiastical tribunal, the civil court will *examine* into such doctrine *as matter of fact*, for the purpose of determining which party maintains the original principles of the society, and will examine into the act or judgment of the ecclesiastical court, for the purpose of determining whether it is in *contravention* of the fundamental law of the church, or without authority from it; in which latter case, such act or judgment will be esteemed void and be disregarded. In these several cases the exclusive standard of judgment is the CONSTITUTION of the church itself.

These principles, first announced with reference to the high claims of the Established Church of Scotland, were afterwards repeated with equal deliberation in reference to the Free Church, which having withdrawn from the Establishment on account of these decisions, reasserted in its voluntary character its claim to ecclesiastical independence. A reference to the Cardross Case will show how it was presented, and met. A Presbytery having tried a minister for misconduct, adjudged (partially) against him; and the Synod on appeal reversed its action. Upon appeal to the General Assembly, that body took up the case *de novo* and passed a sentence more extensive than that of the Presbytery. The minister, whose civil rights were affected by this judgment, applied to the civil court for its '*reduction*,' on the ground that the Assembly being confined to an appellate power by the constitution of the church, had transcended its authority by passing an original sentence upon him. The General Assembly among others filed the following pleas:

1st. 'That the sentences complained of, being spiritual acts, done in the ordinary course of

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discipline of a Christian Church tolerated and protected by law, it is not competent for the civil court to reduce them, and the actions should therefore be dismissed.'

2d. 'As the actions, so far as they conclude for a reduction of the sentences complained of, do not relate to any question of civil right, they cannot be maintained.'*712

Upon argument and a full review of all the cases, both of these pleas were overruled. The cause did not reach a hearing upon the pleas touching the actual powers of the Assembly under the constitution; but those decided are alone important in this discussion. [FN28]

FN28 For a continuous history of this controversy, see Earl of Kinnoul *v.* Presbytery of Auchterarder (Feb. 27th, 1838), 16 Shaw, 661; McLean & Robinson, 320; Clark *v.* Sterling (June 14th, 1839), 1 D. 955; Dunlap, 330; Presbytery of Strathbogie (1839 and 1840), 2 D. 258, 585, 1047, 1380; 15 F. 605, 1478; Dunlap, 64, 330; Edwards *v.* Cruikshank (December, 1840), 3 Dunlap, 283; Presbytery of Strathbogie (May, 1842), and other cases occurring near the same period in reference to the Established Church. Also Dunbar *v.* Skinner (March 3d, 1849), 11 D. 945; Long *v.* Bishop of Capetown, *Ecclesiastical Judgments of* Privy Council, 310; Murray *v.* Burger's Ib. (February 6th, 1867); Forbes *v.* Eden, 38 Jurist, 98.

If then the controlling principles of law touching this matter have been correctly stated, it follows in this Walnut Street Church case, that if it shall appear that the majority have abandoned, while the minority adhere to the original principles of the society, the judgment must go in favor of the minority.

The General Assembly is not excepted from the obligation of the rule. If a doubt upon this point should otherwise exist, it would be removed by a consideration of the *commission* under which alone its members act and hold their places, and by which they are severally restricted to sit, consult, vote, and determine, on all things that may come before that body 'according to the principles and constitution of this church, and the word of God.' Even those general clauses in the Form of Government touching the powers of Assembly to 'decide controversies,' and to 'suppress schismatical contentions and disputations,' are to be exercised not wantonly, but in accordance with the fixed provisions elsewhere stated. They contemplate controversies, contentions, and disputations, to which there may be *parties* and *proceedings*, by which these matters may be constitutionally brought before the Assembly.

The learned counsel then having stated in detail the particulars of the schisms in the Presbyterian Church, set *713 out generally in the Reporter's statement of the case, went into a very interesting examination of the constitution and fundamental principles of that church, and sought to show that those Declaratory Statements or Resolutions 'whereby the church had pledged herself, in her ecclesiastical capacity, to an unabated loyalty to the civil government, and one great section of the church was prejudged as traitors,' were in violation of its fundamental principles; and a departure from those sacred standards which declare that the 'visible church, which is also catholic or universal (and *not confined to one nation* as before, under the law), consists of all those throughout the world that profess the true religion' whereof 'there is no other head but the Lord Jesus Christ;' [FN29] that the Assembly in making such a departure had imposed upon ministers, members, and judicatories, the duty of resistance to its edicts; and that the Presbytery of Louisville, in its 'Declaration and Testimony'--its Declaration against the principle of these deliverances; its Testimony of *refusal* to 'sustain or in any manner assist in the execution' of them, stood immovably on the constitution.

FN29 Confession of Faith, chapter 25.

The conclusion to which this court arrived, as to its competence to pass in this case on such questions, renders that able argument, so interesting in some aspects, comparatively without interest here, on which account it is omitted.

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Messrs. B. H. Bristow and J. M. Harlan, contra.

The case having been held under advisement since the last term, when the argument was had,

Mr. Justice MILLER now delivered the opinion of the court.

This case belongs to a class, happily rare in our courts, in which one of the parties to a controversy, essentially ecclesiastical, resorts to the judicial tribunals of the State for the maintenance of rights which the church has refused to acknowledge, or found itself unable to protect. Much as such dissensions among the members of a religious society should *714 be regretted, a regret which is increased when passing from the control of the judicial and legislative bodies of the entire organization to which the society belongs, an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases.

Religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. Conscious as we may be of the excited feeling engendered by this controversy, and of the extent to which it has agitated the intelligent and pious body of Christians in whose bosom it originated, we enter upon its consideration with the satisfaction of knowing that the principles on which we are to decide so much of it as is proper for our decision, are those applicable alike to all of its class, and that our duty is the simple one of applying those principles to the facts before us.

The first of the points arising in the case concerns the jurisdiction of the Circuit Court, which is denied; first, on the ground that the plaintiffs have no such interest in the subject of litigation as will enable them to maintain the suit, and, secondly, on matters arising out of the alleged proceedings in the suit in the Chancery Court of Louisville.

The allegation that the plaintiffs are not lawful members of the Walnut Street Church is based upon the assumption that their admission as members was by a pastor and elders who had no lawful authority to act as such. As the claim of those elders to be such is one of the matters which this bill is brought to establish, and the denial of which makes an issue to be tried, it is obvious that the objection to the interest of the plaintiffs must stand or fall with the decision on the merits, and cannot be decided as a preliminary question. Their right to have this question decided, if there is no other objection to the jurisdiction, cannot be doubted. Some attempt is made in the answer to question the good faith of their citizenship, but this seems to have been abandoned in the argument.*715

In regard to the suit in the Chancery Court of Louisville, which the defendants allege to be pending, there can be no doubt but that that court is one competent to entertain jurisdiction of all the matters set up in the present suit. As to those matters, and to the parties, it is a court of concurrent jurisdiction with the Circuit Court of the United States, and as between those courts the rule is applicable that the one which has first obtained jurisdiction in a given case must retain it exclusively until it disposes of it by a final judgment or decree.

But when the pendency of such a suit is set up to defeat another, the *case* must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties.

In the case of *Barrows* v. *Kindred*, [FN30] which was an action of ejectment, the plaintiff showed a good title to the land, and the defendant relied on a former judgment in his favor, between the same parties for the same land; the statute of Illinois making a judgment in such an action as conclusive as in other personal actions, except by way of new trial. But this court held that as in the second suit the plaintiff introduced and relied upon a new and different title, acquired since the first trial, that judgment could be no bar, because that title had not been passed upon by the court in the first suit.

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FN30 4 Wallace, 399.

But the principles which should govern in regard to the identity of the matters in issue in the two suits to make the pendency of the one defeat the other, are as fully discussed, in the case of *Buck* v. *Colbath*, [FN31] where that was the main question, as in any case we have been able to find. It was *716 an action of trespass, brought in a State court, against the marshal of the Circuit Court of the United States for seizing property of the plaintiff, under a writ of attachment from the Circuit Court. And it was brought while the suit in the Federal court was still pending, and while the marshal held the property subject to its judgment. So far as the *lis pendens* and possession of the property in one court, and a suit brought for the taking by its officer in another, are concerned, the analogy to the present case is very strong. In that case the court said: 'It is not true that a court, having obtained jurisdiction of a subject-matter of suit and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and in some instances requiring the decision of the same question exactly. In examining into the exclusive character of the jurisdiction in such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits.' And it might have been added, to the facts on which the claim for relief is founded. 'A party,' says the court by way of example, having notes secured by a mortgage on real estate, may, unless restrained by statute, sue in a court of chancery to foreclose his mortgage, and in a court of law to recover a judgment on his notes, and in another court of law in an action of ejectment for possession of the land. Here, in all the suits, the only question at issue may be the existence of the debt secured by the mortgage. But, as the relief sought is different, and the mode of proceeding different, the jurisdiction of neither court is affected by the proceedings in the other.' This opinion contains a critical review of the cases in this court of *Hagan* v. *Lucas*, [FN32] *Peck* v. *Jenness*, [FN33] *Taylor* v. *Carryl*, [FN34] and *Freeman* v. *Howe*, [FN35] cited and relied on by counsel for the appellants; and we are satisfied that it states the doctrine correctly.

FN31 3 Id. 334.

FN32 10 Peters, 402.

FN33 7 Howard, 624.

FN34 20 Id. 594.

FN35 24 Id. 450.

The limits which necessity assigns to this opinion forbid *717 our giving at length, the pleadings in the case in the Louisville Chancery Court. But we cannot better state what is, and what is not, the subject-matter of that suit or controversy, as thus presented and as shown throughout its course, than by adopting the language of the Court of Appeals of Kentucky, in its opinion delivered at the decision of that suit, in favor of the present appellants. 'As suggested in argument,' says the court, 'and apparently conceded on both sides, this is not a case of division or schism in a church; nor is there any question as to which of two bodies should be recognized as the Third or Walnut Street Presbyterian Church. Neither is there any controversy as to the authority of Watson and Galt to act as ruling elders; but the sole inquiry to which we are restricted in our opinion is, whether Avery, McNaughtan, and Leach are also ruling elders, and therefore members of the session of the church.'

The pleadings in the present suit show conclusively a different state of facts, different issues, and a different relief sought. This *is* a case of a division or schism in the church. It *is* a question as to which of two bodies shall be recognized as the Third or Walnut Street Presbyterian Church. There *is* a controversy as to the authority of Watson and Galt to act as ruling elders, that authority being denied in the bill of the complainants; and, so far from the claim of Avery, McNaughtan, and Leach to be ruling elders being the sole inquiry in this case, it is a very subordinate matter, and it depends upon facts and circumstances altogether different from those set up and relied on in the other suit, and which did not exist when it was brought. The issue here is no longer a mere question of eldership, but it is a

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separation of the original church members and officers into two distinct bodies, with distinct members and officers, each claiming to be the true Walnut Street Presbyterian Church, and denying the right of the other to any such claim. This brief statement of the issues in the two suits leaves no room for argument to show that the pendency of the first cannot be pleaded either in bar or in abatement of the second.

The supplementary petition filed by the plaintiffs in that *718 case, after the decree of the Chancery Court had been reversed on appeal, and which did contain very much the same matter found in the present bill, was, on motion of the plaintiffs' counsel, and by order of the court, dismissed, without prejudice, before this suit was brought, and of course was not a *lis pendens* at that time.

It is contended, however, that the delivery to the trustees and elders of the body of which the plaintiffs are members, of the possession of the church building cannot be granted in this suit, nor can the defendants be enjoined from taking possession as prayed in the bill, because the property is in the actual possession of the marshal of the Louisville Chancery Court as its receiver, and because there is an unexecuted decree of that court ordering the marshal to deliver the possession to defendants.

In this the counsel for the appellants are, in our opinion, sustained, both by the law and by the state of the record of the suit in that court.

The court, in the progress of that suit, made several orders concerning the use of the church, and finally placed it in the possession of the marshal as a receiver, and there is no order discharging his receivership; nor does it seem to us that there is any valid order finally disposing of the case, so that it can be said to be no longer in that court. For, though the Chancery Court did, on the 20th March, 1868, after the reversal of the case in the Court of Appeals, enter an order reversing its former decree and dismissing the bill, with costs, in favor of the defendants, the latter, on application to the appellate court, obtained another order dated June 26th. By this order, or mandate to the Chancery Court, it was directed to render a judgment in conformity to the opinion and mandate of the court, restoring possession, use, and control of the church property to the parties entitled thereto, according to said opinion, and so far as they were deprived thereof by the marshal of the Chancery Court under its order.

In obedience to this mandate the Chancery Court, on the 18th September, three months after the commencement of *719 this suit, made an order that the marshal restore the possession, use, and control of the church building to Henry Farley, George Fulton, B. F. Avery, or a majority of them, as trustees, and to John Watson, Joseph Galt, and T. J. Hackney, or a majority of them, as ruling elders, and to report how he had executed the order, and reserving the case for such further order as might be necessary to enforce full obedience.

It is argued here by counsel for the appellees that the case was, in effect, disposed of by the orders of the Chancery Court, and that nothing remained to be done which could have any practical operation on the rights of the parties.

But if the Court of Appeals, in reversing the decree of the chancellor in favor of the plaintiffs, was of opinion that the defendants should be restored to the position they occupied in regard to the possession and control of the property before that suit began, we have no doubt of their right to make such order as was necessary to effect that object; and as the proper mode of doing this was by directing the chancellor to make the necessary order, and have it enforced as chancery decrees are enforced in his court, we are of opinion that the order of the Court of Appeals, above recited, was in essence and effect, a decree in that cause for such restoration, and that the last order of the Chancery Court, made in accordance with it, is a valid subsisting decree, which, though final, is unexecuted.

The decisions of this court in the cases of *Taylor* v. *Carryl*, [FN36] and *Freeman* v. *Howe*, [FN37] and *Buck* v. *Colbath*, [FN38] are conclusive that the marshal of the Chancery Court cannot be displaced as to the mere actual possession of the property, because that might lead to a personal conflict between the officers of the two courts for that possession. And the act of Congress of March 2d, 1793, [FN39] as construed in the cases of *Diggs* v. *Wolcott*, [FN40] and *Peck* v. *Jenness*, [FN41] are equally conclusive against any injunction from the Circuit Court, forbidding the defendants *720 to take the possession which the unexecuted decree of

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the Chancery Court requires the marshal to deliver to them.

FN36 20 Howard, 594.

FN37 24 Id. 450.

FN38 3 Wallace, 334.

FN39 1 Stat. at Large, 334, § 5.

FN40 4 Cranch, 179.

FN41 7 Howard, 625.

But, though the prayer of the bill in this suit does ask for an injunction to restrain Watson, Galt, Fulton, and Farley from taking possession, it also prays such other and further relief as the nature of the case requires, and especially that said defendants be restrained from interfering with Hays, as pastor, and plaintiffs in worshipping in said church. Under this prayer for general relief, if there was any decree which the Circuit Court could render for the protection of the right of the plaintiffs, and which did not enjoin the defendants from taking possession of the church property, and which did not disturb the possession of the marshal of the Louisville chancery, that court had a right to hear the case and grant that relief. This leads us to inquire what is the nature and character of the possession to which those parties are to be restored.

One or two propositions which seem to admit of no controversy are proper to be noticed in this connection. 1. Both by the act of the Kentucky legislature creating the trustees of the church a body corporate, and by the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title- holders and custodians of the church property, and other trustees were, or could be elected by the congregation, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church session. 3. That by the constitution of all Presbyterian churches, the session, which is the governing body in each, is composed of the ruling elders and pastor, and in all business of the session the majority of its members govern, the number of elders for each congregation being variable.

The trustees obviously hold possession for the use of the persons who by the constitution, usages, and laws of the Presbyterian body, are entitled to that use. They are liable to removal by the congregation for whom they hold this trust, and others may be substituted in their places. They *721 have no personal ownership or right beyond this, and are subject in their official relations to the property, to the control of the session of the church.

The possession of the elders, though accompanied with larger and more efficient powers of control, is still a fiduciary possession. It is as a session of the church alone that they could exercise power. Except by an order of the session in regular meeting they have no right to make any order concerning the use of the building; and any action of the session is necessarily in the character of representatives of the church body by whose members it was elected.

If then, this true body of the church, the members of that congregation, having rights of user in the building, have in a mode which is authorized by the canons of the general church in this country elected and installed other elders, it does not seem to us inconsistent or at variance with the nature of the possession which we have described, and which the Chancery Court orders to be restored to the defendants, that they should be compelled to recognize these rights, and permit those who are the real beneficiaries of the trust held by them, to enjoy the uses, to protect which that trust was created. Undoubtedly if the order of the Chancery Court had been executed, and the marshal had delivered the key of the church to the defendants, and placed them in the same position they were in before that suit was commenced, they could in any court having jurisdiction and in a case properly made out, be compelled to respect the rights we have stated, and be controlled in their use of the possession by the court, so far as to secure those rights.

All that we have said in regard to the possession which the marshal is directed to deliver to the defendants, is equally applicable to the possession

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held by him pending the execution of that order. His possession is a substitute for theirs, and the order under which he received that possession, which we have recited, shows this very clearly.

The decree which we are now reviewing seems to us to be carefully framed on this view of the matter. Wile the rights of the plaintiffs and those whom they sue for, are admitted *722 and established, the defendants are still recognized as entitled to the possession which we have described; and while they are not enjoined from receiving that possession from the marshal, and he is not restrained from obeying the Chancery Court by delivering it, and while there is no order made on the marshal at all to interfere with his possession, the defendants are required by the decree to respect the rights of the plaintiffs, and to so use the possession and control to which they may be restored as not to hinder or obstruct the true uses of the trust, which that possession is intended to protect.

We are next to inquire whether the decree thus rendered is based upon an equally just view of the law as applied to the facts of this controversy.

The questions which have come before the civil courts concerning the rights to property held by ecclesiastical bodies, may, so far as we have been able to examine them, be profitably classified under three general heads, which of course do not include cases governed by considerations applicable to a church established and supported by law as the religion of the state.

1. The first of these is when the property which is the subject of controversy has been, by the deed or will of the donor, or other instrument by which the property is held, by the express terms of the instrument devoted to the teaching, support, or spread of some specific form of religious doctrine or belief.

2. The second is when the property is held by a religious congregation which, by the nature of its organization, is strictly independent of other ecclesiastical associations, and so far as church government is concerned, owes no fealty or obligation to any higher authority.

3. The third is where the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme *723 judicatory over the whole membership of that general organization.

In regard to the first of these classes it seems hardly to admit of a rational doubt that an individual or an association of individuals may dedicate property by way of trust to the purpose of sustaining, supporting, and propagating definite religious doctrines or principles, provided that in doing so they violate now law of morality, and give to the instrument by which their purpose is evidenced, the formalities which the laws require. And it would seem also to be the obvious duty of the court, in a case properly made, to see that the property so dedicated is not diverted from the trust which is thus attached to its use. So long as there are persons qualified within the meaning of the original dedication, and who are also willing to teach the doctrines or principles prescribed in the act of dedication, and so long as there is any one so interested in the execution of the trust as to have a standing in court, it must be that they can prevent the diversion of the property or fund to other and different uses. This is the general doctrine of courts of equity as to charities, and it seems equally applicable to ecclesiastical matters.

In such case, if the trust is confided to a religious congregation of the independent or congregational form of church government, it is not in the power of the majority of that congregation, however preponderant, by reason of a change of views on religious subjects, to carry the property so confided to them to the support of new and conflicting doctrine. A pious man building and dedicating a house of worship to the sole and exclusive use of those who believe in the doctrine of the Holy Trinity, and placing it under the control of a congregation which at the time holds the same belief, has a right to expect that the law will prevent that property from being used as a means of support and dissemination of the Unitarian doctrine, and as a place of Unitarian worship. Nor is the principle varied when the organization to which the trust is confided is of the second or associated form of church government. The protection which the law *724 throws around the trust is the same. And though the task may be a delicate one and a difficult

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one, it will be the duty of the court in such cases, when the doctrine to be taught or the form of worship to be used is definitely and clearly laid down, to inquire whether the party accused of violating the trust is holding or teaching a different doctrine, or using a form of worship which is so far variant as to defeat the declared objects of the trust. In the leading case on this subject, in the English courts, of the *Attorney-General* v. *Pearson*, [FN42] Lord Eldon said, 'I agree with the defendants that the religious belief of the parties is irrelevant to the matters in dispute, except so far as the King's Court is called upon to execute the trust.' That was a case in which the trust-deed declared the house which was erected under it was for the worship and service of God. And though we may not be satisfied with the very artificial and elaborate argument by which the chancellor arrives at the conclusion, that because any other view of the nature of the Godhead than the Trinitarian view was heresy by the laws of England, and any one giving expression to the Unitarian view was liable to be severely punished for heresy by the secular courts, at the time the deed was made, that the trust was, therefore, for Trinitarian worship, we may still accept the statement that the court has the right to enforce a trust clearly defined on such a subject.

FN42 3 Merivale, 353.

The case of *Miller* v. *Gable* [FN43] appears to have been decided in the Court of Errors of New York on this principle, so far as any ground of decision can be gathered from the opinions of the majority of the court as reported.

FN43 2 Denio, 492.

The second class of cases which we have described has reference to the case of a church of a strictly congregational or independent organization, governed solely within itself, either by a majority of its members or by such other local organism as it may have instituted for the purpose of ecclesiastical government; and to property held by such a church, either by way of purchase or donation, with no other specific ***725** trust attached to it in the hands of the church than that it is for the use of that congregation as a religious society.

In such cases where there is a schism which leads to a separation into distinct and conflicting bodies, the rights of such bodies to the use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there be within the congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use of the property. The minority in choosing to separate themselves into a distinct body, and refusing to recognize the authority of the governing body, can claim no rights in the property from the fact that they had once been members of the church or congregation. This ruling admits of no inquiry into the existing religious opinions of those who comprise the legal or regular organization; for, if such was permitted, a very small minority, without any officers of the church among them, might be found to be the only faithful supporters of the religious dogmas of the founders of the church. There being no such trust imposed upon the property when purchased or given, the court will not imply one for the purpose of expelling from its use those who by regular succession and order constitute the church, because they may have changed in some respect their views of religious truth.

Of the cases in which this doctrine is applied no better representative can be found than that of *Shannon* v. *Frost*, [FN44] where the principle is ably supported by the learned Chief Justice of the Court of Appeals of Kentucky.

FN44 3 B. Monro, 253.

The case of *Smith* v. *Nelson*, [FN45] asserts this doctrine in a case where a legacy was left to the Associate Congregation of Ryegate, the interest whereof was to be annually paid to their minister forever. In that case, though the Ryegate ***726** congregation was one of a number of Presbyterian churches connected with the general Presbyterian body at large, the court held that the only inquiry

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was whether the society still exists, and whether they have a minister chosen and appointed by the majority and regularly ordained over the society, agreeably to the usage of that denomination. And though we may be of opinion that the doctrine of that case needs modification, so far as it discusses the relation of the Ryegate congregation to the other judicatories of the body to which it belongs, it certainly lays down the principle correctly if that congregation was to be treated as an independent one.

FN45 18 Vermont, 511.

But the third of these classes of cases is the one which is oftenest found in the courts, and which, with reference to the number and difficulty of the questions involved, and to other considerations, is every way the most important.

It is the case of property acquired in any of the usual modes for the general use of a religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.

The case before us is one of this class, growing out of a schism which has divided the congregation and its officers, and the presbytery and synod, and which appeals to the courts to determine the right to the use of the property so acquired. Here is no case of property devoted forever by the instrument which conveyed it, or by any specific declaration of its owner, to the support of any special religious dogmas, or any peculiar form of worship, but of property purchased for the use of a religious congregation, and so long as any existing religious congregation can be ascertained to be that congregation, or its regular and legitimate successor, it is entitled to the use of the property. In the case of an independent congregation we have pointed out how this identity, or succession, is to be ascertained, but in cases of this character we are bound to look at the fact that the local congregation is itself but a member of a much *727 larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments. There are in the Presbyterian system of ecclesiastical government, in regular succession, the presbytery over the session or local church, the synod over the presbytery, and the General Assembly over all. These are called, in the language of the church organs, 'judicatories,' and they entertain appeals from the decisions of those below, and prescribe corrective measures in other cases.

In this class of cases we think the rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

We concede at the outset that the doctrine of the English courts is otherwise. In the case of the *Attorney-General* v. *Pearson*, cited before, the proposition is laid down by Lord Eldon, and sustained by the peers, that it is the duty of the court in such cases to inquire and decide for itself, not only what was the nature and power of these church judicatories, but what is the true standard of faith in the church organization, and which of the contending parties before the court holds to this standard. And in the subsequent case of *Craigdallie* v. *Aikman*, [FN46] the same learned judge expresses in strong terms his chagrin that the Court of Sessions of Scotland, from which the case had been appealed, had failed to find on this latter subject, so that he could rest the case on religious belief, but had declared that in this matter there was no difference between the parties. And we can very well understand how the Lord Chancellor of England, who is, in his office, in a large sense, the head and representative of *728 the Established Church, who controls very largely the church patronage, and whose judicial decision may be, and not unfrequently is, invoked in cases of heresy and ecclesiastical contumacy, should feel, even in dealing with a dissenting church, but little delicacy in grappling with the most abstruse problems of theological controversy, or in construing the instruments which those churches have adopted as their rules of government, or inquiring into their

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customs and usages. The dissenting church in England is not a free church in the sense in which we apply the term in this country, and it was much less free in Lord Eldon's time than now. Laws then existed upon the statute- book hampering the free exercise of religious belief and worship in many most oppressive forms, and though Protestant dissenters were less burdened than Catholics and Jews, there did not exist that full, entire, and practical freedom for all forms of religious belief and practice which lies at the foundation of our political principles. And it is quite obvious, from an examination of the series of cases growing out of the organization of the Free Church of Scotland, found in Shaw's Reports of Cases in the Court of Sessions, that it was only under the pressure of Lord Eldon's ruling, established in the House of Lords, to which final appeal lay in such cases, that the doctrine was established in the Court of Sessions after no little struggle and resistance. The full history of the case of *Craigdallie* v. *Aikman*, in the Scottish court, which we cannot further pursue, and the able opinion of Lord Meadowbank in *Galbraith* v. *Smith*, [FN47] show this conclusively.

FN46 2 Bligh, 529.

FN47 15 Shaw, 808.

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of ***729** any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Nor do we see that justice would be likely to be promoted by submitting those decisions to review in the ordinary judicial tribunals. Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so.

We have said that these views are supported by the preponderant weight of authority in this country, and for the reasons which we have given, we do not think the doctrines of the English Chancery Court on this subject should have with us the influence which we would cheerfully accord to it on others. ***730**

We have already cited [FN48] the case of *Shannon* v. *Frost*, in which the appellate court of the State where this controversy originated, sustains the proposition clearly and fully. 'This court,' says the Chief Justice, 'having no ecclesiastical jurisdiction, cannot revise or question ordinary acts of church discipline. Our only judicial power in the case arises from the conflicting claims of the parties to the church property and the use of it. We cannot decide who ought to be members of the church, nor whether the excommunicated have been justly or unjustly, regularly or irregularly cut off from the body of the church.'

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FN48 *Supra*, p. 725.

In the subsequent case of *Gibson* v. *Armstrong*, [FN49] which arose out of the general division of the Methodist Episcopal Church, we understand the same principles to be laid down as governing that case, and in the case of *Watson* v. *Avery*, [FN50] the case relied on by the appellants as a bar, and considered in the former part of this opinion, the doctrine of *Shannon* v. *Frost* is in general terms conceded, while a distinction is attempted which we shall consider hereafter.

FN49 7 B. Monro, 481.

FN50 2 Bush, 332.

One of the most careful and well-considered judgments on the subject is that of the Court of Appeals of South Carolina, delivered by Chancellor Johnson in the case of *Harmon* v. *Dreher*. [FN51] The case turned upon certain rights in the use of the church property claimed by the minister notwithstanding his expulsion from the synod as one of its members. 'He stands,' says the chancellor, 'convicted of the offences alleged against him, by the sentence of the spiritual body of which he was a voluntary member, and whose proceedings he had bound himself to abide. It belongs not to the civil power to enter into or review the proceedings of a spiritual court. The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority. The judgments, therefore, of *731 religious associations, bearing on their own members, are not examinable here, and I am not to inquire whether the doctrines attributed to Mr. Dreher were held by him, or whether if held were anti-Lutheran; or whether his conduct was or was not in accordance with the duty he owed to the synod or to his donomination. . . . When a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. But the civil tribunal tries the civil right, and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them.' The principle is reaffirmed by the same court in the *John's Island Church Case*. [FN52]

FN51 2 Speer's Equity, 87.

FN52 2 Richardson's Equity, 215.

In *Den* v. *Bolton*, [FN53] the Supreme Court of New Jersey asserts the same principles, and though founding its decision mainly on a statute, it is said to be true on general principles.

FN53 7 Halstead, 206.

The Supreme Court of Illinois, in the case of *Ferraria* v. *Vasconcelles*, [FN54] refers to the case of *Shannon* v. *Frost* with approval, and adopts the language of the court that 'the judicial eye cannot penetrate the veil of the church for the forbidden purpose of vindicating the alleged wrongs of excised members; when they became members they did so upon the condition of continuing or not as they and their churches might determine, and they thereby submit to the ecclesiastical power and cannot now invoke the supervisory power of the civil tribunals.'

FN54 23 Illinois, 456.

In the very important case of *Chase* v. *Cheny*, recently decided in the same court, Judge Lawrence, who dissented, says, 'We understand the opinion as implying that in the administration of ecclesiastical discipline, and where no other right of property is involved than loss of the clerical office or salary incident to such discipline, a spiritual court is the exclusive judge of its own jurisdiction, and that its decision of that question is binding on the secular courts.' And he dissents with Judge Sheldon from the opinion because it so holds.*732

In the case of *Watson* v. *Farris*, [FN55] which was a case growing out of the schism in the Presbyterian Church in Missouri in regard to this same Declaration and Testimony and the action of the General Assembly, that court held that whether a

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case was regularly or irregularly before the Assembly was a question which the Assembly had the right to determine for itself, and no civil court could reverse, modify, or impair its action in a matter of merely ecclesiastical concern.

FN55 45 Missouri, 183.

We cannot better close this review of the authorities than in the language of the Supreme Court of Pennsylvania, in the case of the *German Reformed Church* v. *Seibert:* [FN56] 'The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offence against the word of God and the discipline of the church. Any other than those courts must be incompetent judges of matters of faith, discipline, and doctrine; and civil courts, if they should be so unwise as to attempt to supervise their judgments on matters which come within their jurisdiction, would only involve themselves in a sea of uncertainty and doubt which would do anything but improve either religion or good morals.'

FN56 3 Barr, 291.

In the subsequent case of *McGinnis* v. *Watson*, [FN57] this principle is again applied and supported by a more elaborate argument.

FN57 41 Pennsylvania State, 21.

The Court of Appeals of Kentucky, in the case of *Watson* v. *Avery*, before referred to, while admitting the general principle here laid down, maintains that when a decision of an ecclesiastical tribunal is set up in the civil courts, it is always open to inquiry whether the tribunal acted within its jurisdiction, and if it did not, its decision could not be conclusive.

There is, perhaps, no word in legal terminology so frequently used as the word jurisdiction, so capable of use in a general and vague sense, and which is used so often by men learned in the law without a due regard to precision in its application. As regards its use in the matters we have *733 been discussing it may very well be conceded that if the General Assembly of the Presbyterian Church should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil court or anywhere else. Or if it should at the instance of one of its members entertain jurisdiction as between him and another member as to their individual right to property, real or personal, the right in no sense depending on ecclesiastical questions, its decision would be utterly disregarded by any civil court where it might be set up. And it might be said in a certain general sense very justly, that it was because the General Assembly had no jurisdiction of the case. Illustrations of this character could be multiplied in which the proposition of the Kentucky court would be strictly applicable.

But it is a very different thing where a subject-matter of dispute, strictly and purely ecclesiastical in its character,--a matter over which the civil courts exercise no jurisdiction,--a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them,--becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the *criteria* by which the validity of the ecclesiastical decree would be determined in the civil court. This principle would deprive these bodies of the right of construing their own church laws, would open the way to all the evils which we *734 have depicted as attendant upon the doctrine of Lord Eldon, and would, in effect, transfer to the civil courts where property rights were concerned the decision of all ecclesiastical questions.

And this is precisely what the Court of Appeals of Kentucky did in the case of *Watson* v. *Avery*. Under

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cover of inquiries into the jurisdiction of the synod and presbytery over the congregation, and of the General Assembly over all, it went into an elaborate examination of the principles of Presbyterian church government, and ended by overruling the decision of the highest judicatory of that church in the United States, both on the jurisdiction and the merits; and, substituting its own judgment for that of the ecclesiastical court, decides that ruling elders, declared to be such by that tribunal, are not such, and must not be recognized by the congregation, though four-fifths of its members believe in the judgment of the Assembly and desired to conform to its decree.

But we need pursue this subject no further. Whatever may have been the case before the Kentucky court, the appellants in the case presented to us have separated themselves wholly from the church organization to which they belonged when this controversy commenced. They now deny its authority, denounce its action, and refuse to abide by its judgments. They have first erected themselves into a new organization, and have since joined themselves to another totally different, if not hostile, to the one to which they belonged when the difficulty first began. Under any of the decisions which we have examined, the appellants, in their present position, have no right to the property, or to the use of it, which is the subject of this suit.

The novelty of the questions presented to this court for the first time, their intrinsic importance and far reaching influence, and the knowledge that the schism in which the case originated has divided the Presbyterian churches throughout Kentucky and Missouri, have seemed to us to justify the careful and laborious examination and discussion which we *735 have made of the principles which should govern the case. For the same reasons we have held it under advisement for a year; not uninfluenced by the hope, that since the civil commotion, which evidently lay at the foundation of the trouble, has passed away, that charity, which is so large an element in the faith of both parties, and which, by one of the apostles of that religion, is said to be the greatest of all the Christian virtues, would have brought about a reconciliation. But we have been disappointed. It is not for us to determine or apportion the moral responsibility which attaches to the parties for this result. We can only pronounce the judgment of the law as applicable to the case presented to us, and that requires us to affirm the decree of the Circuit Court as it stands.

DECREE AFFIRMED.

The CHIEF JUSTICE did not sit on the argument of this case, and took no part in its decision.

Mr. Justice CLIFFORD, with whom concurred Mr. Justice DAVIS, dissenting.

I dissent from the opinion and decree of the court in this case, and inasmuch as the case presents an important question of jurisdiction, I deem it proper to state in a few words the grounds of my dissent.

Before this suit was commenced, a suit in respect to the same subject-matter and substantially between the same parties had been instituted in the Chancery Court of Louisville, by parties representing the same interests as those prosecuted in this case by the appellees, and they obtained a final decree in their favor against the respondents therein, representing the same interests as those defended by the present appellants. Whereupon the respondents in that suit appealed to the Court of Appeals of that State, where the decree of the Chancery Court was in all things reversed and the cause remanded for proper corrective proceedings respecting the possession, control, and use of the property *736 in controversy, and for final judgment in conformity with the opinion of the appellate court. [FN58]

FN58 Watson et al. *v.* Avery et al., 2 Bush, 332.

On the twenty-first of February, 1868, the present appellants filed in the Chancery Court the mandate of the Court of Appeals, together with a copy of the opinion of the appellate court, and moved that an order issue for the restitution of the property and for judgment in conformity with the opinion of the court. Pending the consideration of that motion the defeated party filed an original bill in equity against the then appellants, praying that they be restrained from all further prosecution of their motion for

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restitution and from all proceedings, by action, suit, or otherwise, to obtain possession or control of the property in controversy, and the chancellor, instead of executing the mandate of the appellate court, granted the injunction prayed by the losing party in the original case. Feeling aggrieved by that proceeding the then appellants applied to the Court of Appeals for a rule to compel the chancellor to carry the mandate of the appellate court into effect, and upon that hearing the Court of Appeals decided that the chancellor had exceeded his jurisdiction in granting the injunction prior to the entry of their mandate, and rendering a final decree in conformity therewith, and peremptorily required him to render a judgment of restitution of the property to the appellants, in so far as they had been deprived thereof by his previous orders. [FN59]

FN59 3 Id. 635.

Those orders of the appellate court were not executed, but the unsuccessful party immediately dismissed their bill of complaint to enjoin the appellants from executing the decree of the Court of Appeals, and on the twenty-first of the same month filed in the Circuit Court of the United States the bill of complaint in this case, before the second mandate of the appellate court commanding the chancellor to execute the first mandate was filed in the subordinate court.

Beyond all question jurisdiction was assumed by the Circuit Court in this case by virtue of the fact that the parties are citizens of different States, in which case the Judiciary Act provides that the Circuit Courts shall have original cognizance *737 concurrent with the several States. Indeed, jurisdiction in the case is claimed solely upon the ground that the Circuit Court of the United States possesses concurrent and co-ordinate jurisdiction with the State court in such a controversy.

In view of these considerations, as more fully set forth in the record and in the opinions given in this case by the Court of Appeals, I am of the opinion that the Circuit Court had no jurisdiction to hear and determine the matter in controversy, as there were two courts of common law exercising the same jurisdiction between the same parties in respect to the same subject-matter, within the same territorial limits, and governed by the same laws.

Neither court had any peculiar jurisdiction over the property in question nor of any peculiar right or lien upon it claimed by either party. Originally the State court had the same power with the Circuit Court to hear and decide any and every question that might arise as to the rights of property of either party in the course of the litigation. State courts and Circuit Courts in such cases are courts of concurrent and co-ordinate jurisdiction, in respect to which the principle is that 'whenever property has been seized by an officer of the court, or put in his custody by the process of the court, the property will be considered as in the custody of the court and under its control for the time being, and that no other court has a right to interfere with that possession, unless it be some court which may have a direct supervisory control over the court whose process has first taken possession, or some superior jurisdiction in the premises.' [FN60] Decided cases asserting that principle and enforcing it are very numerous in the reported decisions of this court, and also in the reported decisions of other courts of the highest respectability. [FN61]

FN60 Buck *v.* Colbath, 3 Wallace, 341.

FN61 Hagan *v.* Lucas, 10 Peters, 400; Taylor *v.* Carryl, 20 Howard, 594; Freeman *v.* Howe, 24 Id. 450; Payne *v.* Drewe, 4 East, 523; Peck *v.* Jenness, 7 Howard, 612; Evelyn *v.* Lewis, 3 Hare, 472; Noe *v.* Gibson, 7 Paige, 513; Russell *v.* East Anglian Railway Co., 3 McNaughton & Gordon, 104.*738

Remarks to show that the suit in the State court was pending and undisposed of when the bill was filed in the Circuit Court are unnecessary, as the fact is admitted, and in view of that fact I am of the opinion that the Circuit Court had no jurisdiction of the case.

Being of the opinion that the case ought to be reversed and dismissed for the want of jurisdiction, I do not think it necessary or proper to express any opinion upon the merits of the case.

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80 U.S. 679 (Mem), 20 L.Ed. 666, 13 Wall. 679

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EXHIBIT 54

63 S.Ct. 1178
87 L.Ed. 1628, 147 A.L.R. 674
(Cite as: 319 U.S. 624, 63 S.Ct. 1178)

Supreme Court of the United States.

WEST VIRGINIA STATE BOARD OF EDUCATION et al.
v.
BARNETTE et al.

No. 591.

Argued March 11, 1943.
Decided June 14, 1943.

Suit by Walter Barnette and others against the West Virginia State Board of Education, etc., and others for an injunction to restrain enforcement of a regulation requiring children in public schools to salute the American flag. From a decree, 47 F.Supp. 251, granting an injunction, the defendants appeal.

Affirmed.

Mr. Justice FRANKFURTER, Mr. Justice ROBERTS, and Mr Justice REED dissenting.

West Headnotes

[1] Schools ⇦164
345k164 Most Cited Cases

A state may require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty, which tend to inspire patriotism and love of country.

[2] Constitutional Law ⇦254(2)
92k254(2) Most Cited Cases
(Formerly 92k254)

The Fourteenth Amendment as applied to the states protects the citizen against the state itself and all of its creatures, including boards of education. U.S.C.A.Const. Amend. 14.

[3] Constitutional Law ⇦82(2)
92k82(2) Most Cited Cases
(Formerly 92k82)

The purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of the political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. U.S.C.A.Const. Amend. 1 et seq.

[4] Constitutional Law ⇦83(1)
92k83(1) Most Cited Cases

[4] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[4] Constitutional Law ⇦87
92k87 Most Cited Cases

[4] Constitutional Law ⇦90(1)
92k90(1) Most Cited Cases
(Formerly 92k90)

[4] Constitutional Law ⇦91
92k91 Most Cited Cases

One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote, and they depend on the outcome of no election. U.S.C.A.Const. Amends. 1 et seq.

[5] Constitutional Law ⇦251
92k251 Most Cited Cases

The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First Amendment, is much more definite than the test when only the Fourteenth Amendment is involved, and much of the vagueness of the "due process of law" clause disappears when the specific prohibitions of the First Amendment become its standard. U.S.C.A.Const. Amends. 1, 14.

[6] Constitutional Law ⇦84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

[6] Constitutional Law ⇦90(3)
92k90(3) Most Cited Cases
(Formerly 92k90)

[6] Constitutional Law ⇦91
92k91 Most Cited Cases

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"Freedom of speech", "freedom of press", "freedom of assembly" and "freedom of worship" are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. U.S.C.A.Const. Amends. 1, 14.

[7] Constitutional Law ⚖67
92k67 Most Cited Cases

The duty of the Supreme Court to apply the Bill of Rights to assertions of official authority does not depend upon the court's possession of marked competence in field where invasion of rights occurs, and court cannot, because of modest estimates of its competence in such specialties as public education, withhold the judgment that history authenticates as the function of the court when liberty is infringed. U.S.C.A.Const. Amend. 1 et seq.

[8] Constitutional Law ⚖82(2)
92k82(2) Most Cited Cases
(Formerly 92k82)

The United States Government was set up by the consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. U.S.C.A.Const. Amend. 1 et seq.

[9] Constitutional Law ⚖274(1)
92k274(1) Most Cited Cases
(Formerly 92k274)

"Freedom" to differ is not limited, under the Constitution, to things that do not matter much, but the test of its substance is the right to differ as to things which touch the heart of the existing order. U.S.C.A.Const. Amends. 1, 14.

[10] Constitutional Law ⚖274(1)
92k274(1) Most Cited Cases
(Formerly 92k274)

No official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein. U.S.C.A.Const. Amends. 1, 14.

[11] Constitutional Law ⚖274(4)
92k274(4) Most Cited Cases
(Formerly 92k274)

Resolution of state board of education requiring children, as prerequisite to continued attendance at public school, to salute American flag and give pledge, is invalid as applied to children of Jehovah Witnesses since it denies "freedom of speech" and "freedom of worship" in that it transcends constitutional limitations on board's power and invades sphere of intellect and spirit which it is the purpose of the Constitution to reserve from official control. Code Supp.W.Va.1941, § 1734; U.S.C.A.Const. Amends. 1, 14.

**1179 *625 On Appeal from the District Court of the United States for the Southern District of West Virginia.

Mr. W. Holt Wooddell, of Webster Springs, W. Va., for appellants.

Mr. Hayden C. Covington, of Brooklyn, N.Y., for appellees.

Mr. Justice JACKSON delivered the opinion of the Court.

Following the decision by this Court on June 3, 1940, in Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, the West Virginia legislature amended its statutes to require all schools therein to conduct courses of instruction in history, civics, and in the Constitutions of the United States and of the State 'for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.' Appellant *626 Board of Education was directed, with advice of the State Superintendent of Schools, to 'prescribe the courses of study covering these subjects' for public schools. The Act made it the duty of private, parochial and denominational schools to prescribe courses of study 'similar to those required for the public schools.' [FN1]

FN1 s 1734, West Virginia Code (1941 Supp.):
'In all public, private, parochial and denominational schools located within this state there shall be given regular courses of instruction in history of the United States,

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> in civics, and in the constitutions of the United States and of the state of West Virginia, for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government of the United States and of the state of West Virginia. The state board of education shall, with the advice of the state superintendent of schools, prescribe the courses of study covering these subjects for the public elementary and grammar schools, public high schools and state normal schools. It shall be the duty of the officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools.'

The Board of Education on January 9, 1942, adopted a resolution containing recitals taken largely from the Court's Gobitis opinion and ordering that the salute to the flag become 'a regular part of the program of activities in the public schools,' that all teachers and pupils 'shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an Act of insubordination, and shall be dealt with accordingly.' [FN2]

> FN2 The text is as follows:
> 'WHEREAS, The West Virginia State Board of Education holds in highest regard those rights and privileges guaranteed by the Bill of Rights in the Constitution of the United States of America and in the Constitution of West Virginia, specifically, the first amendment to the Constitution of the United States as restated in the fourteenth amendment to the same document and in the guarantee of religious freedom in Article III of the Constitution of this States, and
> 'WHEREAS, The West Virginia State Board of Education honors the broad principle that one's convictions about the ultimate mystery of the universe and man's relation to it is placed beyond the reach of law; that the propagation of belief is protected whether in church or chapel, mosque or synagogue, tabernacle or meeting house; that the Constitutions of the United States and of the State of West Virginia assure generous immunity to the individual from imposition of penalty for offending, in the course of his own religious activities, the religious views of others, be they a minority or those who are dominant in the government, but
> 'WHEREAS, The West Virginia State Board of Education recognizes that the manifold character of man's relations may bring his conception of religious duty into conflict with the secular interests of his fellowman; that conscientious scruples have not in the course of the long struggle for religious toleration relieved the individual from obedience to the general law not aimed at the promotion or restriction of the religious beliefs; that the mere possession of convictions which contradict the relevant concerns of political society does not relieve the citizen from the discharge of political responsibility, and
> 'WHEREAS, The West Virginia State Board of Education holds that national unity is the basis of national security; that the flag of our Nation is the symbol of our National Unity transcending all internal differences, however large within the framework of the Constitution; that the Flag is the symbol of the Nation's power; that emblem of freedom in its truest, best sense; that it signifies government resting on the consent of the governed, liberty regulated by law, protection of the weak against the strong, security against the exercise of arbitrary power, and absolute safety for free institutions against foreign aggression, and
> 'WHEREAS, The West Virginia State Board of Education maintains that the public schools, established by the legislature of the State of West Virginia under the authority of the Constitution of the State of West Virginia and supported by taxes imposed by legally constituted

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> measures, are dealing with the formative period in the development in citizenship that the Flag is an allowable portion of the program of schools thus publicly supported.
> 'Therefore, be it RESOLVED, That the West Virginia Board of Education does hereby recognize and order that the commonly accepted salute to the Flag of the United States--the right hand is placed upon the breast and the following pledge repeated in unison: 'I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all'--now becomes a regular part of the program of activities in the public schools, supported in whole or in part by public funds, and that all teachers as defined by law in West Virginia and pupils in such schools shall be required to participate in the salute honoring the Nation represented by the Flag; provided, however, that refusal to salute the Flag be regarded as an act of insubordination, and shall be dealt with accordingly.'

*627 The resolution originally required the **1180 'commonly accepted salute to the Flag' which it defined. Objections to the salute as 'being too much like Hitler's' were raised by the Parent and Teachers Association, the Boy and Girl *628 Scouts, the Red Cross, and the Federation of Women's Clubs. [FN3] Some modification appears to have been made in deference to these objections, but no concession was made to Jehovah's Witnesses. [FN4] What is now required is the 'stiff-arm' salute, the saluter to keep the right hand raised with palm turned up **1181 while the following is repeated: 'I pledge allegiance to the Flag of the United States of *629 America and to the Republic for which it stands; one Nation, indivisible, with liberty and justice for all.'

> FN3 The National Headquarters of the United States Flag Association takes the position that the extension of the right arm in this salute to the flag is not the Nazi-Fascist salute, 'although quite similar to it. In the Pledge to the Flag the right arm is extended and raised, palm Upward, whereas the Nazis extend the arm practically straight to the front (the finger tips being about even with the eyes), palm Downward, and the Fascists do the same except they raise the arm slightly higher.' James A. Moss, The Flag of the United States: Its History and Symbolism (1914) 108.

> FN4 They have offered in lieu of participating in the flag salute ceremony 'periodically and publicly' to give the following pledge:
> 'I have pledged my unqualified allegiance and devotion to Jehovah, the Almighty God, and to His Kingdom, for which Jesus commands all Christians to pray.
> 'I respect the flag of the United States and acknowledge it as a symbol of freedom and justice to all.
> 'I pledge allegiance and obedience to all the laws of the United States that are consistent with God's law, as set forth in the Bible.'

Failure to conform is 'insubordination' dealt with by expulsion. Readmission is denied by statute until compliance. Meanwhile the expelled child is *'unlawfully absent' [FN5] and may be proceeded* against as a delinquent. [FN6] His parents or guardians are liable to prosecution, [FN7] and if convicted are subject to fine not exceeding $50 and jail term not exceeding thirty days. [FN8]

> FN5 s 1851(1), West Virginia Code (1941 Supp.):
> 'If a child be dismissed, suspended, or expelled from school because of refusal of such child to meet the legal and lawful requirements of the school and the established regulations of the county and/or state board of education, further admission of the child to school shall be refused until such requirements and regulations be complied with. Any such child shall be treated as being unlawfully absent from the school during the time he refuses to comply with such requirements

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and regulations, and any person having legal or actual control of such child shall be liable to prosecution under the provisions of this article for the absence of such child from school.'

FN6 s 4904(4), West Virginia Code (1941 Supp.).

FN7 See Note 5, supra.

FN8 ss 1847, 1851, West Virginia Code (1941 Supp.).

Appellees, citizens of the United States and of West Virginia, brought suit in the United States District Court for themselves and others similarly situated asking its injunction to restrain enforcement of these laws and regulations against Jehovah's Witnesses. The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superiod to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter 20, verses 4 and 5, which says: 'Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them nor serve them.' They consider that the flag is an 'image' within this command. For this reason they refuse to salute it.

*630 Children of this faith have been expelled from school and are threatened with exclusion for no other cause. Officials threaten to send them to reformatories maintained for criminally inclined juveniles. Parents of such children have been prosecuted and are threatened with prosecutions for causing delinquency.

The Board of Education moved to dismiss the complaint setting forth these facts and alleging that the law and regulations are an unconstitutional denial of religious freedom, and of freedom of speech, and are invalid under the 'due process' and 'equal protection' clauses of the Fourteenth Amendment to the Federal Constitution. The cause was submitted on the pleadings to a District Court of three judges. It restrained enforcement as to the plaintiffs and those of that class. The Board of Education brought the case here by direct appeal. [FN9]

FN9 s 266 of the Judicial Code, 28 U.S.C. s 380, 28 U.S.C.A. s 380.

This case calls upon us to reconsider a precedent decision, as the Court throughout its history often has been required to do. [FN10] Before turning to the Gobitis case, however, it is desirable to notice certain characteristics by which this controversy is distinguished.

FN10 See authorities cited in Helvering v. Griffiths, 318 U.S. 371, 63 S.Ct. 636, at page 652, 87 L.Ed. 843, note 52, decided March 1, 1943.

The freedom asserted by these appellees does not bring them into collision with rights asserted by any other individual. It is such conflicts which most frequently require intervention of the State to determine where the rights of one end and those of another begin. But the refusal of these persons to participate in the ceremony does not interfere with or deny rights of others to do so. Nor is there any question in this case that their behavior is peaceable and orderly. The sole conflict is between authority and rights of the individual. The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce *631 attendance by punishing both parent and child. The latter stand on a right **1182 of self-determination in matters that touch individual opinion and personal attitude.

[1] As the present Chief Justice said in dissent in the Gobitis case, the State may 'require teaching by instruction and study of all in our history and in the structure and organization of our government, including the guaranties of civil liberty which tend to inspire patriotism and love of country.' 310 U.S. at page 604, 60 S.Ct. at page 1017, 84 L.Ed. 1375, 127 A.L.R. 1493. Here, however, we are dealing with a compulsion of students to declare a belief. They are not merely made acquainted with the flag

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salute so that they may be informed as to what it is or even what it means. The issue here is whether this slow and easily neglected [FN11] route to aroused loyalties constitutionally may be short-cut by substituting a compulsory salute and slogan. [FN12] This issue is not prejudiced by *632 the Court's previous holding that where a State, without compelling attendance, extends college facilities to pupils who voluntarily enroll, it may prescribe military training as part of the course without offense to the Constitution. It was held that those who take advantage of its opportunities may not on ground of conscience refuse compliance with such conditions. Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. In the present case attendance is not optional. That case is also to be distinguished from the present one because, independently of college privileges or requirements, the State has power to raise militia and impose the duties of service therein upon its citizens.

FN11 See the nation-wide survey of the study of American history conducted by the New York Times, the results of which are published in the issue of June 21, 1942, and are there summarized on p. 1, col. 1, as follows:
'82 per cent of the institutions of higher learning in the United States do not require the study of United States history for the undergraduate degree. Eighteen per cent of the colleges and universities require such history courses before a degree is awarded. It was found that many students complete their four years in college without taking any history courses dealing with this country.
'Seventy-two per cent of the colleges and universities do not require United States history for admission, while 28 per cent require it. As a result, the survey revealed, many students go through high school, college and then to the professional or graduate institution without having explored courses in the history of their country. 'Less than 10 per cent of the total undergraduate body was enrolled in United States history classes during the Spring semester just ended. Only 8 per cent of the freshman class took courses in United States history, although 30 per cent was enrolled in European or world history courses.'

FN12 The Resolution of the Board of Education did not adopt the flag salute because it was claimed to have educational value. It seems to have been concerned with promotion of national unity (see footnote 2), which justification is considered later in this opinion. No information as to its educational aspect is called to our attention except Olander, Children's Knowledge of the Flag Salute, 35 Journal of Educational Research, 300, 305, which sets forth a study of the ability of a large and representative number of children to remember and state the meaning of the flag salute which they recited each day in school. His conclusion was that it revealed 'a rather pathetic picture of our attempts to teach children not only the words but the meaning of our Flag Salute'.

There is no doubt that, in connection with the pledges, the flag salute is a form of utterance. Symbolism is a primitive but effective way of communicating ideas. The use of an emblem or flag to symbolize some system, idea, institution, or personality, is a short cut from mind to mind. Causes and nations, political parties, lodges and ecclesiastical groups seek to knit the loyalty of their followings to a flag or banner, a color or design. The State announces rank, function, and authority through crowns and maces, uniforms and black robes; the church speaks through the Cross, the Crucifix, the altar and shrine, and clerical reiment. Symbols of State often convey political ideas just as religious symbols come to convey theological ones. Associated with many of these symbols are appropriate gestures of acceptance or respect: a salute, a bowed or bared head, a bended knee. A person gets from a *633 symbol the meaning he puts into it, and **1183 what is one man's comfort and inspiration is another's jest and scorn.

Over a decade ago Chief Justice Hughes led this Court in holding that the display of a red flag as a symbol of opposition by peaceful and legal means to organized government was protected by the free

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speech guaranties of the Constitution. Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117, 73 A.L.R. 1484. Here it is the State that employs a flag as a symbol of adherence to government as presently organized. It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks. Objection to this form of communication when coerced is an old one, well known to the framers of the Bill of Rights. [FN13]

> FN13 Early Christians were frequently persecuted for their refusal to participate in ceremonies before the statue of the emperor or other symbol of imperial authority. The story of William Tell's sentence to shoot an apple off his son's head for refusal to salute a bailiff's hat is an ancient one. 21 Encyclopedia Britannica, 14th Ed., 911, 912. The Quakers, William Penn included, suffered punishment rather than uncover their heads in deference to any civil authority. Braithwaite, The Beginnings of Quakerism (1912) 200, 229-230, 232, 233, 447, 451; Fox, Quakers Courageous (1941) 113.

It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony or whether it will be acceptable if they simulate assent by words without belief and by a gesture barren of meaning. It is now a commonplace that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here the power of compulsion *634 is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind.

Whether the First Amendment to the Constitution will permit officials to order observance of ritual of this nature does not depend upon whether as a voluntary exercise we would think it to be good, bad or merely innocuous. Any credo of nationalism is likely to include what some disapprove or to omit what others think essential, and to give off different overtones as it takes on different accents or interpretations. [FN14] If official power exists to coerce acceptance of any patriotic creed, what it shall contain cannot be decided by courts, but must be largely discretionary with the ordaining authority, whose power to prescribe would no doubt include power to amend. Hence validity of the asserted power to force an American citizen publicly to profess any statement of belief or to engage in any ceremony of assent to one presents questions of power that must be considered independently of any idea we may have as to the utility of the ceremony in question.

> FN14 For example: Use of 'Republic,' if rendered to distinguish our government from a 'democracy,' or the words 'one Nation,' if intended to distinguish it from a 'federation,' open up old and bitter controversies in our political history; 'liberty and justice for all,' if it must be accepted as descriptive of the present order rather than an ideal, might to some seem an overstatement.

Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views *635 hold such a compulsory rite to infringe constitutional liberty of the individual. [FN15] It is not necessary to inquire whether non-conformist beliefs will exempt **1184 from the duty to salute unless we first find power to make the salute a legal duty.

FN15 Cushman, Constitutional Law in

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1939--40, 35 American Political Science Review 250, 271, observes: 'All of the eloquence by which the majority extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public.' For further criticism of the opinion in the Gobitis case by persons who do not share the faith of the Witnesses see: Powell, Conscience and the Constitution, in Democracy and National Unity (University of Chicago Press, 1941) 1; Wilkinson, Some Aspects of the Constitutional Guarantees of Civil Liberty, 11 Fordham Law Review 50; Fennell, The 'Reconstructed Court' and Religious Freedom: The Gobitis Case in Retrospect, 19 New York University Law Quarterly Review 31; Green, Liberty under the Fourteenth Amendment, 27 Washington University Law Quarterly 497; 9 International Juridical Association Bulletin 1; 39 Michigan Law Review 149; 15 St. John's Law Review 95.

The Gobitis decision, however, assumed, as did the argument in that case and in this, that power exists in the State to impose the flag salute discipline upon school children in general. The Court only examined and rejected a claim based on religious beliefs of immunity from an unquestioned general rule. [FN16] The question which underlies the *636 flag salute controversy is whether such a ceremony so touching matters of opinion and political attitude may be imposed upon the individual by official authority under powers committed to any political organization under our Constitution. We examine rather than assume existence of this power and, against this broader definition of issues in this case, re-examine specific grounds assigned for the Gobitis decision.

FN16 The opinion says 'The the flagsalute is an allowable portion of a school program for those who do not invoke conscientious scruples is surely not debatable. But for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise.' (Italics ours.) 310 U.S. at pages 599, 600, 60 S.Ct. at page 1015, 84 L.Ed. 1375, 127 A.L.R. 1493. And elsewhere the question under consideration was stated, 'When does the constitutional guarantee compel exemption from doing what society thinks necessary for the promotion of some great common end, or from a penalty for conduct which appears dangerous to the general good?' (Italics ours.) Id., 310 U.S. at page 593, 60 S.Ct. at page 1012, 84 L.Ed. 1375, 127 A.L.R. 1493. And again, '* * * whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion. * * *' (Italics ours.) Id., 310 U.S. at page 595, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493.

1. It was said that the flag-salute controversy confronted the Court with 'the problem which Lincoln cast in memorable dilemma: 'Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?" and that the answer must be in favor of strength. Minersville School District v. Gobitis, supra, 310 U.S. at page 596, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493.

We think these issues may be examined free of pressure or restraint growing out of such considerations.

It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favor of those in authority and would require us to override

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every liberty thought to weaken or delay execution of their policies.

Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by **1185 making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is *637 doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end.

The subject now before us exemplifies this principle. Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction. If it is to impose any ideological discipline, however, each party or denomination must seek to control, or failing that, to weaken the influence of the educational system. Observance of the limitations of the Constitution will not weaken government in the field appropriate for its exercise.

2. It was also considered in the Gobitis case that functions of educational officers in states, counties and school districts were such that to interfere with their authority 'would in effect make us the school board for the country.' Id., 310 U.S. at page 598, 60 S.Ct. at page 1015, 84 L.Ed. 1375, 127 A.L.R. 1493.

[2] The Fourteenth Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures--Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilent in calling it to account. *638 The action of Congress in making flag observance voluntary [FN17] and respecting the conscience of the objector in a matter so vital as raising the Army [FN18] contrasts sharply with these local regulations in matters relatively trivial to the welfare of the nation. There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

FN17 s 7 of House Joint Resolution 359, approved December 22, 1942, 56 Stat. 1074, 36 U.S.C. (1942 Supp.) s 172, 36 U.S.C.A. s 172, prescribes no penalties for nonconformity but provides:
'That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all', is rendered by standing with the right hand over the heart. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. ' * * *'

FN18 s 5(a) of the Selective Training and Service Act of 1940, 50 U.S.C. (App.) s 305(g), 50 U.S.C.A.Appendix, s 305(g).

3. The Gobitis opinion reasoned that this is a field 'where courts possess no marked and certainly no controlling competence,' that it is committed to the legislatures as well as the courts to guard cherished liberties and that it is constitutionally appropriate to 'fight out the wise use of legislative authority in the forum of public opinion and before legislative assemblies rather than to transfer such a contest to the judicial arena,' since all the 'effective means of inducing political changes are left free.' Id., 310 U.S. at page 597, 598, 600, 60 S.Ct. at pages 1014, 1016, 84 L.Ed. 1375, 127 A.L.R. 1493.

[3][4] The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish

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them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted **1186 to vote; they depend on the outcome of no elections.

*639 [5][6] In weighing arguments of the parties it is important to distinguish between the due process clause of the Fourteenth Amendment as an instrument for transmitting the principles of the First Amendment and those cases in which it is applied for its own sake. The test of legislation which collides with the Fourteenth Amendment, because it also collides with the principles of the First, is much more definite than the test when only the Fourteenth is involved. Much of the vagueness of the due process clause disappears when the specific prohibitions of the First become its standard. The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. It is important to note that while it is the Fourteenth Amendment which bears directly upon the State it is the more specific limiting principles of the First Amendment that finally govern this case.

[7] Nor does our duty to apply the Bill of Rights to assertions of official authority depend upon our possession of marked competence in the field where the invasion of rights occurs. True, the task of translating the majestic generalities of the Bill of Rights, conceived as part of the pattern of liberal government in the eighteenth century, into concrete restraints on officials dealing with the problems of the twentieth century, is one to disturb self-confidence. These principles grew in soil which also produced a philosophy that the individual was the center of society, that his liberty was attainable through mere absence of governmental restraints, and that government should be entrusted with few controls and only the mildest supervision *640 over men's affairs. We must transplant these rights to a soil in which the laissez-faire concept or principle of non-interference has withered at least as to economic affairs, and social advancements are increasingly sought through closer integration of society and through expanded and strengthened governmental controls. These changed conditions often deprive precedents of reliability and cast us more than we would choose upon our own judgment. But we act in these matters not by authority of our competence but by force of our commissions. We cannot, because of modest estimates of our competence in such specialties as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed.

4. Lastly, and this is the very heart of the Gobitis opinion, it reasons that 'National unity is the basis of national security,' that the authorities have 'the right to select appropriate means for its attainment,' and hence reaches the conclusion that such compulsory measures toward 'national unity' are constitutional. Id., 310 U.S. at page 595, 60 S.Ct. at page 1013, 84 L.Ed. 1375, 127 A.L.R. 1493. Upon the verity of this assumption depends our answer in this case.

National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.

Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. *641 As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson **1187 of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious

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and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

[8] It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

[9] The case is made difficult not because the principles of its decision are obscure but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism *642 and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

[10] If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. [FN19]

FN19 The Nation may raise armies and compel citizens to give military service. Selective Draft Law Cases (Arver v. United States), 245 U.S. 366, 38 S.Ct. 159, 62 L.Ed. 349, L.R.A.1918C, 361, Ann.Cas.1918B, 856. It follows, of course, that those subject to military discipline are under many duties and may not claim many freedoms that we hold inviolable as to those in civilian life.

[11] We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.

The decision of this Court in Minersville School District v. Gobitis and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled, and the judgment enjoining enforcement of the West Virginia Regulation is affirmed.

Affirmed.

Mr. Justice ROBERTS and Mr. Justice REED adhere to the views expressed by the Court in *643 Minersville School District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, and are of the opinion that the judgment below should be reversed.

Mr. Justice BLACK and Mr. Justice DOUGLAS, concurring.

We are substantially in agreement with the opinion just read, but since we originally joined with the Court in the Gobitis case, it is appropriate that we make a brief statement of reasons for our change of view.

Reluctance to make the Federal Constitution a rigid bar against state regulation of conduct thought inimical to the public welfare was the controlling influence which moved us to consent to the Gobitis decision. Long reflection convinced us that although the principle is sound, its application

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**1188 in the particular case was wrong. Jones v. Opelika, 316 U.S. 584, 623, 62 S.Ct. 1231, 1251, 86 L.Ed. 1691, 141 A.L.R. 514. We believe that the statute before us fails to accord full scope to the freedom of religion secured to the appellees by the First and Fourteenth Amendments.

The statute requires the appellees to participate in a ceremony aimed at inculcating respect for the flag and for this country. The Jehovah's Witnesses, without any desire to show disrespect for either the flag or the country, interpret the Bible as commanding, at the risk of God's displeasure, that they not go through the form of a pledge of allegiance to any flag. The devoutness of their belief is evidenced by their willingness to suffer persecution and punishment, rather than make the pledge.

No well-ordered society can leave to the individuals an absolute right to make final decisions, unassailable by the State, as to everything they will or will not do. The First Amendment does not go so far. Religious faiths, honestly held, do not free individuals from responsibility to conduct themselves obediently to laws which are either imperatively necessary to protect society as a whole from grave *644 and pressingly imminent dangers or which, without any general prohibition, merely regulate time, place or manner of religious activity. Decision as to the constitutionality of particular laws which strike at the substance of religious tenets and practices must be made be this Court. The duty is a solemn one, and in meeting it we cannot say that a failure, because of religious scruples, to assume a particular physical position and to repeat the words of a patriotic formula creates a grave danger to the nation. Such a statutory exaction is a form of test oath, and the test oath has always been abhorrent in the United States.

Words uttered under coercion are proof of loyalty to nothing but self- interest. Love of country must spring from willing hearts and free minds, inspired by a fair administration of wise laws enacted by the people's elected representatives within the bounds of express constitutional prohibitions. These laws must, to be consistent with the First Amendment, permit the widest toleration of conflicting viewpoints consistent with a society of free men.

Neither our domestic tranquillity in peace nor our martial effort in war depend on compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation. If, as we think, their fears are groundless, time and reason are the proper antidotes for their errors. The ceremonial, when enforced against conscientious objectors, more likely to defeat than to serve its high purpose, is a handy implement for disguised religious persecution. As such, it is inconsistent with our Constitution's plan and purpose.

Mr. Justice MURPHY, concurring.

I agree with the opinion of the Court and join in it.

The complaint challenges an order of the State Board of Education which requires teachers and pupils to participate in the prescribed salute to the flag. For refusal to conform with the requirement the State law prescribes expulsion. *645 The offender is required by law to be treated as unlawfully absent from school and the parent or guardian is made liable to prosecution and punishment for such absence. Thus not only is the privilege of public education conditioned on compliance with the requirement, but non-compliance is virtually made unlawful. In effect compliance is compulsory and not optional. It is the claim of appellees that the regulation is invalid as a restriction on religious freedom and freedom of speech, secured to them against State infringement by the First and Fourteenth Amendments to the Constitution of the United States. DP A reluctance to interfere with considered state action, the fact that the end sought is a desirable one, the emotion aroused by the flag as a symbol for which we have fought and are now fighting again,--all of these are understandable. But there is before us the right of freedom to believe, freedom to worship one's Maker according to the dictates of one's conscience, a right which the Constitution specifically shelters. Reflection has convinced me that as a judge I have no loftier duty or responsibility than to uphold that spiritual freedom to its farthest reaches.

The right of freedom of thought and of religion as guaranteed by the Constitution **1189 against State action includes both the right to speak freely and the right to refrain from speaking at all, except in so far

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63 S.Ct. 1178
87 L.Ed. 1628, 147 A.L.R. 674
(Cite as: 319 U.S. 624, 63 S.Ct. 1178)

as essential operations of government may require it for the preservation of an orderly society,--as in the case of compulsion to give evidence in court. Without wishing to disparage the purposes and intentions of those who hope to inculcate sentiments of loyalty nd patriotism by requiring a declaration of allegiance as a feature of public education, or unduly belittle the benefits that may accrue therefrom, I am impelled to conclude that such a requirement is not essential to the maintenance of effective government and orderly society. To many it is deeply distasteful to join in a public chorus of affirmation of private belief. By some, including ***646** the members of this sect, it is apparently regarded as incompatible with a primary religious obligation and therefore a restriction on religious freedom. Official compulsion to affirm what is contrary to one's religious beliefs is the antithesis of freedom of worship which, it is well to recall, was achieved in this country only after what Jefferson characterized as the 'severest contests in which I have ever been engaged.' [FN20]

FN20 See Jefferson, Autobiography, vol. 1, pp. 53--59.

I am unable to agree that the benefits that may accrue to society from the compulsory flag salute are sufficiently definite and tangible to justify the invasion of freedom and privacy that it entailed or to compensate for a restraint on the freedom of the individual to be vocal or silent according to his conscience or personal inclination. The trenchant words in the preamble to the Virginia Statute for Religious Freedom remain unanswerable: '* * * all attempts to influence (the mind) by temporal punishment, or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, * * *.' Code Va.1919, s 34. Any spark of love for country which may be generated in a child or his associates by forcing him to make what is to him an empty gesture and recite words wrung from him contrary to his religious beliefs is overshadowed by the desirability of preserving freedom of conscience to the full. It is in that freedom and the example of persuasion, not in force and compulsion, that the real unity of America lies.

Mr. Justice FRANKFURTER, dissenting.

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should whole-heartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and ***647** action of a lifetime. But as judges we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard. They duty of a judge who must decide which of two claims before the Court shall prevail, that of a State to enact and enforce laws within its general competence or that of an individual to refuse obedience because of the demands of his conscience, is not that of the ordinary person. It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could in reason have enacted such a law. In the light of all the circumstances, including the history of this question in this Court, it would require more daring than I possess to deny that reasonable legislators could have taken the action which is before us for review. Most unwillingly, therefore, I must differ from my brethren with regard to legislation like this. I cannot bring my mind to believe that the 'liberty' secured by the Due Process Clause gives this Court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end, ****1190** namely, the promotion of good citizenship, by employment of the means here chosen.

Not so long ago we were admonished that 'the only check upon our own exercise of power is our own sense of self-restraint. For the removal of unwise laws from the statute books appeal lies, not to the courts, but to the ballot and to the processes of democratic government.' ***648** United States v.

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Butler, 297 U.S. 1, 79, 56 S.Ct. 312, 325, 80 L.Ed. 477, 102 A.L.R. 914 (dissent). We have been told that generalities do not decide concrete cases. But the intensity with which a general principle is held may determine a particular issue, and whether we put first things first may decide a specific controversy.

The admonition that judicial self-restraint alone limits arbitrary exercise of our authority is relevant every time we are asked to nullify legislation. The Constitution does not give us greater veto power when dealing with one phase of 'liberty' than with another, or when dealing with grade school regulations than with college regulations that offend conscience, as was the case in Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343. In neither situation is our function comparable to that of a legislature or are we free to act as though we were a superlegislature. Judicial self-restraint is equally necessary whenever an exercise of political or legislative power is challenged. There is no warrant in the constitutional basis of this Court's authority for attributing different ro les to it depending upon the nature of the challenge to the legislation. Our power does not vary according to the particular provision of the Bill of Rights which is invoked. The right not to have property taken without just compensation has, so far as the scope of judicial power is concerned, the same constitutional dignity as the right to be protected against unreasonable searches and seizures, and the latter has no less claim than freedom of the press or freedom of speech or religious freedom. In no instance is this Court the primary protector of the particular liberty that is invoked. This Court has recognized, what hardly could be denied, that all the provisions of the first ten Amendments are 'specific' prohibitions, United States v. Carolene Products Co., 304 U.S. 144, 152, 58 S.Ct. 778, 783, 82 L.Ed. 1234, note 4. But each specific Amendment, in so far as embraced within the Fourteenth Amendment, must be equally respected, and the function of this ***649** Court does not differ in passing on the constitutionality of legislation challenged under different Amendments.

When Mr. Justice Holmes, speaking for this Court, wrote that 'it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts', Missouri, Kansas & Texas R. Co. v. May, 194 U.S. 267, 270, 24 S.Ct. 638, 639, 48 L.Ed. 971, he went to the very essence of our constitutional system and the democratic conception of our society. He did not mean that for only some phases of civil government this Court was not to supplant legislatures and sit in judgment upon the right or wrong of a challenged measure. He was stating the comprehensive judicial duty and role of this Court in our constitutional scheme whenever legislation is sought to be nullified on any ground, namely, that responsibility for legislation lies with legislatures, answerable as they are directly to the people, and this Court's only and very narrow function is to determine whether within the broad grant of authority vested in legislatures they have exercised a judgment for which reasonable justification can be offered.

The framers of the federal Constitution might have chosen to assign an active share in the process of legislation to this Court. They had before them the well-known example of New York's Council of Revision, which had been functioning since 1777. After stating that 'laws inconsistent with the spirit of this constitution, or with the public good, may be hastily and unadvisedly passed', the state constitution made the judges of New York part of the legislative process by providing that 'all bills which have passed the senate and assembly shall, before they become laws', be presented to a Council of which the judges constituted a majority, 'for their revisal and consideration'. Art. III, New York Constitution of 1777. Judges exercised this legislative function in New York ***650** for nearly fifty years. See Art. I, s 12, New York Constitution of 1821. But the framers of the Constitution denied such legislative powers to the federal judiciary. ****1191** They chose instead to insulate the judiciary from the legislative function. They did not grant to this Court supervision over legislation.

The reason why from the beginning even the narrow judicial authority to nullify legislation has been viewed with a jealous eye is that it serves to prevent the full play of the democratic process. The fact that it may be an undemocratic aspect of our scheme of government does not call for its rejection or its disuse. But it is the best of reasons, as this Court has frequently recognized, for the greatest caution in its use.

The precise scope of the question before us defines

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the limits of the constitutional power that is in issue. The State of West Virginia requires all pupils to share in the salute to the flag as part of school training in citizenship. The present action is one to enjoin the enforcement of this requirement by those in school attendance. We have not before us any attempt by the State to punish disobedient children or visit penal consequences on their parents. All that is in question is the right of the state to compel participation in this exercise by those who choose to attend the public schools.

We are not reviewing merely the action of a local school board. The flag salute requirement in this case comes before us with the full authority of the State of West Virginia. We are in fact passing judgment on 'the power of the State as a whole'. Rippey v. Texas, 193 U.S. 504, 509, 24 S.Ct. 516, 517, 48 L.Ed. 767; Skiriotes v. Florida, 313 U.S. 69, 79, 61 S.Ct. 924, 930, 85 L.Ed. 1193. Practically we are passing upon the political power of each of the forty-eight states. Moreover, since the First Amendment has been read into the Fourteenth, our problem is precisely the same is it would be if we had before us an Act of Congress for the District of Columbia. To suggest that we are here concerned ***651** with the heedless action of some village tyrants is to distort the augustness of the constitutional issue and the reach of the consequences of our decision.

Under our constitutional system the legislature is charged solely with civil concerns of society. If the avowed or intrinsic legislative purpose is either to promote or to discourage some religious community or creed, it is clearly within the constitutional restrictions imposed on legislatures and cannot stand. But it by no means follows that legislative power is wanting whenever a general non-discriminatory civil regulation in fact touches conscientious scruples or religious beliefs of an individual or a group. Regard for such scruples or beliefs undoubtedly presents one of the most reasonable claims for the exertion of legislative accommodation. It is, of course, beyond our power to rewrite the state's requirement, by providing exemptions for those who do not wish to participate in the flag salute or by making some other accommodations to meet their scruples. That wisdom might suggest the making of such accommodations and that school administration would not find it too difficult to make them and yet maintain the ceremony for those not refusing to conform, is outside our province to suggest. Tact, respect, and generosity toward variant views will always commend themselves to those charged with the duties of legislation so as to achieve a maximum of good will and to require a minimum of unwilling submission to a general law. But the real question is, who is to make such accommodations, the courts or the legislature?

This is no dry, technical matter. It cuts deep into one's conception of the democratic process--it concerns no less the practical differences between the means for making these accommodations that are open to courts and to legislatures. A court can only strike down. It can only say 'This or that law is void.' It cannot modify or qualify, it cannot make exceptions to a general requirement. ***652** And it strikes down not merely for a day. At least the finding of unconstitutionality ought not to have ephemeral significance unless the Constitution is to be reduced to the fugitive importance of mere legislation. When we are dealing with the Constitution of the United States, and more particularly with the great safeguards of the Bill of Rights, we are dealing with principles of liberty and justice 'so rooted in the traditions and conscience of our people as to be ranked as fundamental'--something without which 'a fair and enlightened system of justice would be impossible'. Palko v. Connecticut, 302 U.S. 319, 325, 58 S.Ct. 149, 152, 82 L.Ed. 288; ****1192**Hurtado v. California, 110 U.S. 516, 530, 531, 4 S.Ct. 111, 118, 119, 292, 28 L.Ed. 232. If the function of this Court is to be essentially no different from that of a legislature, if the considerations governing constitutional construction are to be substantially those that underlie legislation, then indeed judges should not have life tenure and they should be made directly responsible to the electorate. There have been many but unsuccessful proposals in the last sixty years to amend the Constitution to that end. See Sen. Doc. No. 91, 75th Cong., 1st Sess., pp. 248--51.

Conscientious scruples, all would admit, cannot stand against every legislative compulsion to do positive acts in conflict with such scruples. We have been told that such compulsions override religious scruples only as to major concerns of the state. But the determination of what is major and what is minor itself raises questions of policy. For

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the way in which men equally guided by reason appraise importance goes to the very heart of policy. Judges should be very diffident in setting their judgment against that of a state in determining what is and what is not a major concern, what means are appropriate to proper ends, and what is the total social cost in striking the balance of imponderables.

What one can say with assurance is that the history out of which grew constitutional provisions for religious equality *653 and the writings of the great exponents of religious freedom--Jefferson, Madison, John Adams, Benjamin Franklin--are totally wanting in justification for a claim by dissidents of exceptional immunity from civic measures of general applicability, measures not in fact disguised assaults upon such dissident views. The great leaders of the American Revolution were determined to remove political support from every religious establishment. They put on an equality the different religious sects--Episcopalians, Presbyterians, Catholics, Baptists, Methodists, Quakers, Huguenots--which, as dissenters, had been under the heel of the various orthodoxies that prevailed in different colonies. So far as the state was concerned, there was to be neither orthodoxy nor heterodoxy. And so Jefferson and those who followed him wrote guaranties of religious freedom into our constitutions. Religious minorities as well as religious majorities were to be equal in the eyes of the political state. But Jefferson and the others also knew that minorities may disrupt society. It never would have occurred to them to write into the Constitution the subordination of the general civil authority of the state to sectarian scruples.

The constitutional protection of religious freedom terminated disabilities, it did not create new privileges. It gave religious equality, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma. Religious loyalties may be exercised without hindrance from the state, not the state may not exercise that which except by leave of religious loyalties is within the domain of temporal power. Otherwise each individual could set up his own censor against obedience to laws conscientiously deemed for the public good by those whose business it is to make laws.

The prohibition against any religious establishment by the government placed denominations on an equal footing--*654 it assured freedom from support by the government to any mode of worship and the freedom of individuals to support any mode of worship. Any person may therefore believe or disbelieve what he pleases. He may practice what he will in his own house of worship or publicly within the limits of public order. But the lawmaking authority is not circumscribed by the variety of religious beliefs, otherwise the constitutional guaranty would be not a protection of the free exercise of religion but a denial of the exercise of legislation.

The essence of the religious freedom guaranteed by our Constitution is therefore this: no religion shall either receive the state's support or incur its hostility. Religion is outside the sphere of political government. This does not mean that all matters on which religious organizations or beliefs may pronounce are outside the sphere of government. Were this so, instead of the separation of church and state, there would be the subordination of the state on any matter deemed within the sovereignty of the religious conscience. Much that is the concern of temporal authority affects the spiritual interests of men. But it is not enough to strike down a non-discriminatory **1193 law that it may hurt or offend some dissident view. It would be too easy to cite numerous prohibitions and injunctions to which laws run counter if the variant interpretations of the Bible were made the tests of obedience to law. The validity of secular laws cannot be measured by their conformity to religious doctrines. It is only in a theocratic state that ecclesiastical doctrines measure legal right or wrong.

An act compelling profession of allegiance to a religion, no matter how subtly or tenuously promoted, is bad. But an act promoting good citizenship and national allegiance is within the domain of governmental authority and is therefore to be judged by the same considerations of power and of constitutionality as those involved in the many *655 claims of immunity from civil obedience because of religious scruples.

That claims are pressed on behalf of sincere religious convictions does not of itself establish their constitutional validity. Nor does waving the banner of religious fredom relieve us from examining into the power we are asked to deny the

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states. Otherwise the doctrine of separation of church and state, so cardinal in the history of this nation and for the liberty of our people, would mean not the disestablishment of a state church but the establishment of all churches and of all religious groups.

The subjection of dissidents to the general requirement of saluting the flag, as a measure conducive to the training of children in good citizenship, is very far from being the first instance of exacting obedience to general laws that have offended deep religious scruples. Compulsory vaccination, see Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643, 3 Ann.Cas. 765, food inspection regulations, see Shapiro v. Lyle, D.C., 30 F.2d 971, the obligation to bear arms, see Hamilton v. Regents, 293 U.S. 245, 267, 55 S.Ct. 197, 206, 79 L.Ed. 343, testimonial duties, see Stansbury v. Marks, 2 Dall. 213, 1 L.Ed. 353, compulsory medical treatment, see People v. Vogelgesang, 221 N.Y. 290, 116 N.E. 977--these are but illustrations of conduct that has often been compelled in the enforcement of legislation of general applicability even though the religious consciences of particular individuals rebelled at the exaction.

Law is concerned with external behavior and not with the inner life of man. It rests in large measure upon compulsion. Socreates lives in history partly because he gave his life for the conviction that duty of obedience to secular law does not presuppose consent to its enactment or belief in its virtue. The consent upon which free government rests is the consent that comes from sharing in the process of making and unmaking laws. The state is not shut out from a domain because the individual conscience may deny the state's claim. The individual conscience ***656** may profess what faith it chooses. It may affirm and promote that faith--in the language of the Constitution, it may 'exercise' it freely--but it cannot thereby restrict community action through political organs in matters of community concern, so long as the action is not asserted in a discriminatory way either openly or by stealth. One may have the right to practice one's religion and at the same time owe the duty of formal obedience to laws that run counter to one's beliefs. Compelling belief implies denial of opportunity to combat it and to assert dissident views. Such compulsion is one thing. Quite another matter is submission to conformity of action while denying its wisdom or virtue and with ample opportunity for seeking its change or abrogation.

In Hamilton v. Regents, 293 U.S. 245, 55 S.Ct. 197, 79 L.Ed. 343, this Court unanimously held that one attending a state-maintained university cannot refuse attendance on courses that offend his religious scruples. That decision is not overruled today, but is distinguished on the ground that attendance at the institution for higher education was voluntary and therefore a student could not refuse compliance with its conditions and yet take advantage of its opportunities. But West Virginia does not compel the attendance at its public schools of the children here concerned. West Virginia does not so compel, for it cannot. This Court denied the right of a state to require its children to attend public schools. Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, 39 A.L.R. 468. As to its public schools, West Virginia imposes conditions ****1194** which it deems necessary in the development of future citizens precisely as California deemed necessary the requirements that offended the student's conscience in the Hamilton case. The need for higher education and the duty of the state to provide it as part of a public educational system, are part of the democratic faith of most of our states. The right to secure such education in institutions not maintained by public funds is unquestioned. ***657** But the practical opportunities for obtaining what is becoming in increasing measure the conventional equipment of American youth may be no less burdensome than that which parents are increasingly called upon to bear in sending their children to parochial schools because the education provided by public schools, though supported by their taxes, does not satisfy their ethical and educational necessities. I find it impossible, so far as constitutional power is concerned, to differentiate what was sanctioned in the Hamilton case from what is nullified in this case. And for me it still remains to be explained why the grounds of Mr. Justice Cardozo's opinion in Hamilton v. Regents, supra, are not sufficient to sustain the flag salute requirement. Such a requirement, like the requirement in the Hamilton case, 'is not an interference by the state with the free exercise of religion when the liberties of the Constitution are read in the light of a century and a half of history during days of peace and war.' 293 U.S. 245, 266,

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55 S.Ct. 197, 206, 79 L.Ed. 343. The religious worshiper, 'if his liberties were to be thus extended, might refuse to contribute taxes * * * in furtherance of any other and condemned by his conscience as irreligious or immoral. The right of private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government.' Id., 293 U.S. at page 268, 55 S.Ct. at page 206, 79 L.Ed. 343.

Parents have the privilege of choosing which schools they wish their children to attend. And the question here is whether the state may make certain requirements that seem to it desirable or important for the proper education of those future citizens who go to schools maintained by the states, or whether the pupils in those schools may be relieved from those requirements if they run counter to the consciences of their parents. Not only have parents the right to send children to schools of their own choosing but the state has no right to bring such schools 'under a strict governmental control' or give 'affirmative direction ***658** concerning the intimate and essential details of such schools, intrust their control to public officers, and deny both owners and patrons reasonable choice and discretion in respect of teachers, curriculum and textbooks'. Farrington v. Tokushige, 273 U.S. 284, 298, 47 S.Ct. 406, 408, 409, 71 L.Ed. 646. Why should not the state likewise have constitutional power to make reasonable provisions for the proper instruction of children in schools maintained by it?

When dealing with religious scruples we are dealing with an almost numberless variety of doctrines and beliefs entertained with equal sincerity by the particular groups for which they satisfy man's needs in his relation to the mysteries of the universe. There are in the United States more than 250 distinctive established religious denominations. In the state of Pennsylvania there are 120 of these, and in West Virginia as many as 65. But if religious scruples afford immunity from civic obedience to laws, they may be invoked by the religious beliefs of any individual even though he holds no membership in any sect or organized denomination. Certainly this Court cannot be called upon to determine what claims of conscience should be recognized and what should be rejected as satisfying the 'religion' which the Constitution protects. That would indeed resurrect the very discriminatory treatment of religion which the Constitution sought forever to forbid. And so, when confronted with the task of considering the claims of immunity from obedience to a law dealing with civil affairs because of religious scruples, we cannot conceive religion more narrowly than in the terms in which Judge Augustus N. Hand recently characterized it:

'It is unnecessary to attempt a definition of religion; the content of the term is found in the history of the human race and is incapable of compression into a few words. Religious belief arises from a sense of the inadequacy of reason ***659** as a means of relating the individual to his fellow-men ****1195** and to his universe. * * * (It) may justly be regarded as a response of the individual to an inward mentor, call it conscience or God, that is for many persons at the present time the equivalent of what has always been thought a religious impulse.' United States v. Kauten, 2 Cir., 133 F.2d 703, 708.

Consider the controversial issue of compulsory Bible-reading in public schools. The educational policies of the states are in great conflict over this, and the state courts are divided in their decisions on the issue whether the requirement of Bible-reading offends constitutional provisions dealing with religious freedom. The requirement of Bible-reading has been justified by various state courts as an appropriate means of inculcating ethical precepts and familiarizing pupils with the most lasting expression of great English literature. Is this Court to overthrow such variant state educational policies by denying states the right to entertain such convictions in regard to their school systems because of a belief that the King James version is in fact a sectarian text to which parents of the Catholic and Jewish faiths and of some Protestant persuasions may rightly object to having their children exposed? On the other hand the religious consciences of some parents may rebel at the absence of any Bible-reading in the schools. See State of Washington ex rel. Clithero v. Showalter, 284 U.S. 573, 52 S.Ct. 15, 76 L.Ed. 498. Or is this Court to enter the old controversy between science and religion by unduly defining the limits within which a state may experiment with its school curricula? The religious consciences of some parents may be offended by subjecting their children to the Biblical account of creation, while another state may offend parents by prohibiting a teaching of biology that contradicts such Biblical

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account. Compare Scopes v. State, 154 Tenn. 105, 289 S.W. 363, 53 A.L.R. 821. What of conscientious *660 objections to what is devoutly felt by parents to be the poisoning of impressionable minds of children by chauvinistic teaching of history? This is very far from a fanciful suggestion for in the belief of many thoughtful people nationalism is the seed-bed of war.

There are other issues in the offing which admonish us of the difficulties and complexities that confront states in the duty of administering their local school systems. All citizens are taxed for the support of public schools although this Court has denied the right of a state to compel all children to go to such schools and has recognized the right of parents to send children to privately maintained schools. Parents who are dissatisfied with the public schools thus carry a double educational burden. Children who go to public school enjoy in many states derivative advantages such as free text books, free lunch, and free transportation in going to and from school. What of the claims for equity of treatment of those parents who, because of religious scruples, cannot send their children to public schools? What of the claim that if the right to send children to privately maintained schools is partly an exercise of religious conviction, to render effective this right it should be accompanied by a quality of treatment by the state in supplying free textbooks, free lunch, and free transportation to children who go to private schools? What of the claim that such grants are offensive to the cardinal constitutional doctrine of separation of church and state?

These questions assume increasing importance in view of the steady growth of parochial schools both in number and in population. I am not borrowing trouble by adumbrating these issues nor am I parading horrible examples of the consequences of today's decision. I am aware that we must decide the case before us and not some other case. But that does not mean that a case is dissociated from the past and unrelated to the future. We must decide this *661 case with due regard for what went before and no less regard for what may come after. Is it really a fair construction of such a fundamental concept as the right freely to exercise one's religion that a state cannot choose to require all children who attend public school to make the same gesture of allegiance to the symbol of our national life because it may offend the conscience of some children, but that it may compel all children to attend public school to listen to the King James version although it may offend the consciences of their parents? And what of the larger issue of claiming immunity from obedience to a general civil regulation that has a reasonable **1196 relation to a public purpose within the general competence of the state? See Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S.Ct. 571, 573, 69 L.Ed. 1070, 39 A.L.R. 468. Another member of the sect now before us insisted that in forbidding her two little girls, aged nine and twelve, to distribute pamphlets Oregon infringed her and their freedom of religion in that the children were engaged in 'preaching the gospel of God's Kingdom'. A procedural technicality led to the dismissal of the case, but the problem remains. McSparran v. City of Portland, 318 U.S. 768, 63 S.Ct. 759, 87 L.Ed. 1139.

These questions are not lightly stirred. They touch the most delicate issues and their solution challenges the best wisdom of political and religious statesmen. But it presents awful possibilities to try to encase the solution of these problems within the rigid prohibitions of unconstitutionality.

We are told that a flag salute is a doubtful substitute for adequate understanding of our institutions. The states that require such a school exercise do not have to justify it as the only means for promoting good citizenship in children, but merely as one of diverse means for accomplishing a worthy end. We may deem it a foolish measure, but the point is that this Court is not the organ of government to resolve doubts as to whether it will fulfill its purpose. Only if there be no doubt that any reasonable *662 mind could entertain can we deny to the states the right to resolve doubts their way and not ours.

That which to the majority may seem essential for the welfare of the state may offend the consciences of a minority. But, so long as no inroads are made upon the actual exercise of religion by the minority, to deny the political power of the majority to enact laws concerned with civil matters, simply because they may offend the consciences of a minority, really means that the consciences of a minority are more sacred and more enshrined in the Constitution than the consciences of a majority.

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We are told that symbolism is a dramatic but primitive way of communicating ideas. Symbolism is inescapable. Even the most sophisticated live by symbols. But it is not for this Court to make psychological judgments as to the effectiveness of a particular symbol in inculcating concededly indispensable feelings, particularly if the state happens to see fit to utilize the symbol that represents our heritage and our hopes. And surely only flippancy could be responsible for the suggestion that constitutional validity of a requirement to salute our flag implies equal validity of a requirement to salute a dictator. The significance of a symbol lies in what it represents. To reject the swastika does not imply rejection of the Cross. And so it bears repetition to say that it mocks reason and denies our whole history to find in the allowance of a requirement to salute our flag on fitting occasions the seeds of sanction for obeisance to a leader. To deny the power to employ educational symbols is to say that the state's educational system may not stimulate the imagination because this may lead to unwise stimulation.

The right of West Virginia to utilize the flag salute as part of its educational process is denied because, so it is argued, it cannot be justified as a means of meeting a 'clear and present danger' to national unity. In passing it deserves to be noted that the four cases which unanimously*663 sustained the power of states to utilize such an educational measure arose and were all decided before the present World War. But to measure the state's power to make such regulations as are here resisted by the imminence of national danger is wholly to misconceive the origin and purpose of the concept of 'clear and present danger'. To apply such a test is for the Court to assume, however unwittingly, a legislative responsibility that does not belong to it. To talk about 'clear and present danger' as the touchstone of allowable educational policy by the states whenever school curricula may impinge upon the boundaries of individual conscience, is to take a felicitous phrase out of the context of the particular situation where it arose and for which it was adapted. Mr. Justice Holmes used the phrase 'clear and present danger' in a case involving mere speech as a means by which alone to accomplish sedition in time of war. By that phrase he meant merely to indicate that, in view of the protection given to utterance by the First Amendment, in order that mere utterance may **1197 not be proscribed, 'the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.' Schenck v. United States, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470. The 'substantive evils' about which he was speaking were inducement of insubordination in the military and naval forces of the United States and obstruction of enlistment while the country was at war. He was not enunciating a formal rule that there can be no restriction upon speech and, still less, no compulsion where conscience balks, unless imminent danger would thereby be wrought 'to our institutions or our government'.

The flag salute exercise has no kinship whatever to the oath tests so odious in history. For the oath test was one of the instruments for suppressing heretical beliefs. *664 Saluting the flag suppresses no belief not curbs it. Children and their parents may believe what they please, avow their belief and practice it. It is not even remotely suggested that the requirement for saluting the flag involves the slightest restriction against the fullest opportunity on the part both of the children and of their parents to disavow as publicly as they choose to do so the meaning that others attach to the gesture of salute. All channels of affirmative free expression are open to both children and parents. Had we before us any act of the state putting the slightest curbs upon such free expression, I should not lag behind any member of this Court in striking down such an invasion of the right to freedom of thought and freedom of speech protected by the Constitution.

I am fortified in my view of this case by the history of the flag salute controversy in this Court. Five times has the precise question now before us been adjudicated. Four times the Court unanimously found that the requirement of such a school exercise was not beyond the powers of the states. Indeed in the first three cases to come before the Court the constitutional claim now sustained was deemed so clearly unmeritorious that this Court dismissed the appeals for want of a substantial federal question. Leoles v. Landers, 302 U.S. 656, 58 S.Ct. 364, 82 L.Ed. 507; Hering v. State Board of Education, 303 U.S. 624, 58 S.Ct. 752, 82 L.Ed. 1087; Gabrielli v. Knickerbocker, 306 U.S. 621, 59 S.Ct. 786, 83 L.Ed. 1026. In the fourth case the judgment of the

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district court upholding the state law was summarily affirmed on the authority of the earlier cases. Johnson v. Deerfield, 306 U.S. 621, 59 S.Ct. 791, 83 L.Ed. 1027. The fifth case, Minersville District v. Gobitis, 310 U.S. 586, 60 S.Ct. 1010, 84 L.Ed. 1375, 127 A.L.R. 1493, was brought here because the decision of the Circuit Court of Appeals for the Third Circuit ran counter to our rulings. They were reaffirmed after full consideration, with one Justice dissenting.

What may be even more significant than this uniform recognition of state authority is the fact that every Justice--*665 thirteen in all--who has hitherto participated in judging this matter has at one or more times found no constitutional infirmity in what is now condemned. Only the two Justices sitting for the first time on this matter have not heretofore found this legislation inoffensive to the 'liberty' guaranteed by the Constitution. And among the Justice who sustained this measure were outstanding judicial leaders in the zealous enforcement of constitutional safeguards of civil liberties--men like Chief Justice Hughes, Mr. Justice Brandeis, and Mr. Justice Cardozo, to mention only those no longer on the Court.

One's conception of the Constitution cannot be severed from one's conception of a judge's function in applying it. The Court has no reason for existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the influences of immediacy and form the deflections of worldly ambition, will become able to take a view of longer range than the period of responsibility entrusted to Congress and legislatures. We are dealing with matters as to which legislators and voters have conflicting views. Are we as judges to impose our strong convictions on where wisdom lies? That which three years ago had seemed to five successive Courts to lie within permissible areas of legislation is now outlawed by the deciding shift of opinion of two Justice. What reason is there to believe that they or their successors may not have another view a few years hence? Is that which was **1198 deemed to be of so fundamental a nature as to be written into the Constitution to endure for all times to be the sport of shifting winds of doctrine? Of course, judicial opinions, even as to questions of constitutionality, are not immuntable. As has been true in the past, the Court will from time to time reverse its position. But I believe that never before these Jehovah's Witnesses *666 cases (except for minor deviations subsequently retraced) has this Court overruled decisions so as to restrict the powers of democratic government. Always heretofore, it has withdrawn narrow views of legislative authority so as to authorize what formerly it had denied.

In view of this history it must be plain that what thirteen Justices found to be within the constitutional authority of a state, legislators can not be deemed unreasonable in enacting. Therefore, in denying to the states what heretofore has received such impressive judicial sanction, some other tests of unconstitutionality must surely be guiding the Court than the absence of a rational justification for the legislation. But I know of no other test which this Court is authorized to apply in nullifying legislation.

In the past this Court has from time to time set its views of policy against that embodied in legislation by finding laws in conflict with what was called the 'spirit of the Constitution'. Such undefined destructive power was not conferred on this Court by the Constitution. Before a duly enacted law can be judicially nullified, it must be forbidden by some explicit restriction upon political authority in the Constitution. Equally inadmissible is the claim to strike down legislation because to us as individuals it seems opposed to the 'plan and purpose' of the Constitution. That is too tempting a basis for finding in one's personal views the purposes of the Founders.

The uncontrollable power wielded by this Court brings it very close to the most sensitive areas of public affairs. As appeal from legislation to adjudication becomes more frequent, and its consequences more far-reaching, judicial self-restraint becomes more and not less important, lest we unwarrantably enter social and political domains wholly outside our concern. I think I appreciate fully the objections to the law before us. But to deny that it presents a question upon which men might reasonably *667 differ appears to me to be intolerance. And since men may so reasonably differ, I deem it beyond my constitutional power to assert my view of the wisdom of this law against the view of the State of West Virginia.

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Jefferson's opposition to judicial review has not been accepted by history, but it still serves as an admonition against confusion between judicial and political functions. As a rule of judicial self-restraint, it is still as valid as Lincoln's admonition. For those who pass laws not only are under duty to pass laws. They are also under duty to observe the Constitution. And even though legislation relates to civil liberties, our duty of deference to those who have the responsibility for making the laws is no less relevant or less exacting. And this is so especially when we consider the accidental contingencies by which one man may determine constitutionality and thereby confine the political power of the Congress of the United States and the legislatures of forty-eight states. The attitude of judicial humility which thse considerations enjoin is not an abdication of the judicial function. It is a due observance of its limits. Moreover, it is to be borne in mind that in a question like this we are not passing on the proper distribution of political power as between the states and the central government. We are not discharging the basic function of this Court as the mediator of powers within the federal system. To strike down a law like this is to deny a power to all government.

The whole Court is conscious that this case reaches ultimate questions of judicial power and its relation to our scheme of government. It is appropriate, therefore, to recall an utterance as wise as any that I knew in analyzing what is really involved when the theory of this Court's function is put to the test of practice. The analysis is that of James Bradley Thayer:

'* * * there has developed a vast and growing increase of judicial interference with legislation. This is a very different ***668** state of things from what our fathers contemplated, a century and more ago, in framing the new system. Seldom, indeed, as they imagined, under our system, ****1199** would this great, novel, tremendous power of the courts be exerted,-- would this sacred ark of the covenant be taken from within the veil. Marshall himself expressed truly one aspect of the matter, when he said in one of the later years of his life: 'No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of legislative acts. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other grounds, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed.' And again, a little earlier than this, he laid down the one true rule of duty for the courts. When he went to Philadelphia at the end of September, in 1831, on that painful errand of which I have spoken, in answering a cordial tribute from the bar of that city he remarked that if he might be permitted to claim for himself and his associates any part of the kind things they had said, it would be this, that they had 'never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required.'

'That is the safe twofold rule; nor is the first part of it any whit less important than the second; nay, more; to-day it is the part which most requires to be emphasized. For just here comes in a consideration of very great weight. Great and, indeed, inestimable as are the advantages in a popular government of this conservative influence,--the power of the judiciary to disregard unconstitutional legislation,--it should be remembered that the exercise of it, even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that come from fighting the question out in the ordinary way, and correcting their own errors. If the decision in Munn v. Illinois and the 'Granger Cases,' twenty-five years ago, and in the 'Legal Tender Cases,' nearly thirty years ***669** ago, had been different; and the legislation there in question, thought by many to be unconstitutional and by many more to be ill- advised, had been set aside, we should have been saved some trouble and some harm. But I venture to think that the good which came to the country and its people from the vigorous thinking that had to be done in the political debates that followed, from the infiltration through every part of the population of sound ideas and sentiments, from the rousing into activity of opposite elements, the enlargement of ideas, the strengthening of moral fibre, and the growth of political experience that came out of it all,--that all this far more than outweighed any evil which ever flowed from the refusal of the court to interfere with the work of the legislature.

'The tendency of a common and easy resort to this

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great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. It is no light thing to do that.

'What can be done? It is the courts that can do most to cure the evil; and the opportunity is a very great one. Let them resolutely adhere to first principles. Let them consider how narrow is the function which the constitutions have conferred on them,--the office merely of deciding litigated cases; how large, therefore, is the duty intrusted to others, and above all to the legislature. It is that body which is charged, primarily, with the duty of judging of the constitutionality of its work. The constitutions generally give them no authority to call upon a court for advice; they must decide for themselves, and the courts may never be able to say a word. Such a body, charged, in every State, with almost all the legislative power of the people, is entitled to the most entire and real respect; is entitled, as among all rationally permissible opinions as to what the constitution allows, to its own choice. Courts, as has often been said, are not to think of the legislators, but of the legislature,--the great, continuous body itself, abstracted from all the transitory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a coordinate department of the government *670 charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.

**1200 'To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the court remains untouched; it cannot rightly attempt to protect the people, by undertaking a function not its own. On the other hand, by adhering rigidly to its own duty, the court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation. The judiciary, to-day, in dealing with the acts of their coordinate legislators, owe to the country no greater or clearer duty than that of keeping their hands off these acts wherever it is possible to do it. For that course--the true course of judicial duty always--will powerfully help to bring the people and their representatives to a sense of their own responsibility. There will still remain to the judiciary an ample field for the determinations of this remarkable jurisdiction, of which our American law has so much reason to be proud; a jurisdiction which has had some of its chief illustrations and its greatest triumphs as in Marshall's time, so in ours, while the courts were refusing to exercise it.' J. B. Thayer, John Marshall, (1901) 104-10.

Of course patriotism cannot be enforced by the flag salute. But neither can the liberal spirit be enforced by judicial invalidation of illiberal legislation. Our constant preoccupation with the constitutionality of legislation rather than with its wisdom tends to preoccupation of the American mind with a false value. The tendency of focusing attention on constitutionality is to make constitutionality synonymous with wisdom, to regard a law as all right if it is constitutional. Such an attitude is a great enemy of liberalism. Particularly in legislation affecting freedom of thought and freedom of speech much which should offend a free-spirited society is constitutional. Reliance *671 for the most precious interests of civilization, therefore, must be found outside of their vindication in courts of law. Only a persistent positive translation of the faith of a free society into the convictions and habits and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit.

63 S.Ct. 1178, 319 U.S. 624, 87 L.Ed. 1628, 147 A.L.R. 674

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EXHIBIT 55

92 S.Ct. 1526
32 L.Ed.2d 15
(Cite as: 406 U.S. 205, 92 S.Ct. 1526)

Briefs and Other Related Documents

Supreme Court of the United States

State of WISCONSIN, Petitioner,
v.
Jonas YODER et al.

No. 70--110

Argued Dec. 8, 1971.
Decided May 15, 1972.

The Circuit Court, Green County, Wisconsin, found defendants guilty of violating compulsory education law, and they appealed. The Wisconsin Supreme Court, 49 Wis.2d 430, 182 N.W.2d 539, reversed, and certiorari was granted. The Supreme Court, Mr. Chief Justice Burger, held that the First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age 16.

Affirmed.

Mr. Justice Powell and Mr. Justice Rehnquist took no part in the consideration or decision of the case; Mr. Justice Stewart, with whom Mr. Justice Brennan joined, concurred and filed an opinion; Mr. Justice White, with whom Mr. Justice Brennan and Mr. Justice Stewart joined, concurred and filed an opinion; Mr. Justice Douglas dissented in part and filed an opinion.

West Headnotes

[1] Schools ⇐20
345k20 Most Cited Cases
(Formerly 345k9)

Having a high responsibility for the education of its citizens, a state has the power to impose reasonable regulations for the control and duration of basic education.

[2] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

A state's interest in universal education, however highly ranked, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those protected by the free exercise clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children. U.S.C.A.Const. Amends. 1, 14.

[3] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[3] Schools ⇐160
345k160 Most Cited Cases

In order for a state to compel school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the state does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the free exercise clause. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[4] Constitutional Law ⇐84.1
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. U.S.C.A.Const. Amends. 1, 14.

[5] Schools ⇐160
345k160 Most Cited Cases

However strong a state's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. W.S.A. 118.15, 118.15(1) (b).

[6] Schools ⇐20
345k20 Most Cited Cases
(Formerly 345k9)

A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state

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regulation of education if it is based on purely secular considerations.

[7] **Constitutional Law** ⇐**84.2**
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. U.S.C.A.Const. Amends. 1, 14.

[8] **Constitutional Law** ⇐**84.2**
92k84.2 Most Cited Cases
(Formerly 92k84(2), 92k84)

Beliefs which are philosophical and personal, rather than religious, do not rise to the demands of the religion clause. U.S.C.A.Const. Amends. 1, 14.

[9] **Constitutional Law** ⇐**84.5(3)**
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[9] **Schools** ⇐**160**
345k160 Most Cited Cases

Amish parents, charged with violating Wisconsin's compulsory education law, amply supported their claim that enforcement of the compulsory formal education requirement after the eighth grade would gravely endanger if not destroy the free exercise of their religious belief. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[10] **Constitutional Law** ⇐**84.1**
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Activities of individuals, even when religiously based, are often subject to regulation by the states in the exercise of their undoubted power to promote the health, safety and general welfare, or by the federal government in the exercise of its delegated power; but to agree that religiously grounded conduct must often be subject to the broad police power of the state is not to deny that there are areas of conduct protected by the free exercise clause of the First Amendment and thus beyond the power of the state to control, even under regulations of general applicability. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[11] **Constitutional Law** ⇐**84.1**
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

A state regulation neutral on its face may, in its application, offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. U.S.C.A.Const. Amends. 1, 14.

[12] **Constitutional Law** ⇐**84.1**
92k84.1 Most Cited Cases
(Formerly 92k84(1), 92k84)

Court must not ignore the danger that an exception from a general obligation of citizenship on religious grounds may run afoul of the establishment clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. U.S.C.A.Const. Amends. 1, 14.

[13] **Constitutional Law** ⇐**84.5(3)**
92k84.5(3) Most Cited Cases
(Formerly 92k84)

State's claim that it is empowered, as parens patriae, to extend the benefit of secondary education to children regardless of their parents' wishes could not be sustained against a free exercise claim of the nature revealed by the record in proceeding involving conviction of Amish parents for violating Wisconsin compulsory education law, where the Amish introduced convincing evidence that accommodating their religious objections by foregoing one or two years of compulsory education would not impair the physical or mental health of the child, nor result in an inability to be self-supporting, or to discharge the duties and responsibilities of citizenship, or in any way materially detract from the welfare of society. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[14] **Schools** ⇐**160**
345k160 Most Cited Cases
(Formerly 345k8)

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Where nothing more than the general interest of the parent in the nurture and education of his children is involved, state acts reasonably and constitutionally in requiring education to age 16 in some public or private school meeting the standards prescribed by the state. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[15] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

Power of parent to educate child, even when linked to a free exercise claim, may be subject to limitation if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. U.S.C.A.Const. Amends. 1, 14.

[16] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[16] Constitutional Law ⇐274(5)
92k274(5) Most Cited Cases
(Formerly 92k274(2))

[16] Schools ⇐160
345k160 Most Cited Cases

The First and Fourteenth Amendments prevent a state from compelling Amish parents to cause their children, who have graduated from the eighth grade, to attend formal high school to age 16. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[17] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

Courts must move with great circumspection in performing the sensitive and delicate task of weighing a state's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).

[18] Constitutional Law ⇐84.5(3)
92k84.5(3) Most Cited Cases
(Formerly 92k84)

[18] Schools ⇐160
345k160 Most Cited Cases

Aided by a long history as an identifiable religious sect and as a successful and self-sufficient segment of society, the Amish have demonstrated sincerity of their religious beliefs, interrelationship of beliefs with their mode of life, the vital role that beliefs and daily conduct play in continuing survival of Old Order Amish communities, and hazards presented by a state's enforcement of a compulsory education law generally valid as to others; beyond this, they have carried their burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education; in light of this, state had to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting the Amish an exemption. U.S.C.A.Const. Amends. 1, 14; W.S.A. 118.15, 118.15(1) (b).
****1528 *205** Syllabus [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Respondents, members of the Old Order Amish religion and the Conservative Amish Mennonite Church, were convicted of violating Wisconsin's compulsory school attendance law (which requires a child's school attendance until age 16) by declining to send their children to public or private school after they had graduated from the eighth grade. The evidence showed that the Amish provide continuing informal vocational education to their children designed to prepare them for life in the rural Amish community. The evidence also showed that respondents sincerely believed that high school attendance was contrary to the Amish religion and way of life and that they would endanger their own salvation and that of their children by complying with the law. The State Supreme Court sustained respondents' claim that application of the compulsory school- attendance law to them violated their rights under the Free Exercise Clause of the First Amendment, made applicable to the States by

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the Fourteenth Amendment. Held:

1. The State's interest in universal education is not totally free from a balancing process when it impinges on other fundamental rights, such as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest in parents with respect to the religious upbringing of their children. Pp. 1532--1533.

2. Respondents have amply supported their claim that enforcement of the compulsory formal education requirement after the eighth grade would gravely endanger if not destroy the free exercise of their religious beliefs. Pp. 1533--1535.

3. Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish have demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continuing survival of Old Order Amish communities, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have ***206** carried the difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of the overall interests that the State relies on in support of its program of compulsory high school education. In light of this showing, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. p(p). granting an exemption to the Amish. Pp.

****1529** 4. The State's claim that it is empowered, as parens patriae, to extend the benefit of secondary education to children regardless of the wishes of their parents cannot be sustained against a free exercise claim of the nature revealed by this record, for the Amish have introduced convincing evidence that accommodating their religious objections by foregoing one or two additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society. Pp. 1540--1542.

49 Wis.2d 430, 182 N.W.2d 539, affirmed.

John William Calhoun, Madison, Wis., for petitioner.

William B. Ball, Harrisburg, Pa., for respondent.

***207** Mr. Chief Justice BURGER delivered the opinion of the Court.

On petition of the State of Wisconsin, we granted the writ of certiorari in this case to review a decision of the Wisconsin Supreme Court holding that respondents' convictions for violating the State's compulsory school-attendance law were invalid under the Free Exercise Clause of the First Amendment to the United States Constitution made applicable to the States by the Fourteenth Amendment. For the reasons hereafter stated we affirm the judgment of the Supreme Court of Wisconsin.

Respondents Jonas Yoder and Wallace Miller are members of the Old Order Amish religion, and respondent Adin Yutzy is a member of the Conservative Amish Mennonite Church. They and their families are residents of Green County, Wisconsin. Wisconsin's compulsory school-attendance law required them to cause their children to attend public or private school until reaching age 16 but the respondents declined to send their children, ages 14 and 15, to public school after they complete the eighth grade. [FN1] The children were not enrolled in any private school, or within any recognized exception to the compulsory-attendance law, [FN2] and they are conceded to be subject to the Wisconsin statute.

FN1. The children, Frieda Yoder, aged 15, Barbara Miller, aged 15, and Vernon Yutzy, aged 14, were all graduates of the eighth grade of public school.

FN2. Wis.Stat. s 118.15 (1969) provides in pertinent part:

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'118.15 Compulsory school attendance
'(1)(a) Unless the child has a legal excuse or has graduated from high school, any person having under his control a child who is between the ages of 7 and 16 years shall cause such child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which such child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which he becomes 16 years of age.
'(3) This section does not apply to any child who is not in proper physical or mental condition to attend school, to any child exempted for good cause by the school board of the district in which the child resides or to any child who has completed the full 4-year high school course. The certificate of a reputable physician in general practice shall be sufficient proof that a child is unable to attend school.
'(4) Instruction during the required period elsewhere than at school may be substituted for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside.
'(5) Whoever violates this section . . . may be fined not less than $5 nor more than $50 or imprisoned not more than 3 months or both.'
Section 118.15(1)(b) requires attendance to age 18 in a school district containing a 'vocational, technical and adult education school,' but this section is concedly inapplicable in this case, for there is no such school in the district involved.

***208** On complaint of the school district administrator for the public schools, respondents were charged, tried, and convicted of violating the compulsory-attendance law in Green County Court and ****1530** were fined the sum of $5 each. [FN3] Respondents defended on the ground that the application ***209** of the compulsory-attendance law violated their rights under the First and Fourteenth Amendments. [FN4] The trial testimony showed that respondents believed, in accordance with the tenets of Old Order Amish communities generally, that their children's attendance at high school, public or private, was contrary to the Amish religion and way of life. They believed that by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but, as found by the county court, also endanger their own salvation and that of their children. The State stipulated that respondents' religious beliefs were sincere.

FN3. Prior to trial, the attorney for respondents wrote the State Superintendent of Public Instruction in an effort to explore the possibilities for a compromise settlement. Among other possibilities, he suggested that perhaps the State Superintendent could administratively determine that the Amish could satisfy the compulsory-attendance law by establishing their own vocational training plan similar to one that has been established in Pennsylvania. Supp.App. 6. Under the Pennsylvania plan, Amish children of high school age are required to attend an Amish vocational school for three hours a week, during which time they are taught such subjects as English, mathematics, health, and social studies by an Amish teacher. For the balance of the week, the children perform farm and household duties under parental supervision, and keep a journal of their daily activities. The major portion of the curriculum is home projects in agriculture and homemaking. See generally J. Hostetler & G. Huntington, Children in Amish Society: Socialization and Community Education, c. 5 (1971). A similar program has been instituted in Indiana. Ibid. See also Iowa Code s 299.24 (1971); Kan.Stat.Ann. s 72--1111 (Supp. 1971).
The Superintendent rejected this proposal on the ground that it would not afford Amish children 'substantially equivalent education' to that offered in the schools of the area. Supp.App. 6.

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FN4. The First Amendment provides: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .'

In support of their position, respondents presented as expert witnesses scholars on religion and education whose testimony is uncontradicted. They expressed their opinions on the relationship of the Amish belief concerning school attendance to the more general tenets of their religion, and described the impact that compulsory high school attendance could have on the continued survival of Amish communities as they exist in the United States today. The history of the Amish *210 sect was given in some detail, beginning with the Swiss Anabaptists of the 16th century who rejected institutionalized churches and sought to return to the early, simple, Christian life de-emphasizing material success, rejecting the competitive spirit, and seeking to insulate themselves from the modern world. As a result of their common heritage, Old Order Amish communities today are characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence. This concept of life aloof from the world and its values is central to their faith.

A related feature of Old Order Amish communities is their devotion to a life in harmony with nature and the soil, as exemplified by the simple life of the early Christian era that continued in America during much of our early national life. Amish beliefs require members of the community to make their living by farming or closely related activities. Broadly speaking, the Old Order Amish religion pervades and determines the entire mode of life of its adherents. Their conduct is regulated in great detail by the Ordnung, or rules, of the church community. Adult baptism, which occurs in late adolescence, is the time at which Amish young people voluntarily undertake heavy obligations, not unlike the Bar Mitzvah of **1531 the Jews, to abide by the rules of the church community. [FN5]

FN5. See generally J. Hostetler, Amish Society (1968); J. Hostetler & G. Huntington, Children in Amish Society (1971); Littell, Sectarian Protestantism and the Pursuit of Wisdom: Must Technological Objectives Prevail?, in Public Controls for Nonpublic Schools 61 (G. Erickson ed. 1969).

Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach *211 are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a 'wordly' influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal learning-through-doing; a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge, community welfare, rather than competition; and separation from, rather than integration with, contemporary worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environment hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing, and elementary mathematics, these tratis, skills, and attitudes admittedly fall within the category of those best learned through example and 'doing' rather than in a classroom. And, at this time in life, the Amish child must also grow in his faith and his relationship to the Amish community if he is to be prepared to accept the heavy obligations imposed by adult baptism. In short, high school attendance with teachers who are not of the Amish faith--and may even be hostile to it-- interposes a serious barrier to the integration of the Amish child into *212 the Amish religious community. Dr. John

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Hostetler, one of the experts on Amish society, testified that the modern high school is not equipped, in curriculum or social environment, to impart the values promoted by Amish society.

The Amish do not object to elementary education through the first eight grades as a general proposition because they agree that their children must have basic skills in the 'three R's' in order to read the Bible, to be good farmers and citizens, and to be able to deal with non-Amish people when necessary in the course of daily affairs. They view such a basic education as acceptable because it does not significantly expose their children to wordly values or interfere with their development in the Amish community during the crucial adolescent period. While Amish accept compulsory elementary education generally, wherever possible they have established their own elementary schools in many respects like the small local schools of the past. In the Amish belief higher learning tends to develop values they reject as influences that alienate man from God.

On the basis of such considerations, Dr. Hostetler testified that compulsory high school attendance could not only result in great psychological harm to Amish children, because of the conflicts it would produce, but would also, in his opinion, ultimately result in the destruction of the Old Order Amish church community as it exists in the United States **1532 today. The testimony of Dr. Donald A. Erickson, an expert witness on education, also showed that the Amish succeed in preparing their high school age children to be productive members of the Amish community. He described their system of learning through doing the skills directly relevant to their adult roles in the Amish community as 'ideal' and perhaps superior to ordinary high school education. The evidence also showed that the Amish have an excellent *213 record as law-abiding and generally self-sufficient members of society.

Although the trial court in its careful findings determined that the Wisconsin compulsory school-attendance law 'does interfere with the freedom of the Defendants to act in accordance with their sincere religious belief' it also concluded that the requirement of high school attendance until age 16 was a 'reasonable and constitutional' exercise of governmental power, and therefore denied the motion to dismiss the charges. The Wisconsin Circuit Court affirmed the convictions. The Wisconsin Supreme Court, however, sustained respondents' claim under the Free Exercise Clause of the First Amendment and reversed the convictions. A majority of the court was of the opinion that the State had failed to make an adequate showing that its interest in 'establishing and maintaining an educational system overrides the defendants' right to the free exercise of their religion.' 49 Wis.2d 430, 447, 182 N.W.2d 539, 547 (1971).

I

[1][2] There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education. See, e.g., Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925). Providing public schools ranks at the very apex of the function of a State. Yet even this paramount responsibility was, in Pierce, made to yield to the right of parents to provide an equivalent education in a privately operated system. There the Court held that Oregon's statute compelling attendance in a public school from age eight to age 16 unreasonably interfered with the interest of parents in directing the rearing of their off-spring, including their education in church-operated schools. As that case suggests, the values of parental direction of the religious upbringing *214 and education of their children in their early and formative years have a high place in our society. See also Ginsberg v. New York, 390 U.S. 629, 639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195 (1968); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923); cf. Rowan v. United States Post Office Dept., 397 U.S. 728, 90 S.Ct. 1484, 25 L.Ed.2d 736 (1970). Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment, and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, 'prepare (them) for additional obligations.' 268 U.S., at 535, 45 S.Ct., at 573.

[3] It follows that in order for Wisconsin to compel

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school attendance beyond the eighth grade against a claim that such attendance interferes with the practice of a legitimate religious belief, it must appear either that the State does not deny the free exercise of religious belief by its requirement, or that there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. Long before there was general acknowledgment of the need for universal formal education, the Religion Clauses had specifically and firmly fixed the right to free exercise of religious beliefs, and buttressing this fundamental right was an equally firm, even if less explicit, prohibition against the establishment of any religion by government. The values underlying these two provisions relating **1533 to religion have been zealously protected, sometimes even at the expense of other interests of admittedly high social importance. The invalidation of financial aid to parochial schools by government grants for a salary subsidy for teachers is but one example of the extent to which courts have gone in this regard, notwithstanding that such aid programs were legislatively determined to be in the public interest and the service of sound educational policy by States and by Congress. *215Lemon v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971) ; Tilton v. Richardson, 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790 (1971). See also Everson v. Board of Education, 330 U.S. 1, 18, 67 S.Ct. 504, 513, 91 L.Ed. 711 (1947).

[4][5] The essence of all that has been said and written on the subject is that only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion. We can accept it as settled, therefore, that, however strong the State's interest in universal compulsory education, it is by no means absolute to the exclusion or subordination of all other interests. E.g., Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); McGowan v. Maryland, 366 U.S. 420, 459, 81 S.Ct. 1101, 1122, 6 L.Ed.2d 393 (1961) (separate opinion of Frankfurter, J.); Prince v. Marssachusetts, 321 U.S. 158, 165, 64 S.Ct. 438, 441, 88 L.Ed. 645 (1944).

II

[6][7][8] We come then to the quality of the claims of the respondents concerning the alleged encroachment of Wisconsin's compulsory school-attendance statute on their rights and the rights of their children to the free exercise of the religious beliefs they and their forbears have adhered to for almost three centuries. In evaluating those claims we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a 'religious' belief or practice entitled to constitutional protection may present a most delicate question, [FN6] the very concept of ordered liberty precludes *216 allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

FN6. See Welsh v. United States, 398 U.S. 333, 351--361, 90 S.Ct. 1792, 1802--1807, 26 L.Ed.2d 308 (1970) (Harlan, J., concurring in result); United States v. Ballard, 322 U.S. 78, 64 S.Ct. 882, 88 L.Ed. 1148 (1944).

Giving no weight to such secular considerations, however, we see that the record in this case abundantly supports the claim that the traditional way of life of the Amish is not merely a matter of personal preference, but one of deep religious conviction, shared by an organized group, and intimately related to daily living. That the Old Order Amish daily life and religious practice stem from their faith is shown by the fact that it is in response to their literal interpretation of the Biblical injunction from the Epistle of Paul to the Romans, 'be not conformed to this world . . .' This command is fundamental to the Amish faith. Moreover, for the Old Order Amish, religion is not simply a matter

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of theocratic belief. As the expert witnesses explained, the Old Order Amish religion pervades and * *1534 determines virtually their entire way of life, regulating it with the detail of the Talmudic diet through the strictly enforced rules of the church community.

The record shows that the respondents' religious beliefs and attitude toward life, family, and home have remained constant--perhaps some would say static-- in a period of unparalleled progress in human knowledge generally and great changes in education. [FN7] The respondents *217 freely concede, and indeed assert as an article of faith, that their religious beliefs and what we would today call 'life style' have not altered in fundamentals for centuries. Their way of life in a church-oriented community, separated from the outside world and 'worldly' influences, their attachment to nature and the soil, is a way inherently simple and uncomplicated, albeit difficult to preserve against the pressure to conform. Their rejection of telephones, automobiles, radios, and television, their mode of dress, of speech, their habits of manual work do indeed set them apart from much of contemporary society; these customs are both symbolic and practical.

FN7. See generally R. Butts & L. Cremin, A History of Education in American Culture (1953); L. Cremin, The Transformation of the School (1961).

As the society around the Amish has become more populous, urban, industrialized, and complex, particularly in this century, government regulation of human affairs has correspondingly become more detailed and pervasive. The Amish mode of life has thus come into conflict increasingly with requirements of contemporary society exerting a hydraulic insistence on conformity to majoritarian standards. So long as compulsory education laws were confined to eight grades of elementary basic education imparted in a nearby rural schoolhouse, with a large proportion of students of the Amish faith, the Old Order Amish had little basis to fear that school attendance would expose their children to the worldly influence they reject. But modern compulsory secondary education in rural areas is now largely carried on in a consolidated school, often remote from the student's home and alien to his daily home life. As the record so strongly shows, the values and programs of the modern secondary school are in sharp conflict with the fundamental mode of life mandated by the Amish religion; modern laws requiring compulsory secondary education have accordingly engendered great concern and conflict. [FN8] *218 The conclusion is inescapable that secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.

FN8. Hostetler, supra, n. 5, c. 9; Hostetler & Huntington, supra, n. 5.

The impact of the compulsory-attendance law on respondents' practice of the Amish religion is not only severe, but inescapable, for the Wisconsin law affirmatively compels them, under threat of criminal sanction, to perform acts undeniably at odds with fundamental tenets of their religious beliefs. See Braunfeld v. Brown, 366 U.S. 599, 605, 81 S.Ct. 1144, 1147, 6 L.Ed.2d 563 (1961). Nor is the impact of the compulsory-attendance law confined to grave interference with important Amish religious tenets from a subjective point of view. It carries with it precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent. As the record shows, compulsory school attendance to age 16 for Amish children carries with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into **1535 society at large, or be forced to migrate to some other and more tolerant region. [FN9]

FN9. Some States have developed working arrangements with the Amish regarding high school attendance. See n. 3, supra. However, the danger to the continued existence of an ancient religious faith

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> cannot be ignored simply because of the assumption that its adherents will continue to be able, at considerable sacrifice, to relocate in some more tolerant State or country or work out accommodations under threat of criminal prosecution. Forced migration of religious minorities was an evil that lay at the heart of the Religion Clauses. See, e.g., Everson v. Board of Education, 330 U.S. 1, 9--10, 67 S.Ct. 504, 508--509, 91 L.Ed. 711 (1947); *Madison, Memorial and Remonstrance* Against Religious Assessments, 2 Writings of James Madison 183 (G. Hunt ed. 1901).

***219** [9] In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger if not destroy the free exercise of respondents' religious beliefs.

III

Neither the findings of the trial court nor the Amish claims as to the nature of their faith are challenged in this Court by the State of Wisconsin. Its position is that the State's interest in universal compulsory formal secondary education to age 16 is so great that it is paramount to the undisputed claims of respondents that their mode of preparing their youth for Amish life, after the traditional elementary education, is an essential part of their religious belief and practice. Nor does the State undertake to meet the claim that the Amish mode of life and education is inseparable from and a part of the basic tenets of their religion--indeed, as much a part of their religious belief and practices as baptism, the confessional, or a sabbath may be for others.

[10] Wisconsin concedes that under the Religion Clauses religious beliefs are absolutely free from the State's control, but it argues that 'actions,' even though religiously grounded, are outside the protection of the First Amendment. [FN10] But our decisions have rejected the idea that ***220** religiously grounded conduct is always outside the protection of the Free Exercise Clause. It is true that activities of individuals, even when religiously based, are often subject to regulation by the States in the exercise of their undoubted power to promote the health, safety, and general welfare, or the Federal Government in the exercise of its delegated powers. See, e.g., Gillette v. United States, 401 U.S. 437, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971); Braunfeld v. Brown, 366 U.S. 599, 81 S.Ct. 1144, 6 L.Ed.2d 563 (1961); Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244 (1879). But to agree that religiously grounded conduct must often be subject to the broad police power of the State is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the State to control, even under regulations of general applicability. E.g., Sherbert v. Verner, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943); Cantwell v. Connecticut, 310 U.S. 296, 303--304, 60 S.Ct. 900, 903, 84 L.Ed. 1213 (1940). This case, therefore, does not become easier because respondents were convicted for their 'actions' in refusing to send their children to the public high school; in this context belief and action cannot be neatly confined in ****1536** logic-tight compartments. Cf. Lemon v. Kurtzman, 403 U.S., at 612, 91 S.Ct., at 2111, 29 L.Ed.2d 745.

> FN10. That has been the apparent ground for decision in several previous state cases rejecting claims for exemption similar to that here. See, e.g., State v. Garber, 197 Kan. 567, 419 P.2d 896 (1966), cert. denied, 389 U.S. 51, 88 S.Ct. 236, 19 L.Ed.2d 50 (1967); State v. Hershberger, 103 Ohio App. 188, 144 N.E.2d 693 (1955); Commonwealth v. Beiler, 168 Pa.Super. 462, 79 A.2d 134 (1951).

[11][12] Nor can this case be disposed of on the grounds that Wisconsin's requirement for school attendance to age 16 applies uniformly to all citizens of the State and does not, on its face, discriminate against religions or a particular religion, or that it is motivated by legitimate secular concerns. A regulation neutral on its face may, in

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its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion. Sherbert v. Verner, supra; cf. Walz v. Tax Commission, 397 U.S. 664, 90 S.Ct. 1409, 25 L.Ed.2d 697 (1970). The Court must not ignore the danger that an exception *221 from a general obligation of citizenship on religious grounds may run afoul of the Establishment Clause, but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise. By preserving doctrinal flexibility and recognizing the need for a sensible and realistic application of the Religion Clauses

> 'we have been able to chart a course that preserved the autonomy and freedom of religious bodies while avoiding any semblance of established religion. This is a 'tight rope' and one we have successfully traversed.' Walz v. Tax Commission, supra, at 672, 90 S.Ct., at 1413.

We turn, then, to the State's broader contention that its interest in its system of compulsory education is so compelling that even the established religious practices of the Amish must give way. Where fundamental claims of religious freedom are at stake, however, we cannot accept such a sweeping claim; despite its admitted validity in the generality of cases, we must searchingly examine the interests that the State seeks to promote by its requirement for compulsory education to age 16, and the impediment to those objectives that would flow from recognizing the claimed Amish exemption. See, e.g., Sherbert v. Verner, supra; Martin v. City of Struthers, 319 U.S. 141, 63 S.Ct. 862, 87 L.Ed. 1313 (1943); Schneider v. State, 308 U.S. 147, 60 S.Ct. 146, 84 L.Ed. 155 (1939).

The State advances two primary arguments in support of its system of compulsory education. It notes, as Thomas Jefferson pointed out early in our history, that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions.

*222 However, the evidence adduced by the Amish in this case is persuasively to the effect that an additional one or two years of formal high school for Amish children in place of their long-established program of informal vocational education would do little to serve those interests. Respondents' experts testified at trial, without challenge, that the value of all education must be assessed in terms of its capacity to prepare the child for life. It is one thing to say that compulsory education for a year or two beyond the eighth grade may be necessary when its goal is the preparation of the child for life in modern society as the majority live, but it is quite another if the goal of education be viewed as the preparation of the child for life in the separated agrarian community that is the keystone of the Amish faith. See Meyer v. Nebraska, 262 U.S., at 400, 43 S.Ct., at 627, 67 L.Ed. 1042.

The State attacks respondents' position as one fostering 'ignorance' from which the child must be protected by the State. No one can question the State's duty to protect children from ignorance but this argument does not square with the facts disclosed in the record. Whatever their idiosyncrasies as seen by the majority, this record strongly shows that the Amish community has been a highly successful **1537 social unit within our society, even if apart from the conventional 'mainstream.' Its members are productive and very law-abiding members of society; they reject public welfare in any of its usual modern forms. The Congress itself recognized their self-sufficiency by authorizing exemption of such groups as the Amish from the obligation to pay social security taxes. [FN11]

> FN11. Title 26 U.S.C. s 1402(h) authorizes the Secretary of Health, Education, and Welfare to exempt members of 'a recognized religious sect' existing at all times since December 31, 1950, from the obligation to pay social security taxes if they are, by reason of the tenets of their sect, opposed to receipt of such benefits and agree to waive them, provided the Secretary finds that the sect makes reasonable provision for its dependent members. The history of the exemption shows it was enacted with the situation of the Old Order Amish specifically in view. H.R.Rep.No.213, 89th Cong., 1st Sess., 101--102 (1965).

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> The record in this case establishes without contradiction that the Green County Amish had never been known to commit crimes, that none had been known to receive public assistance, and that none were unemployed.

*223 It is neither fair nor correct to suggests that the Amish are opposed to education beyond the eighth grade level. What this record shows is that they are opposed to conventional formal education of the type provided by a certified high school because it comes at the child's crucial adolescent period of religious development. Dr. Donald Erickson, for example, testified that their system of learning-by-doing was an 'ideal system' of education in terms of preparing Amish children for life as adults in the Amish community, and that 'I would be inclined to say they do a better job in this than most of the rest of us do.' As he put it, 'These people aren't purporting to be learned people, and it seems to me the self-sufficiency of the community is the best evidence I can point to--whatever is being done seems to function well.' [FN12]

> FN12. Dr. Erickson had previously written: 'Many public educators would be elated if their programs were as successful in preparing students for productive community life as the Amish system seems to be. In fact, while some public schoolmen strive to outlaw the Amish approach, others are being forced to emulate many of its features.' Erickson, Showdown at an Amish Schoolhouse: A Description and Analysis of the Iowa Controversy, in Public Controls for Nonpublic Schools 15, 53 (D. Erickson ed. 1969). And see Littell, supra, n. 5, at 61.

We must not forget that in the Middle Ages important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is *224 'right' and the Amish and others like them are 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different.

The State, however, supports its interest in providing an additional one or two years of compulsory high school education to Amish children because of the possibility that some such children will choose to leave the Amish community, and that if this occurs they will be ill-equipped for life. The State argues that if Amish children leave their church they should not be in the position of making their way in the world without the education available in the one or two additional years the State requires. However, on this record, that argument is highly speculative. There is no specific evidence of the loss of Amish adherents by attrition, nor is there any showing that upon leaving the Amish community Amish children, with their practical agricultural training and habits of industry and self-reliance, would become burdens on society because of educational shortcomings. Indeed, this argument of the State appears to rest primarily on the State's mistaken assumption, already noted, that the Amish do not provide any education for their children beyond the eighth grade, but * *1538 allow them to grow in 'ignorance.' To the contrary, not only do the Amish accept the necessity for formal schooling through the eighth grade level, but continue to provide what has been characterized by the undisputed testimony of expert educators as an 'ideal' vocational education for their children in the adolescent years.

There is nothing in this record to suggest that the Amish qualities of reliability, self-reliance, and dedication to work would fail to find ready markets in today's society. Absent some contrary evidence supporting the *225 State's position, we are unwilling to assume that persons possessing such valuable vocational skills and habits are doomed to become burdens on society should they determine to leave the Amish faith, nor is there any basis in the record to warrant a finding that an additional one or two years of formal school education beyond the eighth grade would serve to eliminate any such problem that might exist.

Insofar as the State's claim rests on the view that a brief additional period of formal education is imperative to enable the Amish to participate effectively and intelligently in our democratic process, it must fail. The Amish alternative to

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formal secondary school education has enabled them to function effectively in their day-to-day life under self-imposed limitations on relations with the world, and to survive and prosper in contemporary society as a separate, sharply identifiable and highly self-sufficient community for more than 200 years in this country. In itself this is strong evidence that they are capable of fulfilling the social and political responsibilities of citizenship without compelled attendance beyond the eighth grade at the price of jeopardizing their free exercise of religious belief. [FN13] When Thomas Jefferson emphasized the need for education as a bulwark of a free people against tyranny, there is nothing to indicate he had in mind compulsory education through any fixed age beyond a basic education. Indeed, the Amish communities singularly parallel and reflect many of the virtues of Jefferson's ideal of the 'sturdy yeoman' who would form the basis of what he considered as the *226 ideal of a democratic society. [FN14] Even their idiosyncratic separateness exemplifies the diversity we profess to admire and encourage.

FN13. All of the children involved in this case are graduates of the eighth grade. In the county court, the defense introduced a study by Dr. Hostetler indicating that Amish children in the eighth grade achieved comparably to non-Amish children in the basic skills. Supp.App. 9--11. See generally Hostetler & Huntington, supra, n. 5, at 88--96.

FN14. While Jefferson recognized that education was essential to the welfare and liberty of the people, he was reluctant to directly force instruction of children 'in opposition to the will of the parent.' Instead he proposed that state citizenship be conditioned on the ability to 'read readily in some tongue, native or acquired.' Letter from Thomas Jefferson to Joseph Cabell, Sept. 9, 1817, in 17 Writings of Thomas Jefferson 417, 423--424 (Mem. ed. 1904). And it is clear that, so far as the mass of the people were concerned, he envisaged that a basic education in the 'three R's' would sufficiently meet the interests of the State. He suggested that after completion of elementary school, 'those destined for labor will engage in the business of agriculture, or enter into apprenticeships to such handicraft art as may be their choice.' Letter from Thomas Jefferson to Peter Carr, Sept. 7, 1814, in Thomas Jefferson and Education in a Republic 93--106 (Arrowood ed. 1930). See also id., at 60--64, 70, 83, 136--137.

The requirement for compulsory education beyond the eighth grade is a relatively recent development in our history. Less than 60 years ago, the educational requirements of almost all of the States were satisfied by completion of the elementary grades, at least where the child was regularly and lawfully employed. [FN15] **1539 The independence *227 and successful social functioning of the Amish community for a period approaching almost three centuries and more than 200 years in this country are strong evidence that there is at best a speculative gain, in terms of meeting the duties of citizenship, from an additional one or two years of compulsory formal education. Against this background it would require a more particularized showing from the State on this point to justify the severe interference with religious freedom such additional compulsory attendance would entail.

FN15. See Dept. of Interior, Bureau of Education, Bulletin No. 47, Digest of State Laws Relating to Public Education 527--559 (1916); Joint Hearings on S. 2475 and H.R. 7200 before the Senate Committee on Education and Labor and the House Committee on Labor, 75th Cong., 1st Sess., pt. 2, p. 416.
Even today, an eighth grade education fully satisfies the educational requirements of at least six States. See Ariz.Rev.Stat.Ann. s 15--321, subsec. B, par. 4 (1956); Ark.Stat.Ann. s 80--1504 (1947); Iowa Code s 299.2 (1971); S.D.Comp.Laws Ann. s 13--27--1 (1967); Wyo.Stat.Ann. s 21.1--48 (Supp.1971). (Mississippi has no compulsory education law.) A number of other States have flexible provisions permitting children aged 14 or having completed the eighth grade to be excused from school in order

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to engage in lawful employment. E.g., Colo.Rev.Stat.Ann. ss 123--20--5, 80--6--1 to 80--6--12 (1963); Conn.Gen.Stat.Rev. ss 10--184, 10--189 (1964); D.C.Code Ann. ss 31--202, 36--201 to 36--228 (1967); Ind.Ann.Stat. ss 28--505 to 28--506, 28--519 (1948); Mass.Gen.Laws Ann., c. 76, s 1 (Supp.1972) and c. 149, s 86 (1971); Mo.Rev.Stat. ss 167.031, 294.051 (1969); Nev.Rev.Stat. s 392.110 (1968); N.M.Stat.Ann. s 77--10--6 (1968). An eighth grade education satisfied Wisconsin's formal education requirements until 1933. See Wis.Laws 1927, c. 425, s 97; Laws 1933, c. 143. (Prior to 1933, provision was made for attendance at continuation or vocational schools by working children past the eighth grade, but only if one was maintained by the community in question.) For a general discussion of the early development of Wisconsin's compulsory education and child labor laws, see F. Ensign, Compulsory School Attendance and Child Labor 203--230 (1921).

We should also note that compulsory education and child labor laws find their historical origin in common humanitarian instincts, and that the age limits of both laws have been coordinated to achieve their related objectives. [FN16] In the context of this case, such considerations, ***228** if anything, support rather than detract from respondents' position. The origins of the requirement for school attendance to age 16, an age falling after the completion of elementary school but before completion of high school, are not entirely clear. But to some extent such laws reflected the movement to prohibit most child labor under age 16 that culminated in the provisions of the Federal Fair Labor Standards Act of 1938. [FN17] It is true, then, that the 16-year child labor age limit may to some degree derive from a contemporary impression that children should be in school until that age. But at the same time, it cannot be denied that, conversely, the 16-year education limit reflects, in substantial measure, the concern that children under that age not be employed under conditions hazardous to their health, or in work that should be performed by adults.

FN16. See, e.g., Joint Hearings, supra, n. 15, pt. 1, at 185--187 (statement of Frances Perkins, Secretary of Labor), pt. 2, at 381--387 (statement of Katherine Lenroot, Chief, Children's Bureau, Department of Labor); National Child Labor Committee, 40th Anniversary Report, The Long Road (1944); 1 G. Abbott, The Child and the State 259--269, 566 (Greenwood reprint 1968); L. Cremin, The Transformation of the School, c. 3 (1961); A. Steinhilber & C. Sokolowski, State Law on Compulsory Attendance 3--4 (Dept. of Health, Education, and Welfare 1966).

FN17. 52 Stat. 1060, as amended, 29 U.S.C. ss 201--219.

The requirement of compulsory schooling to age 16 must therefore be viewed as aimed not merely at providing educational opportunities for children, but as an alternative to the equally undesirable consequence of unhealthful child labor displacing adult workers, or, on the other hand, forced idleness. [FN18] The two kinds of statutes--compulsory school attendance and child labor laws-- tend to keep children of certain ages off the labor market and in school; this regimen in ****1540** turn provides opportunity to prepare for a livelihood of a higher order than that which children could pursue without education and protects their health in adolescence.

FN18. See materials cited n. 16, supra; Casad, Compulsory Education and Individual Rights, in 5 Religion and the Public Order 51, 82 (D. Giannella ed. (1969).

In these terms, Wisconsin's interest in compelling the school attendance of Amish children to age 16 emerges as somewhat less substantial than requiring such attendance ***229** for children generally. For, while agricultural employment is not totally outside the legitimate concerns of the child labor laws, employment of children under parental guidance and on the family farm from age 14 to age 16 is an ancient tradition that lies at the periphery of the objectives of such laws. [FN19] There is no

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intimation that the Amish employment of their children on family farms is in any way deleterious to their health or that Amish parents exploit children at tender years. Any such inference would be contrary to the record before us. Moreover, employment of Amish children on the family farm does not present the undesirable economic aspects of eliminating jobs that might otherwise be held by adults.

> FN19. See, e.g., Abbott, supra, n. 16 at 266. The Federal Fair Labor Standards Act of 1938 excludes from its definition of '(o)ppressive child labor' employment of a child under age 16 by 'a parent . . . employing his own child . . . in an occupation other than manufacturing or mining or an occupation found by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of sixteen and eighteen years or detrimental to their health or well-being.' 29 U.S.C. s 203(l).

IV

[13] Finally, the State, on authority of Prince v. Massachusetts, argues that a decision exempting Amixh children from the State's requirement fails to recognize the substantive right of the Amish child to a secondary education, and fails to give due regard to the power of the State as parens patriae to extend the benefit of secondary education to children regardless of the wishes of their parents. Taken at its broadest sweep, the Court's language in Prince, might be read to give support to the State's position. However, the Court was not confronted in Prince with a situation comparable to that of the Amish as revealed in this record; this is shown by the ***230** Court's severe characterization of the evils that it thought the legislature could legitimately associate with child labor, even when performed in the company of an adult. 321 U.S., at 169--170, 64 S.Ct., at 443--444. The Court later took great care to confine Prince to a narrow scope in Sherbert v. Verner, when it stated:

> 'On the other hand, the Court has rejected challenges under the Free Exercise Clause to governmental regulation of certain overt acts prompted by religious beliefs or principles, for 'even when the action is in accord with one's religious convictions, (it) is not totally free from legislative restrictions.' Braunfeld v. Brown, 366 U.S. 599, 603, 81 S.Ct. 1144, 1146, 6 L.Ed.2d 563. The conduct or actions so regulated have invariably posed some substantial threat to public safety, peace or order. See, e.g., Reynolds v. United States, 98 U.S. 145, 25 L.Ed. 244; Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643; Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 . . ..' 374 U.S., at 402--403, 83 S.Ct., at 1793.

This case, of course, is not one in which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred. [FN20] The record is to the contrary, and ****1541** any reliance on that theory would find no support in the evidence.

> FN20. Cf. e.g., Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905); Wright v. DeWitt School District, 238 Ark. 906, 385 S.W.2d 644 (1965); Application of President and Directors of Georgetown College, Inc., 118 U.S.App.D.C. 80, 87--90, 331 F.2d 1000, 1007--1010 (1964) (in-chambers opinion), cert. denied, 377 U.S. 978, 84 S.Ct. 1883, 12 L.Ed.2d 746 (1964).

Contrary to the suggestion of the dissenting opinion of Mr. Justice DOUGLAS, our holding today in no degree depends on the assertion of the religious interest of the child as contrasted with that of the parents. It is the parents who are subject to prosecution here for failing to cause their children to attend school, and it ***231** is their right of free exercise, not that of their children, that must determine Wisconsin's power to impose criminal penalties on the parent. The dissent argues that a child who expresses a desire to attend public high school in conflict with the wishes of his parents should not be prevented from doing so. There is no reason for the Court to consider that point since it is not an issue in the case. The children are not parties to this litigation. The State has at no point tried this case on the theory that respondents were preventing their children from attending school against their

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expressed desires, and indeed the record is to the contrary. [FN21] The State's position from the outset has been that it is empowered to apply its compulsory-attendance law to Amish parents in the same manner as to other parents--that is, without regard to the wishes of the child. That is the claim we reject today.

FN21. The only relevant testimony in the record is to the effect that the wishes of the one child who testified corresponded with those of her parents. Testimony of Frieda Yoder, Tr. 92--94, to the effect that her personal religious beliefs guided her decision to discontinue school attendance after the eighth grade. The other children were not called by either side.

Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary. Recognition of the claim of the State in such a proceeding would, of course, call into question traditional concepts of parental control over the religious upbringing and education of their minor children recognized in this Court's past decisions. It is clear that such an intrusion by a State into family decisions in the area of religious training would give rise to grave questions of religious freedom comparable to those raised here *232 and those presented in Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925). On this record we neither reach nor decide those issues.

The State's argument proceeds without reliance on any actual conflict between the wishes of parents and children. It appears to rest on the potential that exemption of Amish parents from the requirements of the compulsory-education law might allow some parents to act contrary to the best interests of their children by foreclosing their opportunity to make an intelligent choice between the Amish way of life and that of the outside world. The same argument could, of course, be made with respect to all church schools short of college. There is nothing in the record or in the ordinary course of human experience to suggest that non-Amish parents generally consult with children of ages 14--16 if they are placed in a church school of the parents' faith.

Indeed it seems clear that if the State is empowered, as parens patriae, to 'save' a child from himself or his Amish parents by requiring an additional two years of compulsory formal high school education, the State will in large measure influence, if not determine, the religious future of the child. Even more markedly than in Prince, therefore, this case involves the fundamental interest of parents, as contrasted with that of the State, to guide the religious future and education of their children. The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate **1542 as an enduring American tradition. If not the first, perhaps the most significant statements of the Court in this area are found in Pierce v. Society of Sisters, in which the Court observed:

'Under the doctrine of Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, 29 A.L.R. 1146, we think it entirely plain that the Act *233 of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.' 268 U.S., at 534--535, 45 S.Ct., at 573.

[14] The duty to prepare the child for 'additional obligations,' referred to by the Court, must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship. Pierce, of course, recognized that where nothing

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more than the general interest of the parent in the nurture and education of his children is involved, it is beyond dispute that the State acts 'reasonably' and constitutionally in requiring education to age 16 in some public or private school meeting the standards prescribed by the State.

[15] However read, the Court's holding in Pierce stands as a charter of the rights of parents to direct the religious upbringing of their children. And, when the interests of parenthood are combined with a free exercise claim of the nature revealed by this record, more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment. To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under Prince *234 if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens. But in this case, the Amish have introduced persuasive evidence undermining the arguments the State has advanced to support its claims in terms of the welfare of the child and society as a whole. The record strongly indicates that accommodating the religious objections of the Amish by forgoing one, or at most two, additional years of compulsory education will not impair the physical or mental health of the child, or result in an inability to be self-supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society.

In the fact of our consistent emphasis on the central values underlying the Religion Clauses in our constitutional scheme of government, we cannot accept a parens patriae claim of such all-encompassing scope and with such sweeping potential for broad and unforeseeable application as that urged by the State.

V

[16][17] For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16. [FN22] Our disposition of this case, **1543 however, in no way *235 alters our recognition of the obvious fact that courts are not school boards or legislatures, and are ill-equipped to determine the 'necessity' of discrete aspects of a State's program of compulsory education. This should suggest that courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable education requirements. It cannot be overemphasized that we are not dealing with a way of life and mode of education by a group claiming to have recently discovered some 'progressive' or more enlightened process for rearing children for modern life.

FN22. What we have said should meet the suggestion that the decision of the Wisconsin Supreme Court recognizing an exemption for the Amish from the State's system of compulsory education constituted an impermissible establishment of religion. In Walz v. Tax Commission, the Court saw the three main concerns against which the Establishment Clause sought to protect as 'sponsorship, financial support, and active involvement of the sovereign in religious activity.' 397 U.S. 664, 668, 90 S.Ct. 1409, 1411, 25 L.Ed.2d 697 (1970). Accommodating the religious beliefs of the Amish can hardly be characterized as sponsorship or active involvement. The purpose and effect of such an exemption are not to support, favor, advance, or assist the Amish, but to allow their centuries-old religious society, here long before the advent of any compulsory education, to survive free from the heavy impediment compliance with the Wisconsin compulsory-education law would impose. Such an accommodation 'reflects nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall.' Sherbert v. Verner, 374 U.S. 398, 409, 83 S.Ct. 1790, 1797, 10 L.Ed.2d 965 (1963).

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[18] Aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society, the Amish in this case have convincingly demonstrated the sincerity of their religious beliefs, the interrelationship of belief with their mode of life, the vital role that belief and daily conduct play in the continued survival of Old Order Amish communities and their religious organization, and the hazards presented by the State's enforcement of a statute generally valid as to others. Beyond this, they have carried the even more difficult burden of demonstrating the adequacy of their alternative mode of continuing informal vocational education in terms of precisely those overall interests that the State advances in support of its program of compulsory high school education. In light of this convincing *236 showing, one that probably few other religious groups or sects could make, and weighing the minimal difference between what the State would require and what the Amish already accept, it was incumbent on the State to show with more particularity how its admittedly strong interest in compulsory education would be adversely affected by granting an exemption to the Amish. Sherbert v. Verner, supra.

Nothing we hold is intended to undermine the general applicability of the State's compulsory school-attendance statutes or to limit the power of the State to promulgate reasonable standards that, while not impairing the free exercise of religion, provide for continuing agricultural vocational education under parental and church guidance by the Old Order Amish or others similarly situated. The States have had a long history of amicable and effective relationships with church-sponsored schools, and there is no basis for assuming that, in this related context, reasonable standards cannot be established concerning the content of the continuing vocational education of Amish children under parental guidance, provided always that state regulations are not inconsistent with what we have said in this opinion. [FN23]

> FN23. Several States have now adopted plans to accommodate, Amish religious beliefs through the establishment of an 'Amish vocational school.' See n. 3, supra. These are not schools in the traditional sense of the word. As previously noted, respondents attempted to reach a compromise with the State of Wisconsin patterned after the Pennsylvania plan, but those efforts were not productive. There is no basis to assume that Wisconsin will be unable to reach a satisfactory accommodation with the Amish in light of what we now hold, so as to serve its interests without impinging on respondents' protected free exercise of their religion.

Affirmed.

**1544 Mr. Justice POWELL and Mr. Justice REHNQUIST took no part in the consideration or decision of this case.

*237 Mr. Justice STEWART, with whom Mr. Justice BRENNAN joins, concurring.

This case involves the constitutionality of imposing criminal punishment upon Amish parents for their religiously based refusal to compel their children to attend public high schools. Wisconsin has sought to brand these parents as criminals for following their religious beliefs, and the Court today rightly holds that Wisconsin cannot constitutionally do so.

This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so. As the Court points out, there is no suggestion whatever in the record that the religious beliefs of the children here concerned differ in any way from those of their parents. Only one of the children testified. The last two questions and answers on her cross-examination accurately sum up her testimony:

'Q. So I take it then, Frieda, the only reason you are not going to school, and did not go to school since last September, is because of your religion?
'A. Yes.
'Q. That is the only reason?
'A. Yes.' (Emphasis supplied.)

It is clear to me, therefore, that this record simply does not present the interesting and important issue

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discussed in Part II of the dissenting opinion of Mr. Justice DOUGLAS. With this observation, I join the opinion and the judgment of the Court.

Mr. Justice WHITE, with whom Mr. Justice BRENNAN and Mr. Justice STEWART join, concurring.

Cases such as this one inevitably call for a delicate balancing of important but conflicting interests. I join the opinion and judgment of the Court because I cannot ***238** say that the State's interest in requiring two more years of compulsory education in the ninth and tenth grades outweighs the importance of the concededly sincere Amish religious practice to the survival of that sect.

This would be a very different case for me if respondents' claim were that their religion forbade their children from attending any school at any time and from complying in any way with the educational standards set by the State. Since the Amish children are permitted to acquire the basic tools of literacy to survive in modern society by attending grades one through eight and since the deviation from the State's compulsory-education law is relatively slight, I conclude that respondents' claim must prevail, largely because 'religious freedom--the freedom to believe and to practice strange and, it may be, foreign creeds--has classically been one of the highest values of our society.' Braunfeld v. Brown, 366 U.S. 599, 612, 81 S.Ct. 1144, 1150, 6 L.Ed.2d 563 (1961) (Brennan, J., concurring and dissenting).

The importance of the state interest asserted here cannot be denigrated, however:

> 'Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.' Brown v. Board of Education, 347 U.S. 483, 493, 74 S.Ct. 686, 691, 98 L.Ed. 873 (1954).

****1545 *239** As recently as last Term, the Court reemphasized the legitimacy of the State's concern for enforcing minimal educational standards. Lemon v. Kurtzman, 403 U.S., 602, 613, 91 S.Ct. 2105, 2111, 29 L.Ed.2d 745 (1971). [FN1] Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), lends no support to the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society; in Pierce, both the parochial and military schools were in compliance with all the educational standards that the State had set, and the Court held simply that while a State may posit such standards, it may not pre- empt the educational process by requiring children to attend public schools. [FN2] In the present case, the State is not concerned with the maintenance of an educational system as an end in itself, it is rather attempting to nurture and develop the human potential of its children, whether Amish or non- Amish: to expand their knowledge, broaden their sensibilities, kindle their imagination, foster a spirit of free inquiry, and increase their human understanding and tolerance. It is possible that most Amish ***240** children will wish to continue living the rural life of their parents, in which case their training at home will adequately equip them for their future role. Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations, formal training will be necessary. There is evidence in the record that many children desert the Amish faith when they come of age. [FN3] A State has a legitimate interest not only in seeking to develop the latent talents of its children but also in seeking to prepare them for the life style that they may later choose, or at least to provide them with an option other than the life they have led in the past. In the circumstances of this case, although the question is close, I am unable to say that the State has demonstrated that Amish children who leave school in the eighth grade will be intellectually stultified or unable to acquire new academic skills later. The statutory minimum school attendance age set by the State is, after all, only 16.

FN1. The challenged Amish religious practice here does not pose a substantial

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threat to public safety, peace, or order; if it did, analysis under the Free Exercise Clause would be substantially different. See Jacobson v. Massachusetts, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905); Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944); Cleveland v. United States, 329 U.S. 14, 67 S.Ct. 13, 91 L.Ed. 12 (1946); Application of President and Directors of Georgetown College, Inc., 118 U.S.App.D.C. 80, 331 F.2d 1000, cert. denied, 377 U.S. 978, 84 S.Ct. 1883, 12 L.Ed.2d 746 (1964).

FN2. 'No question is raised concerning the power of the State reasonably to regulate all schools, the inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare.' Pierce v. Society of Sisters, 268 U.S. 510, 534, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925).

FN3. Dr. Hostetler testified that though there was a gradual increase in the total number of Old Order Amish in the United States over the past 50 years, 'at the same time the Amish have also lost members (of) their church' and that the turnover rate was such that 'probably two-thirds (of the present Amish) have been assimilated non-Amish people.' App. 110. Justice Heffernan, dissenting below, opined that '(l)arge numbers of young people voluntarily leave the Amish community each year and are thereafter forced to make their way in the world.' 49 Wis.2d 430, 451, 182 N.W.2d 539, 549 (1971).

Decision in cases such as this and the administration of an exemption for Old Order Amish from the State's compulsory school-attendance laws will inevitably involve the kind of close and perhaps repeated scrutiny of religious practices, as is exemplified in today's opinion, which the Court has heretofore been anxious to avoid. But such entanglement does not create a forbidden **1546 establishment of religion where it is essential to implement free *241 exercise values threatened by an otherwise neutral program instituted to foster some permissible, nonreligious state objective. I join the Court because the sincerity of the Amish religious policy here is uncontested, because the potentially adverse impact of the state requirement is great, and because the State's valid interest in education has already been largely satisfied by the eight years the children have already spent in school.

Mr. Justice DOUGLAS, dissenting in part.

I

I agree with the Court that the religious scruples of the Amish are opposed to the education of their children beyond the grade schools, yet I disagree with the Court's conclusion that the matter is within the dispensation of parents alone. The Court's analysis assumes that the only interests at stake in the case are those of the Amish parents on the one hand, and those of the State on the other. The difficulty with this approach is that, despite the Court's claim, the parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children.

It is argued that the right of the Amish children to religious freedom is not presented by the facts of the case, as the issue before the Court involves only the Amish parents' religious freedom to defy a state criminal statute imposing upon them an affirmative duty to cause their children to attend high school.

First, respondents' motion to dismiss in the trial court expressly asserts, not only the religious liberty of the adults, but also that of the children, as a defense to the prosecutions. It is, of course, beyond question that the parents have standing as defendants in a criminal prosecution to assert the religious interests of their *242 children as a defense. [FN1] Although the lower courts and a majority of this Court assume an identity of interest between parent and child, it is clear that they have

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treated the religious interest of the child as a factor in the analysis.

> FN1. Thus, in Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, a Jehovah's Witness was convicted for having violated a state child labor law by allowing her nine-year-old niece and ward to circulate religious literature on the public streets. There, as here, the narrow question was the religious liberty of the adult. There, as here, the Court analyzed the problem from the point of view of the State's conflicting interest in the welfare of the child. But, as Mr. Justice Brennan, speaking for the Court, has so recently pointed out, 'The Court (in Prince) implicitly held that the custodian had standing to assert alleged freedom of religion . . . rights of the child that were threatened in the very litigation before the Court and that the child had no effective way of asserting herself.' Eisenstadt v. Baird, 405 U.S. 438, 446 n. 6, 92 S.Ct. 1029, 1034, 31 L.Ed.2d 349. Here, as in Prince, the children have no effective alternate means to vindicate their rights. The question, therefore, is squarely before us.

Second, it is essential to reach the question to decide the case, not only because the question was squarely raised in the motion to dismiss, but also because no analysis of religious-liberty claims can take place in a vacuum. If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notions of religious duty upon their children. Where the child is mature enough to express potentially conflicting desires, it would be an invasion of the child's rights to permit such an imposition without canvassing his views. As in Prince v. Massachusetts, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645, it is an imposition resulting from this very litigation. As the child has no other effective forum, it is in this litigation that his rights should be considered. And, if an Amish child desires to attend high school, and is mature enough to have that desire respected, the State may well be able to override the parents' religiously motivated objections.

**1547 *243 Religion is an individual experience. It is not necessary, nor even appropriate, for every Amish child to express his views on the subject in a prosecution of a single adult. Crucial, however, are the views of the child whose parent is the subject of the suit. Frieda Yoder has in fact testified that her own religious views are opposed to high-school education. I therefore join the judgment of the Court as to respondent Jonas Yoder. But Frieda Yoder's views may not be those of Vernon Yutzy or Barbara Miller. I must dissent, therefore, as to respondents Adin Yutzy and Wallace Miller as their motion to dismiss also raised the question of their children's religious liberty.

II

This issue has never been squarely presented before today. Our opinions are full of talk about the power of the parents over the child's education. See Pierce v. Cociety of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070; Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042. And we have in the past analyzed similar conflicts between parent and State with little regard for the views of the child. See Prince v. Massachusetts, supra. Recent cases, however, have clearly held that the children themselves have constitutionally protectible interests.

These children are 'persons' within the meaning of the Bill of Rights. We have so held over and over again. In Haley v. Ohio, 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224, we extended the protection of the Fourteenth Amendment in a state trial of a 15-year-old boy. In re Gault, 387 U.S. 1, 13, 87 S.Ct. 1428, 1436, 18 L.Ed.2d 527, we held that 'neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.' In In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368, we held that a 12-year-old boy, when charged with an act which would be a crime if committed by an adult, was entitled to procedural safeguards contained in the Sixth Amendment.

*244 In Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, we dealt with 13-year-old, 15-year-old, and 16-year-old students who wore armbands to public schools and were disciplined for doing so. We gave them reflief, saying that their First Amendment rights had been abridged.

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'Students in school as well as out of school are 'persons' under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.' Id., at 511, 89 S.Ct., at 739.

In West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S.Ct. 1178, 87 L.Ed. 1628, we held that school-children, whose religious beliefs collided with a school rule requiring them to salute the flag, could not be required to do so. While the sanction included expulsion of the students and prosecution of the parents, id., at 630, 63 S.Ct., at 1181, the vice of the regime was its interference with the child's free exercise of religion. We said: 'Here . . . we are dealing with a compulsion of students to declare a belief.' Id., at 631, 63 S.Ct., at 1182. In emphasizing the important and delicate task of boards of education we said:

'That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.' Id., at 637, 63 S.Ct., at 1185.

On this important and vital matter of education, I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be a pianist or an astronaut or an **1548 oceanographer. *245 To do so he will have to break from the Amish tradition. [FN2]

FN2. A significant number of Amish children do leave the Old Order. Professor Hostetler notes that '(t)he loss of members is very limited in some Amish districts and considerable in others.' J. Hostetler, Amish Society 226 (1968). In one Pennsylvania church, he observed a defection rate of 30%. Ibid. Rates up to 50% have been reported by others. Casad, Compulsory High School Attendance and the Old Order Amish: A Commentary on State v. Garber, 16 Kan.L.Rev. 423, 434 n. 51 (1968).

It is the future of the student, not the future of the parents, that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today. The child may decide that that is the preferred course, or he may rebel. It is the student's judgment, not his parents', that is essential if we are to give full meaning to what we have said about the Bill of Rights and of the right of students to be masters of their own destiny. [FN3] If he is harnessed to the Amish way of life *246 by those in authority over him and if his education is truncated, his entire life may be stunted and deformed. The child, therefore, should be given an opportunity to be heard before the State gives the exemption which we honor today.

FN3. The court below brushed aside the students' interests with the offhand comment that '(w)hen a child reaches the age of judgment, he can choose for himself his religion.' 49 Wis.2d 430, 440, 182 N.W.2d 539, 543. But there is nothing in this record to indicate that the moral and intellectual judgment demanded of the student by the question in this case is beyond his capacity. Children far younger than the 14- and 15-year-olds involved here are regularly permitted to testify in custody and other proceedings. Indeed, the failure to call the affected child in a custody hearing is often reversible error. See, e.g., Callicott v. Callicott, 364 S.W.2d 455 (Tex.Civ.App.) (reversible error for trial judge to refuse to hear testimony of eight-year-old in custody battle). Moreover, there is substantial agreement among child psychologists and sociologists that the moral and intellectual maturity of the 14-year-old approaches that of the adult. See, e.g., J. Piaget, The Moral Judgment of the Child (1948); D. Elkind, Children and Adolescents 75--80 (1970); Kohlberg, Moral Education in the Schools: A Development View, in R. Muuss, Adolescent Behavior and Society 193, 199--200 (1971); W. Kay, Moral Development 172--183 (1968); A. Gesell & F. Ilg, Youth: The Years From Ten to Sixteen 175--182 (1956). The maturity of

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> Amish youth, who identify with and assume adult roles from early childhood, see M. Goodman, The Culture of Childhood 92--94 (1970), is certainly not less than that of children in the general population.

The views of the two children in question were not canvassed by the Wisconsin courts. The matter should be explicitly reserved so that new hearings can be held on remand of the case. [FN4]

> FN4. Canvassing the views of all school-age Amish children in the State of Wisconsin would not present insurmountable difficulties. A 1968 survey indicated that there were at that time only 256 such children in the entire State. Comment, 1971 Wis.L.Rev. 832, 852 n. 132.

III

I think the emphasis of the Court on the 'law and order' record of this Amish group of people is quite irrelevant. A religion is a religion irrespective of what the misdemeanor or felony records of its members might be. I am not at all sure how the Catholics, Episcopalians, the Baptists, Jehovah's Witnesses, the Unitarians, and my own Presbyterians would make out if subjected to such a test. It is, of course, true that if a group or society was organized to perpetuate crime and if that is its motive, we would have rather startling problems akin to those that were raised when some years back a particular sect was challenged here as operating on a fraudulent basis. United States v. Ballard, 322 U.S. 78, 64 S.Ct. 822, 88 L.Ed. 1148. But no such factors are present here, and the ****1549** Amish, whether with a high or low criminal ***247** record, [FN5] certainly qualify by all historic standards as a religion within the meaning of the First Amendment.

> FN5. The observation of Justice Heffernan, dissenting below, that the principal opinion in his court portrayed the Amish as leading a life of 'idyllic agrarianism,' is equally applicable to the majority opinion in this Court. So, too, is his observation that such a portrayal rests on a 'mythological basis.' Professor Hostetler has noted that '(d)rinking among the youth is common in all the large Amish settlements.' Amish Society 283. Moreover, '(i)t would appear that among the Amish the rate of suicide is just as high, if not higher, than for the nation.' Id., at 300. He also notes an unfortunate Amish 'preoccupation with filthy stories,' id., at 282, as well as significant 'rowdyism and stress.' Id., at 281. These are not traits peculiar to the Amish, of course. The point is that the Amish are not people set apart and different.

The Court rightly rejects the notion that actions, even though religiously grounded, are always outside the protection of the Free Exercise Clause of the First Amendment. In so ruling, the Court departs from the teaching of Reynolds v. United States, 98 U.S. 145, 164, 25 L.Ed. 244, where it was said concerning the reach of the Free Exercise Clause of the First Amendment, 'Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.' In that case it was conceded that polygamy was a part of the religion of the Mormons. Yet the Court said, 'It matters not that his belief (in polygamy) was a part of his professed religion: it was still belief and belief only.' Id., at 167, 25 L.Ed. 244.

Action, which the Court deemed to be antisocial, could be punished even though it was grounded on deeply held and sincere religious convictions. What we do today, at least in this respect, opens the way to give organized religion a broader base than it has ever enjoyed; and it even promises that in time Reynolds will be overruled.

In another way, however, the Court retreats when in reference to Henry Thoreau it says his 'choice was philosophical ***248** and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.' That is contrary to what we held in United States v. Seeger, 380 U.S. 163, 85 S.Ct. 850, 13 L.Ed.2d 733, where we were concerned with the meaning of the words

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'religious training and belief' in the Selective Service Act, which were the basis of many conscientious objector claims. We said:

> 'Within that phrase would come all sincere religious beliefs which are based upon a power or being, or upon a faith, to which all else is subordinate or upon which all else is ultimately dependent. The test might be stated in these words: A sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition. This construction avoids imputing to Congress an intent to classify different religious beliefs, exempting some and excluding others, and is in accord with the well-established congressional policy of equal treatment for those whose opposition to service is grounded in their religious tenets.' Id., at 176, 85 S.Ct., at 859.

Welsh v. United States, 398 U.S. 333, 90 S.Ct. 1792, 26 L.Ed.2d 308, was in the same vein, the Court saying:

> 'In this case, Welsh's conscientious objection to war was undeniably based in part on his perception of world politics. In a letter to his local board, he wrote: "I can only act according to what I am and what I see. And I see that the military complex wastes both human and material resources, that it fosters disregard for (what I consider a paramount concern) human needs and ends; I see that the means we employ to 'defend' our 'way of life' profoundly change that way of life. I see that in our failure to ****1550 *249** recognize the political, social, and economic realities of the world, we, as a nation, fail our responsibility as a nation." id., at 342, 90 S.Ct., at 1797.

The essence of Welsh's philosophy, on the basis of which we held he was entitled to an exemption, was in these words:

> "I believe that human life is valuable in and of itself; in its living; therefore I will not injure or kill another human being. This belief (and the corresponding 'duty' to abstain from violence toward another person) is not 'superior to those arising from any human relation.' On the contrary: it is essential to every human relation. I cannot, therefore, conscientiously comply with the Government's insistence that I assume duties which I feel are immoral and totally repugnant." Id., at 343, 90 S.Ct., at 1798.

I adhere to these exalted views of 'religion' and see no acceptable alternative to them now that we have become a Nation of many religions and sects, representing all of the diversities of the human race. United States v. Seeger, 380 U.S., at 192--193, 85 S.Ct., at 867--868 (concurring opinion).

Briefs and Other Related Documents (Back to top)

- 1971 WL 126409 (Appellate Brief) Reply Brief for the Petitioner (Dec. 05, 1971)
- 1971 WL 126408 (Appellate Brief) Brief for Respondents (Sep. 15, 1971)
- 1971 WL 126411 (Appellate Brief) Brief Amicus Curiae of the National Council of the Churches of Christ in the United States of America (Sep. 1971)
- 1971 WL 126412 (Appellate Brief) Brief Amici Curiae of the Synagogue Council of America and its Constituents (the Central Conference of American Rabbis, the Rabbinical Assembly of America, the Rabbinical Council of America, the Union of American Hebrew Congregations, the Union of Orthodox Jewish Congregations of America, the United Synagogue of America) and the American Jewish Congress (Sep. 1971)
- 1971 WL 126414 (Appellate Brief) Brief of the National Jewish Commission on Law and Public Affairs, Amicus Curiae (Sep. 1971)
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- 1971 WL 126407 (Appellate Brief) Brief for the Petitioner (Jul. 14, 1971)
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FILED

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Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRER** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs, in the above-numbered and entitled cause, and opposes Watchtower Defendants' Demurrer.

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OPENING SUMMARY OF ARGUMENT

The Watchtower Defendants want this Court to believe this case is about the correctness of the Watchtower Defendants' religious tenets and doctrine and therefore an impermissible clergy malpractice case. It is not. This case is about young children who were devastatingly violated by the Watchtower Defendants' appointed agent who used his appointed position of trust and authority within that organization to criminally, sexually abuse children entrusted to his care by the Watchtower Defendants. It is also a case about the Watchtower Defendants' intentional conduct in not only covering up the abuse, but also actively preventing the reporting of this and other instances of abuse within the organization. At the same time, the Watchtower Defendants continued to appoint this particular agent, as well as other agents, to positions of trust and authority after the Watchtower Defendants knew of their propensity to use their appointed positions in the organization to sexually abuse innocent children. Finally, it is a case about this Nation's and the state of California's compelling state interest in protecting its children from the crime of sexual abuse through the application of secular laws designed to hold accountable those responsible for such abuse.

Nothing in the First Amendment prohibits this Court from addressing the Watchtower Defendants' knowing appointment and protection of a pedophile who criminally assaulted Plaintiffs after the Watchtower Defendants were on notice that he would do just that if they continued to appoint him to a position of authority over children. Also, the First Amendment does not bar this Court from addressing the Watchtower Defendants' liability for their intentional conduct in coercing the silence of victims and preventing the reporting of abuse, not for religious reasons, but to protect the Watchtower Defendants from liability for their own conduct in knowingly continuing to appoint pedophiles to positions of leadership with authority over children without even taking the minimal step of warning members of the congregations to which they were appointed or reporting the abuse to the proper secular authorities.

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None of the cases regarding clergy malpractice, as cited by the Watchtower Defendants in their Memorandum of Points and Authorities, address the duty of a religious organization in the context in which Plaintiffs brings their claims. To the contrary, those on point take exception to any argument that the First Amendment bars claims arising out of the criminal abuse of children. The Watchtower Defendants repeatedly misstated the law in their brief regarding the First Amendment and sexual abuse of children, as explained more fully below. Based on all the arguments contained herein, the Watchtower Defendants' Demurrer should be denied.

STANDARD FOR REVIEWING DEMURRER

As Watchtower Defendants' properly stated, for purposes of a demurrer, all material allegations of a complaint are accepted as true. For the purpose of determining the merits of a demurrer, the material facts alleged in the complaint are deemed admitted. *Ross v. Universal Studios Credit Union* (2002) 95 Cal. App. 4th 537. A demurrer admits all facts properly pled no matter how unlikely or improbable. *Kervian v. Title Ins. & Trust Co.,* (1983) 147 Cal. App. 3d 225, 229. Effect must be given to every allegation in the complaint, and the demurrer must be overruled if the complaint states, or from its averments it can reasonably be inferred, a plaintiff has a cause of action against the defendant on any theory. *Beason v. Griff* (1954) 127 Cal. App. 2d 382. If a complaint states any valid claim entitling plaintiff to relief, the demurrer must be denied. *Quelimane Co., Inc. v Stewart Title Guar. Co.* (1998) 19 Cal. 4th 26, 28.

ARGUMENT

I

THE FIRST AMENDMENT

A. The Majority of Jurisdictions in the United States Find No First Amendment Bar To Claims Against Religious Organizations Arising Out of the Sexual Abuse of Children.

Consistent with related United States Supreme Court decisions, the majority of jurisdictions in the United States, including California, find no burdening of First Amendment liberties in the pursuit of claims against religious organizations for tortious conduct arising

out of sexual misconduct by one of the organization's agents. The majority of jurisdictions refute the ability of religious organizations to hide behind the First Amendment as a way of avoiding their responsibility for the sexual abuse of children. The Florida Supreme Court recently summarized the position of these courts as follows: "The issue presented in this case is whether the First Amendment bars a third-party tort action against a religious institution grounded on the alleged tortious conduct of one of its clergy. We conclude that the First Amendment does not provide a shield behind which the church may avoid liability for harm caused to a child parishioner arising from the alleged sexual assault or battery by one of it clergy...**We thus join the majority of both state and federal jurisdictions that have found no First Amendment bar under similar circumstances."** *Malicki v. Doe* (Fla. 2002) 814 So.2d 347, 351 (emphasis added).

Plaintiffs refer this Court to the following additional decisions supporting the rights of Plaintiffs to have their claims heard by this Court. Interestingly, the first five of these cases were relied upon by the Watchtower Defendants in their Memorandum of Points and Authorities, despite the legal holdings and conclusions of these cases entirely supporting Plaintiffs: *Richelle v. Roman Catholic Archbishops* (2003) 106 Cal.App.4th 257, 612 (A fiduciary duty independent of a claim of seduction exists, and recovery for its breach does not violate the First Amendment if it falls into one of two patterns: "either a minister is alleged to have taken advantage of a woman he is counseling, or **a cleric is said to have sodomized young children under his charge**") (emphasis added); *Amato v. Greenquist* (Ill. App. 1997) 679 N.E.2d 446, 451 (The First Amendment would not bar a claim that a cleric counselor used his position as a spiritual counselor to sexually exploit a counselee. "In the context of spiritual counseling, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused the plaintiff's distress was in fact part of the belief and practices of the religious group....clerics cannot, using the shield of the First Amendment masquerade in the form of marriage counselors and then prey on their counselees."); *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, 109 (The First Amendment bar is not absolute and is non-existent where

religion is used as an excuse for shielding criminal conduct. "Legislative power to punish subversive or hostile action cannot be doubted. If such action should actually be attempted by a cleric, neither his robe nor his pulpit would be a defense."); *Sanders v. Casa View Baptist Church* (N.D. Texas 1995) 898 F. Supp. 1169 (The First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by a church member against a minister); *Isely v. Capuchin Province* (E.D. Mich. 1995) 880 F. Supp. 1138 (The First Amendment does not bar a claim for negligent supervision by a student who was a victim of sexual abuse); *Bivin v. Wright* (Ill. App. 1995) 656 N.E.2d 1121 (The First Amendment comes into play only when the church defendant can legitimately allege that the sexual conduct of its minister was part of its religious beliefs or practices or was in any way sanctioned by the church); *F.G. v. MacDonell* (N.J. 1996) 677 A.2d 258 ("When sexual conduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involves 'no impenetrable barrier.'"); *Nutt v. Norwich Roman Catholic Defendants* (D. Conn. 1995) 921 F. Supp. 66 (The Free Exercise Clause of the First Amendment does not bar claims for negligent employment based upon alleged sexual abuse by a priest); *Moses v. Defendants of Colorado* (Colo. 1993) 863 P.2d 310 (The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on the sexual relationship between parishioner and priest); *Destanfano v. Gabrian* (Colo. 1988) 763 P.2d 275 (The First Amendment does not bar a parishioner's claims for breach of fiduciary duty and negligent hiring and supervision grounded on a sexual relationship with church leader); *Alberts v. Devine,* 479 N.E.2d 113 (Mass. 1985); *Smith v. O'Connell* (D.R.I. 1997) 986 F. Supp. 73 (The First Amendment does not bar a minor's claims for negligent supervision against a church for sexual molestation by a priest); *Smith v. Privette* (N.C. 1998) 495 S.E.2d 395 (A claim of negligent retention and supervision against a church arising out of inappropriate sexual acts by minister is not barred by the First Amendment); *Mrozka v. Archdiocese of St. Paul and Minneapolis* (Minn. Ct. App. 1992) 482 N.W. 2d 806 (The First Amendment does not bar imposition of punitive damages against a church based upon

priest's sexual abuse of a child); *Konkle v. Henson* (Ind. Ct. App. 1996) 672 N.E. 2d 450 (The First Amendment does not bar claims for negligent hiring and supervision against a church for sexual molestation); *Byrd v. Faber* (Oh. 1991) 565 N.E.2d 584 (Negligent hiring and supervision claims brought by a sexually abused child are not barred by the First Amendment); *Kenneth R. v. Roman Catholic Defendants of Brooklyn* (1997) 654 N.Y.S.2d 791 (A child's negligent supervision and retention claims against a diocese are not barred by the First Amendment); *Bear Valley Church of Christ v. Dubose* (Colo. 1996) 928 P.2d 1315 (The First Amendment does not bar a child's various tort claims against pastor and church for "pattern of inappropriate touching".); *Bivin v. Wright* (Ill. Ct. App. 1995) 656 N.E.2d 1121; *F.G. v. MacDonell* (N.J. 1997) 696 A.2d 697 (The First Amendment does not bar claim against church for negligent supervision of minister for inappropriate sexual contact); *Martinez v. Primera Assemblea de Dios, Inc.* (Tex. Ct. App. May 15, 1998) No. 05-96-01458, 1998 WL 242412 (The First Amendment does not bar parishioner's negligence claims against a church based upon allegations that church elder sexually assaulted her); *C.J.C. v. Corporation of the Catholic Bishop of Yakima* (Wash. 1999) 985 P.2d 262 (The First Amendment does not bar minor sexual abuse victim from bringing tort claims against a priest and church.); *Doe v. Hartz* (N.D. Iowa 1997) 970 F. Supp. 1375 (The First Amendment did not bar negligent supervision claim against church brought by adult for improper sexual contact by priest.).

Plaintiffs' claims are consistent with those permitted by the above referenced decisions, which consistently found no burdening of First Amendment freedoms, despite the defendants' religious nature.

B. Religious Conduct May Be Burdened by Secular Laws Supporting a Compelling State Interest.

Even when the pursuit of claims against a religious organization burdens First Amendment freedoms, those claims are not barred by the First Amendment where the pursuit of those claims is supported by a compelling state interest. It has never been the law of the United States or the State of California that religious organizations or persons

may engage in or support unlawful conduct under a claim that their religious doctrine compels them to do so. *Employment Division, Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879, 110 S.Ct. 1595, 1600, 108 L.Ed. 2d 876. "We have never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition." *Id.* "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices....Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself." *Reynolds v. United States* (1879) 98 U.S. 145, 166-167, 25 L.Ed. 244. "Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public". *Cantwell v. Connecticut* (1940) 310 U.S. 296, 306, 60 S.Ct. 900, 904, 84 L.Ed. 1213.

1. **Regulated "Religious" Conduct**

The United States Supreme Court has consistently taken the position that religious conduct may be regulated by secular laws that are neutrally applied in support of a compelling state interest. In *United States v. Lee* (1982) 455 U.S. 252, the United States Supreme Court considered whether or not the state could interfere with the Amish community's religious beliefs against the payment of taxes without violating the First Amendment. The United States Supreme Court held that the Amish could be required to pay social security taxes despite the fact that the payment of such taxes burdened Amish religious beliefs. The Court stated:

> We therefore accept appellee's contention that both payment and receipt of social security benefits is forbidden by the Amish faith. Because the payment of the taxes or receipt of benefits violates Amish religious beliefs, compulsory participation in the social security system interferes with their free exercise rights. The conclusion that there is a conflict between the Amish faith and the obligations imposed by the

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

Id. at 257-258. Thus where the compelling interests of society necessitate the restriction of certain actions, such interests are paramount over any contrary religious conduct.

Other U.S. Supreme Court opinions and those of numerous other jurisdictions across this Nation have found no bar to neutrally applied secular laws that allegedly burden First Amendment freedoms where the law is supported by a compelling state interest. See e.g. *Reynolds v. United States* (1879) 98 U.S. 145; *Jones v. Wolf* (1979) 443 U.S. 595, 604 (Secular laws may interfere with religious practices where required by compelling societal interest. To hold otherwise would make every citizen a law unto himself.); *General Council of Finance and Administration of the United Methodist Church v. Superior Court of California* (1978) 439 U.S. 1369 (The First and the Fourteenth Amendments do not prevent a court from independently examining decisions of a church in a secular dispute between a church and a third party.); *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg, Inc.* (1970) 396 U.S. 367 (Courts may resolve church property disputes that do not require examination of tenets of faith); *Davis v. Beason* (1890) 133 U.S. 333 (First Amendment was never intended to be invoked in the name of religion as a protection against legislation inimical to the peace, good order, and morals of society.); *Cantwell v. Connecticut* (1940) 310 U.S. 296 ("Nothing we have said is intended to even remotely imply that, under the cloak of religion, persons may, with impunity, commit frauds on the public."); *Bob Jones University v. United States* (1983) 461 U.S. 574 (State may enforce tax-exemption laws against religious school that racially discriminates for religious

reasons.) *McBride v McCorkle* (N.J. App. 1957) 130 A.2d 881 (Prisoner could be denied the First Amendment right to attend Mass on Sundays as required by his religious beliefs due to the compelling state interest in preserving order and discipline in the prison); *Christenson v. Erickson* (Or. Ct. App 1989) 99 Or. App. 104, 781 P.2d 383 (Claims by victim of child sexual abuse against a church for negligent supervision, breach of fiduciary duty, intentional infliction of emotional distress and respondeat superior are not barred by First Amendment.); *Martinelli v. Bridgeport Roman Catholic Church* (2nd Cir. 1999) 196 F.2d 409 (First Amendment does not prohibit a court from finding a fiduciary relationship between diocese and child parishioner who was sexually abused by priest.); *Moses v. Defendants of Colorado* (Colo. 1993) 863 P.2d 310 (The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on the sexual relationship between parishioner and priest); *Smith v. O'Connell* (D.R.I 1997) 986 F.Supp. 73 (The First Amendment does not bar a minor's claims for negligent supervision against a church for sexual molestation by a priest); *Byrd v. Faber* (Oh. 1991) 565 N.E.2d 584 (Negligent hiring and supervision claims brought by a sexually abused child are not barred by the First Amendment); *Bivin v. Wright* (Ill. Ct. App. 1995) 656 N.E. 2d 1121 (Negligence action against church for failure to protect plaintiffs from sexual misconduct of its clergy would not violate First Amendment.); *F.G. v. MacDonell* (N.J. 1997) 696 A.2d 697 ("When sexual conduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involves 'no impenetrable barrier.'"); *Sanders v. Casa View Baptist Church* (N.D. Tex. 1995) 898 F.Supp. 1169 (The First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by a church member against a minister); *Malicki v. Jane Doe* (Fla. 2002) 814 So.2d 347, 365 (The First Amendment does not provide a shield behind which the church may avoid liability for harm caused to a child parishioner arising from the alleged sexual assault or battery by one of it clergy); *Bollard v. California Province of the Society of Jesus* (9th Cir. 1999) 196 F.3d 940, 947-48 (Court does not violate the First Amendment when it examines the nature and severity of sexual

harassment of a novice by a religious order and what measures, if any, were taken to prevent or correct it.).

The enforcement of secular laws against child sexual abuse in no way burdens the Watchtower Defendants' religious beliefs. Even if it did, however, the State of California has a compelling state interest in protecting its children from the heinous crime of child sexual abuse. Plaintiffs are asking this Court to enforce secular child abuse laws against the Watchtower Defendants, who happen to be entities that make up a religious organization, just as this Court would enforce such laws against any secular individual or entity.

The government's ability to regulate "religious" conduct is particularly strong when necessitated by a compelling state interest regarding the safety and health of children. In *Prince v. Commonwealth of Massachusetts* (1944) 64 S.Ct. 438, a case involving the regulation of religious conduct by members of the Watchtower Defendants' organization, the United States Supreme Court definitively ruled the First Amendment did not preclude the state from acting to enforce neutrally applied secular laws designed to protect the safety and welfare of a child, even though the enforcement of such laws violated the dictates of the child's and her family's religious beliefs as members of the Watchtower Defendants' organization. "The right to practice religion freely**does not** include the liberty to expose the community or a child to communicable disease or the latter to ill health or death." *Id.* at 167. (Emphasis added.) The court further ruled the "state's authority over children's activities is broader than over like actions of adults....A democratic society rests, for its continuance, upon the healthy well-rounded growth of young people into full maturity as citizens, with all that implies. It may secure this against impeding restraints and dangers, within a broad range of selection." *Id.* According to the United States Supreme Court, such broad range of selection includes the curtailment of religious conduct that endangers a child's health and well-being. *Id.*

Consistent with *Prince,* the United States District Court, W.D. Washington in *Jehovah's Witnesses v. King County Hospital Unit No.1* (W.D. Washington 1967) 278 F.

Supp 488, *judgment affirmed*, 88 S.Ct. 1260 (1961), ruled the "right to practice religion freely does not include liberty to expose the child to ill health or death." *Id.* at 504. Similarly, the New Jersey Court of Appeals found the First Amendment provided no constraint on the government's ability to limit religious conduct to protect the health of a child whose parents were Jehovah's Witnesses. The Jehovah's Witness parents refused a blood transfusion for their child solely on the basis of their religious tenets. The court found that although the parents were in fact acting according to the religious tenets of the Jehovah's Witnesses, there was no First Amendment bar to interfering with the parents' religious conduct because it put the health of their child at risk. The court pointed out specifically that "while freedom to believe is absolute, freedom to exercise one's beliefs is not and must be considered in light of the general public welfare." *Id.*

Consistent with the decisions of the United States Supreme Court and the majority of courts across this Nation, as discussed above, this Court should rule nothing in the First Amendment even remotely implies that, under the cloak of religion, persons and organizations may, with impunity, foster, protect, aid and abet the perpetration of the heinous crime of child sexual abuse, even if religious freedoms are thereby burdened. To hold otherwise would place religious institutions in a preferred position over secular institutions, "a concept both foreign and hostile to the First Amendment." *Malicki*, (Fla. 2002) 814 So.2d 347.

C. The Religious Aspects of an Organization May be Referenced for Context, Without Offending First Amendment Protections.

Plaintiffs are not asking this Court to rule on whether the Watchtower Defendants' religious beliefs are valid or have been properly applied. Instead, Plaintiffs reference the spiritual aspect of his relationship with the Watchtower organization to establish the context in which their secular claims against the Watchtower Defendants, arising out of the crime of sexual abuse, must be understood. Establishing this context does not violate the Watchtower Defendants' First Amendment rights and privileges. The discussion by the court in *Martinelli v. Bridgeport Roman Catholic Diocesan* (2nd Cir. 1999) 196 F.2d 409, 431

regarding the consideration of religious principles for factual context is helpful in explaining this distinction. In examining the religious teachings regarding the relationship of a bishop to a child parishioner for purposes of determining the existence of a fiduciary relationship, the court explained that evidence of religious teachings and tenets, submitted not to determine their validity, but to establish the factual predicates of a civil cause of action is properly allowed and does not violate the First Amendment. There is a distinction between the proper consideration of religious principles as facts and an improper decision that religious principles are true or false. For example, the proposition of a particular religion may be examined to determine the character of the relationship between Plaintiffs and the church, but not to assess its truth. As the court stated:

> ....Where a person's beliefs are alleged to give rise to a special legal relationship between him and his church, we may be required to consider with other relevant evidence the nature of that person's beliefs in order properly to determine whether the asserted relationship in fact exists. In doing so, we judge nothing to be hersay, support no dogma, and acknowledge no beliefs or practices of any sect to be the law.
>
> The obvious distinction between the proper use of religious principles as facts and an improper decision that religious principles are true or false bears a certain family resemblance to the more mundane rules of hearsay. Evidence of a statement made out of court may be inadmissible as hearsay to prove the truth of the facts asserted in it, but may be admissible for the non-hearsay purposes of proving that the statement was made or that other facts can be inferred from the making of the statement. *See* Fed.R.Evid. 801(c). Similarly, the proposition advanced by a particular religion that "a bishop is like a 'shepherd' to the 'flock' of parishioners" cannot be considered by a jury to assess its truth or validity or the extent of its divine approval or authority, but may be considered by the same jury to determine the character of the relationship between a parishioner and his or her bishop.
>
> *Martinelli,* at 431.

Consistent with the above authority, Plaintiffs are merely asking this Court to consider the factual context of Plaintiffs' claims, not to determine the validity of religious beliefs. See also, *Moses* (Colo.1993) 863 P.2d 310 (Extensive inquiry into the internal workings and controls of the Episcopal Church did not implicate the First Amendment as the court was not required to interpret or judge the religious doctrine behind such practices. Instead, the evidence established the factual context out of which the dispute arose.);

Rashedi v. General Board of the Church of the Nazarene (Az. 2002) 54 P.3d 349 (Inquiry into church structure and religious documents on purely secular terms did not violate the First Amendment as such was necessary to establish the factual context of the dispute.); *JC2 v. Grammond* (D.Or. 2002) 232 F.Supp. 2d 1166 (Examination of a number of the church's cannons did not violate the First Amendment as the court was not called upon the evaluate the correctness of these cannons.); *General Council on Finance and Administration of the United Methodist Church v. Superior Court of California* (1978) 439 U.S. 1369 (The First and Fourteenth Amendments do not prevent a court from examining the structure and actual operation of a hierarchical church.)

D. The Watchtower Defendants Cite No United States Supreme Court Case Relevant to Plaintiffs' Claims Supporting Their Alleged First Amendment "Defense."

The Watchtower Defendants cite a total of seven United States Supreme Court cases to allege a defense that the First Amendment "precludes" this litigation against their organization. Not a single one of these cases supports their argument that Plaintiffs' claims are barred. In fact, these cases are either immaterial to the issues to be addressed by **this** Court or actually support Plaintiffs' causes of action alleged in the Complaint.

1. ***Lemon v. Kurtzman***

The Watchtower Defendants cited *Lemon v. Kurtzman* (1971) 403 U.S. 602 for the proposition "the state and government cannot entangle itself in religious affairs." While that general proposition is true, it is not an issue before this Court. Plaintiffs are not asking this Court to "entangle itself in religious affairs", but instead to apply secular law to secular conduct. In *Lemon v. Kurtzman,* the United States Supreme Court held the government could not become involved in promoting a religion by providing government funds to religious schools. Any such funding violated the Establishment Clause of the First Amendment because it had the impermissible effect of giving significant aid to a religious enterprise. Nothing in Plaintiffs' Complaint asks this Court to fund or participate in the religious instruction of children. Plaintiffs are asking this Court to protect them from, and

hold Watchtower Defendants liable for, the crime of child sexual abuse. There is nothing religious about that "affair".

2. *Watson v. Jones*

The Watchtower Defendants cited *Watson v. Jones* (1871) 80 U.S. 679 for the proposition "the United States Supreme Court has repeatedly held 'civil courts exercise no jurisdiction' over 'a matter which concerns theological controversy.'" Again, Plaintiffs' claims do not ask this Court to resolve a theological controversy. They are is asking this Court to resolve a secular controversy about the crime of child sexual abuse. An examination of the court's ruling in *Watson v. Jones* actually confirms Plaintiffs' argument that their claims pose no First Amendment violation. *Watson v. Jones* involved a dispute between two factions of a church over who was entitled to the exclusive use of church property. Articulating the difference between purely ecclesiastical matters, which a court is precluded from deciding, and secular matters, which are properly before a court even if a religious institution is involved, the court stated: "religious organizations come before us in the same attitude as other voluntary associations for benevolent and charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints." *Id.* at 714. "The possession of the elders, though accompanied with larger and more efficient powers of control, is still a fiduciary possession." *Id.* at 721. "In this country, the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine **which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all.**" *Id.* at 728 (Emphasis added). However, **"when a civil right depends upon an ecclesiastical matter, it is the civil court and not the ecclesiastical which is to decide. The civil tribunal tries the civil right and no more, taking the ecclesiastical decisions out of which the civil right arises as it finds them."** *Id.* at 731 (Emphasis added). Therefore, **"if the General Assembly of the Presbyterian Church should undertake to try one of its members for murder, and punish him with death or imprisonment, its sentence would be of no validity in a civil**

court or anywhere else." *Id.* at 733 (Emphasis added). *Watson v. Jones* makes clear that secular courts are not precluded from deciding secular matters even when such matters involve the decisions of a religious entity.

3. ***Serbian Eastern Orthodox Diocese v. Milivojevich***

The Watchtower Defendants cited*Serbian Eastern Orthodox Diocese v. Milivojevich* (1971) 426 U.S. 696 for a similar proposition as *Watson.* However, just as in *Watson,* the U.S. Supreme Court in *Serbian* similarly acknowledged courts may resolve church disputes that do not require the court to determine disputes about the meaning or validity of religious beliefs.

4. ***Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church***

Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church (1976) 393 U.S. 440, also cited by the Watchtower Defendants, makes the same acknowledgment as in *Watson* and *Serbian*. In *Presbyterian Church,* the court was asked to not only interpret religious doctrine, but decide which faction in a church held the correct religious doctrine. The court appropriately held that it could not do that. However, the court specifically noted civil courts do not inhibit free exercise of religion merely by deciding disputes involving churches. Neutral principles of law, which have been developed for use in secular disputes as well, can be applied without 'establishing' churches in violation of the First Amendment. *Id.* at 449.

5. ***Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church***

The Watchtower Defendants cited *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, for the proposition that claims of negligent hiring, supervision and retention against religious organizations with regard to sexual abuse by clergy are barred by the First Amendment. The Watchtower Defendant's again misstate the law as nothing in *Kedroff* supports their interpretation or their argument. *Kedroff* involved the viability of a New York statute purporting to transfer control of a religious entity from one governing religious body to another. The court said that kind of interference in

the internal governance of a church was barred by the First Amendment. Even in that context, however, the court was careful to point out the First Amendment bar is not absolute and is, non-existent where religion is used as an excuse for shielding criminal conduct. "Legislative power to punish subversive or hostile action cannot be doubted. If such action should actually be attempted by a cleric, neither his robe nor his pulpit would be a defense. But in this case no problem of punishment for the violation of law arises. There is no charge of subversive or hostile action by an ecclesiastic. Here there is transfer by statute of control over churches." *Id.* at 6. Again, nothing in *Kedroff* supports the Watchtower Defendants' argument that claims of negligent retention and supervision for the known criminal sexual abuse by an agent of a religious organization are barred by the First Amendment. To the contrary, *Kedroff* supports Plaintiffs' arguments that even religious organizations are not free to hide their criminal conduct behind a "veil of religious freedom."

6. *Gonzales v. Roman Catholic Archbishop of Manila*

Similarly *Gonzales v. Roman Catholic Archbishop of Manila* (1929) 280 U.S.1, cited by Watchtower Defendants, had nothing to do with sexual abuse of any kind or any notice of such abuse on the part of the church. *Gonzales* concerned whether a court had to abide by the determinations of a church, made pursuant to canonical law, about what qualifications have to be met to be recognized as a chaplain. *Gonzales* says nothing about the First Amendment conferring a right on the church, in the name of religion, to not only turn a blind eye to the known sexual abuse of children by one of its appointed agents, but to also actively conceal such abuse, coerce the silence of victims, and intentionally prevent the reporting of such abuse for the church's own protection from liability.

7. *West Virginia State Board of Educ. v. Barnette*

West Virginia State Board of Educ. v. Barnette (1943) 319 U.S. 624 is the **only** United States Supreme Court decision cited by the Watchtower Defendants even arguably relevant. However, it still does not support a dismissal of Plaintiffs' claims. *Barnette*, the United States Supreme Court had to determine whether or not a local school board could

require a Jehovah's Witness child to salute the flag in a public school, since such an act was against his religion. The court found that such a requirement violated the First Amendment because it was fundamental to the principles of liberty that publically funded education could not impose a particular political ideology that was partisan to any race, creed, party or faction. The court also found no compelling state interest since Congress had, by law, made flag observance voluntary. Unlike in *Barnette*, there is no argument in **this** case that some religious ideology of the Watchtower Defendants requires the abuse of children. Even if there were, however, there is a compelling state interest against conduct consistent with any such ideology.

The case law cited by the Watchtower Defendants simply does not stand for the propositions they assert in their demurrer. Repeatedly, they misstate the law. A proper reading, interpretation, and application of the law addressed above whole-heartedly refutes their arguments and supports the viability of Plaintiffs' causes of actions.

II

PLAINTIFFS PLED VIABLE CLAIMS FOR COMMON LAW NEGLIGENCE AND NEGLIGENT SUPERVISION AND RETENTION

The Watchtower Defendants argue Plaintiffs' claims for common law negligence, negligent supervision and retention and breach of fiduciary duty are barred by the First Amendment. However, they cite a number of cases which neither apply to the allegations before **this** Court nor support their arguments.

A. Negligence – Breach of Duty to Warn of Forseeable Harm

Plaintiffs pled a viable claim for negligent breach of a duty to warn of foreseeable harm. Under general negligence principles, a person is obligated to exercise due care in his actions so as not to create an unreasonable risk of harm to others. This duty is owed to the class of persons who it is reasonably foreseeable may be injured as a result of a person's actions. *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232, 240-244; *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703. This duty includes the duty not to place another person in a situation in which the other person is exposed to an unreasonable risk

of harm through the reasonably foreseeable conduct of a third person. *Lugtu,* at 716. As even the cases cited by the Watchtower Defendants recognize, this duty exists especially where the defendant stands in some special relationship to **either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim.** *Tarasoff v. Regents of the University of California* (1976) 17 Cal.3d 425. See also *Nally v. Grace Community Church of the Valley* (1988) 47 Cal.3d 278 (acknowledging a duty to protect another from harm where a special relationship exists).

Peterson v. San Francisco Cmty College Dist (1984) 36 Cal.3d 799, cited by the Watchtower Defendants for the opposite proposition, recognizes a duty of care to warn and protect another from foreseeable harm where there is a relationship between the victim or the third party actor. Citing the Restatement Second Torts, §315, the court stated: "In considering whether one owes another a duty of care, several factors must be weighed including among others: The forseeability of the harm to plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with liability for the resulting breach." *Id.* at 806.

Plaintiffs pled an agency relationship between the Watchtower Defendants and their appointed elder, who perpetrated the sexual abuse of Plaintiffs. Plaintiffs also pled forseeability. They alleged the Watchtower Defendants knew about their agent's prior abuse of children in the Watchtower Defendants' organization and of his propensity to continue to abuse such children. They also pled that despite this knowledge, the Watchtower Defendants continued to place their agent in positions of authority where he could abuse other children. Plaintiffs' claims unquestionably satisfy the *Peterson* factors.

Nothing in the First Amendment bars Plaintiffs' claims for breach of duty to warn of foreseeable harm. This Court does not have to validate or determine anything about the Watchtower Defendants' religious tenets or doctrine to determine the Watchtower

Defendants' appointed agent was a pedophile and the Watchtower Defendants knew its agent was sexually abusing children, yet continued to place him in positions where it was foreseeable he would abuse Plaintiffs and other children. Also, this Court does not have to analyze the Watchtower Defendants' religious tenets or doctrines to determine they have intentionally acted to prevent the reporting of abuse; thereby creating the very conditions which caused Plaintiffs' injuries. This cause of action should survive this demurrer.

B. Negligent Retention and Supervision

Plaintiffs asserted legitimate claims for negligent supervision and retention against the Watchtower Defendants. Plaintiffs alleged the Watchtower Defendants had actual prior notice that their agent, Edward Villegas, repeatedly used his appointed position to sexually abuse children under their care. The Watchtower Defendants engaged in intentional conduct to not only conceal this information from Plaintiffs and others, but also to coerce the silence of victims. The Watchtower Defendants further aided and abetted the abuse through an intentional policy of preventing the reporting of child abuse. The Watchtower Defendants engaged in this intentional tortious conspiracy in violation of both the civil and criminal law, **not** for any religious reason, but to **protect themselves from liability** for their tortious conduct in appointing and protecting known pedophiles.

Numerous courts in various jurisdictions have found no First Amendment bar to claims for negligent supervision and retention of known child abusers. By way of example, Plaintiffs refer this Court to the following cases: *Kenneth R. v. Roman Catholic Diocese of Brooklyn* (N.Y. App. Div. 1997) 229 A.D.2d 159, 654 N.Y.S.2d 791 (A church can be held liable for the negligent hiring, retention and supervision of a priest for sexual abuse of children.); *Moses v. Diocese of Colo* (Colo 1993) 863 P.2d 310 (*en banc), cert. denied,* (1994) 511 U.S. 1137; *Bear Valley Church of Christ v. DuBose* (Colo. 1996) 928 P.2d 1315 (Free exercise clause of First Amendment did not protect church from liability for negligent supervision and discipline and minister who sexually abused child in the church.); *Doe v. Dorsey* (Fla.Dist.Ct.App.1996) 683 So.2d 614 ("Just as the state may prevent a church from offering human sacrifices, it may protect its children against injuries caused by

pedophiles by authorizing civil damages against a church that knowingly (including should know) creates a situation in which such injuries are likely to occur."); *Konkle v. Henson* (Ind.Ct.App.1996) 672 N.E.2d 450 (First Amendment did not bar action against church and church associations for negligent hiring and retention of minister who sexually abused child.); *Erickson v. Christenson* (1989) 99 Or. App. 104, 977 P.2d 1157. This cause of action should survive this demurrer.

C. The Watchtower Defendants' Authorities Do Not Provide a Basis for Barring Plaintiffs' Negligence Claims.

The Watchtower Defendant's cited numerous cases for the proposition that Plaintiffs' negligence claim is barred by the First Amendment. None of these cases support a bar of Plaintiffs' claims in **this** case. Again, the Watchtower Defendants have relied on numerous cases, yet misstated the clear holdings and conclusions enumerated by the various courts, as discussed below.

1. *Schmidt v. Bishop*

Schmidt v. Bishop, 779 F. Supp. 321 (S.D.N.Y. 1991) applies New York law and is not binding on this Court. Further, it does not support a First Amendment bar of Plaintiffs' claims. *Schmidt* is essentially a statute of limitations case. The plaintiff in *Schmidt* had been sexually assaulted as a child by her pastor, but had failed to bring a claim for the intentional tort of sexual assault within the one year statute of limitation. Since the claim was time barred, Plaintiff tried to articulate a negligence claim to get around the statute of limitation. The court held the plaintiff could not bring a negligence claim against the pastor for what was essentially an intentional tort under New York law. The court also held the plaintiff could not bring her fraud claim asserted against the assaulting pastor because the alleged fraud was neither independent of, nor subsequent to, the intentional tort that was time barred. Accordingly, there was no fraud claim against the employing church. The court dismissed the claims against the church stating because the claims against the perpetrator had been dismissed, the court had no choice but to also dismiss those against the church as vicarious. The only direct claim made against the church was a claim for

negligent supervision and retention, which the court dismissed, not because the claim was impermissible under the First Amendment, but because the pastor had left the denomination before the abuse. Only in dicta did the court address the First Amendment issue regarding negligent supervision and retention claims against a church and then only in the context of a claim that a church was negligent for failing to properly supervise the way in which a pastor carried out its religious tenets.

That is not the issue before this Court and New York, as well numerous other jurisdictions including California, permit negligent retention and supervision claims against religious organizations for a cleric's known sexual abuse of children. Contrast with *Kenneth R. v. Roman Catholic Diocese of Brooklyn* (N.Y. App. Div. 1997) 229 A.D.2d 159, 654 N.Y.S.2d 791, which was decided after *Schmidt* and found a church can be held liable for the negligent hiring, retention and supervision of a priest for sexual abuse of children.

2. *Richelle v. Roman Catholic Archbishops*

The Watchtower Defendants' relied on *Richelle v. Roman Catholic Archbishops,* (2003) 106 Cal.App.4th 257, to argue Plaintiffs' negligence claims are barred by the First Amendment. *Richelle* actually supports the permissibility of Plaintiffs' position, not the Watchtower Defendants'. Significantly, *Richelle* is not a case about the sexual assault of a child. It instead involves the application of the California "anti-heart-balm statute". This statute eliminates any cause of action for sexual conduct between two consenting adults, even if that sexual conduct is constrained through "the use of arts, persuasion, or wiles to overcome resistance." Because such sexual conduct is neither criminal nor tortious under California law, the plaintiff in *Richelle* was required to demonstrate the breach of some duty independent of a claim of seduction. "A plaintiff cannot, in other words, camouflage an abolished action with the catchwords of common law." The plaintiff argued she had alleged the "breach of a duty separate and independent of any duty not to seduce because the priest stood in a special relationship with her." *Id.* at 267-268. The court recognized that although a pastor could not be held liable for clergy malpractice, he could be held liable for breach of fiduciary duty. In fact, the California court expressly said a fiduciary duty

independent of the claim of seduction would exist and recovery for its breach would not violate the First Amendment if it fell into one of two patterns: "either a minister is alleged to have taken advantage of a woman he is counseling, or **a cleric is said to have sodomized young children under his charge. Because no credible argument can be made that such conduct is even 'arguably religious' or caused by the promptings of spiritual duty, these torts are not shielded by protestations of religious liberty.**" *Id.* at 612. (Emphasis added.) The *Richelle* plaintiff's claims did not fall into either category. Therefore, the sole basis upon which she could claim the existence of a fiduciary duty was her "religious belief" that her priest could be trusted. Accordingly, the court held that because it could not determine whether a fiduciary relationship existed without evaluating the plaintiff's religious beliefs, her claims were barred by the First Amendment. The court then ruled the claims against the religious organization that hired the priest had to be dismissed due to the absence of any legally recognizable injury.

Contrary to the Watchtower Defendants' representations, the court did not rule "claims against a religious organization, for the sexual misconduct of one of its agents, were barred by the First Amendment." In fact, the court expressly stated it was not making such a ruling.

3. ***Dausch v. Rykse***

The Watchtower Defendants also relied upon *Dausch v. Rykse* (7th Circuit 1994) 52 F.3d 1425. *Dausch* applies Illinois, not California, law. It also involves consensual sex between two adults, not the criminal and tortious conduct of child sexual abuse. As such, it provides no precedent for this Court's dismissal of Plaintiffs' claims. In *Dausch*, an adult church member asserted claims against her pastor and the church for his sexual misconduct in a counseling relationship. Her sole claims against the church were for "professional" or clergy malpractice, breach of fiduciary duty and negligent infliction of emotional distress. *Id.* at 1427. The court held a claim for clergy malpractice was not recognized under Illinois law. Although the court summarily dismissed Ms. Dausch's negligent hiring and retention claims on First Amendment grounds, it did so because they

were asserted solely in connection with a claim of clergy malpractice. The court was careful to point out it was following closely the reasoning of *Schmidt.* As discussed above, the First Amendment issue arose in *Schmidt* solely because the plaintiff was time barred from asserting an intentional tort against the perpetrator of the abuse. Therefore, she tried to reach the pastor by claiming the pastor was negligent in fulfilling his religious duties to her. It was the dismissal of this claim against the pastor as impermissible under the First Amendment that necessitated the dismissal of the claim against his principal, the church. Furthermore, the court in *Dausch* dismissed the negligent retention and supervision claims against the employing church because "there was no allegation the church defendants knew or should have known of the pastor's improper relations or of the need to exercise control over him." (Unlike *Dausch*, that allegation has been made in **this** case.) With respect to the claim for breach of fiduciary duty, the court found it could not determine the existence of a fiduciary duty under any general principles of Illinois law. Therefore, the only remaining basis upon which to determine such a duty would be an impermissible inquiry into religious tenets, which it could not do under the First Amendment. As discussed below, no such obstacle exists in **this** case.

4. *Amato v. Greenquist*

Finally, the Watchtower Defendants cited *Amato v. Greenquist* (Ill. App. 1997) 679 N.E.2d 446, for the proposition that this Court cannot consider Plaintiffs' claims because "to permit claims for clergy malpractice would require courts to establish a standard of reasonable care for religious practitioners practicing their respective faiths." (Defendant's Memorandum of Points and Authorities, p. 4.) What they **do not** tell this Court, however, is that *Amato,* unlike **this** case before this Court, actually involved a claim of clergy malpractice. They also **failed to mention** to this Court that *Amato* specifically holds claims such as those brought by Plaintiffs in **this** case, are not barred by the First Amendment.

In *Amato, a* grown man brought a claim for professional negligence in a counseling relationship because the priest who was counseling the man was also having sex with the man's wife. In holding that this man's claims were precluded by the First Amendment, the

court was careful to distinguish this man's case from cases involving sexual exploitation of a plaintiff. The court stated where a cleric counselor "used his position to sexually exploit the counselee....in the context of spiritual counseling, 'the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused the plaintiff's distress was in fact part of the belief and practices of the religious group....**clerics cannot, using the shield of the first amendment 'masquerade in the form of marriage counselors and then prey on their counselees.** " *Id.* at 451. (Emphasis added.) The First Amendment comes into play only when the church defendant can legitimately allege the sexual conduct of its minister was part of its religious beliefs or practices or was in any way sanctioned by the church. *Id.,* citing *Bivin v. Wright* (Ill. App. 1995) 656 N.E.2d 1121. Even then, "when sexual conduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involves 'no impenetrable barrier.'" *Id.,* citing *F.G. v. MacDonell* (N.J. 1996) 677 A.2d 258.

5. *Nally v. Grace Community Church of the Valley*

Nally v. Grace Community Church of the Valley (1988) 47 Cal.3d 278, relied on by the Watchtower Defendants, is also inapplicable. *Nally* addresses the limited issue of when a third party has a duty to prevent a suicide. The court's decision in*Nally* reflects its grave concern regarding the chilling effect of imposing a duty on "non-therapist counselors", whether religious or secular, to prevent suicide. Even though the *Nally* plaintiff's claim against the church defendants was "for teaching certain Protestant religious doctrines that conflicted with Nally's Catholic upbringing...", the court mentions the issue of "constitutionality" only in dicta and then, only in passing, stating: "....differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical and quite possibly unconstitutional to impose such a duty of care on pastoral counselors."

Nally is not applicable to the issues before this Court and certainly provides no authority for finding Plaintiffs' claims for breach of a duty to warn of the foreseeable harm of child abuse by its agents who was a known pedophile is barred by the First Amendment.

6. ***Additional Cases Relied on by Defendants***

As discussed above, the Watchtower Defendants' reliance on *Kedroff* for the position Plaintiffs are barred by the First Amendment from bringing negligent supervision claims is misstatement of the case law by Defendants to this Court. The other cases, cited by the Watchtower Defendants, similarly do not support a First Amendment bar to Plaintiffs' claims. In fact, both *Doe v. Hartz* (N.D. Iowa) 970 F.Supp 1375, and *Isely v. Capuchin Province* (E.D. Mich 1995) 580 F.Supp. 1138, 1151, expressly deny the First Amendment constitutes a bar to a negligent supervision and retention claim against a religious entity, especially at the pleading stage. (*Isely* dismissed these claims, not as barred by the First Amendment, but because the Wisconsin Supreme Court has never recognized a tort for negligent supervision in any context.)

In *Ayon v. Gourley* (D. Colo. 1998) 47 F.Supp 2d. 1246, there was no allegation the church had any notice or prior knowledge of their agent-priest's sexual abuse of the plaintiff or anyone else. In fact, there was no allegation the church defendant even knew about the abuse of plaintiff by their agent until the complaint was filed. The only allegation made was the church defendant learned of the abuse of "a boy" two years after the assaults on the plaintiff ended. Thus, the court could not look to the neutral principle of notice to determine the negligent retention and supervision claim. Instead, the court by necessity would have to examine the inner-disciplines of the church to see if they were sufficient to screen out an individual unknown as a pedophile.

The Watchtower Defendants quoted from *Schmoll v. Chapman Univ* (1999) 70 Cal. App. 4th 1434, as a related California case, when in fact, *Schmoll* is **not related** at all. *Schmoll* addressed the judicially created "ministerial exception" barring a court from evaluating the financial arrangements between a church and its minister. It has nothing to do with whether the First Amendment bars consideration of a negligent supervision and retention claim due to prior notice that an agent of the church was sexually abusing children and likely to continue doing so if allowed to remain in a leadership position with the church.

Specifically, *Schmoll* concerned whether a court could look at a religious universities inner policies for reducing a chaplain's hours and benefits for financial reasons.

Ehrens v. Lutheran Church-Missouri Synod (S.D.N.Y. 2003) 269 F.Supp.2d 328, is a summary judgment case in which the court allowed the negligent supervision and retention claims to proceed beyond the pleading stage. In response to the defendant's summary judgment motion, the court found there was no evidence the church had any notice prior to the assault on the plaintiff as a minor. Plaintiffs in **this** case alleged notice.

Plaintiffs properly pled a negligence claim, and accordingly, their claims should survive this demurrer.

III

PLAINTIFFS PLED VIABLE CLAIMS FOR BREACH OF FIDUCIARY DUTY AND FRAUD

A. Breach of Fiduciary Duty

Plaintiffs alleged facts demonstrating both a duty arising out of the special relationship of trust and confidence between the Watchtower Defendants and Plaintiffs and the Watchtower Defendants' violation of that duty to Plaintiffs' great harm. As alleged, the Watchtower Defendants exercise absolute control over the moral, spiritual and educational development of members and their children. They then train and appoint male leaders to positions of authority and instruct members, especially children, to obey these leaders in all matters. Failure to comply with the Watchtower Defendants' instructions results in dire circumstances for children. As part of this control, the Watchtower Defendants assume responsibility for the welfare of members and their children, forbidding any resort to outside resources such as law enforcement or mental health care providers. In particular, they assume and insist on full responsibility for the investigation, determination and resolution of all claims of child abuse among their membership. They are the sole resource to which vulnerable women and children are permitted to turn for protection and help in overcoming this trauma. These allegations articulate facts sufficient to demonstrate a special relationship of trust and confidence that is fiduciary in nature. The Watchtower Defendants'

own documents acknowledge the fiduciary nature of this relationship. (See Exhibit A, attached hereto). This determination can be made without any evaluation of religious tenets or policies.

The breach of that duty can be neutrally decided as well. Plaintiffs alleged the Watchtower Defendants, with full knowledge that their appointed elder, Edward Villegas, was a pedophile who continuing to use his appointed position as an elder to abuse or aid in abusing Plaintiffs and others, intentionally withheld that information from Plaintiffs and instead held Villegas out to be a leader who could be trusted. Plaintiffs also alleged intentional tortious conduct on the part of the Watchtower Defendants to aid, abet and protect pedophiles by preventing the reporting of child abuse.

The Watchtower Defendants cited only one case which found a First Amendment bar regarding a claim for breach of fiduciary duty for the crime of sexual assault of a child, *H.R.B. v. J.L.G.* (Mo.Ct. App. 1995) 913 S.W.2d 92, which nevertheless acknowledged a split in authority and stated there were other theories of liability pursuant to which a church could be held liable for the sexual abuse of a child by one of its clergy. *Id.* at 98-99. The court further acknowledged, "Tort actions against religious groups or persons are not offensive to the First Amendment if based on purely secular activities, unrelated to their religious functions; if the alleged wrongdoing was clearly outside the tenets of the religion, **not withstanding its religious pretext,** then it is actionable." *Id.* at 98. (Emphasis added.) That is what the Watchtower Defendants have presented **this** Court - a religious pretext to avoid liability for both the intentional withholding of information vital to the Plaintiffs' safety and protection and the intentional prevention of the reporting of child abuse in circumvention of both criminal and secular law.

Numerous courts have seen through that pretext and held religious organizations cannot avoid their fiduciary duties by hiding behind the First Amendment in the context of sexual abuse. **California is one of those jurisdictions.** In *Richelle,* the court recognized although a pastor could not be held liable for clergy malpractice, he could be held liable for breach of fiduciary duty. In fact, the court expressly said a fiduciary duty independent of

the claim of seduction would exist and recovery for its breach would not violate the First Amendment if it fell into one of two patterns: "either a minister is alleged to have taken advantage of a woman he is counseling, or **a cleric is said to have sodomized young children under his charge.**" By way of further example, Plaintiffs refer this Court to the following authorities: *Erickson v. Christenson* (1989) 99 Or. App. 104, 977 P.2d 1157 (the Oregon Court of Appeals found the plaintiff had stated viable causes of action for negligent supervision, breach of fiduciary duty, intentional infliction of emotional distress, and *respondeat superior* and such claims did not violate the Free Exercise clause of the First Amendment.); *Jones by Jones v. Trane* (1992) 591 N.Y.S.2d 927, 931; *Moses v. Defendants of Colorado* (Colo. 1993) 863 P.2d 310 (The First Amendment does not bar an adult parishioner's claims against bishop and diocese for breach of fiduciary duty and negligent hiring and supervision grounded on sexual relationship between parishioner and priest); *Destanfano v. Gabrian* (Colo. 1988) 763 P.2d 275 (The First Amendment does not bar parishioner's claims for breach of fiduciary duty and negligent hiring and supervision grounded on sexual relationship with church leader); *Sanders v. Casa View Baptist Church* (N.D. Texas 1995) 898 F. Supp. 1169 (The First Amendment does not bar claims of professional negligence and breach of fiduciary duty brought by church member against a minister).

California lines up with the jurisdictions finding no First Amendment bar to claims for breach of fiduciary duty claim against a religious organization where the relationship is between a cleric and a child. Therefore, this Court should deny the Watchtower Defendants' Demurrer to Plaintiffs' breach of fiduciary duty claims.

B. Fraud and Fraudulent Concealment.

Under California law, the elements of fraud are: a material misrepresentation the speaker knew was false when made or was ignorant of the truth; made with the intent it be acted upon by a person who had the right to rely on its truth and who was ignorant of its falsity; and that person relied upon the misrepresentation and was injured thereby. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

The fraud alleged by Plaintiffs does not require an analysis of the Watchtower Defendants' religious tenents. Therefore *Schmidt*, a case from New York and the sole case relied upon by the Watchtower Defendants in regard to Plaintiffs' fraud claims, is inapplicable. Plaintiffs alleged the Watchtower Defendants knowingly and intentionally, not only withheld information about known sexual predators, but also prevented the reporting of abuse in direct violation of the criminal and civil law. They have thus defrauded Plaintiffs, the community, and the government. Plaintiffs relied upon the Watchtower Defendants' omissions and false representations to his and this community's severe detriment.

IV

PLAINTIFFS PLED VIABLE CLAIMS AGAINST THE WATCHTOWER DEFENDANTS UNDER THE LEGAL THEORIES OF *RESPONDEAT SUPERIOR*, RATIFICATION, ALTER EGO AND SINGLE BUSINESS ENTERPRISE, AS WELL AS NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

A. Respondent Superior

Under Count I, Plaintiffs asserted, that as an agent and alter ego of the WATCHTOWER DEFENDANTS, Edward Villegas, repeatedly committed sexual battery upon the persons of the Plaintiffs. Plaintiffs further alleged the Watchtower Defendants knew about the abuse, continued to appoint Heard to positions where he could continue to abuse children, and then in conspiracy with each other intentionally acted to prevent the reporting of such abuse. In so doing, they have ratified Villegas' conduct and are therefore liable for the sexual battery to Plaintiffs under the legal theory of *respondeat superior.*

The Watchtower Defendants argue they cannot be held liable under a theory of *respondeat superior* because sexual abuse is outside the course and scope of an elder's duties, citing *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202. In *Mary M.*, the Supreme Court of California held a police officer could be acting within the course and scope of his duties for purposes of *respondeat superior* liability if the officer misused the authority of his office to commit the rape. The footnote referenced by the Watchtower Defendants states employees who do not have this kind of authority "may" be acting outside the scope of their authority. Plaintiffs alleged the Watchtower Defendants have a

level of authority over them equivalent to that of a police officer. Plaintiffs were taught to obey the Watchtower Defendants without question and as having ultimate authority.

The footnote in *Mary M.* cites to *Rita M. v. Roman Catholic Archbishop.* The Watchtower Defendants rely on *Rita M.* for the proposition there can be no *respondeat superior* liability for sexual abuse by a priest. That is not what *Rita M.* says. *Rita M.* held sexual abuse was outside the scope of a priest's duties and because there was no evidence of ratification, there could be no *respondeat superior* liability. Unlike *Rita M.*, Plaintiffs in **this** case alleged, and will produce, evidence of ratification by the Watchtower Defendants. Therefore, Plaintiffs has asserted a legitimate claim for *respondeat superior* liability against the Watchtower Defendants.

B. Ratification

Plaintiffs asserted claims for sexual assault, negligence, fraud, breach of fiduciary duty, intentional tortious prevention of reporting of child abuse, and the like, based on the theory the Watchtower Defendants ratified their agent's conduct. Specifically, Plaintiffs asserted the Watchtower Defendants knew about the sexual abuse of their agent and not only continued to place him in positions of authority where he could continue to abuse children, but actively prevented the reporting of the abuse through an intentional policy of coercing and silencing victims. Under California law, "ratification" is a recognized theory for holding persons responsible for the tortious conduct of others.

Once again, the Watchtower Defendants misrepresented the holdings of the cases they rely upon in attacking Plaintiffs' ratification claims. For example, the Watchtower Defendants cited *Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, in support of their argument that for ratification to occur, the act must have been done for the benefit of the principal. But that is not what *Fretland* says. The Watchtower Defendants are attempting to create an illusion, quoting only a portion of the a court's opinion, and then taking that portion completely out of context, and then arguing **their assertion** "is the law." The entire referenced quote is as follows:

> Ratification is the voluntary election by a person to adopt in some manner as his own an act which was purportedly done on his behalf by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him. [Citations.] A purported agent's act may be adopted expressly or it may be adopted by implication based on conduct of the purported principal from which an intention to consent to or adopt the act may be fairly inferred, including conduct which is 'inconsistent with any reasonable intention on his part, other than that he intended approving and adopting it.' [Citations.]" (*Rakestraw v. Rodrigues* (1972) 8 Cal.3d 67, 73 [104 Cal.Rptr. 57, 500 P2d1401].)
>
> *Fretland*, 69 Cal.App.4th at 1490-1491.

The *Fretland* court also stated:

> The *Iverson* court recognized that the prohibition against imposing vicarious liability on an employer does not apply when there was "positive misconduct" by the employer such as when the employer "ratified" the tortious conduct of its employee and thereby became "liable for the employee's wrongful conduct as a joint participant." (*Iverson, supra,* 143 Cal.App.3d at p. 228.) Other courts have also recognized that an employer can be held civilly liable as a joint participant in assaultive conduct committed by its employee pursuant to the doctrine of ratification. (See *Herrick v. Quality Hotels, Inns & Resorts, Inc.* (1993) 19 Cal.App.4th 1608, 1618 [24 Cal.Rptr.2d 203]; *Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1432 [235 Cal.Rptr. 68], disagreed with on other grounds in *Mogilefsky v. Superior Court* (1993) 20 Cal.App.4th 1409, 1415-1416 [26 Cal.Rptr.2d 116].)
>
> *Fretland*, 69 Cal.App.4th at 1489-1490.

Plaintiffs alleged that by continuing to appoint a known pedophile to positions of authority where he could abuse children and by intentionally coercing the silence of victims and others, the Watchtower Defendants adopted their agent's conduct as their own. These allegations sufficiently articulate a viable claim for ratification.

The Watchtower Defendants also misrepresent the import of *Emery v. Visa International* (2002) 95 Cal. App.4th 952. They cite *Emery* for the proposition that under California law, a principal cannot ratify the conduct of an agent unless that agent acts on behalf of the principle. *Emery,* however, dealt with an attempt to create an agency relationship by ratification. In *Emery,* the alleged bad actor had no relationship to the alleged principle, nor was there any evidence the alleged principle knew anything about the conduct complained of. Instead, the plaintiff argued that by not doing anything about conduct it did not even know about, the alleged principal ratified a third party's conduct and

thereby created an agency relationship by ratification. In that context, the court said one has to be acting on behalf of another to create an agency by ratification.

Plaintiffs, in **this** case, do not need ratification to create an agency relationship. Elders are appointed directly by the Watchtower Defendants and serve at their behest. (See Exhibit B, The Watchtower Defendants answer in Federal Court in a matter styled No. CS-02-0190-WFN; *Erica Rodriguez, vs. Watchtower Bible and Tract Society of New York, Inc., et al*; In the United States District Court for the Eastern District of Washington). Plaintiffs alleged the Watchtower Defendants not only knew about this abuse, but continued to appoint their agent to positions where the abuse could continue and also intentionally acted to prevent the reporting and disclosure of their agents' abuse. They thereby ratified it by their own conduct.

C. Failure to Report/Criminal Aiding and Abetting/Negligent Usurpation of Investigatory Function

If this Court has any doubt the Watchtower Defendants ratified their agent's conduct in sexually abusing Plaintiffs, it need only look at the Watchtower Defendants' arguments regarding their civil and criminal liability for failing to report. The Watchtower Defendants argue the mandatory reporting requirements of California Penal Code, Section 11166, do not apply to them in this case because clergy did not become mandatory reporters until January 1, 1997. They also argue there is no civil liability for aiding and abetting a criminal by harboring him and/or preventing his apprehension by law enforcement officers, in violation of California Penal Code Section 32.

Neither of the above arguments helps the Watchtower Defendants. The above cited criminal statutes set a standard by which their conduct may be judged. The Watchtower Defendants owed Plaintiffs a duty of care to not actively prevent the reporting of child abuse and thereby prevent law enforcement officials from apprehending these pedophiles. They also owed him a duty to report. Whether these laws in and of themselves create civil causes of action, does not preclude their use to define the standard by which the Watchtower Defendants were required to act. The argument the mandatory duty to report

did not apply to clergy until January 1, 1997 does not prevent the reporting statute from setting a standard of care. In addition, and perhaps even more importantly, the reporting statute speaks directly against the Watchtower Defendants' claims they have not ratified their elder, Edward Villegas' conduct.

Section 11166(3)(A) expressly provides prior to January 1, 2004, clergy may report, with immunity, any knowledge or **reasonable suspicion** a child may have been sexually abused, even if they did not previously report it, even if it occurred prior to 1997, and even if the victim has reached the age of majority. Plaintiffs recently learned that in response to an October 1991 article in the Watchtower Defendants' magazine "Awake" regarding child sexual abuse, the Watchtower Defendants received hundreds of letters from members of their organization articulating both abuse by elders, ministerial servants and pioneers, and also actions by the Watchtower Defendants in preventing the reporting of such abuse. If the Watchtower Defendants' do not have a policy of concealing and actively preventing the reporting of child abuse and if, as the Watchtower Defendants claim, they have not ratified the conduct of their agents in abusing Plaintiffs and others, then where are the reports permitted by Section 11166(3)(A) regarding this outcry of abuse by their agents?! At a time when the Watchtower Defendants are indeed mandatory reporters under California law, they have failed to take any steps to avail themselves of the opportunity to notify authorities of the hundred of claims of abuse from their own members regarding elders, ministerial servants, pioneers and others who are still in appointed positions of leadership within the Watchtower Defendants' organization. They have also deliberately acted to silence the outcry. This is both gross ratification and a gross breach of their own duty of care to Plaintiffs and others.

D. Alter Ego and Single Business Enterprise

Plaintiffs pled these theories as a basis for holding the Watchtower Defendants liable for the torts of each other. Plaintiffs does not assert these theories a causes of action, but as theories of liability.

CONCLUSION

For all the reasons stated herein above, Plaintiffs respectfully requests this Court deny the Watchtower Defendant's Demurrer in its entirety, or alternatively, grant leave to amend if necessarily required by this Court.

Dated: 10/23/03

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.,
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANTS' DEMURRER** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
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Sacramento, CA 95825
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 27 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF OPPOSITION TO DEFENDANTS' DEMURRERS** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

I, William Brelsford, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice law before all the Courts of the State of California.

2. Attached hereto as Exhibit A is a true and correct copy of a July 20, 1998 Confidential letter to All Bodies of Elders.

3. Attached hereto as Exhibit B is a true and correct copy of the Answer filed by Watchtower Defendants' in *Rodriguez v. Watchtower Bible and Tract Society of New York, Inc., et al.*, Case No. CS-02-0190 EFS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/23/03

NOLEN SAUL BRELSFORD

William Brelsford

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF OPPOSITION TO DEMURRER** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL –I** am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

EXHIBIT A

CONFIDENTIAL TO ALL BODIES OF ELDERS - July 20, 1998

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS BROOKLYN, NEW YORK 11201-2483, USA PHONE (718) 625-3600

July 20, 1998

CONFIDENTIAL TO ALL BODIES OF ELDERS

Dear Brothers:

We are here providing, for your future reference, information that was presented at the 15-hour supplementary course for congregation elders on certain serious matters.

Child Molestation: The Society's letter to all bodies of elders dated March 14, 1997, page 2, paragraph 5, states: *"[Give the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past.* " Reports indicate that some elders think this direction does not apply if before his baptism the person sexually abused a child. However, even in such a situation, the elders should write the branch office. This is true even if what occurred was many years ago. If any body of elders has not yet reported such a matter, they should immediately do so. Furthermore, any correspondence put in the confidential congregation file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

In the Kingdom Ministry School Supplementary Course for Congregation Elders there was a panel discussion in Unit 5b, "USE DISCERNMENT IN HANDLING SERIOUS MATTERS." This portion of the course addressed questions related to the problems associated with child abuse. Question 6 to the panel asked: "What factors should be considered in determining what congregation privileges, if any, a former child molester can enjoy?" The answer included the statement: "There are also legal considerations." Some have inquired about how and why legal considerations should affect our recommendations of those who have been guilty of child abuse in the past.

Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse. This could result in costly lawsuits, involving dedicated funds that should be used to further the Kingdom work. So, legal considerations must also be weighed along with the degree of notoriety, the extent of the misconduct, how many years ago the sin occurred, and how the brother is now viewed by the congregation and people In the community including those he victimized.

TO ALL BODIES OF ELDERS July 20, 1998 Page 2

Scriptural Freedom to Remarry: The 1991 Kingdom Ministry School textbook, page 135, paragraph 1, describes a situation where an adulterous mate unilaterally obtains a divorce over the objection of the innocent mate. In such a case, the guilty one is not free to remarry.

What if the innocent mate consents to the divorce by signing the divorce papers? Does this free the guilty mate to remarry? Yes, Jesus' counsel at Matthew 5:37 applies here: "Let your *Yes* mean Yes, your *No,* No." If the innocent mate, perhaps in an effort to protect herself financially or to obtain custody of children, agrees to a divorce obtained by her adulterous husband, the adulterous one is then free to remarry. Although the innocent one may claim forgiveness, by signing the divorce papers she indicates her rejection of the adulterous mate. Since she has rejected that one, she holds no further claim on him, and he is Scripturally free to remarry .

Another situation involving the Scriptural freedom to remarry is where an unscriptural divorce is obtained and then, some time later, one of the mates commits fornication. In such a case, does either one have a Scriptural basis to remarry?

If a man takes the initiative and divorces his mate without a Scriptural basis and his divorced wife later commits adultery, both are free to remarry. This is because, by his previous unscriptural action of divorcing his wife, the husband has given evidence of his wanting to reject her. What is stated in the 1991 Kingdom Ministry School textbook, page 135, paragraph 6, applies: *"A person who commits adultery after having been divorced by his or her mate on unscriptural grounds would be Scripturally free to remarry, since he or she had already been rejected by the mate that obtained the divorce.* " However, the converse is not necessarily true.

If the one who initiated the unscriptural divorce later commits adultery, that one is still obligated to confess to the mate, although they are legally divorced. The innocent mate must be given the opportunity to determine whether to forgive or not. However, in both cases, the one committing adultery would need to meet with a judicial committee.

While the principles outlined above should prove helpful in handling inquiries from publishers about the Scriptural freedom to remarry , the elders should always exercise extreme caution when providing an answer. They should never inform a publisher that there appears to be a basis for Scriptural freedom to divorce and remarry , *unless conclusive evidence has been established* (1) that adultery was committed, (2) that the innocent mate has rejected the guilty one, and (3) that a legal, final divorce has been obtained. Because of the numerous factors involved in such matters, in many cases it will be best to write the Society. When doing so, always provide as many details as possible, including the names of the individuals involved. The Society will then provide the needed assistance.

When a divorced brother or sister wishes to remarry , the elders should kindly request to see the divorce papers to make sure that that one is legally free to do so. They should also determine that it has been established that both parties involved are Scripturally free to remarry . (Matt. 19:9) This will help servants of Jehovah to preserve the cleanness of the congregation and avoid entering adulterous marriages. Always review the Society's letter to all bodies of elders.

TO ALL BODIES OF ELDERS July 20, 1998 Page 3

dated May 15, 1988, regarding. guidelines on wedding procedures before agreeing to solemnize any marriage.

Please be assured of our prayers on your behalf as you endeavor to fulfill your weighty responsibilities as shepherds of the flock. We send herewith a warm expression of our Christian love and best wishes.

Your brothers,WTBS

P .S. to Body of Elders: At the next meeting of the entire body of elders, the presiding overseer

should have this letter read and should have each elder make the following notations in the margins of his personal copy of the 1991 Kingdom Ministry School textbook:

On page 93, next to paragraphs 10-11: See the Society's letters dated July 20,1998; March 14, 1997; August 1,1995; February 3,1993; March 23,1992; and July 1,1989.

On page 135, next to paragraphs 1-6: See the Society's letter dated July 20,1998.

EXHIBIT B

Gregory J. Arpin, WSBA #2746
Donald G. Stone, WSBA #7547
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717 W. Sprague Avenue, Suite 1200
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Facsimile: (509) 838-0007

Attorneys for Defendants Watchtower
and Othello North Spanish Congregation

The Honorable Wm. Fremming Nielsen

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 05 2002

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

ERICA RODRIGUEZ, a single person,

Plaintiff,

vs.

WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., a New York corporation; OTHELLO SPANISH CONGREGATION OF JEHOVAH'S WITNESSES, an unknown legal entity; and MANUEL BELIZ, individually and on behalf of his marital community,

Defendants.

No. CS-02-0190-EFS

DEFENDANTS WATCHTOWER AND OTHELLO (NORTH) SPANISH CONGREGATION'S ANSWER TO PLAINTIFF'S COMPLAINT

And

JOINDER IN DEMAND FOR JURY TRIAL

Attest A True Copy
James R. Larsen Clerk
United States District Court
Eastern District of Washington
By
Deputy Clerk

The defendants, WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., (hereinafter "Watchtower") and OTHELLO SPANISH CONGREGATION OF JEHOVAH'S WITNESSES (hereinafter "Othello North Spanish Congregation"), by and through their attorneys, Paine, Hamblen, Coffin, Brooke & Miller LLP, Gregory J. Arpin and Donald G. Stone, for answer to plaintiff's complaint, admit, deny, and allege as follows:

I.

JURISDICTION

Admit that the amount in controversy exceeds $75,000 and that diversity of citizenship exists between the plaintiff and the defendants. Further admit that this Court has jurisdiction over the subject matter of the plaintiff's complaint under the authority cited in paragraph I of plaintiff's complaint. Defendants deny any remaining allegations of paragraph I of plaintiff's complaint.

II.

PARTIES

1. With reference to paragraph 1 of plaintiff's complaint, admit that plaintiff Erica Rodriguez previously resided in the State of Washington; admit

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SPOKANE, WA 99201 PHONE: (509) 455-6000

that she currently resides in Sacramento, California; admit that she is presently of the age of majority; and further admit that plaintiff and her parents previously attended services of the Othello North Spanish Congregation of Jehovah's Witnesses in Othello, Washington. Defendants deny any remaining allegations of paragraph 1 of plaintiff's complaint.

2. With reference to paragraph 2 of plaintiff's complaint, admit that defendant Othello Spanish Congregation of Jehovah's Witnesses, more properly known as Othello North Spanish Congregation of Jehovah's Witnesses located in Othello, Washington, is an unincorporated association and a part of the worldwide religious organization known as Jehovah's Witnesses, but deny any remaining allegations of paragraph 2 of plaintiff's complaint.

3. With reference to paragraph 3 of plaintiff's complaint, admit that at one time, plaintiff and her parents were publishers and previously associated with the Othello North Spanish Congregation of Jehovah's Witnesses, but deny any remaining allegations of paragraph 3 of plaintiff's complaint.

4. Deny paragraph 4 of plaintiff's complaint.

5. With reference to paragraph 5 of plaintiff's complaint, admit that the Governing Body exercises spiritual oversight of the organization of Jehovah's Witnesses worldwide; admit that such Governing Body presently consists of 11 men, who are part of what is known as the Faithful and Discreet Slave described at Matthew 24:45-47; admit that all members of the Governing Body are spirit-anointed Christians that have a heavenly hope; admit that some of the members of the Governing Body served as members of the Board of Directors and as officers of Watchtower Bible and Tract Society of Pennsylvania, Inc., and of Watchtower Bible and Tract Society of New York, until October, 2000; further admit that the Governing Body used Watchtower Bible and Tract Society of Pennsylvania, to help carry out the activities of Jehovah's Witnesses worldwide; admit that the Governing Body exercises spiritual oversight over the organization of Jehovah's Witnesses worldwide and oversees the appointment of congregation elders and ministerial servants; admit that the Governing Body has six committees (Chairman's, Writing, Teaching, Publishing, Personnel and Service); and admit that the Governing Body overseers the promulgation of policies and procedures for the spiritual, physical, and emotional welfare of all persons

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associating with Jehovah's Witnesses, as well as for all of mankind in general, but deny any remaining allegations of paragraph 5 of plaintiff's complaint.

6. With reference to paragraph 6 of plaintiff's complaint, admit that the address for defendant Watchtower Bible and Tract Society of New York, Inc., is 25 Columbia Heights, Brooklyn, New York 11201, and the Governing Body does have ultimate spiritual authority to bar a publisher from serving in certain positions of responsibility within the organization of Jehovah's Witnesses. Deny any remaining allegations of paragraph 6 of plaintiff's complaint.

7. Admit paragraph 7 of plaintiff's complaint.

8. With reference to paragraph 8 of plaintiff's complaint, admit that the Governing Body exercises spiritual oversight over the organization of Jehovah's Witnesses worldwide; admit that the Othello North Spanish Congregation of Jehovah's Witnesses has publishers, elders, ministerial servants, pioneers and others; admit that the Governing Body oversees the appointment of congregation elders, who are those individuals who have demonstrated by their speech and conduct that they meet the spiritual requirements to serve as an elder, and further admit that elders serve as

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spiritual shepherds and teachers for their local congregation. Defendants further admit that the elders in a local congregation are referred to as the "body of elders" and that the positions of congregation Presiding Overseer, Secretary, Service Overseer, Watchtower Study Conductor, Theocratic School Overseer and Book Study Overseer are held by elders. Further admit that elders also investigate and respond to allegations of serious sins involving a congregation publisher in accordance with the Holy Scriptures and the procedures and policies established by the Governing Body of Jehovah's Witnesses. Further admit that ministerial servants are recommended by the body of elders and appointed under the oversight of the Governing Body to render a variety of practical services within the congregation, and further allege that those individuals who are appointed as ministerial servants are men who have demonstrated by their speech and conduct that they reasonably meet the spiritual qualifications for such a position. Allegations of child molestation made against congregation publishers are investigated by congregation elders. Defendants admit that publishers who are appointed as ministerial servants are individuals who have given evidence through their speech and conduct that they reasonably meet the spiritual qualifications for such a position; admit that

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a regular pioneer is a publisher who has demonstrated exemplary speech and conduct, and whose personal circumstances allow the spending of 840 hours per year in publicly preaching the good news of God's Kingdom. Defendants deny any remaining allegations of paragraph 8 of plaintiff's complaint.

9. With reference to paragraph 9 of plaintiff's complaint, defendants admit that congregations of Jehovah's Witnesses are organized into circuits which are composed of a number of congregations, and further allege that a qualified elder serves as a circuit overseer to visit and provide spiritual encouragement to each congregation in the circuit. Defendants admit that substitute circuit overseers under the oversight of a Governing Body exist to visit congregations if the circuit overseer is unavailable to do so; admit that several circuits are organized into a district and that some of the congregations within the district are visited by a district overseer who is appointed by the Governing Body to provide spiritual encouragement to the congregations in the district of assignment; admit that periodically arrangements are made by the Governing Body to have qualified elders serve as zone overseers to visit one or more of the branch offices of Jehovah's Witnesses worldwide; admit that in each of the branch offices of Jehovah's Witnesses around the world,

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there is a branch committee that provides spiritual oversight over the activities in the country or countries under their jurisdiction, and allege that Jehovah's Witnesses assigned as volunteers at branch offices are commonly referred to as "Bethelites," or members of the "Bethel" family; admit that there are three Bethel complexes in the United States located in Brooklyn, Patterson and Wallkill, New York; admit that the Executive Offices, Treasurer's Office, the majority of the Writing Department, and the Governing Body of Jehovah's Witnesses are located in Brooklyn, New York; admit that the United States branch Service Department and most of the Legal Department are located in Patterson, New York; admit that among the duties of the Service Department are the spiritual oversight of the congregations, elders, circuit and district overseers, and the preaching activity of Jehovah's Witnesses in the United States; further admit that from time to time the Service Department issues letters that provide spiritual assistance and guidance to congregations elders, circuit and district overseers, and to congregations, but deny any remaining allegations of paragraph 9 of plaintiff's complaint.

10. With reference to paragraph 10 of plaintiff's complaint, admit that the Governing Body of Jehovah's Witnesses provides spiritual oversight

over the activities of Jehovah's Witnesses worldwide and further admit that the Governing Body oversees the appointment of spiritually qualified men to provide spiritual oversight over branches, districts, circuits and congregations of Jehovah's Witnesses throughout the earth, but deny the remaining allegations of paragraph 10 of plaintiff's complaint.

11. With reference to paragraph 11 of plaintiff's complaint, admit that Jehovah's Witnesses teach that congregation elders, as well as members of the Governing Body, are appointed by Holy Spirit to their office of spiritual oversight; admit that Jehovah's Witnesses believe that wisdom and understanding can be acquired from reading and studying the Bible; admit that congregation elders serve as spiritual teachers for all persons associated with their congregation, but deny the remaining allegations of paragraph 11 of plaintiff's complaint.

12. With reference to paragraph 12 of plaintiff's complaint, allege that individual Jehovah's Witnesses exercise free choice as to whether or not they want to follow direction, guidance and policies promulgated by the organization, and further allege that many choose not to follow such direction. Further allege that no one is capable of, or expected to follow such to

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perfection, and deny the specific allegations in paragraph 12 of plaintiff's complaint.

13. With reference to paragraph 13 of plaintiff's complaint, defendants allege that there is much more to an individual Jehovah's Witness becoming a publisher than the ritual of baptism. Baptism is merely the final step. Further allege that publishers do not donate personally or collect donations because they are directed by the Governing Body or the local congregation. Defendants further allege that a publisher's choice to do so is on a voluntary basis based upon their own free will. Further allege that there is no record kept of what individual publishers do in this regard, and that some undoubtedly are incapable of donating and/or do not collect donations. Defendants deny any remaining allegations of paragraph 13 of plaintiff's complaint.

14. With reference to paragraph 14 of plaintiff's complaint, allege that some adult male publishers will never be eligible to be elders. Further allege that the recommendation for someone to be an elder is made by the entire local body of elders, and not by the Service Committee of the local congregation; allege that the recommendation is sent to the United States

branch where it is then reviewed by appointed elders in the Service Department. Further, defendants allege that publishers are not told that all elders are exemplary, and allege that publishers know that elders are imperfect humans who make mistakes, and further that some of them fall away from the faith and are far from exemplary. Further allege that when it becomes known that an elder is no longer conducting himself in an exemplary fashion, he is removed. Defendants deny any remaining allegations of paragraph 14 of plaintiff's complaint.

15. With reference to paragraph 15 of plaintiff's complaint, defendants allege that publishers are encouraged, but not expected, to teach Bible truths to others, to include the good news of God's Kingdom, and deny any remaining allegations of paragraph 15 of plaintiff's complaint.

16. With reference to paragraph 16 of plaintiff's complaint, admit that at various times in the past Manuel Beliz was associated with the Othello North Spanish Congregation of Jehovah's Witnesses and that he was a resident of the state of Washington during this association. Defendants further admit that subsequently, upon information and belief, Manuel Beliz was convicted of felony crimes involving sexual abuse of a minor and remains

incarcerated in the state of Washington. Further allege that Manuel Beliz was disfellowshipped for a period of time, during which time Mr. Beliz would not have been one of Jehovah's Witnesses. Defendants deny the remaining allegations of paragraph 16 of plaintiff's complaint.

III.

VENUE

17. Admit that venue is proper in this Court pursuant to 28 U.S.C. § 1391, but deny any remaining allegations of paragraph 17 of plaintiff's complaint.

IV.

OPERATIVE FACTS

18. With reference to paragraph 18 of plaintiff's complaint, admit that John White is an elder in the Othello North Spanish Congregation of Jehovah's Witnesses, and further admit that congregation elders administer spiritual counsel and discipline as needed to publishers associated with their local congregation, but deny any remaining allegations of paragraph 18 of plaintiff's complaint.

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19. Deny paragraph 19 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

20. Deny paragraph 20 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

21. With reference to paragraph 21 of plaintiff's complaint, admit that, upon information and belief, plaintiff and her family moved to Sacramento, California, and for a period of time were members of the Las Palmas Congregation of Jehovah's Witnesses at that location, but deny any remaining allegations of paragraph 21 of plaintiff's complaint.

22. With reference to paragraph 22 of plaintiff's complaint, admit that in June, 1996, plaintiff reported to Las Palmas Congregation elders Carlos Chicas and Milton Melendez that she had been sexually abused by Manuel Beliz, and deny any remaining allegations of paragraph 22 of plaintiff's complaint.

23. With reference to paragraph 23 of plaintiff's complaint, defendants admit that subsequent to receipt of the information referenced in paragraph 22 of plaintiff's complaint, elder Carlos Chicas contacted elder John White of the Othello North Spanish Congregation, and advised John White

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that plaintiff had made allegations that Manuel Beliz had sexually abused her. Defendants deny the remaining allegations of paragraph 23 of plaintiff's complaint.

24. With reference to paragraph 24 of plaintiff's complaint, admit that Manuel Beliz was disfellowshipped in 1996 and reinstated in 1998; admit that plaintiff provided information to police authorities in Sacramento, California, and Othello, Washington, which led to the subsequent arrest and conviction of Manuel Beliz, but deny the remaining allegations of paragraph 24 of plaintiff's complaint.

25. With reference to paragraph 25 of plaintiff's complaint, admit that Manuel Beliz was convicted of felony criminal sexual conduct with a minor in the Adams County Superior Court in Ritzville, Washington, and further admit that John White provided testimony to the court at the time of sentencing of Mr. Beliz, but deny the remaining allegations of paragraph 25 of plaintiff's complaint.

26. With respect to paragraph 26 of plaintiff's complaint, defendants deny that Washington had an applicable statute mandating any report by church ministers, to include elders of the Othello North Spanish Congregation

to report allegations of child abuse to law enforcement authorities, and specifically deny any lawful duty to do so under circumstance of the information related by plaintiff to church elders in Sacramento and/or as subsequently related to elder John White of the Othello North Spanish Congregation of Jehovah's Witnesses. Further allege that the applicable Washington statute (RCW 26.44.030) imposes no such requirement or duty as a matter of law. Defendants allege that the decision on reporting plaintiff's allegations to law enforcement authority was left to the sole discretion of plaintiff and/or her parents, and defendants deny any remaining allegations of paragraph 26 of plaintiff's complaint.

27. With reference to paragraph 27 of plaintiff's complaint, defendants admit that Manuel Beliz was subsequently convicted on felony charges based upon the information provided by the plaintiff to law enforcement authorities, but deny the remaining allegations of paragraph 27 for lack of present information upon which to form a basis for belief.

28. Deny paragraph 28 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

29. With reference to paragraph 29 of plaintiff's complaint, these defendants reallege their response to paragraph 26 of plaintiff's complaint, as if more fully set forth herein; admit that John White is an elder with the Othello North Spanish Congregation of Jehovah's Witnesses, and that Carlos Chicas is an elder of the Las Palmas Congregation of Jehovah's Witnesses in Sacramento, but deny any remaining allegations of paragraph 29 of plaintiff's complaint.

30. Deny paragraph 30 of plaintiff's complaint, and specifically allege that defendants did not learn of any allegations of sexual abuse by Manuel Beliz until after plaintiff first related such information in June, 1996, to elders of the Las Palmas Congregation of Jehovah's Witnesses in Sacramento, California.

31. Deny paragraph 31 of plaintiff's complaint.

32. With respect to paragraph 32 of plaintiff's complaint, defendants allege upon information and belief that elders John White and Carlos Chicas acted appropriately upon receiving information from plaintiff, but deny all of the remaining allegations of paragraph 32 of plaintiff's complaint.

33. Deny paragraph 33 of plaintiff's complaint.

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VI.

SECOND CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

41. Defendants reallege their answer to all paragraphs of this complaint as necessary to respond to paragraph 41 of plaintiff's complaint.

42. Deny paragraph 42 of plaintiff's complaint.

43. With reference to paragraph 43 of plaintiff's complaint, defendants allege first knowledge of plaintiff's claims of sexual abuse by Manuel Beliz when such information was first provided in June, 1996; deny that any fiduciary duty was owed to plaintiff under the circumstances herein; deny that any duty was breached under the circumstances herein; and further deny any remaining allegations of paragraph 43 of plaintiff's complaint.

44. Deny paragraph 44 of plaintiff's complaint for lack of present information upon which to form a basis for belief, and specifically deny that plaintiff was unable to discover any injury caused by the alleged abusive acts of Manuel Beliz as of the date of the first disclosure to these defendants in June, 1996.

45. Deny paragraph 45 of plaintiff's complaint.

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46. Deny paragraph 46 of plaintiff's complaint.

47. Deny paragraph 47 of plaintiff's complaint.

48. Deny paragraph 48 of plaintiff's complaint.

VII.

THIRD CAUSE OF ACTION:

CHILDHOOD SEXUAL ABUSE

49. Defendants reallege their answer to plaintiff's complaint as necessary to respond to paragraph 49 of plaintiff's complaint.

50. Deny paragraph 50 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

51. Deny paragraph 51 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

VIII.

CAUSATION AND DAMAGES

52. Defendants reallege their answer to plaintiff's complaint as necessary to respond to paragraph 52 of plaintiff's complaint.

53. Deny paragraph 53 of plaintiff's complaint.

54. Deny paragraph 54 of plaintiff's complaint.

55. Deny paragraph 55 of plaintiff's complaint.

IX.

JURY DEMAND

56. These defendants join plaintiff in a request for jury trial.

FOR FURTHER ANSWER TO PLAINTIFF'S COMPLAINT AND AS AFFIRMATIVE DEFENSES THERETO, defendants allege as follows:

1. Plaintiff's complaint fails to set forth a cause of action for which relief can be granted as against these answering defendants.

2. Plaintiff's service of process on defendant Watchtower was insufficient. Process server Angelo Rivera, of Avenger Process Services, Inc., stated in an Affidavit of Service that he left a copy of the plaintiff's complaint with Watchtower employee Ms. Donna Bush; however, Watchtower does not now and has not ever employed anyone by the name of Donna Bush.

3. The plaintiff's complaint is barred by operation of RCW 4.16.340.

4. These answering defendants owed no legal duty, and no fiduciary duty, to plaintiff under the circumstances herein such that her claims fail to

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state a cause of action for which relief can be granted as against these answering defendants.

5. Plaintiff's injuries and damages, if any, were due to the actions of Manuel Beliz, for whom these answering defendants have no lawful liability.

6. Plaintiff's injuries and damages, if any, were caused by the intervening, superseding actions or omissions of third-parties for whom these answering defendants have no lawful liability.

7. Plaintiff's injuries and damages, if any, resulted from her own fault, carelessness and negligence, and were not caused by the negligence of these answering defendants. If not the sole and proximate cause of plaintiff's injuries and damages, plaintiff's fault, carelessness and negligence was a contributing cause such that the amount of any damages must be reduced by the percentage of fault, carelessness or negligence as found to exist at the time of trial herein.

8. Plaintiff's claims are barred by the doctrine of laches.

9. Plaintiff's claims against these answering defendants must be dismissed under provisions of the United States Constitution, First

Amendment, to specifically include the separation of church and state, and the freedom of religion.

10. Contrary to the assertions in plaintiff's complaint, RCW 26.44.030 does not require church ministers or clergy to report claims of sexual abuse of a minor, and any claims premised upon such allegation fail to state a claim for which relief can be granted herein.

11. Plaintiff has failed to mitigate her damages herein.

WHEREFORE, having fully answered plaintiff's complaint, and having asserted affirmative defenses thereto, these answering defendants pray that plaintiff's claim be dismissed with prejudice, and that these defendants be awarded their costs and disbursements herein, to include reasonable attorney

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fees, and such other and further relief as the Court may deem just and equitable under the circumstances herein.

DATED this 5th day of August, 2002.

PAINE, HAMBLEN, COFFIN,
BROOKE & MILLER LLP

By: _____
Gregory J. Arpin, WSBA #2746
Donald G. Stone, WSBA #7547
Attorneys for Defendants
Watchtower and Othello North
Spanish Congregation

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CERTIFICATE OF SERVICE

I certify that on this 5th day of August, 2002, a true and correct copy of the foregoing DEFENDANTS WATCHTOWER AND OTHELLO SPANISH CONGREGATION'S ANSWER TO PLAINTIFF'S COMPLAINT and JOINDER IN DMAND FOR JURY TRIAL, was caused to be served as indicated below and addressed as follows:

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FILED
OCT 27 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANTS' MOTIONS TO QUASH SERVICE OF SUMMONS** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs, in the above-numbered and entitled cause, and opposes Watchtower Defendants' Motions to Quash Service of Summons.

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I

OPENING SUMMARY OF ARGUMENT

Defendant Watch Tower Bible and Tract Society of Pennsylvania (hereinafter "Watch Tower Pennsylvania") moved this Court for an Order quashing service of summons upon it and dismissing Plaintiffs' Complaint as to Watch Tower Pennsylvania on the grounds that this Court lacks personal jurisdiction over it. In its Memorandum of Points and Authorities in Support of its Motion, Watch Tower Pennsylvania provides this Court with a basic synopsis of the requirements for *in personam* jurisdiction as handed down by the United States Supreme Court and applied by the California courts. **The factual description of Watch Tower Pennsylvania and its relationship to Plaintiffs and the non-moving defendants, however, is woefully inadequate, if not purposefully misleading**.

Before addressing the law, it is Plaintiffs' position the Court must first be provided with a fair description of the entity seeking an Order quashing service. It is Plaintiffs' position the Jehovah's Witnesses organization acts as a single business enterprise with the Watch Tower Pennsylvania having a chief role in California and worldwide.

II

NARROWING OF DEFENDANTS

A. PARTIES NAMED IN PLAINTIFFS' COMPLAINT

In this Complaint, Plaintiffs alleged the Jehovah's Witnesses organization is controlled by a group of men called the Governing Body [Para. 22]. Plaintiffs further alleged the Governing Body sits at the top of a hierarchical structure of entities (incorporated and unincorporated), which act as agents, servants and alter egos for the Governing Body. The Governing Body uses these entities to operate, oversee and make policy for the worldwide organization of Jehovah's Witnesses. The Jehovah's Witnesses organization works as a single business enterprise on behalf of the Governing Body [Para. 23]. The Complaint also describes how the operation, oversight and policies of the Jehovah's Witnesses led to Plaintiffs' damages.

To pursue the theories pled in the Complaint, Plaintiffs named several legal entities as defendants including:

-Watchtower Bible and Tract Society of New York, Inc.;

-Watch Tower Bible and Tract Society of Pennsylvania, Inc.;

-Watchtower Enterprises, L.L.C.;

-Watchtower Foundation, Inc.;

-Watchtower Associates, Ltd.;

-Kingdom Support Services, Inc.;

-Christian Congregation of Jehovah's Witnesses, Inc.;

-Religious Order of Jehovah's Witnesses;

-Napa Kingdom Hall dba Napa Congregation of Jehovah's Witnesses - Jehovah's Witnesses Oak Knoll Congregation and Jehovah's Witnesses Sliverado Congregation.

B. PLAINTIFFS' INTENT TO DISMISS FIVE DEFENDANTS

Since filing the Complaint, Plaintiffs have gained a better understanding of the entities used by the Governing Body to operate and oversee the Jehovah's Witnesses organization relative to the allegations being made in Plaintiffs' Complaint.

First, Plaintiffs have determined Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., and Watchtower Associates, Ltd., are entities unrelated to the Jehovah's Witnesses organization. Plaintiffs will dismiss these three entities.

Second, Plaintiffs have determined Kingdom Support Services, Inc., and Religious Order of Jehovah's Witnesses are entities within the Jehovah's Witnesses organization, but have no connection to the matters alleged by Plaintiffs in their Complaint. Plaintiffs will dismiss these two entities.

The remaining defendants, collectively referred to in Plaintiffs' Complaint as Watchtower Defendants, are be as follows:

-Watchtower Bible and Tract Society of New York, Inc.;

-Watch Tower Bible and Tract Society of Pennsylvania, Inc.;

-Christian Congregation of Jehovah's Witnesses;

-Napa Kingdom Hall dba Napa Congregation of Jehovah's Witnesses - Jehovah's Witnesses Oak Knoll Congregation and Jehovah's Witnesses Sliverado Congregation.

As mentioned above, Plaintiffs allege the Governing Body operates, oversees and makes policy with respect to the worldwide operations of the Jehovah's Witnesses organization, which includes California. The Governing Body is an association that is not a partnership, corporation or other legally recognizable entity for purpose of litigation. The Governing Body, however, exists and has acted primarily through two corporate entities:

-Watchtower Bible and Tract Society of New York, Inc.

-Watch Tower Bible and Tract Society of Pennsylvania, Inc.

Watch Tower Pennsylvania has moved this Court to quash service of summons, but Watchtower New York has not.

III

PRELIMINARY CONSIDERATIONS

A. APPLICATION OF THE LAW DEPENDS ON GOOD FACTS

This Court is being called upon to determine whether its exercise of personal jurisdiction over Watch Tower Pennsylvania does or does not violate "traditional notions of fair play and substantial justice". *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [90 L.Ed. 95, 102, 66 S. Ct. 154, 161 A.L.R. 1057]. In making this determination, this Court must evaluate the facts of **this** case in determining whether personal jurisdiction would comport with 'fair play and substantial justice'. *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 460 *citing Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 485 [85 L.Ed.2d 528, 105 S.Ct. 2174] (high court rejects use of talismanic jurisdictional formulas).

B. DISCOVERY NOT OBTAINED FROM WATCH TOWER PENNSYLVANIA

Plaintiffs filed their Complaint on July 23, 2003, and have not been afforded the opportunity to direct discovery to Watch Tower Pennsylvania.

///

1. Plaintiffs Request an Opportunity to Conduct Written Discovery

As mentioned above, Plaintiffs' Complaint was filed on July 24, 2003, and no discovery to any Defendant has been served, much less answered. Plaintiffs are confident this Court will find its exercise of personal jurisdiction over Watch Tower Pennsylvania to be appropriate and reasonable. To further support their position relative to Watch Tower Pennsylvania's continuous and systematic contacts in California, Plaintiffs respectfully request this Court allow Plaintiffs the opportunity to conduct discovery with regard to Watch Tower Pennsylvania's contacts in California. *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 911; *see also Mihlon v. Superior Court* (1985) 169 Cal.App.3rd 703 [215 Cal. Rptr. 442], 711; *School Dist. Of Okaloosa County v. Superior Court* (1997) 58 Cal.App.4th 1126, 1132 (plaintiff may be given time to conduct discovery concerning the "contacts" issue before the trial court rules on a motion to quash service of summons); *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3rd 1222, 1234; Weil & Brown, Cal Practice Guide: Civil Procedure Before Trial 1 (The Rutter Group 1997) P 3:386, p. 3-92, rev.#1 1995.

Attached hereto as **Exhibit 1** is Plaintiffs' First Set of Interrogatories to Defendant Watch Tower Bible & Tract Society of Pennsylvania, Inc. Additionally, attached hereto as **Exhibit 2** is Plaintiffs First Request for Production to Defendant Watch Tower Bible & Tract Society of Pennsylvania, Inc. Both of these discovery devices are narrowly drawn to obtain information regarding Watch Tower Pennsylvania's business activities and contacts in the state of California during the times relevant to Plaintiffs' allegations. These two sets of discovery will be served in the immediate future to address the jurisdictional issues, if required.

2. Plaintiffs Request an Opportunity to Depose Abrahamson

In support of Watch Tower Pennsylvania's Motion to Quash Service of Summons, Watch Tower Pennsylvania relies on the affidavit of Richard Abrahamson, its Secretary and Treasurer. In his affidavit, Mr. Abrahamson testified the "primary purpose of Watch Tower is to coordinate the worldwide activities of Jehovah's Witnesses." On its face,

Plaintiffs do not quarrel with Mr. Abrahamson on this point; in fact, Plaintiffs agree Watch Tower Pennsylvania coordinated a number of activities relating to child sexual abuse, created and enforced policies relating to child sexual abuse, and engaged in continuing efforts to conceal sexual abusers and sexually abusive behavior. Additionally, Plaintiffs contend that "worldwide" certainly includes the state of California.

An obvious need exists to conduct discovery relative to Mr. Abrahamson's assertions and other "contact matters" about which Mr. Abrahamson may have knowledge. A deposition notice for Richard Abrahamson with respect to Watch Tower Pennsylvania's corporate organization, relationship to the Governing Body and other issues involving Watch Tower Pennsylvania's contacts with California is attached as **Exhibit 3**.

IV

WATCHTOWER ADMISSIONS

A. PLAINTIFFS' ALLEGATIONS

In their Complaint, Plaintiffs made several serious allegations against the Jehovah's Witnesses organization – not the least of which is that several entities conspired to aid and abet known child molesters to rape and/or sexually assault children in California. Additionally, Plaintiffs alleged several entities conspired to conceal and/or suppress information about sexual abuse perpetrated by leaders appointed by the organization.

In their Complaint, Plaintiffs carefully described, based on information and belief, how the Jehovah's Witnesses organization is structured and how it functions relative to Plaintiffs' claims. The Defendants in this lawsuit have offered no organizational description to help the Court or Plaintiffs better understand their operations, oversight or policy-making. It is Plaintiffs' position this Court's decision as to the reasonableness of its exercise of jurisdiction over Watch Tower Pennsylvania depends on a fair understanding of Watch Tower Pennsylvania as it relates to the operation of the Jehovah's Witnesses organization.

In their Complaint, Plaintiffs sued Watchtower Bible & Tract Society of New York, Inc. (Watchtower New York), Christian Congregation of Jehovah's Witnesses (CCJW) and the Watchtower Group, Inc. These entities have been served with Plaintiffs' Complaint and have not challenged this Court's exercise of personal jurisdiction.

B. RODRIGUEZ LITIGATION - WASHINGTON FEDERAL COURT

Watchtower New York and a Jehovah's Witnesses congregation were named as defendants in a lawsuit filed in United States District Court for the Eastern District of Washington on May 29, 2002. A certified copy of the Complaint styled Erica Rodriguez v. Watchtower Bible & Tract Society of New York, Inc., et al, is attached hereto as **Exhibit 4**. The lawsuit alleged, among other things, several corporate entities were acting in concert to aid and abet child abusers and to conceal the abuse. The lawsuit further alleged an unincorporated group of individuals known as the Governing Body is the ultimate decision-making group for all Jehovah's Witnesses worldwide and that the Governing Body acted through various incorporated and unincorporated entities to carry out the business and activities of the Jehovah's Witnesses organization in the state of Washington and worldwide (see paragraphs 4 through 6 of the Rodriguez Complaint attached as **Exhibit 4**). These allegations mirror those pled in the instant case.

C. WATCHTOWER ANSWER IN RODRIGUEZ

In response to the Rodriguez Complaint, Watchtower New York and the Washington congregation filed Defendants Watchtower and Othello (North) Spanish Congregation's Answer to Plaintiffs' Complaint (hereinafter the "Rodriguez Answer") on August 5, 2002. A certified copy of the Rodriguez Answer is attached hereto as **Exhibit 5**.[1] The Rodriguez Answer was signed by Donald Stone, Attorney for Watchtower New York and the Othello Congregation in the Rodriguez case.

1. Rule 8 of FRCP

For a qualification of an averment, the pleader shall specify so much of it as is true

[1] Watch Tower Pennsylvania was not named as a Defendant in the Rodriguez Complaint.

and material and shall deny only the remainder." [Emphasis added] See *Mann v. Smith* (5th Cir. 1986) 796 F.2d 79, 86.

2. Rule 11 of FRCP

Rule 11 (b) of the FRCP requires the following: "By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, ... an attorney ... is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -- (3) the allegations and other factual contentions have evidentiary support ... ." [Emphasis added]

Accordingly, by signing the Rodriguez Answer, Donald Stone, Esq., is making the representation to the United States District Court for the Eastern District of Washington that the factual contentions contained therein have evidentiary support.

D. FACTUAL AVERMENTS IN RODRIGUEZ COMPLAINT

In Paragraphs 4 through 9 of her Complaint, Rodriguez made several factual averments relating to the organizational structure of the Jehovah's Witnesses organization; the allegations made by Rodriguez relative to the Jehovah's Witnesses' organizational structure are very similar to those alleged by Plaintiffs in the instant case. The Rodriguez Complaint alleges in Paragraph 5 that:

> The head of the organization of Jehovah's Witnesses is the Governing Body, which consists of approximately 10-13 men, also known as the Faithful and Discreet Slave, ... The Governing Body served until October 2000 as members of the board of directors and officers of the Watch Tower Bible and Tract Society of Pennsylvania, Inc. and the Watchtower Bible and Tract Society of New York, Inc. The Governing Body, as directors, used those two legal entities to direct all of the organization Jehovah's Witnesses and its affairs around the world.

E. WATCHTOWER ADMISSIONS IN RODRIGUEZ ANSWER

In the Rodriguez Answer, Watchtower New York and the Othello Congregation admitted the following in Paragraph 5:

> With reference to paragraph 5 of Plaintiff's complaint, admit that the Governing

Body exercises spiritual oversight of the organization of Jehovah's Witnesses worldwide; admit that such Governing Body presently consists of 11 men, who are part of what is known as the Faithful and Discreet Slave ... ; admit that some of the members of the Governing Body served as members of the Board of Directors and as officers of Watchtower (sic) Bible and Tract Society of Pennsylvania, Inc., and of Watchtower Bible and Tract Society of New York, until October, 2000; further admit that the Governing Body used Watchtower Bible and Tract Society of Pennsylvania, to help carry out the activities of Jehovah's Witnesses worldwide; admit that the Governing Body exercises spiritual oversight over the organization of Jehovah's Witnesses worldwide and oversees the appointment of congregation elders and ministerial servants; admit that the Governing Body has six committees (Chairman's, Writing, Teaching, Publishing, Personnel and Service); and admit that the Governing Body oversees the promulgation of policies and procedures for the spiritual, physical, and emotional welfare of all persons associating with Jehovah's Witnesses, ...

Watchtower New York and Othello Congregation further admit the following:

-Governing Body overseers (sic) the promulgation of policies and procedures for the spiritual, physical and emotional welfare of persons associating with Jehovah's Witnesses (paragraph 5);

-Governing Body has ultimate spiritual authority to bar a publisher [member] from serving in certain positions of responsibility with the organization of Jehovah's Witnesses (paragraph 6);

-Governing Body oversees the appointment of congregation elders (paragraph 8);

-Governing Body oversees the appointment of ministerial servants (paragraph 8);

-Governing Body oversees the appointment of circuit overseers (paragraph 9); and

-Governing Body oversees the appointment of district overseers (paragraph 9).

F. GOVERNING BODY CONTROLS THROUGH WATCH TOWER PENNSYLVANIA

Clearly, the Governing Body is the group of men responsible for organizational operations, oversight, and policy-making for the Jehovah's Witnesses organization. The Governing Body, however, operates, oversees and makes policy through corporate entities; one of those corporate entities is Watchtower New York, which is a defendant in this action and has not moved this Court to quash service of summons. The other corporation the Governing Body admittedly uses to carry out the activities of Jehovah's Witnesses worldwide (which, incidentally, includes California) is Watch Tower Pennsylvania.

It is not surprising, therefore, that Paragraph 4 of Richard E. Abrahamson's affidavit attached to Watch Tower Pennsylvania's Memorandum of Points and Authorities in Support of Motion to Quash Service of Summons indicates the following: "The primary purpose of Watch Tower is to coordinate the worldwide activities of Jehovah's Witnesses."

Those worldwide activities, however, include activities in California; more specifically, those worldwide activities include activities in the Napa Kingdom Hall dba Napa Congregation of Jehovah's Witnesses - Jehovah's Witnesses Oak Knoll Congregation and Jehovah's Witnesses Sliverado Congregation– the defendant congregation where Defendant Edward Villegas was allowed access to minor children after having been reported to the Watchtower Defendants that he was a sexual abuser.

G. PROPER FOCUS FOR COURT IS ON GOVERNING BODY

The focus should not be on where Watch Tower Pennsylvania has its office, mailing address and telephone number; rather, it should be on what continuous and systematic contacts the Governing Body has, and continues to have, in the state of California.

The Governing Body controls the operations, conducts oversight and promulgates policies for dozens of Jehovah's Witnesses Congregations in the state of California,

including the congregations at issue in Plaintiffs' Complaint. The Governing Body appointed and removed hundreds of Elders, Ministerial Servants and Circuit Overseers in the state of California and continues to do so. It is clear the Governing Body's contacts in the state of California are the sort that more than approximate its physical presence. Since it is alleged and admitted by Defendants (albeit in a Washington Federal Court pleading) the Governing Body used Watch Tower Pennsylvania to help carry out the activities of the Jehovah's Witnesses worldwide (which includes California), this Court should find that it has general jurisdiction over Watch Tower Pennsylvania and deny its motion to quash service of summons.

V

OTHER CONTACTS

A. KINGDOM HALL FINANCING HANDLED BY WATCH TOWER PENNSYLVANIA

Each Jehovah's Witnesses congregation meets in a building called a Kingdom Hall (more than one congregation may share a physical Kingdom Hall building). The financing and insurance for those structures are handled through the Watch Tower Pennsylvania.

On August 1, 1997, Watch Tower Pennsylvania directed correspondence to all Elders and Accounts Servants of Congregations with Society Kingdom Hall Loans; presumably, many of those Elders and Accounts Servants are in California and may specifically be associated with the North Congregation, Red Bluff. The August 1st letter is attached hereto as **Exhibit 6**. The August 1st letter indicates loans have been extended to Jehovah's Witnesses congregations to finance or purchase Kingdom Hall buildings. Though it is unclear who is making the loan, it is clear the payments on the loans are supposed to be paid to the "Pennsylvania Corporation" (Watch Tower Pennsylvania). The letter provides enough information to glean the existence of a financial relationship (at least lender/borrower) between California congregations and Watch Tower Pennsylvania. Moreover, the letter communicates instructions rather than suggestions; it is clear the recipients were expected to follow the steps provided by Watch Tower

Pennsylvania, use the forms provided by Watch Tower Pennsylvania and remit payment when instructed by Watch Tower Pennsylvania.

B. KINGDOM HALL SELF-INSURANCE HANDLED BY WATCH TOWER PENNSYLVANIA

The September 1, 1998, letter from Watch Tower Pennsylvania to all congregations (including those in California) describes the Kingdom Hall Assistance Arrangement (KHAA). The September 1st letter is attached hereto as **Exhibit 7**. In essence, KHAA is a self-insurance or excess coverage program for the Jehovah's Witnesses organization for claims arising from accidents/incidents at Kingdom Halls in California and elsewhere:

> "[T]he fund is used to purchase commercial "excess" insurance to protect congregations and the Society from possible catastrophic losses."

Essentially, Watch Tower Pennsylvania coordinates the collection of funds to purchase insurance to protect the congregations and the society – which includes the Governing Body and Watch Tower Pennsylvania. The KHAA program is operated by the Society's Risk Management Office within Watch Tower Pennsylvania.

The September 1, 1998, letter contains instructions, references and forms easily describing a relationship between Watch Tower Pennsylvania and the congregations (including those in California) that is not arms-length. Again, the Governing Body controls the operations, oversight and policy-making of the Jehovah's Witnesses organization and uses Watch Tower Pennsylvania to carry out those activities. The KHAA is simply another example of control and the use of Watch Tower Pennsylvania to exercise such control.

C. GILEAD SCHOOL HANDLED BY WATCH TOWER PENNSYLVANIA

In the course of the Governing Body exercising control over operations, oversight and policy-making of the Jehovah's Witnesses organization in California (and worldwide), the Governing Body trains selective members and appointed Elders at their Gilead School. The members and Elders in California (and nationwide) are to submit

applications to Watch Tower Pennsylvania; more specifically, the applications are to be submitted to the attention of: "Service Committee of the Governing Body". The address, of course, is the same Brooklyn address shared by Watch Tower Pennsylvania, Watchtower New York and the Governing Body. These facts are borne out in a January 2, 1995 letter from Watch Tower Pennsylvania to all Bodies of Elders, including those in California. The January 2nd letter is attached hereto as **Exhibit 8**.

More significantly, the letter is from the Watch Tower Pennsylvania "FOR THE SERVICE COMMITTEE" of the Governing Body. Recall that the Governing Body exercises control over operations, oversight and policy-making of the Jehovah's Witnesses organization in California. The Service Committee is the single most significant committee of the Governing Body as it relates to appointment of Elders, removal of Elders, appointment of Ministerial Servants, removal of Ministerial Servants, and the oversight of day-to-day functioning of the congregations in California (and worldwide). We have already seen the admissions relating to the Governing Body using Watch Tower Pennsylvania to carry out its activities (see paragraph 5 of Rodriguez Answer attached hereto as **Exhibit 5**); the January 2, 1995, letter strongly suggests that Watch Tower Pennsylvania is (at least in part) the entity through which the Service Committee of the Governing Body works.

D. PUBLIC DIS-INFORMATION DISSEMINATED BY WATCH TOWER PENNSYLVANIA

One of the purposes of the conspiracy being carried out in the Jehovah's Witnesses organization involves its public reputation. While there is an enormous problem within the organization involving child sexual abuse (by members of the congregations and by leaders appointed by the Governing Body), the Governing Body is attempting to conceal that problem and further mislead the public into believing the Jehovah's Witnesses organization has particular policies and practices relative to child sexual abuse and is active in the protection of children from child sexual abusers.

To make these false representations, the Governing Body continues to use Watch

Tower Pennsylvania.

On January 2, 2001 and on August 7, 2001, the Jehovah's Witnesses organization released two public statements, which Plaintiffs contend contain misleading information in furtherance of the conspiracy alleged in their Complaint. These two documents appear to originate from the "Public Affairs Office" for "Jehovah's Witnesses" (attached hereto as **Exhibits 9** and **Exhibit 10**). The contact person is J.R. Brown, Director of the Public Affairs Office with its address at Watch Tower, 25 Columbia Heights, Brooklyn, New York; telephone: 718-560-5600.

A February 7, 2002, letter from J.R. Brown, Director of the Office of Public Information to *Dateline NBC* (attached as **Exhibit 11**) clarifies the origination of **Exhibit 9** and **Exhibit 10** above. The February 7th letter bears the letterhead: "Watch Tower Bible and Tract Society of Pennsylvania", and references a department called the Office of Public Information; again, J.R. Brown is identified as its Director.

A May 9, 2002, letter from J.R. Brown, Director of the Office of Public Information to *BBC Panorama* (attached as **Exhibit 12**) provides additional misinformation regarding the handling of child sexual abuse outcries and allegations within the Jehovah's Witnesses organization. The May 9th letter describes the existence of a database of members and appointed leaders accused of sexual abuse within the Jehovah's Witnesses organization. The May 9th letter also bears the letterhead: "Watch Tower Bible and Tract Society of Pennsylvania", and references a department called the Office of Public Information; again, J.R. Brown is identified as its Director. The May 9th letter was produced by Watch Tower Pennsylvania in similar litigation in Texas.[2]

Watch Tower Pennsylvania continues to be involved in the ongoing conspiracy to conceal the abuses and suppress information about abusers while at the same time falsely claiming to have policies and procedures in effect to stem the abuses and investigate abusers.

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[2] Kaleena S. et al v. Watchtower Bible and Tract Society of New York, Inc., et al; in the 241st District Court of Smith County, Cause No. 03-2368C

E. SPECIFIC INVOLVEMENT IN CHILD SEXUAL ABUSE MATTERS BY WATCH TOWER PENNSYLVANIA

In the Affidavit of Richard E. Abrahamson, Watch Tower Pennsylvania is described as the entity coordinating the worldwide activities of Jehovah's Witnesses (which includes California); however, it does much more. Watch Tower Pennsylvania provides instruction to Bodies of Elders in Britain regarding child sexual abuse, reporting requirements, and how to follow the Watch Tower's instructions without "being seen to be involved in an 'attempt' or 'conspiracy to pervert the course of justice.'" On January 30, 1992, Watch Tower Pennsylvania directed instructions "To All Bodies of Elders in Britain" regarding the Elders' handling of duties involving legal issues or questions (attached hereto as **Exhibit 13**). By the instructions and information provided by Watch Tower Pennsylvania, it is clear Watch Tower Pennsylvania is involved in instruction, operation, oversight and policy-making relative to child sexual abuse and the impact of allegations on the Jehovah's Witnesses organization.

More importantly, the Court must recall the Governing Body is in control of the operation, oversight and policy-making of the Jehovah's Witnesses organization, and merely uses Watch Tower Pennsylvania to carry out its activities. Put differently, the Governing Body is specifically using Watch Tower Pennsylvania for instructional, operational, oversight and policy-making purposes relating to child sexual abuse and the handling of information related thereto. Discovery, if necessary, on this and other issues will further reveal the Governing Body's use of Watch Tower Pennsylvania in California (generally) and regarding child sexual abuse (specifically).

VI

LEGAL STANDARD OF REVIEW ON MOTION TO QUASH

When a defendant moves to quash service of process on jurisdictional grounds, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th at 449. Once facts showing minimum contacts with the forum state are established, however, it

out the activities of the Jehovah's Witnesses worldwide (which includes California). The focus, therefore, should not be on where Watch Tower Pennsylvania has its office, mailing address and telephone number; rather, it should be on what continuous and systematic contacts the Governing Body has in the state of California. This Court should make its jurisdictional determination based on the activities of the Governing Body, as well as Watch Tower Pennsylvania.

B. GENERAL JURISDICTION

Personal jurisdiction may be either general or specific. A nonresident defendant may be subject to the *general* jurisdiction of the forum if his or her contacts in the forum state are "substantial ... continuous and systematic." *Vons Companies, Inc. v. Seabest Foods, Inc. supra*, 14 Cal.4th at 445. When the activities of the nonresident defendant are extensive or wide-ranging, there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against the nonresident defendant. *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 717.

1. Activities Support General Jurisdiction

Based on the facts provided above (even without discovery), Watch Tower Pennsylvania's activities in California were substantial, continuous and systematic and were such that Watch Tower Pennsylvania approximated a physical presence. Watch Tower Pennsylvania is a corporation through which the Governing Body has operated the Jehovah's Witnesses organization in California (and worldwide) for quite some time. In addition to being the entity through which the Governing Body operated the Jehovah's Witnesses organization in California, Plaintiffs have provided the Court with evidence (even without discovery) indicating Watch Tower Pennsylvania is and has been intimately involved in (1) the financing of Kingdom Halls for the California congregations; (2) the providing of instructions, forms and timing of loan payments by California congregations; (3) the financing of self-insurance for Kingdom Halls (KHAA) in California; (4) the application process for California members and appointed elders to attend the Gilead School; (5) the duties of the Service Committee for the Governing Body; and (6)

the continued dissemination of false information in California in furtherance of the alleged conspiracy. Plaintiffs anticipate the uncovering of far more activity once Plaintiffs are given the opportunity to conduct discovery.

Based on the evidence provided by Plaintiffs, it is easier to understand Richard Abrahamson's affidavit testimony that the "primary purpose of Watch Tower [Pennsylvania] is to coordinate the worldwide activities of Jehovah's Witnesses." The coordination of the Jehovah's Witnesses' activities in California involved activities that were substantial, continuous, systematic, extensive and wide-ranging which approximated a physical presence. *Boaz v. Boyle & Co.* (1995) 40 Cal.App.4th 700, 716-717.

2. Discovery Will Further Reveal Watch Tower Pennsylvania's Activities

It is undeniable the Jehovah's Witnesses organization has a substantial, continuous and systematic presence in California. The fact that the Governing Body (acting through Watch Tower Pennsylvania and others) appoints and removes the leaders of those California entities (congregations) suggests the California entities have no independent existence outside their relationship to the Jehovah's Witnesses organization. All of the significant business decisions of the California congregations are made by the Governing Body acting through Watch Tower Pennsylvania and others. Plaintiffs expect this relationship to be borne out in discovery.

C. SPECIFIC JURISDICTION

If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he may be subject to the specific jurisdiction of the forum, if the defendant has deliberately engaged in significant activities within California. *Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, 239. In making the determination that this Court has specific jurisdiction over Watch Tower Pennsylvania, this Court must determine Watch Tower Pennsylvania deliberately engaged in significant activities within California.

1. Watch Tower Pennsylvania's Contacts were Deliberate and Significant

Watch Tower Pennsylvania argues the affidavit of Richard Abrahamson "conclusively establishes" this Court lacks specific jurisdiction over Watch Tower Pennsylvania by arguing it was incorporated in Pennsylvania, has its office in Brooklyn and has never had an office, mailing address, or telephone number in California. The proper inquiry for this Court, however, is whether Watch Tower Pennsylvania "reached out beyond one state and created continuing relationships ... with citizens of another state [California]." If so, the nonresident defendant is subject to the regulation and sanctions in California for the consequences of its actions. *Vons Companies, Inc. v. Seabest Foods, Inc.* 14 Cal.4th 434, 447.

Did the Governing Body or Watch Tower Pennsylvania deliberately engage in significant activities in California? Did the Governing Body or Watch Tower Pennsylvania reach out and create continuing relationships with the citizens of California? The evidence and admissions discussed clearly demonstrate both the Governing Body and Watch Tower Pennsylvania created relationships with citizens of California and continue to do so. The Plaintiffs in this action are citizens of California with whom the Governing Body and Watch Tower Pennsylvania created relationship and ultimately injured.

2. Claims Alleged By Plaintiffs Are Related to Contacts

Plaintiffs alleged the Governing Body (through various incorporated and unincorporated entities including Watch Tower Pennsylvania) exercises control, oversight and policy-making for the Jehovah's Witnesses organization. Defendants admitted that relationship (albeit in a Washington Federal Court Pleading). Plaintiffs further alleged the organization has engaged in tortious and intentional behavior that has caused Plaintiffs' injuries. Plaintiffs alleged the Jehovah's Witnesses organization (controlled by the Governing Body through Watch Tower Pennsylvania and others) created policies that caused Plaintiffs' injuries, enforced policies that caused Plaintiffs'

injuries, gave instructions that caused Plaintiffs' injuries and conspired to conceal the activities that caused Plaintiffs' injuries.

The claims alleged by Plaintiffs are directly related to the activities of the Governing Body by and through Watch Tower Pennsylvania.

3. Assertion Of Jurisdiction Comports With Fair Play

After making the determination the Governing Body, by and through Watch Tower Pennsylvania, has had significant contacts with California and that the litigation bears a substantial connection to those contacts, this Court's inquiry becomes whether it would be unfair to subject Watch Tower Pennsylvania to the jurisdiction of this Court. *Vons Companies, Inc. v. Seabest Foods, Inc.* 14 Cal.4th 434, 477. The *Vons* Court provides the following analysis:

> As the high court has explained, "When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the ... defendant." (*Asahi Metal Industry Co. v. Superior Court*, [citation omitted]) ... Moreover, considerations of judicial efficiency overwhelmingly favor litigation of all claims in a single forum. Because California already has invested judicial resources in this litigation apart from its substantive interest in the claims, the additional interest of efficiency favors this exercise of jurisdiction.

Id.

The factors to be weighed in determining undue hardship on a Watch Tower Pennsylvania support this Court's exercise of jurisdiction. Watch Tower Pennsylvania is represented by the same counsel group (Bullivant Houser Bailey PC) representing defendants that have already appeared in this case. Accordingly, Watch Tower Pennsylvania will not be put to extraordinary additional cost not already being borne by other instrumentalities of the Governing Body. Additionally, judicial efficiency overwhelmingly favors the litigation of all claims in California where four of the other Watchtower Defendants have submitted to this Court's jurisdiction.

D. SHIFTING THE BURDEN TO DEFENDANTS

Once facts showing minimum contacts with the forum state are established, the burden shifts to the defendant to demonstrate that the assumption of jurisdiction would

be unreasonable. *Malone v. Equitas Reinsurance Ltd.* (2000) 84 Cal.App.4th 1430, 1436 *citing Vons Companies, Inc. v. Seabest Foods, Inc.* 14 Cal.4th 434, 449.

VIII

CONCLUSION

Without having yet conducted any discovery, Plaintiffs have provided this Court with evidence describing the operation of the Jehovah's Witnesses organization in California and how its operation has depended on Watch Tower Pennsylvania. Watch Tower Pennsylvania's activities are substantial, continuous and systematic such that this Court's exercise of jurisdiction over Watch Tower Pennsylvania does not offend traditional notions of fair play and substantial justice. Accordingly, for all the reasons and arguments set forth hereinabove, Plaintiffs respectfully request this Court to deny Defendants' Motion to Quash Service of Summons in its entirety, or alternatively, grant leave to conduct discovery on the jurisdictional issues before making a ruling.

Dated: 10/23/03

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.
Attorneys for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO WATCHTOWER DEFENDANTS' MOTIONS TO QUASH SERVICE OF SUMMONS** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

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CHARISSA W. and NICOLE D.

FILED
OCT 27 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO QUASH** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

I, William Brelsford, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice law before all the Courts of the State of California.

2. Attached hereto as Exhibit 1 is a true and correct copy of a proposed set of special interrogatories to intended to develop discovery on the jurisdictional issues.

3. Attached hereto as Exhibit 2 is a true and correct copy of a proposed set of request for document productions intended to develop discovery on the jurisdictional issues.

4. Attached hereto as Exhibit 3 is a true and correct copy of deposition notice to Abrahamson intended to develop discovery on the jurisdictional issues.

5. Attached hereto as Exhibit 4 is a true and correct copy of a Complaint filed in *Rodriguez v. Watchtower Bible and Tract Society of New York, Inc., et al.*, Case No. 02-0190-WFN.

6. Attached hereto as Exhibit 5 is a true and correct copy of an Answer filed in *Rodriguez v. Watchtower Bible and Tract Society of New York, Inc., et al.*, Case No. 02-0190-EFS.

7. Attached hereto as Exhibit 6 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated August 1, 1997.

8. Attached hereto as Exhibit 7 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated September 1, 1998.

9. Attached hereto as Exhibit 8 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated January 2, 1995.

10. Attached hereto as Exhibit 9 is a true and correct copy of a letter by Jehovah's Witnesses Public Affairs Office dated January 2, 2001.

11. Attached hereto as Exhibit 10 is a true and correct copy of a letter by Jehovah's Witnesses Public Affairs Office dated August 7, 2001.

12. Attached hereto as Exhibit 11 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated February 7, 2002.

13. Attached hereto as Exhibit 12 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated May 9, 2002.

14. Attached hereto as Exhibit 13 is a true and correct copy of a letter by Watchtower Bible and Tract Society of Pennsylvania dated January 30, 1992.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/23/03

NOLEN SAUL BRELSFORD

William Brelsford

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **DECLARATION OF WILLIAM L. BRELSFORD OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL –I** am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

BLUEBIRDonline.com (888) 477-0706

EXHIBIT 1

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **SPECIAL INTERROGATORIES, SET ONE**

PROPOUNDED TO: WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., KINGDOM SUPPORT SERVICES, INC., and RELIGIOUS ORDER OF JEHOVAH'S WITNESSES

PROPOUNDED BY: CHARISSA W. and NICOLE D.

SET NUMBER: SET, ONE

You are requested to answer under oath, pursuant to Section 2030 of the California Code of Civil Procedure, the following Interrogatories. In doing so, please furnish such information as is available to you, not merely that which you know of your own personal knowledge. This means you are to furnish information which is available to you or is in the possession of your attorneys and/or investigators and/or your insurance company.

DEFINITIONS

1. The term "Charissa" and/or "Plaintiff" shall refer to Charissa W., her servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Plaintiffs' behalf, including her attorney(s), whether authorized to do so or not.

2. The term "Nicole" and/or "Plaintiff" shall refer to Nicole D., her servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Plaintiffs' behalf, including her attorney(s), whether authorized to do so or not.

3. The term "Defendant" refers to Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc., its servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Defendant's behalf, including his attorney(s), whether authorized to do so or not.

4. The term "Watchtower Defendants" refers to Defendant Watchtower Bible and Tract Society of New York, Inc., Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc., Defendant Watchtower Enterprises, L.L.C., Defendant Watchtower Foundation, Inc., Defendant Watchtower Associates Ltd., Defendant Kingdom Support Services, Inc., Defendant Christian Congregation of Jehovah's Witnesses, Defendant Religious Order of Jehovah's Witnesses, Defendant Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses and Defendant Oak Knoll Congregation of Jehovah's Witnesses, Napa, CA, Inc.

5. The term "document" shall refer to any written or recorded material, whether

typed, hand written, printed or otherwise, or any photographs, photostats, microfilm, tape recording or other reproduction thereof, including, without limitations, to each note, memorandum, work paper, letter, telegram, telex, facsimile, circular, release, article, report, prospectus, memorandum of telephone or personal conversations, financial statement or data, analysis, chart, account, book, draft, summary, diary, desk calendar, appointment book, tabulations, specifications, account record, minutes, transcript, agreement, contract, order, tape and any other date compilation from which information can be obtained or translated through detection devises into reasonable useable form when translation is practically necessary, including the original and any non-identical copy (whether different from the original because of hand written notes, or underlinings on the copy or otherwise).

6. The term "communication" shall refer to every disclosure, transfer or exchange of information, formal or informal, whether orally, in writing, or recorded and whether in person, by telephone, by mail, by telegram, by air courier, by personal delivery or any other manner or method.

7. The term "identify" shall refer to:

(a) As to an individual means to state his age, full name, last known residential address and telephone number, last known business address and telephone number, occupation, job title and date so employed;

(b) As to a partnership, association, corporation, joint venture, firm, proprietorship, agency, board, authority, commission or other legal or business entity means to state its name, address of its principal place of business, state of incorporation, if applicable, and major purpose of business activity.

(c) As to a document, means to state the type of document (e.g., letter, memo, notice, announcement), state where, when, and how it was made, identify the author or originator, identify each person to whom the original or copy was addressed or delivered, identify each person known or reasonably believed by you to have present possession, custody, or control thereof, and state a brief description of the subject matter thereof, all

with sufficient particularity to request its production under Tex. R. Civ. P. 196.

Without limitation of the term "control" as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof.

If a document is responsive to a request for identification and is in your control, but is not in your possession or custody, identify the person with possession or custody.

If any document was, but no longer is, in your possession or subject to your control, state what disposition was made of it, by whom, and the date or dates or approximate date or dates on which such imposition was made, and why.

(d) As to a communication, means state the date of the communication, the type of communication (e.g., telephone conversation, meeting), the place where the communication took place, and the complete substance of the communication; identify the person(s) who made the communication, received the communication, were present when the communication was made, or have personal knowledge that the communication was made and its content; state whether the communication was recorded, and if so, identify who recorded it and state how it was recorded or transcribed and what machines or instruments were used to record or transcribe it, if any; and identify the persons who presently have possession or last-known possession, custody or control of the communication.

(e) As to any other tangible thing means to state a detailed description thereof, including, if applicable, where, when, and how it was made, identify the person who made it, and identify who presently has possession or last known possession, custody and control of such thing.

8. "State or "describe" when referring to a claim or statement, means to describe in detail all facts known to you or believed by you to be true upon which the claim or statement is based and to identify every "person," as defined below, whose status, acts, omissions, or statements constitute any of such facts.

9. "Person" shall refer to any individual, firm, partnership, corporation, proprietorship, association, joint venture, agency, board, authority, governmental body, natural person or any other organization or business entity.

10. All requests shall cover 1970 to the present unless otherwise indicated.

INTERROGATORIES

INTERROGATORY NO. 1:

Please describe your involvement with the purchase and/or financing of Kingdom Halls, generally, and the specific Kingdom Halls used by Defendant North Congregation of Jehovah's Witnesses, Red Bluff, Ca, Inc.

INTERROGATORY NO. 2:

With respect to the Gilead School,

a. describe its function or purpose from 1970 to the present; and

b. describe your involvement with the Gilead School from 1970 to the present.

INTERROGATORY NO. 3:

Describe the relationship between you and the following entities:

a. Defendant Jehovah's Witnesses - North Congregation of Jehovah's Witnesses, Red Bluff, Ca, Inc.

b. Defendant Jehovah's Witnesses- Napa Congregation;

c. Defendant Jehovah's Witnesses - Oak Knoll Congregation;

d. Defendant Jehovah's Witnesses - White House Congregation;

e. Defendant Watchtower Bible and Tract Society of New York, Inc.;

f. Defendant Kingdom Support Services, Inc.;

g. Defendant Christian Congregation of Jehovah's Witnesses;

h. Defendant Religious Order of Jehovah's Witnesses;

i. Defendant The Watchtower Group, Inc.;

j. Watchtower Service Department;

k. Watchtower Legal Department;

l. Watchtower Writing Department; and

m. Governing Body.

INTERROGATORY NO. 4:

With respect to Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc., please provide the following:

a. Describe your function/purpose within the Watchtower Society/Jehovah's Witnesses organization;

b. Describe all of the changes to your purpose/function since 1970, why such changes were made, when such changes were made and by whom;

c. Are you involved in any way with receiving monies from members, publishers, congregations or any other Watchtower Defendant; if so, explain why and how. Also identify the individual who knows the most about your receipt of funds;

d. Identify the people responsible for your policy-making and operations;

e. Identify all members of your Board of Directors since 1970;

f. Identify all officers at the entity since 1970; and

g. Describe the function of the Board of Directors as it relates to the Governing Body and any changes since 1970 up to and including the present.

INTERROGATORY NO. 5:

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

Identify how, when and why the database was first created;

a. Identify what type of information is collected and stored in the database;

b. Identify how the information is received before it is entered in the database;

c. Identify who receives the information that is entered into the database;

d. Identify who inputs the data into the database;

e. Describe in detail what happens to the hard copy of the information once it is entered into the database;

f. Identify who uses the database at present;

g. Identify how the information in the database is accessed;

h. Identify the software that is used to access and/or operate the database;

i. Describe the purpose for maintaining such information;

j. Identify who is authorized to obtain information from the database; and

k. Describe in detail the circumstances which give rise to requesting information from the database.

INTERROGATORY NO. 6:

With respect to any claims, complaints, and/or allegations brought to your attention regarding sexual abuse, please provide the following:

a. Identify the person(s) making the claim, complaint and/or allegation;

b. Identify the person(s) to whom the report was made;

c. Identify the date of each report;

d. Identify the nature of the allegations;

e. Identify and describe any and all documents relating to the allegations;

f. Identify all persons made aware of the claim, complaint and/or allegation;

g. Identify all documents that were destroyed relative to the claims; and

h. If these complaints are the subject of litigation, state the name of the case, the court file number, the court in which the action is venued, and the lawyers involved.

Date:_____, 2003

NOLEN SAUL BRELSFORD

_____
William L. Brelsford
Attorney for Plaintiffs

EXHIBIT 2

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Jonathan Saul, Esq., SBN 189271
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE**

PROPOUNDED TO: WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., KINGDOM SUPPORT SERVICES, INC., and RELIGIOUS ORDER OF JEHOVAH'S WITNESSES

PROPOUNDED BY: CHARISSA W. and NICOLE D.

SET NUMBER: SET, ONE

Pursuant to Code of Civil Procedure Section 2031, the parties represented by Nolen Saul Brelsford hereby demand production, inspection and copying of the documents identified below which are in your possession, custody and/or control.

Production will take place at Nolen Saul Brelsford, located at 350 University Avenue, Suite 280, Sacramento, California within 30 days (or 35 days after service by mail) at 11:00 a.m.

DEFINITIONS

1. The term "Charissa" and/or "Plaintiff" shall refer to Charissa W., her servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Plaintiffs' behalf, including her attorney(s), whether authorized to do so or not.

2. The term "Nicole" and/or "Plaintiff" shall refer to Nicole D., her servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Plaintiffs' behalf, including her attorney(s), whether authorized to do so or not.

3. The term "Defendant" refers to Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc., its servants, agents, employees and representatives, as well as any experts, investigators or persons acting or purporting to act on Defendant's behalf, including his attorney(s), whether authorized to do so or not.

4. The term "Watchtower Defendants" refers to Defendant Watchtower Bible and Tract Society of New York, Inc., Defendant Watchtower Bible and Tract Society of Pennsylvania, Inc., Defendant Watchtower Enterprises, L.L.C., Defendant Watchtower Foundation, Inc., Defendant Watchtower Associates Ltd., Defendant Kingdom Support Services, Inc., Defendant Christian Congregation of Jehovah's Witnesses, Defendant Religious Order of Jehovah's Witnesses, Defendant Napa Kingdom Hall, now doing business as Napa Congregation of Jehovah's Witnesses and Defendant Oak Knoll Congregation of Jehovah's Witnesses, Napa, CA, Inc.

5. The term "document" shall refer to any written or recorded material, whether typed, hand written, printed or otherwise, or any photographs, photostats, microfilm, tape recording or other reproduction thereof, including, without limitations, to each note, memorandum, work paper, letter, telegram, telex, facsimile, circular, release, article, report, prospectus, memorandum of telephone or personal conversations, financial statement or data, analysis, chart, account, book, draft, summary, diary, desk calendar, appointment book, tabulations, specifications, account record, minutes, transcript, agreement, contract, order, tape and any other date compilation from which information can be obtained or translated through detection devises into reasonable useable form when translation is practically necessary, including the original and any non-identical copy (whether different from the original because of hand written notes, or underlinings on the copy or otherwise).

6. The term "communication" shall refer to every disclosure, transfer or exchange of information, formal or informal, whether orally, in writing, or recorded and whether in person, by telephone, by mail, by telegram, by air courier, by personal delivery or any other manner or method.

7. The term "identify" shall refer to:

(a) As to an individual means to state his age, full name, last known residential address and telephone number, last known business address and telephone number, occupation, job title and date so employed;

(b) As to a partnership, association, corporation, joint venture, firm, proprietorship, agency, board, authority, commission or other legal or business entity means to state its name, address of its principal place of business, state of incorporation, if applicable, and major purpose of business activity.

(c) As to a document, means to state the type of document (e.g., letter, memo, notice, announcement), state where, when, and how it was made, identify the author or originator, identify each person to whom the original or copy was addressed or delivered, identify each person known or reasonably believed by you to have present possession,

custody, or control thereof, and state a brief description of the subject matter thereof, all with sufficient particularity to request its production under Tex. R. Civ. P. 196.

Without limitation of the term "control" as used in the preceding sentence, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person or public or private entity having actual possession thereof.

If a document is responsive to a request for identification and is in your control, but is not in your possession or custody, identify the person with possession or custody.

If any document was, but no longer is, in your possession or subject to your control, state what disposition was made of it, by whom, and the date or dates or approximate date or dates on which such imposition was made, and why.

(d) As to a communication, means state the date of the communication, the type of communication (e.g., telephone conversation, meeting), the place where the communication took place, and the complete substance of the communication; identify the person(s) who made the communication, received the communication, were present when the communication was made, or have personal knowledge that the communication was made and its content; state whether the communication was recorded, and if so, identify who recorded it and state how it was recorded or transcribed and what machines or instruments were used to record or transcribe it, if any; and identify the persons who presently have possession or last-known possession, custody or control of the communication.

(e) As to any other tangible thing means to state a detailed description thereof, including, if applicable, where, when, and how it was made, identify the person who made it, and identify who presently has possession or last known possession, custody and control of such thing.

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8. "State or "describe" when referring to a claim or statement, means to describe in detail all facts known to you or believed by you to be true upon which the claim or statement is based and to identify every "person," as defined below, whose status, acts, omissions, or statements constitute any of such facts.

9. "Person" shall refer to any individual, firm, partnership, corporation, proprietorship, association, joint venture, agency, board, authority, governmental body, natural person or any other organization or business entity.

10. All requests shall cover 1970 to the present unless otherwise indicated.

REQUESTS

REQUEST FOR PRODUCTION NO. 1:

Please produce the following documents and/or information relating to your organization/operation:

a. Corporate Book;

b. Bylaws;

c. Organizational meeting minutes;

d. All Board of Director meeting minutes from 1970 to the present;

e. All Shareholder or Member meeting minutes from 1970 to the present;

f. All Committee meeting minutes from 1970 to the present;

g. All resolutions from 1970 to the present;

h. A complete list of shareholders and/or members from 1970 to the present;

i. Documents indicating corporate restructuring or reorganization from 1970 to the present;

j. All documents describing the hierarchical flow chart of positions/personnel from 1970 through the present;

k. All documents reflecting officers and directors from 1970 through the present;

l. All mission statements and purpose statements;

m. All flowcharts describing parent corporations and/or subsidiaries; and

n. All documents which indicate a relationship to or with other business or corporate entities.

REQUEST FOR PRODUCTION NO. 2:

With respect to property owned or used by you, please provide the following:

a. Ownership documents including deed records and plats with respect to property in California;

b. Documents relating to land purchase or acquisition in California;

c. Documents relating to building purchase or construction in California;

d. Documents relating to financing or purchase of building(s) in California; and

e. All lease agreements relating to property or buildings in California.

REQUEST FOR PRODUCTION NO. 3:

Documents relating to financing or purchases of building(s) for use by assemblies and/or congregations in California, including but not limited to Kingdom Halls and Assembly Buildings.

REQUEST FOR PRODUCTION NO. 4:

Produce all documentation that relates to monies you have received from California including but not limited to:

a. Organizational financial statements from 1970 to the present;

b. Documents that indicate or reflect the origin of monies received by you;

c. Documents that describe how monies from California congregations are received by you from 1970 to the present;

d. Treasurer summaries and reports from 1970 to the present;

e. Tax returns and other government filings or reportings from 1970 to the present;

f. Documents that memorialize wire transfers or deposits from congregations in California from 1970 to the present;

g. Deposit summaries from individuals and/or congregations in California from 1970 to the present; and

h. Bank statements reflecting amounts received from California by you from 1970 to the present.

REQUEST FOR PRODUCTION NO. 5:

Produce all corporate and/or governmental filings (state or federal) from 1970 to the present.

REQUEST FOR PRODUCTION NO. 6:

Any and all communications from Edward Villegas to you from 1970 to the present.

REQUEST FOR PRODUCTION NO. 7:

Any and all communications from you to Edward Villegas from 1970 to the present.

REQUEST FOR PRODUCTION NO. 8:

Any and all documents provided to you regarding Edward Villegas from anyone including but not limited to any present or former Overseer, Elder or other Jehovah's Witness or any of the Watchtower Defendants.

REQUEST FOR PRODUCTION NO. 9:

Any and all documents from you regarding Edward Villegas to anyone including but not limited to any present or former Overseer, Elder or other Jehovah's Witness or any of the Watchtower Defendants.

REQUEST FOR PRODUCTION NO. 10:

Any and all documents and/or correspondence between any of the Watchtower Defendants, Circuit Overseers, Elders, or any Jehovah's Witness Congregations within which Edward Villegas was involved (including but not limited to congregations in Oregon and Alaska) regarding the following:

a. All correspondence associated with Edward Villegas' movement of membership from one congregation to another;

b. Edward Villegas' recommendation and appointment as an Elder or other position in any congregation;

c. Any references or allegations relating to child sexual abuse, molestation, lewdness, or improper conduct on the part of Edward Villegas;

d. Any investigation or inquiry performed by any of the Watchtower Defendants or any individual regarding Edward Villegas regarding allegations of child sexual abuse, molestation, lewdness, or improper conduct with any minor; and

e. Matters leading to any and all congregational discipline, reproval (private or public) and/or disfellowshipping of Edward Villegas.

REQUEST FOR PRODUCTION NO. 11:

Any and all church and/or membership files or publisher record cards kept by you or any of the Watchtower Defendants pertaining to Edward Villegas, Plaintiff Charissa W, or Plaintiff Nicole D., in this action.

REQUEST FOR PRODUCTION NO. 12:

All documents sent by or prepared by you from 1970 to the present to any media representative relative to child sexual abuse or matters related thereto.

REQUEST FOR PRODUCTION NO. 13:

All documents sent by or prepared by you from 1970 to the present that serve as press releases or public announcements relative to child sexual abuse or matters related thereto.

REQUEST FOR PRODUCTION NO. 14:

All documents sent by or prepared by you that provide instruction for elders and other congregation leaders including but not limited to:

a. Elder school materials from 1970 to the present (together with addenda, additions and supplements provided either verbally or in writing);

b. Gilead school materials from 1970 to the present (together with addenda, additions and supplements provided either verbally or in writing);

c. Instruction/Operation manuals from 1970 to the present (including all supplements);

d. Policy materials and manuals from 1970 to the present (including all replacements and/or supplements) including but not limited to "Watch Over Yourselves and All Your Flock"; and

e. Instructional letters to the Elders or Circuit Overseers or any of the Watchtower Defendants.

REQUEST FOR PRODUCTION NO. 15:

All articles from "The Watchtower" or "Awake!" that relate to child sexual abuse from 1970 to the present, including but not limited to:

a. Let Us Abhor What Is Wicked (1997)

b. Christendom Walks In The Way of Canaan (1989)

c. Child Molesting - - You Can Protect Your Child (1985)

REQUEST FOR PRODUCTION NO. 16:

If you have ever been involved in a criminal investigation or charged with a crime in California from 1970 to the present, please provide the following:

a. All criminal records, including but not limited to indictments, informations, subpoenas, briefing and docket sheets; and

b. All judgments, verdicts or plea agreements.

REQUEST FOR PRODUCTION NO. 17:

If you have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide the following:

a. All pleadings, discovery, motions and briefing; and

b. All judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

REQUEST FOR PRODUCTION NO. 18:

If your past or present Governing Body members have ever been involved as a party in any civil litigation in California from 1970 to the present, please provide the following:

a. All pleadings, discovery, motions and briefing; and

b. All judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

REQUEST FOR PRODUCTION NO. 19:

If your past or present members of your Board of Directors has ever been involved as a party in any civil litigation in California from 1970 to the present, please provide the following:

a. All pleadings, discovery, motions and briefing; and

b. All judgments, settlement agreements or other documents which memorialize the conclusion of the litigation(s).

Date:_____, 2003

NOLEN SAUL BRELSFORD

_____
William L. Brelsford
Attorney for Plaintiffs

EXHIBIT 3

Rudy Nolen, Esq., SBN 59808
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **NOTICE OF TAKING DEPOSITION**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE:

TIME:

PLACE: Nolen Saul Brelsford
350 University Avenue, Suite 280
Sacramento, California

WITNESS: Richard Abrahamson

At the date, time and place specified above, the parties represented by Attorney William L. Brelsford, of Nolen Saul Brelsford, will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of California who is present at the specified time and date.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date:_____, 2003

NOLEN SAUL BRELSFORD

_____
William L. Brelsford
Attorney for Plaintiffs

EXHIBIT 4

RICHARD C. EYMANN
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Attorney at Law
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Bellevue, WA 98004
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JEFFREY R. ANDERSON
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(651) 227-9990

Attorneys for Plaintiff

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 29 2002

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF WASHINGTON

ERICA RODRIGUEZ, a single person,

Plaintiff,

vs.

WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., a New York corporation; OTHELLO SPANISH CONGREGATION OF JEHOVAH'S WITNESSES, an unknown legal entity; and MANUEL BELIZ, individually and on behalf of his marital community,

Defendants.

No. CS-02-0190-WFN

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

COMES NOW the plaintiff, by and through her undersigned attorneys, and for her cause of action against Defendants alleges as follows:

Attest A True Copy
James R. Larsen Clerk
United States District Court
Eastern District of Washington
By _____
Deputy Clerk

and officers of the Watch Tower Bible and Tract Society of Pennsylvania, Inc. and the Watchtower Bible and Tract Society of New York, Inc. The Governing Body, as directors, used those two legal entities to direct all of the organization Jehovah's Witnesses and its affairs around the world. The ultimate power of the organization of Jehovah's Witnesses rests with the Governing Body which has authority over every person and all matters in the organization and its world wide operations including, but not limited to, the appointment of congregation officials, the promulgation of organizational policies and procedures, management of property and assets, conduct of organization controlled entities, the discipline of individual Jehovah's Witnesses and furthering the overall welfare of the organization and its followers, especially its children. The authority of the Governing Body in the organization of Jehovah's Witnesses is absolute. The Governing Body is organized into six committees: The Chairman's Committee, the Writing Committee, the Teaching Committee, the Publishing Committee, the Personnel Committee, and the Service Committee.

6. The central headquarters for the organization of Jehovah's Witnesses is located at 25 Columbia Heights, Brooklyn, New York 11201, the address of Defendant Watchtower Bible and Tract Society of New York, Inc. The organization of Jehovah's Witnesses maintains a central repository of records of organization members (herein "publishers") at its facilities in Patterson, New York under the control of the Service Department, including the formal disciplinary history of all publishers. A publisher who has been disciplined by being removed from the organization of Jehovah's Witnesses has been disassociated or "disfellowshipped" and cannot be reinstated without the consent of the Governing Body or its appointed

EYMANN • ALLISON • FENNESSY • HUNTER • JONES P.S.
601 WEST MAIN AVENUE, SUITE 801 • SPOKANE, WA 99201
TELEPHONE: (509) 747-0101 • FAX: (509) 458-5977

entities. The Governing Body has ultimate power to bar a publisher from serving in the organization of Jehovah's Witnesses in any capacity.

7. The Charter of the Watchtower Bible and Tract Society of New York, Inc. states in part that its corporate purposes are, charitable, benevolent and religious purposes, the moral and mental improvement of men and women, the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and for religious missionary work, and for the purposes of maintaining and conducting classes for the instruction of men and women on the premises or by mail.

8. The Governing Body administers the organization of Jehovah's Witnesses through a multi-level structure. The local level consists of the congregations of Jehovah's Witnesses, such as the Defendant Othello Spanish Congregation of Jehovah's Witnesses. The congregations consist of elders, ministerial servants, pioneers and other congregational publishers.

A congregation's elders are appointed by the Governing Body as the spiritual leaders of the congregation and are held out by the organization of Jehovah's Witnesses as qualified spiritual shepherds. All of the elders of a congregation, whether they hold a specific servant position or not, make up the "body of elders." The specific servant positions within the body of elders are Presiding Overseer, Secretary, Service Overseer, Watchtower Study Conductor, Theocratic School Overseer and Book Study Overseer. The body of elders presides over certain congregational matters, including judicial matters, and all publishers must respect and obey decisions made by the body of elders. Judicial matters within a congregation include any infraction of what the

Governing Body has deemed to be a breach of God's law. Allegations of child molestation made by and against publishers within a congregation are considered judicial matters and are handled by the body of elders, as directed by the Governing Body.

Ministerial servants are recommended by the body of elders and appointed by the Governing Body to administer the secondary administrative work of the congregations. According to the Governing Body, ministerial servants are viewed as examples to the flock and must be viewed with respect.

Pioneers are full time ministers who lead the door-to-door work putting in a set number of hours each month and are viewed as examples for the congregation and also are given due honor and respect.

9. The next level of the organization of Jehovah's Witnesses is the Circuit Overseer. The Circuit Overseer generally appoints two foremost elders within the circuit to be Substitute Overseers, who fulfill the Circuit Overseers role when the Circuit Overseer is not available. All communication received at a congregation from a Circuit Overseer or a Sub-Circuit Overseers is considered to be instructions direct from the Governing Body. Each circuit has approximately twenty congregations.

The level above the circuit is the district, which has a District Overseer. Each district has approximately ten circuits.

Above the district level are the worldwide "zones" which are made up of branch members and a branch office. In the branch offices, there are Branch Committees to oversee the work in the countries of their jurisdiction. Working at branches around the world are volunteer Jehovah's Witnesses who are termed Bethelites.

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In the United States Branch there are three Bethel complexes; one at the worldwide headquarters in Brooklyn, New York; one in Patterson, New York; one in Walkill, New York. The major departments at the Brooklyn complex are the Writing Department, Treasury Offices and Executive Offices, including some of the Governing Body offices such as the corporate heads. Each Governing Body member oversees a particular department. The major departments in the Patterson, New York complex are the Legal and Service Departments. The Service Department is responsible for overseeing the preaching work, assembly programs, and has direct oversight of the congregations of Jehovah's Witnesses, including the elders, circuit and district overseers in the organization of Jehovah's Witnesses. The Service Department regularly issues letters to congregation elders, circuit and district overseers and congregations concerning administration, discipline, oversight and all matters pertaining to the organization of Jehovah's Witnesses. All of the entities discussed above ultimately answer to the Governing Body and the corporation known as the Watchtower Bible and Tract Society of New York, Inc.

10. The Governing Body of Jehovah's Witnesses has comprehensive, pastoral and administrative responsibility including primary responsibility for developmental programs involving congregational publishers and youth, overseeing the work of adults called to assist in teaching and spreading the word, determining the worthiness of all publishers who attend the Kingdom Halls of Jehovah's Witnesses and based on that determination choosing men who are called to serve as ministerial servants, elders, circuit and district overseers, and other positions of responsibility within the organization of Jehovah's Witnesses. The Governing Body, through its departments

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and other entities, is authorized to initiate serious disciplinary proceedings against all publishers including disassociation, disfellowshipping, deletion, acceptance of resignation, reinstatement, restrictions, restoration of privileges, public and private reproof and marking.

11. Publishers are encouraged to believe that the overseers, from elder to the Governing Body, are "appointed by Holy Spirit" to their office, that decisions of each overseer within the scope of their authority are guided by the Holy Spirit and the overseers are specially endowed with wisdom and understanding from their reading of the Bible. These "gifts in men" are entrusted with Bible education, congregational activity and spiritual direction of all the publishers including the children of Jehovah's Witnesses that attend the local Kingdom Halls. Publishers are expected to seek and comply with the advice of congregation elders, ministerial servants, circuit and district overseers, Bethel elders, and ultimately the Governing Body on matters involving important decisions in their daily lives.

12. Without exception, all Jehovah's Witnesses must follow the direction, guidance and policies promulgated by the organization of Jehovah's Witnesses.

13. Individuals in the organization of Jehovah's Witnesses become publishers through a ritual of baptism. As directed by the Governing Body, publishers donate personally and collect donations through the local congregation and forward all monies to the home office in their respective country for international operations of the worldwide preaching work.

14. Adult male publishers are eligible to be "elders" of the church and elevated to this position by meeting certain Scriptural requirements. These male

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publishers are then recommended to the Service Department in Patterson, New York by the Service Committee of the local congregation to have met the precepts laid out by the Governing Body. Publishers are instructed that all elders are exemplary in conduct and are to be respected and obeyed if they are appointed.

15. All publishers are expected to prosthelitize the religion of Jehovah's Witnesses and to offer and provide religious instruction to prospective converts, including children.

16. At all times relevant, Defendant Manuel Beliz was one of Jehovah's Witnesses, and received appointments as ministerial servant and as an elder while associated with the Defendant Othello Spanish Congregation of Jehovah's Witnesses in Othello, Washington. Defendant Manuel Beliz lived in the state of Washington at all times relevant herein, was tried and convicted of a felony in Washington, and is currently incarcerated in the state of Washington. Defendant Manuel Beliz has a history of sexual and physical abuse of children.

III.

VENUE

17. Venue is properly in this Court pursuant to 28 U.S.C. § 1391(a).

IV.

OPERATIVE FACTS

18. John White, at all times relevant, was an elder in the Othello Spanish Congregation of Jehovah's Witnesses. As directed by the Governing Body, the elders of the congregation have specific authority regarding dissemination of communication, and are authorized representatives of the organization of Jehovah's Witnesses to

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receive reports of possible wrongdoing and offer congregational discipline to the organization's publishers.

19. Defendant Beliz met Plaintiff as the Defendant Othello Spanish Congregation of Jehovah's Witnesses when she was an infant. Beliz started sexually abusing Plaintiff when she was four years old. Beliz' abuse continued on a weekly basis until Plaintiff's family moved out to Sacramento, California when Plaintiff was eleven years old.

20. During the seven years of sexual abuse, Defendant Beliz would warn Plaintiff that she would be shunned from the congregation and the organization of Jehovah's Witnesses if she told anyone about the abuse. Because Defendant was a ministerial servant at the Defendant Othello Spanish Congregation, Plaintiff feared she would and her family would be shunned and did not tell anyone about the abuse.

21. After Plaintiff and her family moved to Sacramento, they became members of the Las Palmas Congregation of Jehovah's Witnesses in Sacramento, California.

22. As part of the organization of Jehovah's Witnesses, Plaintiff and her parents were taught to respect the teachings of the organization of Jehovah's Witnesses and to bring any problem with a fellow publisher to the elders. Pursuant to these instructions and teachings, Plaintiff reported the sexual abuse by Beliz to elders in the Las Palmas Congregation Carlos Chicas and Milton Malendez.

23. In accord with directions to publishers, policies and practices of the organization of Jehovah's Witnesses, the elder Chicas told Plaintiff she should keep the matter within the organization of Jehovah's Witnesses. Chicas told Plaintiff that

she should "not say anything" and that "we will take care of it." Chicas told Plaintiff that he would call the Othello Spanish Congregation and tell them about Beliz' sexual abuse of Plaintiff. Chicas did call John White at the Othello Spanish Congregation and told him about the Beliz' abuse of Plaintiff.

24. Plaintiff subsequently learned that Beliz was not disciplined in any way at first by the Othello Spanish Congregation after he report of his abuse. Beliz continued to minister and be active in the Othello Spanish Congregation for several months. It was only after repeated complaints to the Othello congregation that an announcement was read in October of 1996 that Beliz was disfellowshipped but was quickly reinstated in June of 1997. Plaintiff contacted Milton Malendez and told him she was planning to report Beliz to the police. Malendez warned Plaintiff that she would be disfellowshipped from the organization of Jehovah's Witnesses and her family would no longer speak to her. Plaintiff challenged Malendez, and asked him how she could be disfellowshipped if she was speaking the truth. Malendez confirmed that even if she was speaking the truth she still would be disfellowshipped. Plaintiff contacted the Sacramento police, who contacted the Othello police and Beliz was subsequently arrested.

25. Beliz was tried and convicted of several counts of criminal sexual conduct with a minor in the Superior Court of Washington for Adams County. At his sentencing, elder John White spoke and admitted to the court that the congregation knew that Beliz was a bad man in the 1980's and the 1990's but told the court if you punish Beliz now, he will be punished for the man he was, not the man he is now.

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White also stated that he could not believe Defendant had abused the Plaintiff to the extent she had testified to.

26. At all times relevant, Washington had a mandatory reporting statute, requiring the report of suspected child abuse including sexual abuse to law enforcement authorities. Said statute mandates a report by ministers of suspected child abuse to designated authorities. At all times material, the elders of the Othello Spanish Congregation were "ministers" of the church defendants such that they had a duty to report under this reporting statute. None of the elders of the Othello Spanish Congregation reported the suspected abuse of Plaintiff to any designated authority.

27. Defendant Beliz was ultimately convicted of two counts of first degree child rape and two counts of first degree child molestation of Plaintiff Erica Rodriguez and was sentenced to prison for eleven years.

28. As a result of the sexual abuse, Plaintiff Erica Rodriguez has incurred and will continue to incur, costs for counseling and psychological treatment, has lost earning capacity and has suffered and will continue to suffer extreme, permanent emotional distress and psychological harm with accompanying physical manifestations.

29. The information reported to elders White, Chicas and Malendez was such that they were required by law to report the information to law enforcement authorities. The elders were agents of Defendant Othello Spanish Congregation and were acting in the course and scope of this agency in accordance with the organizational policies and practices of the Defendant Watchtower Bible and Tract Society of New York, Inc.

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30. Despite knowing of his abuse of Plaintiff and others, the Othello Spanish Congregation gave Beliz the appointments of ministerial servant and elder in the Othello Spanish Congregation, rather than investigating and taking proper remedial action against Beliz and taking reasonable steps to protect children of the Congregation, including Plaintiff. As a direct result of the failure to report the child abuse by Beliz, the sexual abuse of the Plaintiff continued.

31. Prior to and during Beliz' physical and sexual abuse of Plaintiff, Defendants Othello Spanish Congregation of Jehovah's Witnesses and Watchtower Bible and Tract Society of New York Inc., through agents and elders knew or had reason to know that Beliz had the propensity and an uncontrollable urge to engage in sexual abuse of children under his control, and that he had sexually abused one or more Jehovah's Witnesses' children under his control. Defendants negligently failed to take reasonable steps to prevent Beliz from further abusing children, including the Plaintiff.

32. After reports of suspected abuse were made to the elders of the Othello Spanish Congregation of Jehovah's Witnesses by Plaintiff, the elders responded in accordance to the organization of Jehovah's Witnesses instructions, practices, policies and procedures, as promulgated by the Governing Body, in regard to possible abuse of children by one of Jehovah's Witnesses. The organization of Jehovah's Witnesses has specifically developed policies, practices and procedures that dictate the elders to be appropriate authorities to whom abuse by publishers is to be reported. The organization of Jehovah's Witnesses requires adherence to an ancient edict/policy that has been restated to the public and to the publishers within the organization repeatedly.

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The edict/policy requires two eyewitnesses to abuse before a matter can be established. Pursuant to this edict/policy, the elders are charged with investigating the accusation. The elders have no experience or training in child abuse investigation. Under this edict/policy, if the accused denies the charge, the elders require the accuser or victim to produce witnesses and/or supporting evidence to prove the allegation. The accuser and/or victims are required to prove they are telling the truth by producing people who watched the abuse happen, or present tangible proof such as photographs, DNA or physical evidence. Because child physical and sexual abuse is not susceptible to eyewitness, physical, photographic or other tangible proof and is not committed in the presence of eyewitnesses, the victims often cannot offer the required proof and the organization regards and adjudicates the accused innocent. The victim and/or accuser is required to not warn others, pursuant to practice, policy and procedure, or to speak about the matter to anyone under penalty of discipline by the organization which could include disfellowshipping. Disfellowshipping results in termination and isolation from family and all friends who are Jehovah's Witnesses until the victim/accuser agrees to live by the edict/policy of the organization. Further the victim/accuser is often intimidated and not encouraged to report suspected abuse by a publisher to the authorities outside the organization of Jehovah's Witnesses as it would bring reproach on God and the organization.

33. When one of Jehovah's Witnesses violates organizational policy and does not obey directives offered by the Body of Elders who operate the direction of the Governing Body, to remain silent about accusations of child molestation within the congregation, that publisher is sanctioned by the organization and sometimes

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disfellowshipped. In contrast, the accused Jehovah's Witness is routinely given sanctuary, protection, sympathy and support from the organization and other publishers. As a result of those policies and practices, Plaintiffs' mother was sanctioned by the organization for reporting her suspicions of Beliz' abuse of children, while the elders of the Othello Spanish Congregation spoke at Beliz's criminal sentencing hearing in support of the Defendant.

34. When Plaintiff brought the information to the elders in the organization of Jehovah's Witnesses, the elders acted in accord with the above-mentioned practice, policy, protocol and instructions in all respects and in the course and scope of their positions as agents of the church defendants. The organization's longstanding policy and practice of minimizing, defending and tolerating abuse by congregation publishers, negligently permitted the abuse to occur and breached a legal duty to Plaintiffs to protect them and to prevent said abuse from occurring.

35. Defendant Watchtower Bible and Tract Society, Inc. knowingly allowed, permitted and encouraged Beliz' abuse of the Plaintiff in one or more of the following ways:

a. by Defendant Watchtower Bible and Tract Society Inc.'s longstanding pattern and practice of: (1) openly and notoriously tolerating, minimizing and defending the abuse of children by publishers and elders; (2) blaming, humiliating and disciplining victims/accusers of abuse instead of the perpetrators; and (3) refusing and failing to report such abuse to law enforcement and governmental child welfare agencies and discouraging church

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publishers from making such reports and requiring church publishers to not make such reports.

b. by allowing Beliz to continue to have unsupervised, unlimited access to his own children and remain a publisher in good standing in the organization.

c. by failing to report Beliz' abuse of children to law enforcement or child protective agencies.

d. by failing to warn other organization publishers, family publishers and others at risk of Beliz' abuse.

e. by failing to train its employees, volunteers and appointed overseers to prevent, identify, investigate, respond to or report child abuse.

f. by failing to adopt policies and procedures for the protection of children or to appoint publishers and overseers in the congregation to monitor the implementation and compliance with such procedures that did exist.

g. by representing to the organization's membership and continuing Beliz as a publisher of the congregation in good standing, ultimately promoting him to ministerial servant and elder within the Othello Spanish Congregation.

36. Defendants' wanton negligence and breach of fiduciary duty are the result of intentional, conscious and outrageous indifference to the health, safety and welfare

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of the Plaintiff so as to constitute aggravating circumstances entitling Plaintiff to compensatory and enhanced compensatory damages.

37. The sexual abuse of Plaintiff and the circumstances under which it occurred caused Plaintiff to develop various coping mechanisms and symptoms of psychological distress, including great shame, guilt, self-blame, depression, repression and disassociation. As a result, Plaintiff was unable to perceive or know the existence or nature of their psychological and emotional injuries and their connection to the sexual abuse perpetrated upon her by Defendant Beliz.

V.

FIRST CAUSE OF ACTION:

NEGLIGENCE

38. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further alleges:

39. By failing to report the suspected abuse of the Plaintiff, and by the other acts alleged herein, Defendant Othello Spanish Congregation and Defendant Watchtower Bible and Tract Society of New York, Inc., permitted the sexual abuse of the Plaintiff to continue to occur.

40. As a direct result of Defendants' negligent conduct, Plaintiff has suffered the injuries and damages alleged herein.

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VI.

SECOND CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

41. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further allege:

42. Defendants Othello Spanish Congregation and Watchtower Bible and Tract Society of New York, Inc. had a special relationship to the Plaintiff, then a minor child, to protect her from harm.

43. Defendants negligently breached the fiduciary duty to Plaintiff by failing to take reasonable steps to prevent Beliz from continuing to molest Plaintiff, and/or by failing to warn or protect Plaintiff.

44. Child victims of sexual abuse by an authority figure are unlikely to openly disclose the abuse or seek counseling for the effects of it by reason of the position of authority of the perpetrator or the age of the victim until such time as the elders and other publishers of the organization of persons in control have acknowledged the crimes and offered spiritual support to the victim. Without such acknowledgment, the victim will tend to believe that they are responsible for the abuse and suffer in secrecy and silence and are unwilling and unable to openly disclose the abuse for fear of retribution, humiliation by the perpetrator or be disfellowshipped from the organization.

45. After receiving reports of Beliz' abuse of one or more children, Defendants with intent to keep that information from Plaintiff and other victims similarly situated thereby willfully concealed that information and has continually

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breached their duty to Plaintiff by failing to investigate adequately whether others had been victimized, failing to notify others that it was safe to disclose they had been abused by Beliz and failing publicly to acknowledge Beliz' crimes either to the public or within the organization of Jehovah's Witnesses.

46. As a direct result of Defendants' concealment of Beliz' crimes and its breach of fiduciary duty, the Plaintiff did not know that she was not at fault, did not know that she could be believed if she would report it and to various degrees maintained the secrecy of the abuse, blamed herself and failed to seek counseling for the effects of it and has thus been unable to heal from the effects of the abuse and discover or appreciate how the abuse had permanently and indelibly affected her psychological well-being. Thus Plaintiff did not discover Defendants' concealment of Beliz' crimes and its breach of fiduciary duty until two years within the filing of this complaint.

47. As a direct result of Defendants' negligent conduct, Plaintiff has suffered the injuries and damages alleged herein.

48. Defendants' concealment of Beliz' crimes and its breach of fiduciary duty was intentional and malicious and/or the result of reckless and outrageous indifference to a highly unreasonable risk of harm and a conscious indifference to Plaintiff's health, safety and welfare which conduct is socially intolerable and part of a longstanding pattern of concealing abuse of children by publishers and officials of the church. Plaintiff is entitled to enhanced compensatory damages.

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VII.

THIRD CAUSE OF ACTION:

CHILDHOOD SEXUAL ABUSE

49. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count and further allege:

50. Over a course of six years, Defendant Beliz engaged in a pattern of intentional, unwanted sexual intercourse and touching of Plaintiff.

51. As a direct result of this unlawful conduct, Plaintiff has suffered the injuries and damages alleged herein.

VIII.

CAUSATION AND DAMAGES

52. Plaintiff realleges each and every allegation as set forth in paragraphs 1-51 herein.

53. Equitable relief, such as back pay or prospective relief are inappropriate, rather Plaintiff is entitled to the broadest of monetary damage remedies.

54. As a direct and proximate result of the above-described acts of the Defendants, Plaintiff has suffered severe physical and emotional distress, inconvenience, pain and suffering, humiliation, anxiety, loss of enjoyment of life, and other non-pecuniary losses as previously alleged herein and will continue to so suffer in the future.

55. As a direct and proximate result of the above-described acts of the Defendants, Plaintiff has suffered destruction of her enjoyment of her religion, destruction of her trust in her community and society in general, the destruction of

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Plaintiff's faith in the values and traits as defined in RCW 28A.150.211, as well as past and future economic and/or earning capacity loss.

IX.

JURY DEMAND

56. A jury trial is requested.

X.

PRAYER

WHEREFORE, Plaintiff seeks the following relief:

1. Compensation for past, present and future medical and related health care expenses;
2. Compensatory damages for past, present and future pain, suffering and other general and non-pecuniary damages as herein before alleged;
3. Compensatory damages for past, present and future loss of enjoyment of life;
4. Compensatory damages for pecuniary losses including lost earning capacity, past and future;
5. For prejudgment interest on liquidated damages;
6. For reasonable attorneys' fees and costs of litigation; and
7. For such other and further relief as the Court may deem just and equitable.

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Dated this 29th day of May, 2002.

EYMANN, ALLISON, FENNESSY,
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and Othello North Spanish Congregation

The Honorable Wm. Fremming Nielsen

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AUG 05 2002

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

ERICA RODRIGUEZ, a single person, Plaintiff, vs. WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., a New York corporation; OTHELLO SPANISH CONGREGATION OF JEHOVAH'S WITNESSES, an unknown legal entity; and MANUEL BELIZ, individually and on behalf of his marital community, Defendants.	No. CS-02-0190-~~WFS~~ EFS **DEFENDANTS WATCHTOWER AND OTHELLO (NORTH) SPANISH CONGREGATION'S ANSWER TO PLAINTIFF'S COMPLAINT** **And** **JOINDER IN DEMAND FOR JURY TRIAL**

Attest A True Copy
James R. Larsen Clerk
United States District Court
Eastern District of Washington
By _____
Deputy Clerk

The defendants, WATCHTOWER BIBLE and TRACT SOCIETY OF NEW YORK, INC., (hereinafter "Watchtower") and OTHELLO SPANISH CONGREGATION OF JEHOVAH'S WITNESSES (hereinafter "Othello North Spanish Congregation"), by and through their attorneys, Paine, Hamblen, Coffin, Brooke & Miller LLP, Gregory J. Arpin and Donald G. Stone, for answer to plaintiff's complaint, admit, deny, and allege as follows:

I.

JURISDICTION

Admit that the amount in controversy exceeds $75,000 and that diversity of citizenship exists between the plaintiff and the defendants. Further admit that this Court has jurisdiction over the subject matter of the plaintiff's complaint under the authority cited in paragraph I of plaintiff's complaint. Defendants deny any remaining allegations of paragraph I of plaintiff's complaint.

II.

PARTIES

1. With reference to paragraph 1 of plaintiff's complaint, admit that plaintiff Erica Rodriguez previously resided in the State of Washington; admit

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that she currently resides in Sacramento, California; admit that she is presently of the age of majority; and further admit that plaintiff and her parents previously attended services of the Othello North Spanish Congregation of Jehovah's Witnesses in Othello, Washington. Defendants deny any remaining allegations of paragraph 1 of plaintiff's complaint.

2. With reference to paragraph 2 of plaintiff's complaint, admit that defendant Othello Spanish Congregation of Jehovah's Witnesses, more properly known as Othello North Spanish Congregation of Jehovah's Witnesses located in Othello, Washington, is an unincorporated association and a part of the worldwide religious organization known as Jehovah's Witnesses, but deny any remaining allegations of paragraph 2 of plaintiff's complaint.

3. With reference to paragraph 3 of plaintiff's complaint, admit that at one time, plaintiff and her parents were publishers and previously associated with the Othello North Spanish Congregation of Jehovah's Witnesses, but deny any remaining allegations of paragraph 3 of plaintiff's complaint.

4. Deny paragraph 4 of plaintiff's complaint.

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5. With reference to paragraph 5 of plaintiff's complaint, admit that the Governing Body exercises spiritual oversight of the organization of Jehovah's Witnesses worldwide; admit that such Governing Body presently consists of 11 men, who are part of what is known as the Faithful and Discreet Slave described at Matthew 24:45-47; admit that all members of the Governing Body are spirit-anointed Christians that have a heavenly hope; admit that some of the members of the Governing Body served as members of the Board of Directors and as officers of Watchtower Bible and Tract Society of Pennsylvania, Inc., and of Watchtower Bible and Tract Society of New York, until October, 2000; further admit that the Governing Body used Watchtower Bible and Tract Society of Pennsylvania, to help carry out the activities of Jehovah's Witnesses worldwide; admit that the Governing Body exercises spiritual oversight over the organization of Jehovah's Witnesses worldwide and oversees the appointment of congregation elders and ministerial servants; admit that the Governing Body has six committees (Chairman's, Writing, Teaching, Publishing, Personnel and Service); and admit that the Governing Body overseers the promulgation of policies and procedures for the spiritual, physical, and emotional welfare of all persons

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associating with Jehovah's Witnesses, as well as for all of mankind in general, but deny any remaining allegations of paragraph 5 of plaintiff's complaint.

6. With reference to paragraph 6 of plaintiff's complaint, admit that the address for defendant Watchtower Bible and Tract Society of New York, Inc., is 25 Columbia Heights, Brooklyn, New York 11201, and the Governing Body does have ultimate spiritual authority to bar a publisher from serving in certain positions of responsibility within the organization of Jehovah's Witnesses. Deny any remaining allegations of paragraph 6 of plaintiff's complaint.

7. Admit paragraph 7 of plaintiff's complaint.

8. With reference to paragraph 8 of plaintiff's complaint, admit that the Governing Body exercises spiritual oversight over the organization of Jehovah's Witnesses worldwide; admit that the Othello North Spanish Congregation of Jehovah's Witnesses has publishers, elders, ministerial servants, pioneers and others; admit that the Governing Body oversees the appointment of congregation elders, who are those individuals who have demonstrated by their speech and conduct that they meet the spiritual requirements to serve as an elder, and further admit that elders serve as

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spiritual shepherds and teachers for their local congregation. Defendants further admit that the elders in a local congregation are referred to as the "body of elders" and that the positions of congregation Presiding Overseer, Secretary, Service Overseer, Watchtower Study Conductor, Theocratic School Overseer and Book Study Overseer are held by elders. Further admit that elders also investigate and respond to allegations of serious sins involving a congregation publisher in accordance with the Holy Scriptures and the procedures and policies established by the Governing Body of Jehovah's Witnesses. Further admit that ministerial servants are recommended by the body of elders and appointed under the oversight of the Governing Body to render a variety of practical services within the congregation, and further allege that those individuals who are appointed as ministerial servants are men who have demonstrated by their speech and conduct that they reasonably meet the spiritual qualifications for such a position. Allegations of child molestation made against congregation publishers are investigated by congregation elders. Defendants admit that publishers who are appointed as ministerial servants are individuals who have given evidence through their speech and conduct that they reasonably meet the spiritual qualifications for such a position; admit that

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a regular pioneer is a publisher who has demonstrated exemplary speech and conduct, and whose personal circumstances allow the spending of 840 hours per year in publicly preaching the good news of God's Kingdom. Defendants deny any remaining allegations of paragraph 8 of plaintiff's complaint.

9. With reference to paragraph 9 of plaintiff's complaint, defendants admit that congregations of Jehovah's Witnesses are organized into circuits which are composed of a number of congregations, and further allege that a qualified elder serves as a circuit overseer to visit and provide spiritual encouragement to each congregation in the circuit. Defendants admit that substitute circuit overseers under the oversight of a Governing Body exist to visit congregations if the circuit overseer is unavailable to do so; admit that several circuits are organized into a district and that some of the congregations within the district are visited by a district overseer who is appointed by the Governing Body to provide spiritual encouragement to the congregations in the district of assignment; admit that periodically arrangements are made by the Governing Body to have qualified elders serve as zone overseers to visit one or more of the branch offices of Jehovah's Witnesses worldwide; admit that in each of the branch offices of Jehovah's Witnesses around the world,

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there is a branch committee that provides spiritual oversight over the activities in the country or countries under their jurisdiction, and allege that Jehovah's Witnesses assigned as volunteers at branch offices are commonly referred to as "Bethelites," or members of the "Bethel" family; admit that there are three Bethel complexes in the United States located in Brooklyn, Patterson and Wallkill, New York; admit that the Executive Offices, Treasurer's Office, the majority of the Writing Department, and the Governing Body of Jehovah's Witnesses are located in Brooklyn, New York; admit that the United States branch Service Department and most of the Legal Department are located in Patterson, New York; admit that among the duties of the Service Department are the spiritual oversight of the congregations, elders, circuit and district overseers, and the preaching activity of Jehovah's Witnesses in the United States; further admit that from time to time the Service Department issues letters that provide spiritual assistance and guidance to congregations elders, circuit and district overseers, and to congregations, but deny any remaining allegations of paragraph 9 of plaintiff's complaint.

10. With reference to paragraph 10 of plaintiff's complaint, admit that the Governing Body of Jehovah's Witnesses provides spiritual oversight

over the activities of Jehovah's Witnesses worldwide and further admit that the Governing Body oversees the appointment of spiritually qualified men to provide spiritual oversight over branches, districts, circuits and congregations of Jehovah's Witnesses throughout the earth, but deny the remaining allegations of paragraph 10 of plaintiff's complaint.

11. With reference to paragraph 11 of plaintiff's complaint, admit that Jehovah's Witnesses teach that congregation elders, as well as members of the Governing Body, are appointed by Holy Spirit to their office of spiritual oversight; admit that Jehovah's Witnesses believe that wisdom and understanding can be acquired from reading and studying the Bible; admit that congregation elders serve as spiritual teachers for all persons associated with their congregation, but deny the remaining allegations of paragraph 11 of plaintiff's complaint.

12. With reference to paragraph 12 of plaintiff's complaint, allege that individual Jehovah's Witnesses exercise free choice as to whether or not they want to follow direction, guidance and policies promulgated by the organization, and further allege that many choose not to follow such direction. Further allege that no one is capable of, or expected to follow such to

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perfection, and deny the specific allegations in paragraph 12 of plaintiff's complaint.

13. With reference to paragraph 13 of plaintiff's complaint, defendants allege that there is much more to an individual Jehovah's Witness becoming a publisher than the ritual of baptism. Baptism is merely the final step. Further allege that publishers do not donate personally or collect donations because they are directed by the Governing Body or the local congregation. Defendants further allege that a publisher's choice to do so is on a voluntary basis based upon their own free will. Further allege that there is no record kept of what individual publishers do in this regard, and that some undoubtedly are incapable of donating and/or do not collect donations. Defendants deny any remaining allegations of paragraph 13 of plaintiff's complaint.

14. With reference to paragraph 14 of plaintiff's complaint, allege that some adult male publishers will never be eligible to be elders. Further allege that the recommendation for someone to be an elder is made by the entire local body of elders, and not by the Service Committee of the local congregation; allege that the recommendation is sent to the United States

branch where it is then reviewed by appointed elders in the Service Department. Further, defendants allege that publishers are not told that all elders are exemplary, and allege that publishers know that elders are imperfect humans who make mistakes, and further that some of them fall away from the faith and are far from exemplary. Further allege that when it becomes known that an elder is no longer conducting himself in an exemplary fashion, he is removed. Defendants deny any remaining allegations of paragraph 14 of plaintiff's complaint.

15. With reference to paragraph 15 of plaintiff's complaint, defendants allege that publishers are encouraged, but not expected, to teach Bible truths to others, to include the good news of God's Kingdom, and deny any remaining allegations of paragraph 15 of plaintiff's complaint.

16. With reference to paragraph 16 of plaintiff's complaint, admit that at various times in the past Manuel Beliz was associated with the Othello North Spanish Congregation of Jehovah's Witnesses and that he was a resident of the state of Washington during this association. Defendants further admit that subsequently, upon information and belief, Manuel Beliz was convicted of felony crimes involving sexual abuse of a minor and remains

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incarcerated in the state of Washington. Further allege that Manuel Beliz was disfellowshipped for a period of time, during which time Mr. Beliz would not have been one of Jehovah's Witnesses. Defendants deny the remaining allegations of paragraph 16 of plaintiff's complaint.

III.

VENUE

17. Admit that venue is proper in this Court pursuant to 28 U.S.C. §1391, but deny any remaining allegations of paragraph 17 of plaintiff's complaint.

IV.

OPERATIVE FACTS

18. With reference to paragraph 18 of plaintiff's complaint, admit that John White is an elder in the Othello North Spanish Congregation of Jehovah's Witnesses, and further admit that congregation elders administer spiritual counsel and discipline as needed to publishers associated with their local congregation, but deny any remaining allegations of paragraph 18 of plaintiff's complaint.

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19. Deny paragraph 19 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

20. Deny paragraph 20 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

21. With reference to paragraph 21 of plaintiff's complaint, admit that, upon information and belief, plaintiff and her family moved to Sacramento, California, and for a period of time were members of the Las Palmas Congregation of Jehovah's Witnesses at that location, but deny any remaining allegations of paragraph 21 of plaintiff's complaint.

22. With reference to paragraph 22 of plaintiff's complaint, admit that in June, 1996, plaintiff reported to Las Palmas Congregation elders Carlos Chicas and Milton Melendez that she had been sexually abused by Manuel Beliz, and deny any remaining allegations of paragraph 22 of plaintiff's complaint.

23. With reference to paragraph 23 of plaintiff's complaint, defendants admit that subsequent to receipt of the information referenced in paragraph 22 of plaintiff's complaint, elder Carlos Chicas contacted elder John White of the Othello North Spanish Congregation, and advised John White

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that plaintiff had made allegations that Manuel Beliz had sexually abused her. Defendants deny the remaining allegations of paragraph 23 of plaintiff's complaint.

24. With reference to paragraph 24 of plaintiff's complaint, admit that Manuel Beliz was disfellowshipped in 1996 and reinstated in 1998; admit that plaintiff provided information to police authorities in Sacramento, California, and Othello, Washington, which led to the subsequent arrest and conviction of Manuel Beliz, but deny the remaining allegations of paragraph 24 of plaintiff's complaint.

25. With reference to paragraph 25 of plaintiff's complaint, admit that Manuel Beliz was convicted of felony criminal sexual conduct with a minor in the Adams County Superior Court in Ritzville, Washington, and further admit that John White provided testimony to the court at the time of sentencing of Mr. Beliz, but deny the remaining allegations of paragraph 25 of plaintiff's complaint.

26. With respect to paragraph 26 of plaintiff's complaint, defendants deny that Washington had an applicable statute mandating any report by church ministers, to include elders of the Othello North Spanish Congregation

to report allegations of child abuse to law enforcement authorities, and specifically deny any lawful duty to do so under circumstance of the information related by plaintiff to church elders in Sacramento and/or as subsequently related to elder John White of the Othello North Spanish Congregation of Jehovah's Witnesses. Further allege that the applicable Washington statute (RCW 26.44.030) imposes no such requirement or duty as a matter of law. Defendants allege that the decision on reporting plaintiff's allegations to law enforcement authority was left to the sole discretion of plaintiff and/or her parents, and defendants deny any remaining allegations of paragraph 26 of plaintiff's complaint.

27. With reference to paragraph 27 of plaintiff's complaint, defendants admit that Manuel Beliz was subsequently convicted on felony charges based upon the information provided by the plaintiff to law enforcement authorities, but deny the remaining allegations of paragraph 27 for lack of present information upon which to form a basis for belief.

28. Deny paragraph 28 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

29. With reference to paragraph 29 of plaintiff's complaint, these defendants reallege their response to paragraph 26 of plaintiff's complaint, as if more fully set forth herein; admit that John White is an elder with the Othello North Spanish Congregation of Jehovah's Witnesses, and that Carlos Chicas is an elder of the Las Palmas Congregation of Jehovah's Witnesses in Sacramento, but deny any remaining allegations of paragraph 29 of plaintiff's complaint.

30. Deny paragraph 30 of plaintiff's complaint, and specifically allege that defendants did not learn of any allegations of sexual abuse by Manuel Beliz until after plaintiff first related such information in June, 1996, to elders of the Las Palmas Congregation of Jehovah's Witnesses in Sacramento, California.

31. Deny paragraph 31 of plaintiff's complaint.

32. With respect to paragraph 32 of plaintiff's complaint, defendants allege upon information and belief that elders John White and Carlos Chicas acted appropriately upon receiving information from plaintiff, but deny all of the remaining allegations of paragraph 32 of plaintiff's complaint.

33. Deny paragraph 33 of plaintiff's complaint.

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34. Deny paragraph 34 of plaintiff's complaint.

35. Deny paragraph 35 and subparts (a) – (g) thereof of plaintiff's complaint.

36. Deny paragraph 36 of plaintiff's complaint.

37. Deny paragraph 37 of plaintiff's complaint for lack of present information upon which to form a basis for belief, and specifically deny that plaintiff was unable to discover any injury caused by the sexually abusive actions of Mr. Beliz as of the time of her disclosure of such information in June, 1996.

V.

FIRST CAUSE OF ACTION:

NEGLIGENCE

38. These defendants incorporate their answer to all paragraphs of this complaint as necessary to respond to paragraph 38 of plaintiff's complaint.

39. Deny paragraph 39 of plaintiff's complaint.

40. Deny paragraph 40 of plaintiff's complaint.

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VI.

SECOND CAUSE OF ACTION:

BREACH OF FIDUCIARY DUTY

41. Defendants reallege their answer to all paragraphs of this complaint as necessary to respond to paragraph 41 of plaintiff's complaint.

42. Deny paragraph 42 of plaintiff's complaint.

43. With reference to paragraph 43 of plaintiff's complaint, defendants allege first knowledge of plaintiff's claims of sexual abuse by Manuel Beliz when such information was first provided in June, 1996; deny that any fiduciary duty was owed to plaintiff under the circumstances herein; deny that any duty was breached under the circumstances herein; and further deny any remaining allegations of paragraph 43 of plaintiff's complaint.

44. Deny paragraph 44 of plaintiff's complaint for lack of present information upon which to form a basis for belief, and specifically deny that plaintiff was unable to discover any injury caused by the alleged abusive acts of Manuel Beliz as of the date of the first disclosure to these defendants in June, 1996.

45. Deny paragraph 45 of plaintiff's complaint.

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46. Deny paragraph 46 of plaintiff's complaint.

47. Deny paragraph 47 of plaintiff's complaint.

48. Deny paragraph 48 of plaintiff's complaint.

VII.

THIRD CAUSE OF ACTION:

CHILDHOOD SEXUAL ABUSE

49. Defendants reallege their answer to plaintiff's complaint as necessary to respond to paragraph 49 of plaintiff's complaint.

50. Deny paragraph 50 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

51. Deny paragraph 51 of plaintiff's complaint for lack of present information upon which to form a basis for belief.

VIII.

CAUSATION AND DAMAGES

52. Defendants reallege their answer to plaintiff's complaint as necessary to respond to paragraph 52 of plaintiff's complaint.

53. Deny paragraph 53 of plaintiff's complaint.

54. Deny paragraph 54 of plaintiff's complaint.

55. Deny paragraph 55 of plaintiff's complaint.

IX.

JURY DEMAND

56. These defendants join plaintiff in a request for jury trial.

FOR FURTHER ANSWER TO PLAINTIFF'S COMPLAINT AND AS AFFIRMATIVE DEFENSES THERETO, defendants allege as follows:

1. Plaintiff's complaint fails to set forth a cause of action for which relief can be granted as against these answering defendants.

2. Plaintiff's service of process on defendant Watchtower was insufficient. Process server Angelo Rivera, of Avenger Process Services, Inc., stated in an Affidavit of Service that he left a copy of the plaintiff's complaint with Watchtower employee Ms. Donna Bush; however, Watchtower does not now and has not ever employed anyone by the name of Donna Bush.

3. The plaintiff's complaint is barred by operation of RCW 4.16.340.

4. These answering defendants owed no legal duty, and no fiduciary duty, to plaintiff under the circumstances herein such that her claims fail to

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state a cause of action for which relief can be granted as against these answering defendants.

5. Plaintiff's injuries and damages, if any, were due to the actions of Manuel Beliz, for whom these answering defendants have no lawful liability.

6. Plaintiff's injuries and damages, if any, were caused by the intervening, superseding actions or omissions of third-parties for whom these answering defendants have no lawful liability.

7. Plaintiff's injuries and damages, if any, resulted from her own fault, carelessness and negligence, and were not caused by the negligence of these answering defendants. If not the sole and proximate cause of plaintiff's injuries and damages, plaintiff's fault, carelessness and negligence was a contributing cause such that the amount of any damages must be reduced by the percentage of fault, carelessness or negligence as found to exist at the time of trial herein.

8. Plaintiff's claims are barred by the doctrine of laches.

9. Plaintiff's claims against these answering defendants must be dismissed under provisions of the United States Constitution, First

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Amendment, to specifically include the separation of church and state, and the freedom of religion.

10. Contrary to the assertions in plaintiff's complaint, RCW 26.44.030 does not require church ministers or clergy to report claims of sexual abuse of a minor, and any claims premised upon such allegation fail to state a claim for which relief can be granted herein.

11. Plaintiff has failed to mitigate her damages herein.

WHEREFORE, having fully answered plaintiff's complaint, and having asserted affirmative defenses thereto, these answering defendants pray that plaintiff's claim be dismissed with prejudice, and that these defendants be awarded their costs and disbursements herein, to include reasonable attorney

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fees, and such other and further relief as the Court may deem just and equitable under the circumstances herein.

DATED this 5th day of August, 2002.

PAINE, HAMBLEN, COFFIN,
BROOKE & MILLER LLP

By: _____
Gregory J. Arpin, WSBA #2746
Donald G. Stone, WSBA #7547
Attorneys for Defendants
Watchtower and Othello North
Spanish Congregation

PAINE, HAMBLEN, COFFIN, BROOKE & MILLER LLP
717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA 99201 PHONE: (509) 455-6000

CERTIFICATE OF SERVICE

I certify that on this 5th day of August, 2002, a true and correct copy of the foregoing DEFENDANTS WATCHTOWER AND OTHELLO SPANISH CONGREGATION'S ANSWER TO PLAINTIFF'S COMPLAINT and JOINDER IN DMAND FOR JURY TRIAL, was caused to be served as indicated below and addressed as follows:

Richard C. Eymann EYMANN, ALLISON, FENNESSY, HUNTER & JONES, P.S. 601 West Main Avenue, Suite 801 Spokane, WA 99201 Attorneys for Plaintiff	___ U.S. MAIL ✓ HAND-DELIVERED ___ OVERNIGHT MAIL ___ TELECOPY (FAX)
Timothy D. Kosnoff Attorney at Law Bellevue Place Building 800 Bellevue Way N.E., Suite 300 Bellevue, WA 98004-4229 Attorneys for Plaintiff	✓ U.S. MAIL ___ HAND-DELIVERED ___ OVERNIGHT MAIL ___ TELECOPY (FAX)
Jeffrey R. Anderson Jodean A. Thronson REINHARDT & ANDERSON E-1000 First National Bank Bldg. 332 Minnesota Street St. Paul, MN 55101 Attorneys for Plaintiff	✓ U.S. MAIL ___ HAND-DELIVERED ___ OVERNIGHT MAIL ___ TELECOPY (FAX)

Donald G. Stone

GREGORY J. ARPIN
DONALD G. STONE

00054314.DOC:bkm

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717 WEST SPRAGUE AVENUE, SUITE 1200
SPOKANE, WA 99201 PHONE: (509) 455-6000

BLUEBIRDonline.com (888) 477-3700

EXHIBIT 6

WATCH TOWER

BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

OFFICE OF THE SECRETARY AND TREASURER
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

AOA:AOB August 1, 1997

TO ALL ELDERS AND ACCOUNTS SERVANTS OF CONGREGATIONS WITH SOCIETY KINGDOM HALL LOANS

Dear Brothers:

Re: Remittance Forms for Society Kingdom Hall Loans

Please find enclosed your yearly supply of *Loan Remittance Forms* (T-6) which are only to be used to make your monthly Kingdom Hall loan payment to the Pennsylvania Corporation. Further information regarding this T-6 form can be found in paragraph 20 of the *Instructions for Congregation Accounting* (S(d)-27). Please be sure to give these forms to the brother responsible for sending the loan payments to the Society.

You will find in your annual shipment of service forms a year's supply of green pre-addressed envelopes. These green envelopes are to be used to forward all your monthly congregation remittances to the Society following the directions outlined below:

1. Use the *Loan Remittance Form* (T-6) and write <u>one check</u> for your loan payment.
2. Use the *Contribution Remittance Form* (S(d)-20) and write <u>one check</u> for your contributions and payment on Congregation Account (including KHAA).
3. Use one green envelope to mail the above <u>two forms</u> and <u>two checks</u> by the sixth of each month.

The presiding overseer, secretary and the accounts servant should read this letter and become familiar with these procedures. May Jehovah continue to bless your loyal support of Kingdom arrangements. Rest assured of our warm Christian love and best wishes.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosures

EXHIBIT 7

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

25 Columbia Heights
Brooklyn, NY 11201-2483

OFFICE OF THE SECRETARY AND TREASURER
RISK MANAGEMENT OFFICE

Phone (718) 625-3600
Fax (718) 560-5577

KEY FACTS ABOUT THE KINGDOM HALL ASSISTANCE ARRANGEMENT

September 1, 1998

(Replaces letter of October 1, 1995, which should be discarded)

WHAT IS THE KINGDOM HALL ASSISTANCE ARRANGEMENT (KHAA)?

The Society uses contributions designated for the KHAA to pay for property damage to Kingdom Halls as well as expenses and liability claims arising from accidents/incidents at Kingdom Halls. *This is not a commercial insurance program.* The Society's Risk Management Office administers the KHAA fund, using these contributions to make all payments. In addition, the fund is used to purchase commercial "excess" insurance to protect congregations and the Society from possible catastrophic losses.

If all other available avenues of aid are pursued first when a loss occurs, the KHAA funds remain available for cases of genuine need. A fine spirit is shown by those who give loving support to accident victims and provide volunteer labor for property repairs. Generally, family heads provide for their family's health needs, including accident-related expenses (w97 8/15 19,22). However, the Society is pleased to be able to render assistance when needed.

HOW DO WE PARTICIPATE IN THE KHAA?

Contributions Each year you will receive a letter suggesting a contribution amount based upon the needs of all those supported by the KHAA. Please send your contribution as soon thereafter as possible.

Existing Kingdom Halls The replacement costs for existing structures are reported to the Society on the *Property Description Form (T-50).* All congregations that own property were asked to update their values in 1997 by filling out one of these forms. If you have not already done so, please send a completed form to Risk Management at the above address. The Regional Building Committee may be able to help you calculate the replacement cost of your building.

Construction Prior to beginning construction, you should complete a *Kingdom Hall Under Construction Form (T-56)* available from Risk Management. If performance or other bonds are needed, please contact Risk Management. If the building project is canceled, please inform us in writing.

Purchased Buildings and Vacant Lots For newly purchased buildings, you should complete a *Property Description Form (T-50).* Vacant lots are automatically covered by your existing account.

Apartments Modest apartments on Kingdom Hall property, used by traveling ministers or special pioneers, can be included by request in the KHAA.

A Specific Certificate of Insurance may be obtained for certain cases, such as:

- General Liability coverage for rented facilities (such as are used by some congregations for the Memorial). Also, property damage assistance for contents owned by the congregation.
- Rental equipment damage, up to $10,000 per reported rental

In order for any special coverage to be in effect or for certificates to be issued, Risk Management needs to be notified in advance in writing.

Canceling KHAA Assistance If you wish to cancel your participation in the KHAA arrangement, please notify Risk Management in writing, providing the termination date. Your participation will not be automatically canceled due to failure to make the suggested contribution, so please provide cancellation notification in writing.

WHAT CAN WE DO TO KEEP KHAA COSTS DOWN?

Preventive maintenance is the key to controlling costs. Each year you will receive an *Annual Congregation Property Documents & Safety Inspection Worksheet (T-34)*. Its purpose is to help you identify potential areas of property damage or accidents that could result in losses. Please take immediate action in correcting any noted problems and document the action taken. Please file the completed checklist in the file of the congregation that holds title to the property.

Of course, more is required to prevent losses than filling out a checklist once each year. Elders should take the lead in spotting and correcting potential problems and safety hazards. It is our fine attitude towards safety and maintaining our properties in good repair that enables us to operate the KHAA at a cost much lower than would be possible for other organizations through commercial insurance. Since the losses of all those that participate affect the balance of the KHAA fund, it is in everyone's interest to reduce losses.

Often steps can be taken to keep costs to a minimum after a loss does occur. In the case of property damage, quick action can go far in preventing further loss. For example, if a storm causes damage that results in a leak, fixing the leak prevents further damage and reduces the amount needed from the fund to care for the incident. The use of Regional Building Committees and volunteer labor can save valuable contributed funds. Careful shopping for high quality materials will prove economical in the long run.

In the case of bodily injury, prompt, loving care to the injured will ensure as full and quick a recovery as is possible.

HOW TO REPORT ACCIDENTS RESULTING IN BODILY INJURY

1. Please ensure that the injured party receives appropriate medical attention as soon as possible. In most instances of serious injury it is best for an ambulance to transport the injured to a medical facility.
2. Appoint an experienced, mature elder to handle the accident. This will include ensuring that all the steps outlined in this arrangement are followed. The elder should review the information in this letter and complete an *Accident Report (T-5)* within one week. Have two brothers present while documenting the information for the form. While filling out the report, please follow the questions provided therein. Please do not ask any other questions such as who or what may have been at fault or the cause of the accident. Furthermore, do not make any reference to any legal action.
3. Report the accident by phone immediately if there is any mention of legal action or correspondence comes from an attorney. Generally, this would only occur if a worldly person was injured on your property. If this should occur, please obtain his/her name and address as well as the names and addresses of any witnesses, along with a full description of the incident.
4. Do not make any statements of fault, responsibility or liability about the cause of the accident to the injured or any other party, including governmental officials.
5. If any professional medical treatment is given, please call Risk Management at (718) 625-3600 within 48 hours to report the accident. This should be done even if the individual has personal insurance and will not be submitting any bills to the congregation. Please have the following information when calling: the *date* of the accident, the *name* of the injured, the *name* of the congregation, the *name* of the coordinating elder, his *telephone number*, and his *address*. You will be assisted with reminders concerning these procedures and we will be available to provide answers concerning any questions you may have.

6. Keep in close touch with the injured party and their family to see what further assistance may be needed in the home, etc. If the injured is not one of Jehovah's Witnesses, kindly offer to provide additional assistance and make needed arrangements. Show genuine Christian love and concern.

7. After you complete the *Accident Report (T-5)*, make a copy for the congregation files and send the original to Risk Management. When you receive any correspondence or bills related to the accident, please make a copy for the congregation files and forward the original to Risk Management.

The Society or its legal representative may contact the coordinating elder. Please keep in contact with the injured person if possible and notify Risk Management of any significant changes in the injured's status.

HOW TO REPORT INCIDENTS INVOLVING PROPERTY DAMAGE

1. Appoint an experienced elder to take the lead in managing the situation.

2. Protect the property from further damage, loss, or break-in.

3. Immediately report acts of theft and vandalism to the police. Please include a copy of the Police Report with the *Property Loss Report (T-55)* when this is sent to the Society.

4. In the event of a loss for which KHAA funds may be used, please contact Risk Management for recommendations on how to proceed.

5. Within 30 days after you discover the damage or loss, please send us bills or written estimates you obtained for all repairs or replacements made necessary by the loss along with the completed *Property Loss Report (T-55)*. If you cannot do this within 30 days, contact Risk Management. (Less estimates should not include labor costs if you are planning to use volunteers to do the work.)

In conclusion, we thank you for your careful review of the foregoing information. We are confident that all will continue to make a diligent effort to apply the suggestions set forth so that accidents, property losses and their associated costs will be kept to a minimum. May Jehovah bless our united efforts in promoting the interests of his Kingdom.

Watch Tower B. & T. Society
OF PENNSYLVANIA

Enclosures
cc: Regional Building Committees
Traveling Ministers

EXHIBIT 8

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
EXECUTIVE OFFICES
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A.
PHONE (718) 625-3600

GSC/AS January 2, 1995

TO ALL BODIES OF ELDERS

Dear Brothers:

Beginning with the district conventions in 1995 we will change the way individuals submit preliminary applications for Gilead School. Up until the present time the preliminary Gilead application form has been given to those interested at district conventions and they have filled in the information and returned them to the brother conducting the meeting at the district convention and in turn that brother has forwarded them to the Society. However, beginning with the 1995 district convention those interested in applying for Gilead School will be given the application to take home with them, along with a covering letter. They will fill in the information requested in the first half of the form and then will turn the application over to the congregation service committee in the congregation where they are assigned as pioneers. The congregation service committee then will fill in the lower half of the application, answering all of the questions propounded thereon. The application will then be sent to the circuit overseer, unless he is due to visit within a few weeks, in which case it will be held for his visit to the congregation. The circuit overseer will give his rating of the individual as requested on the form. If either the service committee of the congregation, or the circuit overseer wish to make additional comments that may be done on the reverse side of the application. The application should be promptly forwarded to the following address at the conclusion of the visit of the circuit overseer or by the circuit overseer if the applications are forwarded to him:

Watch Tower Bible and Tract Society
Attention: Service Committee of the Governing Body
25 Columbia Heights
Brooklyn, NY 11201

It is very important that these applications be given attention at the time of the visit of the circuit overseer, or be sent to him if his visit to the congregation is not scheduled in the near future, so that the applications can be sent to the Service Committee of the Governing Body and be duly processed so that Gilead classes can be formed. Please bear in mind that if you do NOT RECOMMEND the individual you should make it clear in your rating of the individual and in answering question No. 7 on the form. We want only those who are well qualified for the training and schooling provided at Gilead and who to the best of your knowledge will do well if given an assignment as a missionary in a foreign land.

Be assured of our love and best wishes.

Your brothers,

Watch Tower B. & T. Society
OF PENNSYLVANIA

FOR THE SERVICE COMMITTEE

EXHIBIT 9

JEHOVAH'S WITNESSES

PUBLIC AFFAIRS OFFICE

For Immediate Release *January 2, 2001*

Statement

Jehovah's Witnesses abhor all forms of wickedness including child abuse. We do not condone the actions of those who exploit children by this terrible crime and such persons are disfellowshipped (excommunicated) from the congregation. A known child molester does not qualify for appointment as a church elder or for any other position of responsibility in any congregation of Jehovah's Witnesses.

If child abuse becomes known to our church elders, they strictly comply with applicable child abuse reporting laws. We also encourage the wrongdoers to do everything they can to set the matter straight with the authorities. Furthermore, we do not prohibit or discourage the victim or the victim's parents from reporting child abuse to the authorities even if the alleged perpetrator is one of Jehovah's Witnesses. If you would like to receive more information on how we report such matters, please contact Mario Moreno, Watchtower Legal Department. (845) 509-0416 or (845) 306-1000.

A primary focus of Jehovah's Witnesses is to elevate me Bible's strong family values in all communities and to help willing ones come to know and serve God acceptably.

Contact: J. R. Brown, Director. Public Affairs Office, telephone: (718) 560-5600

Watch Tower, 25 Columbia Heights, Brooklyn, New York 11201-2483 USA.

Telephone: 718-560-5600 Facmile: 718-560-5619

EXHIBIT 10

JEHOVAH'S WITNESSES

PUBLIC AFFAIRS OFFICE

For Immediate Release *August7, 2001*

Statement

Sexual abuse of children is a terrible crime that can leave lasting emotional scars on its victims. Often, child molesters are attracted to organizations that have children as members, which makes protecting children from sexual abuse a complex and important societal concern.

Jehovah's Witnesses condemn child molestation, and they do not tolerate such activity within their membership. If there is sufficient evidence that someone has exploited children in this way, he may be disfellowshipped (excommunicated). A sincerely repentant former child molester may be allowed to remain a member of the faith, but he is strongly warned against being alone with children unless one of the parents or another responsible adult is also present. Moreover, as a protection to our children, former child molesters are not permitted to receive positions of responsibility in our religion.

If an accusation of child molestation is made against a member of the congregation, the elders immediately work to assure the safety of the victim. Also, they make every effort to comply with the law. This includes complying with laws that mandate reporting the incident to the proper authorities. This is even done when a child is the only one to report the wrong conduct or when the elders received the allegation of molestation in confidence.

The victim or the victim's family may also report the matter to the authorities. The have an absolute right to report and none should interfere with this. If you would like to receive more information on how we report such matters, please contact Mario Moreno, Watchtower Legal Department. (845) 509-0416 or (845) 306-1000.

Contact: J. R. Brown, Director. Public Affairs Office, telephone: (718) 560-5600

Watch Tower, 25 Columbia Heights, Brooklyn, New York 11201-2483 USA.

Telephone: 718-560-5600 Facmile:718-560-5619

EXHIBIT //

BLUEBIRD OFFICE SUPPLIES (888) 477-0700 www.bluebirdoline.com

EXHIBIT 12

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

Original via fax

May 9, 2002

Betsan Powys
BBC Panorama

Dear Ms. Powys:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

J. R. Brown
Director
Office of Public Information

JRB:at



EXHIBIT 13

10

WATCH TOWER
BIBLE AND TRACT SOCIETY OF PENNSYLVANIA
THE RIDGEWAY LONDON NW7 1RN ENGLAND
TELEPHONE 081-906 2211

January 30, 1992

TO ALL BODIES OF ELDERS IN BRITAIN

CONFIDENTIAL

Dear Brothers:

We are writing to help all of you as individual elders be aware of a growing concern regarding the handling of your duties that may involve legal issues or questions. **Owing to its importance, the presiding overseer should arrange for a special meeting of the body of elders to read and consider this letter carefully.** Please do not make any copies of this letter, nor should it be read by others. It should be kept in the congregation's confidential files for any future reference that may be required by the body of elders.

In spreading the Kingdom message, it is appropriate that we be bold and outspoken. Jesus commanded that "what you hear whispered, preach from the housetops." (Matthew 10:27) Even when worldly authorities demand that we keep silent, we reply as did the apostles: "We cannot stop speaking about the things we have seen and heard." (Acts 4:20) The Christian congregation will continue to declare the Kingdom message boldly until Jehovah says the work is done.

Elders share the obligation to shepherd the flock. However, they must **be careful not to divulge information about personal matters to unauthorized persons.** There is "a time to keep quiet," when "your words should prove to be few." (Ecclesiastes 3:7; 5:2) Proverbs 10:19 warns: "In the abundance of words there does not fail to be transgression, but the one keeping his lips in check is acting discreetly." Problems are created when elders unwisely reveal matters that should be kept confidential. Elders must give special heed to the counsel: "Do not reveal the confidential talk of another." (Proverbs 25:9) Often the peace, unity, and spiritual well-being of the congregation are at stake. Improper use of the tongue by an elder can result in serious legal problems for the individual, the congregation and even the Society.

While we as Christians are ready to forgive others who may wrong us, those in the world are not so inclined. Worldly persons are quick to resort to lawsuits if they feel their 'rights'

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alleged wrongdoer or by witnesses should be kept in strict confidence. If it is necessary to continue at a later time a committee hearing, the members of the committee should submit to the chairman any personal notes they have taken. The chairman will keep these notes in a secure place to prevent breaches of confidentiality. The notes may be returned to the individual elders when the hearing resumes. Upon conclusion of the case, the chairman should place only necessary notes and documents, a summary of the case, and the S-77 forms in a sealed envelope for the congregation file. Nothing should be preserved outside of this sealed envelope (including unnecessary personal notes) by any elder on the committee. Obviously, no committee will ever allow judicial proceedings to be tape recorded or allow witnesses testifying before the committee to take notes.

B. Child Abuse

Jehovah's people in no way condone crimes such as child abuse or endeavour to shield those committing offences of this nature. When elders receive reports of physical or sexual abuse of a child, they should contact the Society's Legal Desk immediately. Victims of such abuse need to be protected from further danger.—See "If the Worst Should Happen," *Awake!* January 22, 1985, page 8.

As members of the community in which Caesar still acts as God's minister and hence still has a certain authority, all in the Christian congregation would want to consider their personal and moral responsibility to alert the appropriate authorities in cases where there has been committed or there exists a risk that there might be committed a serious criminal offence of this type (see *kr91*, page 138). In child abuse cases such authorities might include the family doctor, the Social Services, the NSPCC, or the police.

C. Crimes and Criminal Investigations

In some cases the elders will form judicial committees to handle alleged wrongdoing that also could constitute a violation of Caesar's criminal laws (e.g. theft, assault, etc.). It is natural that the Christian congregation should find such situations to be distressing. There is clearly a need to balance the principle of "rendering Caesar's things to Caesar" (Matthew 22:21) with those concerning the spiritual cleanness of the congregation, such as 1 Corinthians 5:11-13. A case of this type should be considered on two levels.

Firstly, the secular Courts view it as their prerogative to examine criminal charges and to

judge the matter. Should congregation elders become involved in a matter which is *sub judice* they are in jeopardy of being seen to be involved in an "attempt" or "conspiracy to pervert the course of justice." This view may be taken by the authorities if there appears to be any pressure placed on witnesses, or on the person accused, to make or to refrain from making statements. Should any party change his testimony between the congregation judicial hearing and the trial this may emerge in cross examination. In view of the serious consequences of conviction for a criminal offence the lawyers acting for the accused party may advise that the case is not discussed with anyone before the trial. In all cases where a brother or sister is charged with a criminal offence, and that offence is also a violation of God's law necessitating the formation of a judicial committee, please contact the Society's Legal Desk immediately.

Applying this counsel may result in a lengthy delay in dealing with a serious matter. In such an event the congregation must be patient and wait on Jehovah. It may be advisable for the brother who has been accused not to be used for assignments until the matter is resolved. A charge which is to be heard in Court has, at least to a limited extent, become a matter of public knowledge. The brother who has been charged, even if he is innocent, will wish to co-operate in maintaining the good name of the Christian congregation. Of course, every case is different and it is not possible to make rules to cover every situation.

The second level to consider is when the alleged wrongdoer has made a confession. The congregation judicial committee may then proceed on the basis of the confession without waiting for the trial to be completed. Naturally the confession should be in writing and signed, or else heard by more than one witness. In such instance there is no need for the testimony of witnesses to establish guilt. Caution should still be exercised in case the guilty party changes his testimony between the judicial hearing and the trial, perhaps on the advice of a worldly lawyer. Also, should further wrongdoing come to light during the trial it would be necessary for the matter to be re-examined, as is true of any judicial matter when additional wrongdoing is discovered.

D. Search Warrants and Subpoenas

1. A search warrant is a court order authorizing the police to search premises to locate evidence that may be used in a criminal prosecution. No elder should ever consent to the search of a Kingdom Hall or any other place where confidential records are stored. However, when armed with a search warrant the police do not need consent and may even use force to accomplish their task. Likely before obtaining a search warrant, the police or other

governmental officials will make inquiries regarding confidential records, make request to obtain the records, or indicate that they will seek a search warrant if the elders(s) involved does not co-operate. In any such situation, the Society's Legal Desk should be contacted immediately.

If at any time an elder is confronted with a search warrant (whether given advance notice or not), the elder should first ask to read the warrant. After reading it he should ask if he can call for legal guidance and then telephone the Society's Legal Desk. If for some reason the Legal Desk cannot be contacted, the elder(s) involved should make every effort to obtain the assistance of a local solicitor for the purpose of protecting the confidentiality of the records. It may be impossible to stop determined officers from conducting the search authorized by the warrant. Conscientious elders will want to do all they reasonably and peaceably can to preserve the confidentiality of the congregation in harmony with the principle set out in Acts 5:29.

2. Subpoenas are demands for records or for the appearance of an individual at a trial or court hearing to give testimony. Subpoenas may be issued by a court or in some cases by a governmental agency or a solicitor. If an elder receives a subpoena, he should contact the Society's Legal Desk immediately. Never turn over records, notes, documents or reveal any confidential matter sought by subpoena without receiving direction from the Legal Desk.

In Scotland such orders are known as witness citations and diligence for recovery of documents.

E. When Lawsuits Are Threatened

If the congregation or the elders (in their capacity as elders) are threatened with a lawsuit the Society's Legal Desk should be contacted immediately. No statements should be made by any member of the body of elders about the merits or validity of an actual or threatened lawsuit without authorization from the Society.

F. Parental Rights And Responsibilities

Elders may learn that a publisher is facing a dispute over child care in a divorce proceeding. If parental rights are challenged on the basis of our Christian beliefs, or on the assertion that our beliefs are harmful to a child's best interests, the elders should immediately write to the Society's Legal Desk. In a rare emergency, a telephone call may be necessary. The Legal Desk will assess the facts and determine the degree of its involvement, if any, and

whether to send a *Litigation Pack*. The Legal Desk may be able to suggest a local solicitor who would be prepared to undertake family litigation involving Jehovah's Witnesses, if that is requested. Elders have no authority to make any promises about the Society's paying legal fees or handling specific cases. There is no need to contact the Society if there is no indication that the beliefs and practices of Jehovah's Witnesses will be attacked in a child care dispute.

When you write to the Society's Legal Desk about a specific case, please provide the following information:

1. The names of the parents and their solicitors, if instructed.
2. The number of children involved and their ages.
3. A brief description of the facts, including the presence of any apostates.
4. A short assessment of the Christian parent's spiritual condition.—Is he or she new in the truth? Active? Inactive? Balanced?
5. The status of the legal proceedings.—Has the matter gone to court? Has the hearing date been set? If so, when?

G. When Servants and Publishers Move

A considerable number of publishers, including elders and ministerial servants, move from one congregation to another. Sometimes the circumstances surrounding their departure are unsettled. Some appointed brothers may be experiencing problems that have brought their qualifications into question. It is not uncommon for a body of elders to hold back in giving counsel, allowing a brother to move without discussing his problem. Thereafter, they decline to recommend his re-appointment in his new congregation. Often such a brother protests, requiring extensive correspondence between the bodies of elders. Much personal, and sometimes embarrassing, information must then be passed on. Such mishandling of things greatly increases the potential for serious repercussions. Problems can be avoided by the body of elders assuming its responsibility to inform a brother that he will not be favourably recommended, fully explaining the reasons why. Every effort should be made to resolve any difference before he leaves, eliminating any need for controversy involving his new congregation. The body should assign two elders to meet with him before he moves, letting him know whether they are recommending him to the new congregation.

This would likewise apply to publishers who move at a time when their personal conduct requires investigation by the elders. If serious accusations of wrongdoing have been made against

an individual and he moves to another congregation before matters are finalized, usually it is best for the elders in the original congregation to follow through in handling matters, if possible and if distance permits. They are acquainted with the individual and the circumstances surrounding the alleged wrongdoing: this ordinarily puts them in the best position to get the facts and to handle the case. Handling matters in this way will eliminate the need to reveal confidential information about the private lives of individuals unnecessarily.

II. POINTS TO REMEMBER

A. Appreciate the Importance of Maintaining Confidentiality

Elders must exercise extraordinary caution when it comes to handling confidential information about the private lives of others. Do not mistakenly minimize the gravity of a breach of confidentiality. Unauthorized disclosure of confidential information can result in costly lawsuits. Even if a lawsuit turns out favourably, valuable time and energy that could have been devoted to Kingdom interests will be lost.

B. Do Not Make Statements to Secular Authorities Until You Receive Legal Advice from the Society

You are not legally required to make immediate responses to secular authorities about matters that could involve the disclosure of confidential information. Voluntarily allowing the Kingdom Hall or confidential records to be searched, where no search warrant is produced, could infringe on the legal rights of the congregation or of others. No statements should be made until you have an understanding of your legal position from the Society's Legal Desk.

C. Be Extremely Careful with Written Material

All material related to judicial matters should be kept in a safe place, accessible only to elders. **Final reports on the handling of judicial matters should be placed in a sealed envelope in the congregation file.** A judicial committee should avoid sending to an individual any kind of correspondence that accuses him of specific wrongdoing. (Note *ks91*, pages 110, 121.) **Nothing should be put in writing to any disfellowshipped person to advise him of his status or the reasons for it without specific direction from the Society.** The rules and procedures of Jehovah's Witnesses do not require such written disclosures. Anything in writing submitted to a judicial

committee should be kept in strict confidence. If a judicial committee disfellowships an individual, he should be informed orally of the action taken and of the right of appeal. If the wrongdoer refuses to attend the hearing, two members of the judicial committee should attempt to contact the individual at his home and inform him orally of the decision. If this is not possible, the two elders may be able to inform him by telephone.

D. Guard the Use of Your Tongue

Think before you speak. Do not discuss private and judicial matters with members of your family, including your wife, or with other members of the congregation. Be extremely careful not to disclose private information inadvertently when others are present, such as when speaking on the telephone with others listening in or nearby. At times, complicated judicial cases may necessitate consultation with an experienced, mature elder in another congregation or with the circuit overseer. Unless the circuit overseer is the elder consulted, only the pertinent details should be discussed and names should not be used.

Elders bear a heavy responsibility in ministering to the needs of the Christian congregation and observing confidentiality as they do so. (1 Corinthians 16:13) We trust that the information in this letter will help you carry this burden. Please be assured of our love and prayers. May Jehovah continue to bless you as you shepherd his flock.—1 Peter 5:1-3.

Your brothers.

Watch Tower B. & T. Society
OF PENNSYLVANIA

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 27 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH SERVICE OF SUMMONS** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

Cases **Exhibit No.**

Burger King Corp. v. Rudzewicz
(1985) 471 U.S. 462 1

International Shoe Co. v. Washington
(1945) 326 U.S. 310 2

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH SERVICE OF SUMMONS** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

BLUEBIRDcurling.com (866) 477-0700

EXHIBIT 1

Briefs and Other Related Documents

Supreme Court of the United States

BURGER KING CORPORATION, Appellant
v.
John RUDZEWICZ.

No. 83-2097.

Argued Jan. 8, 1985.
Decided May 20, 1985.

Franchisor brought action against franchisee alleging breach of franchise obligations and trademark infringement. The United States District Court for the Southern District of Florida entered judgment in favor of franchisor and franchisee appealed. The Court of Appeals for the Eleventh Circuit, 724 F.2d 1505, reversed and denied rehearing, 729 F.2d 1468. The Supreme Court, Justice Brennan, held that: (1) where it was not clear that Court of Appeals had found Florida long-arm statute unconstitutional as applied, Supreme Court did not have jurisdiction over appeal; (2) jurisdictional statement would be treated as petition for writ of certiorari; and (3) exercise of long- arm jurisdiction over Michigan franchisee in Florida did not offend due process.

Reversed and remanded.

Justice Stevens dissented and filed an opinion in which Justice White joined.

West Headnotes

[1] **Federal Courts** 453
170Bk453 Most Cited Cases

Where it was unclear whether Court of Appeals actually held statute unconstitutional as applied to the circumstances of the case, jurisdiction did not properly lie in the Supreme Court by appeal and appeal would be dismissed, with the jurisdictional statement treated as a petition for writ of certiorari, which would be granted. 28 U.S.C.A. § 1254(2).

[2] **Federal Courts** 455.1
170Bk455.1 Most Cited Cases
(Formerly 170Bk455)

Parties cannot stipulate to a particular construction of state law, and thereby obtain jurisdiction over appeal to Supreme Court, where state law might, in fact, be in harmony with the Federal Constitution; Supreme Court's jurisdiction is properly invoked only where a Court of Appeals has squarely held that the statute is unconstitutional on its face or as applied and jurisdiction does not lie if the decision might rest on other grounds. 28 U.S.C.A. § 1254(2).

[3] **Constitutional Law** 305(5)
92k305(5) Most Cited Cases

Due process clause protects an individual's liberty in not being subject to the binding judgments of a forum with which he has established no meaningful contacts, ties, or relations; although the protection operates to restrict state power, it is ultimately a function of the individual liberty interest preserved by the due process clause rather than a function of federalism concern. U.S.C.A. Const.Amend. 14.

[4] **Constitutional Law** 305(4.1)
92k305(4.1) Most Cited Cases
(Formerly 92k305(4))

[4] **Contracts** 127(4)
95k127(4) Most Cited Cases

Where forum selection provisions have been obtained through freely negotiated agreements and are not unreasonable and unjust, their enforcement does not offend due process. U.S.C.A. Const.Amend. 14.

[5] **Federal Courts** 76.10
170Bk76.10 Most Cited Cases

Where forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, fair-warning requirement is satisfied if the defendant has purposefully directed his activities at residence of the forum and the litigation results from injuries that arise out of or relate to those activities.

[6] **Federal Courts** 84
170Bk84 Most Cited Cases

Publisher who distributes magazines in a distant state may fairly be held accountable in that forum for damages resulting therefrom an allegedly defamatory story.

[7] **Federal Courts** 76.10

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170Bk76.5 Most Cited Cases

Individual's contact with an out-of-state party cannot alone automatically establish sufficient minimum contacts in the other party's home forum to permit exercise of jurisdiction in that forum.

[20] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Parties' negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated in determining whether the defendant has purposefully established minimum contacts with the forum.

[21] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Michigan franchisee who deliberately reached out beyond his state of residence and negotiated with a Florida franchisor for purchase of a long-term franchise and the manifold benefits that would derive from affiliation with the nationwide organization, who entered into a carefully structured 20-year relationship which envisioned continuing and wide-reaching contacts with Florida, who accepted regulation of his business from the Miami headquarters of the franchisor, and who was required to make monthly payments to the franchisor in Miami was constitutionally subject to long-arm jurisdiction in Florida in dispute arising out of the franchise arrangement. West's F.S.A. § 48.193(1)(g); U.S.C.A. Const.Amend. 14.

[22] Federal Courts ⚿76.30
170Bk76.30 Most Cited Cases

Although choice-of-law provision on a contract, standing alone, would be insufficient to confer jurisdiction in forum whose law is to apply, choice-of- law provision should not be ignored in considering whether defendant has purposefully invoked the benefits and protections of a state's law.

[23] Federal Courts ⚿76.15
170Bk76.15 Most Cited Cases

State of residence of nationwide franchisor had more than a negligible interest in providing a convenient forum, notwithstanding the franchisor's size and ability to conduct litigation anywhere in the country; absent compelling consideration, defendant who has purposefully derived commercial benefit from his affiliations in a forum may not defeat jurisdiction there simply because of his adversary's greater net wealth.

[24] Federal Courts ⚿101
170Bk101 Most Cited Cases

To the extent that it is inconvenient for a party who has minimum contacts with a forum to litigate there, the considerations can be accommodated through change of venue, rather than denial of jurisdiction.

[25] Federal Courts ⚿76
170Bk76 Most Cited Cases

Inconvenience which Michigan franchisee would suffer from litigating franchise dispute in Florida was not so substantial as to render it unconstitutional to subject him to jurisdiction in Florida.

[26] Federal Courts ⚿96
170Bk96 Most Cited Cases

Evidence sustained trial court's finding that franchisee was not the victim of misrepresentation, fraud, or duress in connection with franchise agreement rendering it unconstitutional to subject him to jurisdiction in franchisor's state of residence.

[27] Federal Courts ⚿76.5
170Bk76.5 Most Cited Cases

Quality and nature of an interstate transaction may sometimes be so random, fortuitous, or attenuated that it cannot fairly be said that the potential defendant should reasonably anticipate being haled into court in another jurisdiction.

***2176 *Syllabus* [FN*]**

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Appellant is a Florida corporation whose principal offices are in Miami. It conducts most of its restaurant business through a franchise operation, under which franchisees are licensed to use appellant's trademarks and service marks in leased standardized restaurant facilities for a period of 20

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years. The governing contracts provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required monthly fees and forwarding of all relevant notices to the Miami headquarters. The Miami headquarters sets policy and works directly with the franchisees in attempting to resolve major problems. Day-to-day monitoring of franchisees, however, is conducted through district offices that in turn report to the Miami headquarters. Appellee is a Michigan resident who, along with another Michigan resident, entered into a 20-year franchise contract with appellant to operate a restaurant in Michigan. Subsequently, when the restaurant's patronage declined, the franchisees fell behind in their monthly payments. After extended negotiations among the franchisees, the Michigan district office, and the Miami headquarters proved unsuccessful in solving **2177 the problem, headquarters terminated the franchise and ordered the franchisees to vacate the premises. They refused and continued to operate the restaurant. Appellant then brought a diversity action in Federal District Court in Florida, alleging that the franchisees had breached their franchise obligations and requesting damages and injunctive relief. The franchisees claimed that, because they were Michigan residents and because appellant's claim did not "arise" within Florida, the District Court lacked personal jurisdiction over them. But the court held that the franchisees were subject to personal jurisdiction pursuant to Florida's long-arm statute, which extends jurisdiction to any person, whether or not a citizen or resident of the State, who breaches a contract in the State by failing to perform acts that the contract requires to be performed there. Thereafter, the court entered judgment against the franchisees on the merits. The Court of Appeals reversed, holding that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process."

Held: The District Court's exercise of jurisdiction pursuant to Florida's long-arm statute did not violate the Due Process Clause of the Fourteenth Amendment. Pp. 2181-2190.

*463 (a) A forum may assert specific jurisdiction over a nonresident defendant where an alleged injury arises out of or relates to actions by the defendant *himself* that are purposefully directed toward forum residents, and where jurisdiction would not otherwise offend "fair play and substantial justice." Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum. Pp. 2181-2185.

(b) An individual's contract with an out-of-state party cannot *alone* automatically establish sufficient minimum contacts in the other party's home forum. Instead, the prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, must be evaluated to determine whether a defendant purposefully established minimum contacts within the forum. Pp. 2185-2186.

(c) Here, appellee established a substantial and continuing relationship with appellant's Miami headquarters, and received fair notice from the contract documents and the course of dealings that he might be subject to suit in Florida. The District Court found that appellee is an "experienced and sophisticated" businessman who did not act under economic duress or disadvantage imposed by appellant, and appellee has pointed to no other factors that would establish the *unconstitutionality* of Florida's assertion of jurisdiction. Pp. 2186-2190.

724 F.2d 1505 (CA11 1984), reversed and remanded.

Joel S. Perwin argued the cause and filed briefs for appellant.

Thomas H. Oehmke argued the cause and filed a brief for appellee.

Justice BRENNAN delivered the opinion of the Court.

The State of Florida's long-arm statute extends jurisdiction to "[a]ny person, whether or not a citizen or resident of this state," who, *inter alia*, "[b]reach[es] a contract in this state by failing to perform acts required by the contract to be performed in this state," so long as the cause of action *464 arises from the alleged contractual breach. Fla.Stat. § 48.193(1)(g) (Supp.1984). The United States District Court for the Southern District of Florida, sitting in diversity, relied on this provision in exercising personal jurisdiction over a Michigan resident who allegedly had breached a franchise agreement with a Florida corporation by failing to make required payments in Florida. The question presented is whether this exercise of long-arm jurisdiction offended "traditional conception[s] of fair play and substantial justice" embodied in the Due Process Clause of the Fourteenth Amendment.

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**2178*International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945).

I
A

Burger King Corporation is a Florida corporation whose principal offices are in Miami. It is one of the world's largest restaurant organizations, with over 3,000 outlets in the 50 States, the Commonwealth of Puerto Rico, and 8 foreign nations. Burger King conducts approximately 80% of its business through a franchise operation that the company styles the "Burger King System"--"a comprehensive restaurant format and operating system for the sale of uniform and quality food products." App. 46. [FN1] Burger King licenses its franchisees to use its trademarks and service marks for a period of 20 years and leases standardized restaurant facilities to them for the same term. In addition, franchisees acquire a variety of proprietary information concerning the "standards, specifications, procedures and methods for operating *465 a Burger King Restaurant." *Id.*, at 52. They also receive market research and advertising assistance; ongoing training in restaurant management; [FN2] and accounting, cost-control, and inventory- control guidance. By permitting franchisees to tap into Burger King's established national reputation and to benefit from proven procedures for dispensing standardized fare, this system enables them to go into the restaurant business with significantly lowered barriers to entry. [FN3]

FN1. Burger King's standard Franchise Agreement further defines this system as "a restaurant format and operating system, including a recognized design, decor, color scheme and style of building, uniform standards, specifications and procedures of operation, quality and uniformity of products and services offered, and procedures for inventory and management control...." App. 43.

FN2. Mandatory training seminars are conducted at Burger King University in Miami and at Whopper College Regional Training Centers around the country. See *id.*, at 39; 6 Record 540-541.

FN3. See App. 43-44. See generally H. Brown, Franchising Realities and Remedies 6-7, 16-17 (2d ed. 1978).

In exchange for these benefits, franchisees pay Burger King an initial $40,000 franchise fee and commit themselves to payment of monthly royalties, advertising and sales promotion fees, and rent computed in part from monthly gross sales. Franchisees also agree to submit to the national organization's exacting regulation of virtually every conceivable aspect of their operations. [FN4] Burger King imposes these standards and undertakes its rigid regulation out of conviction that "[u]niformity of service, appearance, and quality of product is essential to the preservation of the Burger King image and the benefits accruing therefrom to both Franchisee and Franchisor." *Id.*, at 31.

FN4. See, *e.g.*, App. 24-25, 26 (range, "quality, appearance, size, taste, and processing" of menu items), 31 ("standards of service and cleanliness"), 32 (hours of operation), 47 ("official mandatory restaurant operating standards, specifications and procedures"), 48-50 (building layout, displays, equipment, vending machines, service, hours of operation, uniforms, advertising, and promotion), 53 (employee training), 55-56 (accounting and auditing requirements), 59 (insurance requirements). Burger King also imposes extensive standards governing franchisee liability, assignments, defaults, and termination. See *id.*, at 61-74.

Burger King oversees its franchise system through a two-tiered administrative structure. The governing contracts *466 provide that the franchise relationship is established in Miami and governed by Florida law, and call for payment of all required fees and forwarding of all relevant notices to the Miami headquarters. [FN5] The Miami headquarters sets policy and works directly with its franchisees in attempting to resolve major problems. See nn. 7, 9, *infra*. Day-to-day monitoring of franchisees, however, is conducted through a network of 10 district offices which in turn report to the Miami headquarters.

FN5. See *id.*, at 10-11, 37, 43, 72-73, 113. See *infra*, at 2187.

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The instant litigation grows out of Burger King's termination of one of its franchisees, **2179 and is aptly described by the franchisee as "a divorce proceeding among commercial partners." 5 Record 4. The appellee John Rudzewicz, a Michigan citizen and resident, is the senior partner in a Detroit accounting firm. In 1978, he was approached by Brian MacShara, the son of a business acquaintance, who suggested that they jointly apply to Burger King for a franchise in the Detroit area. MacShara proposed to serve as the manager of the restaurant if Rudzewicz would put up the investment capital; in exchange, the two would evenly share the profits. Believing that MacShara's idea offered attractive investment and tax-deferral opportunities, Rudzewicz agreed to the venture. 6 *id.*, at 438-439, 444, 460.

Rudzewicz and MacShara jointly applied for a franchise to Burger King's Birmingham, Michigan, district office in the autumn of 1978. Their application was forwarded to Burger King's Miami headquarters, which entered into a preliminary agreement with them in February 1979. During the ensuing four months it was agreed that Rudzewicz and MacShara would assume operation of an existing facility in Drayton Plains, Michigan. MacShara attended the prescribed management courses in Miami during this period, see n. 2, *supra*, and the franchisees purchased $165,000 worth of restaurant equipment from Burger King's Davmor Industries division in *467 Miami. Even before the final agreements were signed, however, the parties began to disagree over site- development fees, building design, computation of monthly rent, and whether the franchisees would be able to assign their liabilities to a corporation they had formed. [FN6] During these disputes Rudzewicz and MacShara negotiated both with the Birmingham district office and with the Miami headquarters. [FN7] With some misgivings, Rudzewicz and MacShara finally obtained limited concessions from the Miami headquarters, [FN8] signed the final agreements, and commenced operations in June 1979. By signing the final agreements, Rudzewicz obligated himself personally to payments exceeding $1 million over the 20-year franchise relationship.

FN6. The latter two matters were the major areas of disagreement. Notwithstanding that Burger King's franchise offering advised that minimum rent would be based on a percentage of "approximated capitalized site acquisition and construction costs," *id.*, at 23, Rudzewicz assumed that rent would be a function solely of renovation costs, and he thereby underestimated the minimum monthly rent by more than $2,000. The District Court found Rudzewicz' interpretation "incredible." 7 Record 649. With respect to assignment, Rudzewicz and MacShara had formed RMBK Corp. with the intent of assigning to it all of their interest and liabilities in the franchise. Consistent with the contract documents, however, Burger King insisted that the two remain personally liable for their franchise obligations. See App. 62, 109. Although the franchisees contended that Burger King officials had given them oral assurances concerning assignment, the District Court found that pursuant to the parol evidence rule any such assurances "even if they had been made and were misleading were joined and merged" into the final agreement. 7 Record 648.

FN7. Although Rudzewicz and MacShara dealt with the Birmingham district office on a regular basis, they communicated directly with the Miami headquarters in forming the contracts; moreover, they learned that the district office had "very little" decisionmaking authority and accordingly turned directly to headquarters in seeking to resolve their disputes. 5 *id.*, at 292. See generally App. 5-6; 5 Record 167-168, 174-179, 182-184, 198-199, 217-218, 264-265, 292-294; 6 *id.*, at 314- 316, 363, 373, 416, 463, 496.

FN8. They were able to secure a $10,439 reduction in rent for the third year. App. 82; 5 Record 222-223; 6 *id.*, at 500.

*468 The Drayton Plains facility apparently enjoyed steady business during the summer of 1979, but patronage declined after a recession began later that year. Rudzewicz and MacShara soon fell far behind in their monthly payments to Miami. Headquarters sent notices of default, and an extended period of negotiations began among the franchisees, the Birmingham district office, and the Miami headquarters. After several Burger King officials in Miami had engaged in prolonged but ultimately

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unsuccessful negotiations with the franchisees **2180 by mail and by telephone, [FN9] headquarters terminated the franchise and ordered Rudzewicz and MacShara to vacate the premises. They refused and continued to occupy and operate the facility as a Burger King restaurant.

FN9. Miami's policy was to "deal directly" with franchisees when they began to encounter financial difficulties, and to involve district office personnel only when necessary. 5 *id.*, at 95. In the instant case, for example, the Miami office handled all credit problems, ordered cost- cutting measures, negotiated for a partial refinancing of the franchisees' debts, communicated directly with the franchisees in attempting to resolve the dispute, and was responsible for all termination matters. See 2 *id.*, at 59-69; 5 *id.*, at 84-89, 94-95, 97-98, 100-103, 116-128, 151- 152, 158, 163; 6 *id.*, at 395-397, 436-438, 510-511, 524-525.

B

Burger King commenced the instant action in the United States District Court for the Southern District of Florida in May 1981, invoking that court's diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) and its original jurisdiction over federal trademark disputes pursuant to § 1338(a). [FN10] Burger King alleged that Rudzewicz and MacShara had breached their franchise obligations "within [the jurisdiction of] this district court" by failing to make the required payments "at plaintiff's place of business in Miami, Dade County, Florida," ¶ 6, App. 121, and also charged that they were tortiously infringing *469 its trademarks and service marks through their continued, unauthorized operation as a Burger King restaurant, ¶ ¶ 35-53, App. 130-135. Burger King sought damages, injunctive relief, and costs and attorney's fees. Rudzewicz and MacShara entered special appearances and argued, *inter alia*, that because they were Michigan residents and because Burger King's claim did not "arise" within the Southern District of Florida, the District Court lacked personal jurisdiction over them. The District Court denied their motions after a hearing, holding that, pursuant to Florida's long-arm statute, "a non-resident Burger King franchisee is subject to the personal jurisdiction of this Court in actions arising out of its franchise agreements." *Id.*, at 138. Rudzewicz and MacShara then filed an answer and a counterclaim seeking damages for alleged violations by Burger King of Michigan's Franchise Investment Law, Mich.Comp.Laws § 445.1501 *et seq.* (1979).

FN10. Rudzewicz and MacShara were served in Michigan with summonses and copies of the complaint pursuant to Federal Rule of Civil Procedure 4. 2 *id.*, at 102-103.

After a 3-day bench trial, the court again concluded that it had "jurisdiction over the subject matter and the parties to this cause." App. 159. Finding that Rudzewicz and MacShara had breached their franchise agreements with Burger King and had infringed Burger King's trademarks and service marks, the court entered judgment against them, jointly and severally, for $228,875 in contract damages. The court also ordered them "to immediately close Burger King Restaurant Number 775 from continued operation or to immediately give the keys and possession of said restaurant to Burger King Corporation," *id.*, at 163, found that they had failed to prove any of the required elements of their counterclaim, and awarded costs and attorney's fees to Burger King.

Rudzewicz appealed to the Court of Appeals for the Eleventh Circuit. [FN11] A divided panel of that Circuit reversed the *470 judgment, **2181 concluding that the District Court could not properly exercise personal jurisdiction over Rudzewicz pursuant to Fla.Stat. § 48.193(1)(g) (Supp.1984) because "the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida." *Burger King Corp. v. MacShara*, 724 F.2d 1505, 1513 (1984). Accordingly, the panel majority concluded that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." *Ibid.*

FN11. MacShara did not appeal his judgment. See *Burger King Corp. v. MacShara*, 724 F.2d 1505, 1506, n. 1 (CA11 1984). In addition, Rudzewicz entered into a compromise with Burger King and waived his right to appeal the District Court's finding of trademark infringement and its entry of injunctive relief. See 4 Record 804-816. Accordingly, we need not address

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the extent to which the tortious act provisions of Florida's long-arm statute, see Fla.Stat. § 48.193(1)(b) (Supp.1984), may constitutionally extend to out-of-state trademark infringement. Cf. *Calder v. Jones*, 465 U.S. 783, 788-789, 104 S.Ct. 1482, 1486-1487, 79 L.Ed.2d 804 (1984) (tortious out-of-state conduct); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776, 104 S.Ct. 1473, 1479, 79 L.Ed.2d 790 (1984) (same).

[1][2] Burger King appealed the Eleventh Circuit's judgment to this Court pursuant to 28 U.S.C. § 1254(2), and we postponed probable jurisdiction. 469 U.S. 814, 105 S.Ct. 77, 83 L.Ed.2d 25 (1984). Because it is unclear whether the Eleventh Circuit actually held that Fla.Stat. § 48.193(1)(g) (Supp.1984) *itself* is unconstitutional as applied to the circumstances of this case, we conclude that jurisdiction by appeal does not properly lie and therefore dismiss the appeal. [FN12] Treating the jurisdictional *471 statement as a petition for a writ of certiorari, see 28 U.S.C. § 2103, we grant the petition and now reverse.

FN12. The District Court had found both that Rudzewicz fell within the reach of Florida's long-arm statute and that the exercise of jurisdiction was constitutional. The Court of Appeals did not consider the statutory question, however, because, as Burger King acknowledged at argument, that court "accepted the parties' stipulation" that § 48.193 reached Rudzewicz "in lieu of [making] a determination of what Florida law provides." Tr. of Oral Arg. 12. Burger King contends that an appeal is proper "on the basis of the Circuit Court's holding that *given that stipulation* the statute was unconstitutional as applied." *Id.*, at 13 (emphasis added).

We disagree. Our "overriding policy, historically encouraged by Congress, of minimizing the mandatory docket of this Court in the interests of sound judicial administration," *Gonzalez v. Automatic Employees Credit Union*, 419 U.S. 90, 98, 95 S.Ct. 289, 294, 42 L.Ed.2d 249 (1974) (construing 28 U.S.C. § 1253), would be threatened if litigants could obtain an appeal through the expedient of stipulating to a particular construction of state law where state law might in fact be in harmony with the Federal Constitution. Jurisdiction under 28 U.S.C. § 1254(2) is properly invoked only where a court of appeals *squarely* has "held" that a state statute is unconstitutional on its face or as applied; jurisdiction does not lie if the decision might rest on other grounds. *Public Service Comm'n v. Batesville Telephone Co.*, 284 U.S. 6, 7, 52 S.Ct. 1, 76 L.Ed. 135 (1931) (*per curiam*). Consistent with "our practice of strict construction" of § 1254(2), *Fornaris v. Ridge Tool Co.*, 400 U.S. 41, 42, n. 1, 91 S.Ct. 156, 157, n. 1, 27 L.Ed.2d 174 (1970) (*per curiam*), we believe that an appeal cannot lie where a court of appeals' judgment rests solely on the stipulated applicability of state law. Rather, it must be reasonably clear that the court independently concluded that the challenged statute governs the case and held the statute itself unconstitutional as so applied. The Court of Appeals did neither in this case, concluding simply that "[j]urisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." 724 F.2d, at 1513.

Of course, if it were clear under Florida law that § 48.193(1)(g) governed every transaction falling within its literal terms, there could be no objection to a stipulation that merely recognized this established construction. But the Florida Supreme Court has not ruled on the breadth of § 48.193(1)(g), and several state appellate courts have held that the provision extends only to the limits of the Due Process Clause. See, *e.g.*, *Scordilis v. Drobnicki*, 443 So.2d 411, 412-414 (Fla.App.1984); *Lakewood Pipe of Texas, Inc. v. Rubati*, 379 So.2d 475, 477 (Fla.App.1979), appeal dism'd, 383 So.2d 1201 (Fla.1980); *Osborn v. University Society, Inc.*, 378 So.2d 873, 874 (Fla.App.1979). If § 48.193(1)(g) is construed and applied in accordance with due process limitations as a matter of state law, then an appeal is improper because the statute cannot be "invalid as repugnant to the Constitution ... of the United States," 28 U.S.C. § 1254(2), since its boundaries are defined by, rather than being in excess of, the Due Process Clause. See, *e.g.*, *Calder v. Jones*, *supra*, 465 U.S., at 787-788, n. 7, 104 S.Ct., at 1486, n. 7; *Kulko v. California*

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Superior Court, 436 U.S. 84, 90, and n. 4, 98 S.Ct. 1690, 1695-1696, and n. 4, 56 L.Ed.2d 132 (1978).

II
A

[3][4] The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a *472 forum with which he has established no meaningful "contacts, ties, or relations." **2182*International Shoe Co. v. Washington*, 326 U.S., at 319, 66 S.Ct., at 160. [FN13] By requiring that individuals have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," *Shaffer v. Heitner*, 433 U.S. 186, 218, 97 S.Ct. 2569, 2587, 53 L.Ed.2d 683 (1977) (STEVENS, J., concurring in judgment), the Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62 L.Ed.2d 490 (1980).

FN13. Although this protection operates to restrict state power, it "must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause" rather than as a function "of federalism concerns." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-703, n. 10, 102 S.Ct. 2099, 2104-2105, n. 10, 72 L.Ed.2d 492 (1982).

[5][6][7] Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [FN14] this "fair warning" requirement is satisfied if the defendant has "purposefully directed" his activities at residents of the forum, *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 1478, 79 L.Ed.2d 790 (1984), and the litigation results from alleged injuries that "arise out of or relate to" those activities, *473*Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984). [FN15] Thus "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State" and those products subsequently injure forum consumers. *World-Wide Volkswagen Corp. v. Woodson*, *supra*, 444 U.S., at 297-298, 100 S.Ct., at 567-568. Similarly, a publisher who distributes magazines in a distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story. *Keeton v. Hustler Magazine, Inc.*, *supra*; see also *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984) (suit against author and editor). And with respect to interstate contractual obligations, we have emphasized that parties who "reach out beyond one state and create continuing relationships and obligations with citizens of another state" are subject to regulation and sanctions in the other State for the consequences of their activities. *Travelers Health Assn. v. Virginia*, 339 U.S. 643, 647, 70 S.Ct. 927, 929, 94 L.Ed. 1154 (1950). See also *McGee v. International Life Insurance Co.*, 355 U.S. 220, 222-223, 78 S.Ct. 199, 200-201, 2 L.Ed.2d 223 (1957).

FN14. We have noted that, because the personal jurisdiction requirement is a waivable right, there are a "variety of legal arrangements" by which a litigant may give "express or implied consent to the personal jurisdiction of the court." *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, *supra*, at 703, 102 S.Ct., at 2105. For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. See *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 84 S.Ct. 411, 11 L.Ed.2d 354 (1964). Where such forum-selection provisions have been obtained through "freely negotiated" agreements and are not "unreasonable and unjust," *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15, 92 S.Ct. 1907, 1916, 32 L.Ed.2d 513 (1972), their enforcement does not offend due process.

FN15. "Specific" jurisdiction contrasts with "general" jurisdiction, pursuant to which "a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S., at 414, n.

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9, 104 S.Ct., at 1872, n. 9; see also *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952).

[8] We have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who "purposefully directs" his activities toward forum residents. A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. • **2183 Id.*, at 223, 78 S.Ct., at 201; see also *Keeton v. Hustler Magazine, Inc., supra*, 465 U.S., at 776, 104 S.Ct., at 1479. Moreover, where individuals "purposefully derive benefit" from their interstate activities, *474*Kulko v. California Superior Court*, 436 U.S. 84, 96, 98 S.Ct. 1690, 1699, 56 L.Ed.2d 132 (1978), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because "modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity," it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. *McGee v. International Life Insurance Co., supra*, 355 U.S., at 223, 78 S.Ct., at 201.

[9][10] Notwithstanding these considerations, the constitutional touchstone remains whether the defendant purposefully established "minimum contacts" in the forum State. *International Shoe Co. v. Washington, supra*, 326 U.S., at 316, 66 S.Ct., at 158. Although it has been argued that foreseeability of causing *injury* in another State should be sufficient to establish such contacts there when policy considerations so require, [FN16] the Court has consistently held that this kind of foreseeability is not a "sufficient benchmark" for exercising personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 295, 100 S.Ct., at 566. Instead, "the foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Id.*, at 297, 100 S.Ct., at 567. In defining when it is that a potential defendant should "reasonably anticipate" out-of-state litigation, the Court frequently has drawn from the reasoning of *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-1240, 2 L.Ed.2d 1283 (1958):

FN16. See, *e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299, 100 S.Ct. 559, 568, 62 L.Ed.2d 490 (1980) (BRENNAN, J., dissenting); *Shaffer v. Heitner*, 433 U.S. 186, 219, 97 S.Ct. 2569, 2588, 53 L.Ed.2d 683 (1977) (BRENNAN, J., concurring in part and dissenting in part).

"The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State. The application *475 of that rule will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws."

[11][12][13] This "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts, *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson, supra*, 444 U.S., at 299, 100 S.Ct., at 568, or of the "unilateral activity of another party or a third person," *Helicopteros Nacionales de Colombia, S.A. v. Hall, supra*, 466 U.S., at 417, 104 S.Ct., at 1873. [FN17] Jurisdiction is proper, however, **2184 where the contacts proximately result from actions by the defendant *himself* that create a "substantial connection" with the forum State. *McGee v. International Life Insurance Co., supra*, 355 U.S., at 223, 78 S.Ct., at 201; see also *Kulko v. California Superior Court, supra*, 436 U.S., at 94, n. 7, 98 S.Ct., at 1698, n. 7. [FN18] Thus where the defendant "deliberately" has *476 engaged in significant activities within a State, *Keeton v. Hustler Magazine, Inc., supra*, 465 U.S., at 781, 104 S.Ct., at 1481, or has created "continuing obligations" between himself and residents of the forum, *Travelers Health Assn. v. Virginia*, 339 U.S., at 648, 70 S.Ct., at 929, he manifestly has availed himself of the privilege of conducting business there, and because his activities are shielded by "the benefits and protections" of the forum's laws it is presumptively not unreasonable to require him to submit to the burdens of litigation in that forum as well.

FN17. Applying this principle, the Court has

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held that the Due Process Clause forbids the exercise of personal jurisdiction over an out-of-state automobile distributor whose only tie to the forum resulted from a customer's decision to drive there, *World-Wide Volkswagen Corp. v. Woodson, supra;* over a divorced husband sued for child-support payments whose only affiliation with the forum was created by his former spouse's decision to settle there, Kulko v. California Superior Court, 436 U.S. 84, 98 S.Ct. 1690, 56 L.Ed.2d 132 (1978); and over a trustee whose only connection with the forum resulted from the settlor's decision to exercise her power of appointment there, Hanson v. Denckla, 357 U.S. 235, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958). In such instances, the defendant has had no "clear notice that it is subject to suit" in the forum and thus no opportunity to "alleviate the risk of burdensome litigation" there. *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 297, 100 S.Ct., at 567.

FN18. So long as it creates a "substantial connection" with the forum, even a single act can support jurisdiction. *McGee v. International Life Insurance Co.*, 355 U.S., at 223, 78 S.Ct., at 201. The Court has noted, however, that "some single or occasional acts" related to the forum may not be sufficient to establish jurisdiction if "their nature and quality and the circumstances of their commission" create only an "attenuated" affiliation with the forum. *International Shoe Co. v. Washington*, 326 U.S. 310, 318, 66 S.Ct. 154, 159, 90 L.Ed. 95 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 299, 100 S.Ct., at 568. This distinction derives from the belief that, with respect to this category of "isolated" acts, *Id.*, at 297, 100 S.Ct., at 567, the reasonable foreseeability of litigation in the forum is substantially diminished.

[14][15] Jurisdiction in these circumstances may not be avoided merely because the defendant did not *physically* enter the forum State. Although territorial presence frequently will enhance a potential defendant's affiliation with a State and reinforce the reasonable foreseeability of suit there, it is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as a commercial actor's efforts are "purposefully directed" toward residents of another State, we have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 774-775, 104 S.Ct., at 1478; see also *Calder v. Jones*, 465 U.S., at 788-790, 104 S.Ct., at 1486-1487; *McGee v. International Life Insurance Co.*, 355 U.S., at 222-223, 78 S.Ct., at 200-201. Cf. *Hoopeston Canning Co. v. Cullen*, 318 U.S. 313, 317, 63 S.Ct. 602, 605, 87 L.Ed. 777 (1943).

[16][17][18] Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S., at 320, 66 S.Ct., at 160. Thus *477 courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies." *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 292, 100 S.Ct., at 564. These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. See, *e.g., Keeton v. Hustler Magazine, Inc., supra,* 465 U.S., at 780, 104 S.Ct., at 1481; *Calder v. Jones, supra,* 465 U.S., at 788-789, 104 S.Ct., at 1486-1487; *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223-224, 78 S.Ct., at 201-202. On the other hand, where a defendant who purposefully has directed his activities at **2185 forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. Most such considerations usually may be accommodated through means short of finding jurisdiction unconstitutional. For example, the potential clash of the forum's law with the "fundamental substantive social policies" of another State may be accommodated through application of the forum's choice-of-law rules. [FN19] Similarly, a defendant claiming substantial inconvenience may seek a

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change of venue. [FN20] Nevertheless, minimum requirements inherent in the concept of "fair play and substantial *478 justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. *World-Wide Volkswagen Corp. v. Woodson, supra,* 444 U.S., at 292, 100 S.Ct., at 564; see also Restatement (Second) of Conflict of Laws § § 36-37 (1971). As we previously have noted, jurisdictional rules may not be employed in such a way as to make litigation "so gravely difficult and inconvenient" that a party unfairly is at a "severe disadvantage" in comparison to his opponent. *The Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 18, 92 S.Ct. 1907, 1917, 32 L.Ed.2d 513 (1972) (re forum-selection provisions); *McGee v. International Life Insurance Co., supra,* 355 U.S., at 223-224, 78 S.Ct., at 201-202.

FN19. See *Allstate Insurance Co. v. Hague,* 449 U.S. 302, 307-313, 101 S.Ct. 633, 637-640, 66 L.Ed.2d 521 (1981) (opinion of BRENNAN, J.). See generally Restatement (Second) of Conflict of Laws § § 6, 9 (1971).

FN20. See, *e.g.,* 28 U.S.C. § 1404(a) ("For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought"). This provision embodies in an expanded version the common-law doctrine of *forum non conveniens,* under which a court in appropriate circumstances may decline to exercise its jurisdiction in the interest of the "easy, expeditious and inexpensive" resolution of a controversy in another forum. See *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508-509, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947).

B
(1)

[19][20] Applying these principles to the case at hand, we believe there is substantial record evidence supporting the District Court's conclusion that the assertion of personal jurisdiction over Rudzewicz in Florida for the alleged breach of his franchise agreement did not offend due process. At the outset, we note a continued division among lower courts respecting whether and to what extent a contract can constitute a "contact" for purposes of due process analysis. [FN21] If the question is whether an individual's contract with an out-of-state party *alone* can automatically establish sufficient minimum contacts in the other party's home forum, we believe the answer clearly is that it cannot. The Court long ago rejected the notion that personal jurisdiction might turn on "mechanical" tests, *International Shoe Co. v. Washington, supra,* 326 U.S., at 319, 66 S.Ct., at 159, or on "conceptualistic ... theories of the place of contracting or of performance," *479 *Hoopeston Canning Co. v. Cullen,* 318 U.S., at 316, 63 S.Ct., at 604. Instead, we have emphasized the need for a "highly realistic" approach that recognizes that a "contract" is "ordinarily but an intermediate step serving to tie up prior business negotiations with future consequences which themselves are the real object of the business transaction." *Id.,* at 316-317, 63 S.Ct., at 604-605. It is these factors--prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing--that must be evaluated in determining whether the defendant purposefully established minimum contacts within the forum.

FN21. See, *e.g., Lakeside Bridge & Steel Co. v. Mountain State Construction Co.,* 445 U.S. 907, 909-910, 100 S.Ct. 1087, 1088-1089, 63 L.Ed.2d 325 (1980) (WHITE, J., dissenting from denial of certiorari) (collecting cases); Brewer, Jurisdiction in Single Contract Cases, 6 U.Ark. Little Rock L.J. 1, 7-11, 13 (1983); Note, Long-Arm Jurisdiction in Commercial Litigation: When is a Contract a Contact?, 61 B.U.L.Rev. 375, 384-388 (1981).

**2186 [21] In this case, no physical ties to Florida can be attributed to Rudzewicz other than MacShara's brief training course in Miami. [FN22] Rudzewicz did not maintain offices in Florida and, for all that appears from the record, has never even visited there. Yet this franchise dispute grew directly out of "a contract which had a *substantial* connection with that State." *McGee v. International Life Insurance Co.,* 355 U.S., at 223, 78 S.Ct., at 201 (emphasis added). Eschewing the option of operating an independent local enterprise, Rudzewicz deliberately "reach[ed] out beyond" Michigan and negotiated with a Florida corporation for the purchase of a long- term franchise and *480 the manifold benefits that would derive from affiliation with a nationwide organization. *Travelers Health Assn. v. Virginia,* 339 U.S., at 647,

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70 S.Ct., at 929. Upon approval, he entered into a carefully structured 20-year relationship that envisioned continuing and wide-reaching contacts with Burger King in Florida. In light of Rudzewicz' voluntary acceptance of the long-term and exacting regulation of his business from Burger King's Miami headquarters, the "quality and nature" of his relationship to the company in Florida can in no sense be viewed as "random," "fortuitous," or "attenuated." *Hanson v. Denckla*, 357 U.S., at 253, 78 S.Ct., at 1239; *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 299, 100 S.Ct., at 568. Rudzewicz' refusal to make the contractually required payments in Miami, and his continued use of Burger King's trademarks and confidential business information after his termination, caused foreseeable injuries to the corporation in Florida. For these reasons it was, at the very least, presumptively reasonable for Rudzewicz to be called to account there for such injuries.

FN22. The Eleventh Circuit held that MacShara's presence in Florida was irrelevant to the question of Rudzewicz's minimum contacts with that forum, reasoning that "Rudzewicz and MacShara never formed a partnership" and "signed the agreements in their individual capacities." 724 F.2d, at 1513, n. 14. The two did jointly form a corporation through which they were seeking to conduct the franchise, however. See n. 6, *supra*. They were required to decide which one of them would travel to Florida to satisfy the training requirements so that they could commence business, and Rudzewicz participated in the decision that MacShara would go there. We have previously noted that when commercial activities are "carried on in behalf of" an out-of-state party those activities may sometimes be ascribed to the party, *International Shoe Co. v. Washington*, 326 U.S. 310, 320, 66 S.Ct. 154, 160, 90 L.Ed. 95 (1945), at least where he is a "primary participan[t]" in the enterprise and has acted purposefully in directing those activities, *Calder v. Jones*, 465 U.S., at 790, 104 S.Ct., at 1487. Because MacShara's matriculation at Burger King University is not pivotal to the disposition of this case, we need not resolve the permissible bounds of such attribution.

The Court of Appeals concluded, however, that in light of the supervision emanating from Burger King's district office in Birmingham, Rudzewicz reasonably believed that "the Michigan office was for all intents and purposes the embodiment of Burger King" and that he therefore had no "reason to anticipate a Burger King suit outside of Michigan." 724 F.2d, at 1511. See also *post*, at 2190 (STEVENS, J., dissenting). This reasoning overlooks substantial record evidence indicating that Rudzewicz most certainly knew that he was affiliating himself with an enterprise based primarily in Florida. The contract documents themselves emphasize that Burger King's operations are conducted and supervised from the Miami headquarters, that all relevant notices and payments must be sent there, and that the agreements were made in and enforced from Miami. See n. 5, *supra*. Moreover, the parties' actual course of dealing repeatedly confirmed that decisionmaking authority was vested in the Miami headquarters *481 and that the district office served largely as an intermediate link between the headquarters and the franchisees. When problems arose over building design, site-development fees, rent computation, and the defaulted payments, Rudzewicz and MacShara learned that the Michigan office was powerless to resolve their disputes and **2187 could only channel their communications to Miami. Throughout these disputes, the Miami headquarters and the Michigan franchisees carried on a continuous course of direct communications by mail and by telephone, and it was the Miami headquarters that made the key negotiating decisions out of which the instant litigation arose. See nn. 7, 9, *supra*.

[22][23] Moreover, we believe the Court of Appeals gave insufficient weight to provisions in the various franchise documents providing that all disputes would be governed by Florida law. The franchise agreement, for example, stated:

> "This Agreement shall become valid when executed and accepted by BKC at Miami, Florida; it shall be deemed made and entered into in the State of Florida and shall be governed and construed under and in accordance with the laws of the State of Florida. The choice of law designation does not require that all suits concerning this Agreement be filed in Florida." App. 72.

See also n. 5, *supra*. The Court of Appeals reasoned that choice-of-law provisions are irrelevant to the question of personal jurisdiction, relying on

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Hanson v. Denckla for the proposition that "the center of gravity for choice-of-law purposes does not necessarily confer the sovereign prerogative to assert jurisdiction." 724 F.2d, at 1511-1512, n. 10, citing 357 U.S., at 254, 78 S.Ct., at 1240. This reasoning misperceives the import of the quoted proposition. The Court in *Hanson* and subsequent cases has emphasized that choice-of-law *analysis* --which focuses on all elements of a transaction, and not simply on the defendant's conduct--is distinct from minimum-contacts jurisdictional analysis--which focuses at the threshold *482 solely on the defendant's purposeful connection to the forum. [FN23] Nothing in our cases, however, suggests that a choice-of-law *provision* should be ignored in considering whether a defendant has "purposefully invoked the benefits and protections of a State's laws" for jurisdictional purposes. Although such a provision standing alone would be insufficient to confer jurisdiction, we believe that, when combined with the 20-year interdependent relationship Rudzewicz established with Burger King's Miami headquarters, it reinforced his deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there. As Judge Johnson argued in his dissent below, Rudzewicz "purposefully availed himself of the benefits and protections of Florida's laws" by entering into contracts expressly providing that those laws would govern franchise disputes. 724 F.2d, at 1513. [FN24]

FN23. *Hanson v. Denckla*, 357 U.S., at 253-254, 78 S.Ct., at 1239- 1240. See also *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 778, 104 S.Ct., at 1480; *Kulko v. California Superior Court*, 436 U.S., at 98, 98 S.Ct., at 1700; *Shaffer v. Heitner*, 433 U.S., at 215, 97 S.Ct., at 2585.

FN24. In addition, the franchise agreement's disclaimer that the "choice of law designation does not *require* that all suits concerning this Agreement be filed in Florida," App. 72 (emphasis added), reasonably should have suggested to Rudzewicz that by negative implication such suits *could* be filed there.
The lease also provided for binding arbitration in Miami of certain condemnation disputes, *id.*, at 113, and Rudzewicz conceded the validity of this provision at oral argument, Tr. of Oral Arg. 37. Although it does not govern the instant dispute, this provision also should have made it apparent to the franchisees that they were dealing directly with the Miami headquarters and that the Birmingham district office was *not* "for all intents and purposes the embodiment of Burger King." 724 F.2d, at 1511.

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[24][25] Nor has Rudzewicz pointed to other factors that can be said persuasively to outweigh the considerations discussed above and to establish the *unconstitutionality* of Florida's assertion of jurisdiction. We cannot conclude that Florida had no "legitimate interest in holding [Rudzewicz] answerable *483 on a claim related to" the contacts he had established in that State. *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 776, 104 S.Ct., at 1479; see also **2188*McGee v. International Life Insurance Co.*, 355 U.S., at 223, 78 S.Ct., at 201 (noting that State frequently will have a "manifest interest in providing effective means of redress for its residents"). [FN25] Moreover, although Rudzewicz has argued at some length that Michigan's Franchise Investment Law, Mich.Comp.Laws § 445.1501 *et seq.* (1979), governs many aspects of this franchise relationship, he has not demonstrated how Michigan's acknowledged interest might possibly render jurisdiction in Florida *unconstitutional*. [FN26] Finally, the Court of Appeals' assertion that the Florida litigation "severely impaired [Rudzewicz'] ability to call Michigan witnesses who might be essential to his defense and counterclaim," 724 F.2d, at 1512-1513, is wholly without support in the record. [FN27] And even to the extent that it is inconvenient *484 for a party who has minimum contacts with a forum to litigate there, such considerations most frequently can be accommodated through a change of venue. See n. 20, *supra*. Although the Court has suggested that inconvenience may at some point become so substantial as to achieve *constitutional* magnitude, *McGee v. International Life Insurance Co.*, *supra*, 355 U.S., at 223, 78 S.Ct., at 201, this is not such a case.

FN25. Complaining that "when Burger King is the plaintiff, you won't 'have it your way' because it sues all franchisees in Miami," Brief for Appellee 19, Rudzewicz contends that Florida's interest in providing a convenient forum is negligible given the company's size and ability to conduct

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litigation anywhere in the country. We disagree. Absent compelling considerations, cf. *McGee v. International Life Insurance Co.*, 355 U.S., at 223, 78 S.Ct., at 201, a defendant who has purposefully derived commercial benefit from his affiliations in a forum may not defeat jurisdiction there simply because of his adversary's greater net wealth.

FN26. Rudzewicz has failed to show how the District Court's exercise of jurisdiction in this case might have been at all inconsistent with Michigan's interests. To the contrary, the court found that Burger King had fully complied with Michigan law, App. 159, and there is nothing in Michigan's franchise Act suggesting that Michigan would attempt to assert exclusive jurisdiction to resolve franchise disputes affecting its residents. In any event, minimum-contacts analysis presupposes that two or more States may be interested in the outcome of a dispute, and the process of resolving potentially conflicting "fundamental substantive social policies," *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 292, 100 S.Ct., at 564, can usually be accommodated through choice-of-law rules rather than through outright preclusion of jurisdiction in one forum. See n. 19, *supra*.

FN27. The only arguable instance of trial inconvenience occurred when Rudzewicz had difficulty in authenticating some corporate records; the court offered him as much time as would be necessary to secure the requisite authentication from the Birmingham district office, and Burger King ultimately stipulated to their authenticity rather than delay the trial. See 7 Record 574-575, 578-579, 582, 598-599.

[26] The Court of Appeals also concluded, however, that the parties' dealings involved "a characteristic disparity of bargaining power" and "elements of surprise," and that Rudzewicz "lacked fair notice" of the potential for litigation in Florida because the contractual provisions suggesting to the contrary were merely "boilerplate declarations in a lengthy printed contract." 724 F.2d, at 1511-1512, and n. 10. See also *post*, at 2190 (STEVENS, J., dissenting). Rudzewicz presented many of these arguments to the District Court, contending that Burger King was guilty of misrepresentation, fraud, and duress; that it gave insufficient notice in its dealings with him; and that the contract was one of adhesion. See 4 Record 687-691. After a 3-day bench trial, the District Court found that Burger King had made no misrepresentations, that Rudzewicz and MacShara "were and are experienced and sophisticated businessmen," and that "at no time" did they "ac [t] under economic duress or disadvantage imposed by" Burger King. App. 157- 158. See also 7 Record 648-649. Federal Rule of Civil Procedure 52(a) requires that "[f]indings of fact shall not be set aside unless clearly erroneous," and neither Rudzewicz nor the Court of Appeals has pointed to record evidence that would support a "definite and firm conviction" that the District Court's findings are mistaken. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948). See also *485 **2189 *Anderson v. Bessemer City*, 470 U.S. 564, 573-576, 105 S.Ct. 1504, ----, 84 L.Ed.2d 518 (1985). To the contrary, Rudzewicz was represented by counsel throughout these complex transactions and, as Judge Johnson observed in dissent below, was himself an experienced accountant "who for five months conducted negotiations with Burger King over the terms of the franchise and lease agreements, and who obligated himself personally to contracts requiring over time payments that exceeded $1 million." 724 F.2d, at 1514. Rudzewicz was able to secure a modest reduction in rent and other concessions from Miami headquarters, see nn. 8, 9, *supra;* moreover, to the extent that Burger King's terms were inflexible, Rudzewicz presumably decided that the advantages of affiliating with a national organization provided sufficient commercial benefits to offset the detriments. [FN28]

FN28. We do not mean to suggest that the jurisdictional outcome will always be the same in franchise cases. Some franchises may be primarily intrastate in character or involve different decisionmaking structures, such that a franchisee should not reasonably anticipate out-of-state litigation. Moreover, commentators have argued that franchise relationships may sometimes involve unfair business practices in their inception and operation. See H. Brown, Franchising Realities and Remedies 4-5 (2d ed. 1978). For these reasons, we reject Burger King's

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suggestion for "a general rule, or at least a presumption, that participation in an interstate franchise relationship" represents consent to the jurisdiction of the franchisor's principal place of business. Brief for Appellant 46.

III

[27] Notwithstanding these considerations, the Court of Appeals apparently believed that it was necessary to reject jurisdiction in this case as a prophylactic measure, reasoning that an affirmance of the District Court's judgment would result in the exercise of jurisdiction over "out-of-state consumers to collect payments due on modest personal purchases" and would "sow the seeds of default judgments against franchisees owing smaller debts." 724 F.2d, at 1511. We share the Court of Appeals' broader concerns and therefore reject any talismanic jurisdictional formulas; "the *486 facts of each case must [always] be weighed" in determining whether personal jurisdiction would comport with "fair play and substantial justice." *Kulko v. California Superior Court*, 436 U.S., at 92, 98 S.Ct., at 1696-1697. [FN29] The "quality and nature" of an interstate transaction may sometimes be so "random," "fortuitous," or "attenuated" [FN30] that it cannot fairly be said that the potential defendant "should reasonably anticipate being haled into court" in another jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 297, 100 S.Ct., at 567; see also n. 18, *supra*. We also have emphasized that jurisdiction may not be grounded on a contract whose terms have been obtained through "fraud, undue influence, or overweening bargaining power" and whose application would render litigation "so gravely difficult and inconvenient that [a party] will for all practical purposes be deprived of his day in court." *The Bremen v. Zapata Off-Shore Co.*, 407 U.S., at 12, 18, 92 S.Ct., at 1914, 1917. Cf. *Fuentes v. Shevin*, 407 U.S. 67, 94-96, 92 S.Ct. 1983, 2001-2002, 32 L.Ed.2d 556 (1972); *National Equipment Rental, Ltd. v. Szukhent*, 375 U.S. 311, 329, 84 S.Ct. 411, 421, 11 L.Ed.2d 354 (1964) (BLACK, J., dissenting) (jurisdictional rules may not be employed against small consumers so as to "crippl[e] their defense"). Just as the Due Process Clause allows flexibility in ensuring that commercial actors are not effectively **2190 "judgment proof" for the consequences of obligations they voluntarily assume in other States, *McGee v. International Life Insurance Co.*, 355 U.S., at 223, 78 S.Ct., at 201, so too does it prevent rules that would unfairly enable them to obtain default judgments against unwitting customers. Cf. *United States v. Rumely*, 345 U.S. 41, 44, 73 S.Ct. 543, 545, 97 L.Ed. 770 (1953) (courts must not be " 'blind' " to what " '[a]ll others can see and understand' ").

FN29. This approach does, of course, preclude clear-cut jurisdictional rules. But any inquiry into "fair play and substantial justice" necessarily requires determinations "in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.' " *Kulko v. California Superior Court*, 436 U.S., at 92, 98 S.Ct., at 1697.

FN30. *Hanson v. Denckla*, 357 U.S., at 253, 78 S.Ct., at 1239; *Keeton v. Hustler Magazine, Inc.*, 465 U.S., at 774, 104 S.Ct., at 1478; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 299, 100 S.Ct., at 568.

*487 For the reasons set forth above, however, these dangers are not present in the instant case. Because Rudzewicz established a substantial and continuing relationship with Burger King's Miami headquarters, received fair notice from the contract documents and the course of dealing that he might be subject to suit in Florida, and has failed to demonstrate how jurisdiction in that forum would otherwise be fundamentally unfair, we conclude that the District Court's exercise of jurisdiction pursuant to Fla.Stat. § 48.193(1)(g) (Supp.1984) did not offend due process. The judgment of the Court of Appeals is accordingly reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice POWELL took no part in the consideration or decision of this case.

Justice STEVENS, with whom Justice WHITE joins, dissenting.

In my opinion there is a significant element of unfairness in requiring a franchisee to defend a case of this kind in the forum chosen by the franchisor. It

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is undisputed that appellee maintained no place of business in Florida, that he had no employees in that State, and that he was not licensed to do business there. Appellee did not prepare his French fries, shakes, and hamburgers in Michigan, and then deliver them into the stream of commerce "with the expectation that they [would] be purchased by consumers in" Florida. *Ante*, at 2182. To the contrary, appellee did business only in Michigan, his business, property, and payroll taxes were payable in that State, and he sold all of his products there.

Throughout the business relationship, appellee's principal contacts with appellant were with its Michigan office. Notwithstanding its disclaimer, *ante*, at 2185, the Court seems ultimately to rely on nothing more than standard boilerplate language contained in various documents, *ante*, at 2187, *488 to establish that appellee " 'purposefully availed himself of the benefits and protections of Florida's laws.' " *Id.*, at 2187. Such superficial analysis creates a potential for unfairness not only in negotiations between franchisors and their franchisees but, more significantly, in the resolution of the disputes that inevitably arise from time to time in such relationships.

Judge Vance's opinion for the Court of Appeals for the Eleventh Circuit adequately explains why I would affirm the judgment of that court. I particularly find the following more persuasive than what this Court has written today:

"Nothing in the course of negotiations gave Rudzewicz reason to anticipate a Burger King suit outside of Michigan. The only face-to-face or even oral contact Rudzewicz had with Burger King throughout months of protracted negotiations was with representatives of the Michigan office. Burger King had the Michigan office interview Rudzewicz and MacShara, appraise their application, discuss price terms, recommend the site which the defendants finally agreed to, and attend the final closing ceremony. There is no evidence that Rudzewicz ever negotiated with anyone in Miami or even sent mail there during negotiations. He maintained no staff in the state of Florida, and as far as the record reveals, he has never even visited the state.

"The contracts contemplated the startup of a local Michigan restaurant whose profits would derive solely from food sales made to customers in Drayton Plains. The sale, which involved the use of an intangible trademark in Michigan and occupancy of a Burger King facility **2191 there, required no performance in the state of Florida. Under the contract, the local Michigan district office was responsible for providing all of the services due Rudzewicz, including advertising and management consultation. Supervision, moreover, emanated from that office alone. To Rudzewicz, the Michigan office was for all intents and purposes the embodiment *489 of Burger King. He had reason to believe that his working relationship with Burger King began and ended in Michigan, not at the distant and anonymous Florida headquarters.... "Given that the office in Rudzewicz' home state conducted all of the negotiations and wholly supervised the contract, we believe that he had reason to assume that the state of the supervisory office would be the same state in which Burger King would file suit. Rudzewicz lacked fair notice that the distant corporate headquarters which insulated itself from direct dealings with him would later seek to assert jurisdiction over him in the courts of its own home state....

"Just as Rudzewicz lacked notice of the possibility of suit in Florida, he was financially unprepared to meet its added costs. The franchise relationship in particular is fraught with potential for financial surprise. The device of the franchise gives local retailers the access to national trademark recognition which enables them to compete with better-financed, more efficient chain stores. This national affiliation, however, does not alter the fact that the typical franchise store is a local concern serving at best a neighborhood or community. Neither the revenues of a local business nor the geographical range of its market prepares the average franchise owner for the cost of distant litigation....

"The particular distribution of bargaining power in the franchise relationship further impairs the franchisee's financial preparedness. In a franchise contract, 'the franchisor normally occupies [the] dominant role'.... "We discern a characteristic disparity of bargaining power in the facts of this case. There is no indication that Rudzewicz had any latitude to negotiate a reduced rent or franchise fee in exchange for the added risk of suit in Florida. He signed a standard form contract whose terms were non- negotiable and which appeared *490 in some respects to vary from the more favorable terms agreed to in earlier discussions. In fact, the final contract required a minimum monthly rent computed on a base far in excess of that discussed in oral negotiations. Burger King resisted price concessions, only to sue Rudzewicz far from home. In doing so, it severely impaired his ability to call Michigan witnesses who

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might be essential to his defense and counterclaim. "In sum, we hold that the circumstances of the Drayton Plains franchise and the negotiations which led to it left Rudzewicz bereft of reasonable notice and financially unprepared for the prospect of franchise litigation in Florida. Jurisdiction under these circumstances would offend the fundamental fairness which is the touchstone of due process." 724 F.2d 1505, 1511-1513 (1984) (footnotes omitted).

Accordingly, I respectfully dissent.

105 S.Ct. 2174, 471 U.S. 462, 85 L.Ed.2d 528, 53 USLW 4541

Briefs and Other Related Documents (Back to top)

- 1984 WL 565540 (Appellate Brief) Reply Brief of Appellant (Dec. 31, 1984)

- 1984 WL 565538 (Appellate Brief) Appellee's Brief (Dec. 15, 1984)

- 1984 WL 565536 (Appellate Brief) Brief of Appellant (Nov. 15, 1984)

END OF DOCUMENT

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EXHIBIT 2

66 S.Ct. 154
90 L.Ed. 95, 161 A.L.R. 1057
(Cite as: 326 U.S. 310, 66 S.Ct. 154)

Briefs and Other Related Documents

Supreme Court of the United States

INTERNATIONAL SHOE CO.
v.
STATE OF WASHINGTON, OFFICE OF UNEMPLOYMENT COMPENSATION AND PLACEMENT et al.

No. 107.

Decided Dec. 3, 1945.

Proceeding by the State of Washington, Office of Unemployment Compensation and Placement, and E. B. Riley, Commissioner, against the International Shoe Company to recover contributions under the Unemployment Compensation Act. From a judgment of the Supreme Court of Washington, 154 P.2d 801, affirming a judgment in favor of the plaintiff, the defendant appeals under s 237(a) of the Judicial Code, 28 U.S.C.A. s 344(a).

Affirmed.

West Headnotes

[1] **Commerce** 62.71
83k62.71 Most Cited Cases
(Formerly 83k62.70, 83k72)

The Washington Unemployment Compensation Act, as applied to foreign corporation having employees within state, does not impose an unconstitutional burden on interstate commerce. 26 U.S.C.A. Int.Rev.Code, § 1606(a); Rem.Supp.Wash.1941, § § 9998--103a to 9998--123a.

[2] **Commerce** 9
83k9 Most Cited Cases

Congress, in exercise of commerce power, may authorize states, in specified ways, to regulate interstate commerce or impose burdens upon it.

[3] **Constitutional Law** 315
92k315 Most Cited Cases

"Due process of law" requires only that in order to subject a defendant to a judgment in personam, if he be not present within territory of forum, he has certain minimum contacts with it such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. U.S.C.A. Const.Amend. 14.

[4] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k283, 92k305)

The "presence" of a corporation without or within state of its origin for purposes of taxation or maintenance of suits against it in courts of state can be manifested only by activities carried on in corporation's behalf by those who are authorized to act for it. U.S.C.A. Const. Amend. 14.

[5] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The demand that corporation be "present" in state to satisfy due process of law requirement for purpose of maintenance of suit against it in courts of state may be met by such contacts of corporation with the state of forum as make it reasonable, in context of federal system of government, to require corporation to defend the particular suit which is brought there, and an "estimate of inconveniences" which would result to corporation from a trial away from its "home" or principal place of business would be relevant in such connection. U.S.C.A. Const. Amend. 14.

[6] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

"Presence" of foreign corporation in state for purpose of maintenance of suit against it exists when activities of corporation in state of forum have not only been continuous and systematic, but also give rise to liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. U.S.C.A. Const. Amend. 14.

[7] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The casual presence of corporate agent or even his conduct of single or isolated items of activities in a state in corporation's behalf are not enough to subject

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corporation to suit on causes of action unconnected with activities there. U.S.C.A. Const. Amend. 14.

[8] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

Although commission of some single act or occasional acts of corporate agent in a state sufficient to impose an obligation on corporation does not confer upon the state authority to enforce obligation, other such acts, because of their nature and quality and circumstances of their commission, may be deemed sufficient to render corporation liable to suit. U.S.C.A. Const. Amend. 14.

[9] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305, 192k305)

Whether due process of law is satisfied in suit in state court against foreign corporation must depend upon quality and nature of corporation's activity in relation to fair and orderly administration of laws which it was purpose of due process clause to insure. U.S.C.A. Const. Amend. 14.

[10] **Constitutional Law** 315
92k315 Most Cited Cases

The due process of law clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which state has no contacts, ties or relations. U.S.C.A. Const.Amend. 14.

[11] **Constitutional Law** 305(6)
92k305(6) Most Cited Cases
(Formerly 92k305)

The exercise by foreign corporation of privilege of conducting activities within a state may give rise to obligations, and, so far as those obligations arise out of or are connected with activities within the state, a procedure requiring corporation to respond to a suit brought to enforce such obligations does not offend due process of law clause. U.S.C.A. Const. Amend. 14.

[12] **Constitutional Law** 309(1)
92k309(1) Most Cited Cases

A Delaware shoe corporation having its principal place of business in Missouri and employing from 11 to 13 salesmen residing in state of Washington and regularly engaged therein in soliciting orders and displaying samples, sometimes in permanent display rooms paid for by company, which paid commissions to salesmen totalling more than $31,000 for each year during 4-year period, was "present" and "doing business" in Washington, so as to be amenable to process in proceedings in Washington courts to recover unpaid contributions to state unemployment compensation fund. Rem.Supp.Wash.1941, § § 9998-103a to 9998-123a; U.S.C.A. Const. Amend. 14.

[13] **Constitutional Law** 309(3)
92k309(3) Most Cited Cases

The service of process within state upon foreign corporation's agent whose activities established corporation's presence in state was sufficient notice of the suit. U.S.C.A. Const. Amend. 14.

[14] **Constitutional Law** 309(3)
92k309(3) Most Cited Cases

A proceeding in Washington state courts against foreign corporation to recover unpaid contributions to state unemployment compensation fund based on commissions paid to its salesmen in state was not so unrelated to activities of a salesman soliciting orders in state as to make such salesman an inappropriate vehicle for communicating notice of suit to corporation. Rem.Supp.Wash.1941, ss 9998--103a to 9998--123a; U.S.C.A.Const. Amend. 14.

[15] **Constitutional Law** 309(2)
92k309(2) Most Cited Cases

The mailing of notice of suit to a foreign corporation by registered mail at its home office was sufficient notice of the suit. U.S.C.A. Const. Amend. 14.

[16] **Constitutional Law** 283
92k283 Most Cited Cases

[16] **Taxation** 37.3
371k37.3 Most Cited Cases
(Formerly 371k37)

The Washington Unemployment Compensation Act, when construed as imposing a tax against foreign corporation on privilege of employing salesmen within state measured by percentage of commissions payable to salesmen, is not invalid as violative of "due process of law". Rem.Supp.Wash.1941, § §

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9998-103a to 9998- 123a; U.S.C.A.Const. Amend. 14.

**156 *311 Appeal from the Supreme Court of the State of Washington.

Mr. Henry C. Lowenhaupt, of St. Louis Mo., for appellant.

Mr. George W. Wilkins, of Olympia, Wash., for appellees.

Mr. Chief Justice STONE delivered the opinion of the Court.

The questions for decision are (1) whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of Washington rendered itself amenable to proceedings in the courts of that state to recover unpaid contributions to the state unemployment compensation fund exacted by state statutes, Washington Unemployment Compensation Act, Washington Revised Statutes, s 9998--103a through s 9998--123a, 1941 Supp., and (2) whether the state can exact those contributions consistently with the due process clause of the Fourteenth Amendment.

The statutes in question set up a comprehensive scheme of unemployment compensation, the costs of which are defrayed by contributions required to be made by employers to a state unemployment compensation fund. *312 The contributions are a specified percentage of the wages payable annually by each employer for his employees' services in the state. The assessment and collection of the contributions and the fund are administered by respondents. Section 14(c) of the Act, Wash.Rev.Stat. 1941 Supp., s 9998--114c, authorizes respondent Commissioner to issue an order and notice of assessment of delinquent contributions upon prescribed personal service of the notice upon the employer if found within the state, or, if not so found, by mailing the notice to the employer by registered mail at his last known address. That section also authorizes the Commissioner to collect the assessment by distraint if it is not paid within ten days after service of the notice. By ss 14(e) and 6(b) the order of assessment may be administratively reviewed by an appeal tribunal within the office of unemployment upon petition of the employer, and this determination is by s 6(i) made subject to judicial review on questions of law by the state Superior Court, with further right of appeal in the state Supreme Court as in other civil cases.

In this case notice of assessment for the years in question was personally served upon a sales solicitor employed by appellant in the State of Washington, and a copy of the notice was mailed by registered mail to appellant at its address in St. Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant's salesman was not proper service upon appellant; that appellant was not a corporation of the State of Washington and was not doing business within the state; that it had no agent within the state upon whom service could be made; and that appellant is not an employer and does not furnish employment within the meaning of the statute.

The motion was heard on evidence and a stipulation of facts by the appeal tribunal which denied the motion *313 and ruled that respondent Commissioner was entitled to recover the unpaid contributions. That action **157 was affirmed by the Commissioner; both the Superior Court and the Supreme Court affirmed. 154 P.2d 801. Appellant in each of these courts assailed the statute as applied, as a violation of the due process clause of the Fourteenth Amendment, and as imposing a constitutionally prohibited burden on interstate commerce. The cause comes here on appeal under s 237(a) of the Judicial Code, 28 U.S.C. s 344(a), 28 U.S.C.A. s 344(a), appellant assigning as error that the challenged statutes as applied infringe the due process clause of the Fourteenth Amendment and the commerce clause.

The facts as found by the appeal tribunal and accepted by the state Superior Court and Supreme Court, are not in dispute. Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than Washington, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of Washington.

Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to

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thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in Washington; their principal activities were confined to that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than $31,000. Appellant supplies its salesmen with a line of samples, each consisting of one shoe of a pair, which *314 they display to prospective purchasers. On occasion they rent permanent sample rooms, for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

The Supreme Court of Washington was of opinion that the regular and systematic solicitation of orders in the state by appellant's salesmen, resulting in a continuous flow of appellant's product into the state, was sufficient to constitute doing business in the state so as to make appellant amenable to suit in its courts. But it was also of opinion that there were sufficient additional activities shown to bring the case within the rule frequently stated, that solicitation within a state by the agents of a foreign corporation plus some additional activities there are sufficient to render the corporation amenable to suit brought in the courts of the state to enforce an obligation arising out of its activities there. International Harvester Co. v. Kentucky, 234 U.S. 579, 587, 34 S.Ct. 944, 946, 58 L.Ed. 1479; People's Tobacco Co. v. American Tobacco Co., 246 U.S. 79, 87, 38 S.Ct. 233, 235, 62 L.Ed. 587, Ann.Cas.1918C, 537; Frene v. Louisville Cement Co., 77 U.S.App.D.C. 129, 134 F.2d 511, 516, 146 A.L.R. 926. The court found such additional activities in the salesmen's display of samples sometimes in permanent display rooms, and the salesmen's residence within the state, continued over a period of years, all resulting in a *315 substantial volume of merchandise regularly shipped by appellant to purchasers within the state. The court also held that the statute as applied did not invade the constitutional power of Congress to regulate interstate commerce and did not impose a prohibited burden on such commerce.

[1][2] Appellant's argument, renewed here, that the statute imposes an unconstitutional burden on interstate commerce need not detain us. For 53 Stat. 1391, 26 U.S.C. s 1606(a), 26 U.S.C.A. Int.Rev.Code, s 1606(a), provides that 'No person required under a State law to make payments to an unemployment fund shall be **158 relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.' It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens upon it. Kentucky Whip & Collar Co. v. Illinois Central R. Co., 299 U.S. 334, 57 S.Ct. 277, 81 L.Ed. 270; Perkins v. Pennsylvania, 314 U.S. 586, 62 S.Ct. 484, 86 L.Ed. 473; Standard Dredging Corp. v. Murphy, 319 U.S. 306, 308, 63 S.Ct. 1067, 1068, 87 L.Ed. 1416; Hooven & Allison v. Evatt, 324 U.S. 652, 679, 65 S.Ct. 870, 883; Southern Pacific Co. v. Arizona, 325 U.S. 761, 769, 65 S.Ct. 1515, 1520.

Appellant also insists that its activities within the state were not sufficient to manifest its 'presence' there and that in its absence the state courts were without jurisdiction, that consequently it was a denial of due process for the state to subject appellant to suit. It refers to those cases in which it was said that the mere solicitation of orders for the purchase of goods within a state, to be accepted without the state and filled by shipment of the purchased goods interstate, does not render the corporation seller amenable to suit within the state. See Green v. Chicago, Burlington & Quincy R. Co., 205 U.S. 530, 533, 27 S.Ct. 595, 596, 51 L.Ed. 916; International Harvester Co. v. Kentucky, supra, 234 U.S. 586, 587, 34 S.Ct. 946, 58 L.Ed. 1479; Philadelphia & Reading R. Co. v. McKibbin, 243 U.S. 264, 268, 37 S.Ct. 280, 61 L.Ed. 710; People's Tobacco Co. v. American Tobacco Co., supra, 246 U.S. 87, 38 S.Ct. 235, 62 L.Ed. 587, Ann.Cas.1918C, 537. *316 And appellant further argues that since it was not present within the state, it is a denial of due process to subject it to taxation or other money exaction. It thus denies the power of the state to lay the tax or to subject appellant to a suit for its collection.

[3] Historically the jurisdiction of courts to render

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judgment in personam is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of court was prerequisite to its rendition of a judgment personally binding him. Pennoyer v. Neff, 95 U.S. 714, 733, 24 L.Ed. 565. But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' Milliken v. Meyer, 311 U.S. 457, 463, 61 S.Ct. 339, 343, 85 L.Ed. 278, 132 A.L.R. 1357. See Holmes, J., in McDonald v. Mabee, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458. Compare Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 316, 319, 63 S.Ct. 602, 604, 606, 87 L.Ed. 777, 145 A.L.R. 1113. See Blackmer v. United States, 284 U.S. 421, 52 S.Ct. 252, 76 L.Ed. 375; Hess v. Pawloski, 274 U.S. 352, 47 S.Ct. 632, 71 L.Ed. 1091; Young v. Masci, 289 U.S. 253, 53 S.Ct. 599, 77 L.Ed. 1158, 88 A.L.R. 170.

[4][5] Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, Klein v. Board of Tax Supervisors, 282 U.S. 19, 24, 51 S.Ct. 15, 16, 75 L.Ed. 140, 73 A.L.R. 679, it is clear that unlike an individual its 'presence' without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far 'present' there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms 'present' or 'presence' are *317 used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. L. Hand, J., in Hutchinson v. Chase & Gilbert, 2 Cir., 45 F.2d 139, 141. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business is relevant in this connection. Hutchinson v. Chase & Gilbert, supra, 45 F.2d 141.

**159 [6][7] 'Presence' in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. St. Clair v. Cox, 106 U.S. 350, 355, 1 S.Ct. 354, 359, 27 L.Ed. 222; Connecticut Mutual Life Ins. Co. v. Spratley, 172 U.S. 602, 610, 611, 19 S.Ct. 308, 311, 312, 43 L.Ed. 569; Pennsylvania Lumbermen's Mut. Fire Ins. Co. v. Meyer, 197 U.S. 407, 414, 415, 25 S.Ct. 483, 484, 485, 49 L.Ed. 810; Commercial Mutual Accident Co. v. Davis, 213 U.S. 245, 255, 256, 29 S.Ct. 445, 448, 53 L.Ed. 782; International Harvester Co. v. Kentucky, supra; cf. St. Louis S.W.R. Co. v. Alexander, 227 U.S. 218, 33 S.Ct. 245, 57 L.Ed. 486, Ann.Cas.1915B, 77. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. St. Clair v. Cox, supra, 106 U.S. 359, 360, 1 S.Ct. 362, 363, 27 L.Ed. 222; Old Wayne Mut. Life Ass'n v. McDonough, 204 U.S. 8, 21, 27 S.Ct. 236, 240, 51 L.Ed. 345; Frene v. Louisville Cement Co., supra, 77 U.S.App.D.C. 133, 134 F.2d 515, 146 A.L.R. 926, and cases cited. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

*318 While it has been held in cases on which appellant relies that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, Old Wayne Mut. Life Ass'n v. McDonough, supra; Green v. Chicago, Burlington & Quincy R. Co., supra; Simon v. Southern R. Co., 236 U.S. 115, 35 S.Ct. 255, 59 L.Ed. 492; People's Tobacco Co. v. American Tobacco Co., supra; cf. Davis v. Farmers' Co-operative Equity Co., 262 U.S. 312, 317, 43 S.Ct. 556, 558, 67 L.Ed. 996, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities. See Missouri, K. & T.R. Co. v. Reynolds, 255 U.S. 565, 41 S.Ct. 446, 65 L.Ed. 788; Tauza v. Susquehanna Coal Co., 220 N.Y. 259, 115 N.E. 915; cf. St. Louis S.W.R. Co. v. Alexander, supra.

[8] Finally, although the commission of some single

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or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, Rosenberg Bros. & Co. v. Curtis Brown Co., 260 U.S. 516, 43 S.Ct. 170, 67 L.Ed. 372, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit. Cf. Kane v. New Jersey, 242 U.S. 160, 37 S.Ct. 30, 61 L.Ed. 222; Hess v. Pawloski, supra; Young v. Masci, supra. True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. Lafayette Insurance Co. v. French, 18 How. 404, 407, 15 L.Ed. 451; St. Clair v. Cox, supra, 106 U.S. 356, 1 S.Ct. 359, 27 L.Ed. 222; Commercial Mutual Accident Co. v. Davis, supra, 213 U.S. 254, 29 S.Ct. 447, 53 L.Ed. 782; State of Washington v. Superior Court, 289 U.S. 361, 364, 365, 53 S.Ct. 624, 626, 627, 77 L.Ed. 1256, 89 A.L.R. 653. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction. Smolik v. Philadelphia & R.C. & I. Co., D.C., 222 F. 148, 151. *319 Henderson, The Position of Foreign Corporations in American Constitutional Law, 94, 95.

[9][10] It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. St. Louis S.W.R. Co. v. Alexander, supra, 227 U.S. 228, **16033 S.Ct. 248, 57 L.Ed. 486, Ann.Cas.1915B, 77; International Harvestor Co. v. Kentucky, supra, 234 U.S. 587, 34 S.Ct. 946, 58 L.Ed. 1479. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations. Cf. Pennoyer v. Neff, supra; Minnesota Commercial Men's Ass'n v. Benn, 261 U.S. 140, 43 S.Ct. 293, 67 L.Ed. 573.

[11] But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations; and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue. Compare International Harvester Co. v. Kentucky, supra, with Green v. Chicago, Burlington & Quincy R. Co., supra, and People's Tobacco Co. v. American Tobacco Co., supra. Compare Connecticut Mutual Life Ins. Co. v. Spratley, supra, 172 U.S. 619, 620, 19 S.Ct. 314, 315, 43 L.Ed. 569, and Commercial Mutual Accident Co. v. Davis, supra, with Old Wayne Mut. Life Ass'n v. McDonough, supra. See 29 Columbia Law Review, 187-195.

[12] *320 Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

[13][14][15] We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. Connecticut Mutual Life Ins. Co. v. Spratley, supra, 172 U.S. 618, 619, 19 S.Ct. 314, 315, 43 L.Ed. 569; Board of Trade v. Hammond Elevator Co., 198 U.S. 424, 437, 438, 25 S.Ct. 740, 743, 744, 49 L.Ed. 1111; Commercial Mutual Accident Co. v. Davis, supra, 213 U.S. 254, 255, 29 S.Ct. 447, 448, 53 L.Ed. 782. Cf. Riverside & Dan River Cotton Mills v. Menefee, 237 U.S. 189, 194, 195, 35 S.Ct. 579, 580, 581, 59 L.Ed. 910; see

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Knowles v. Gaslight & Coke Co., 19 Wall. 58, 61, 22 L.Ed. 70; McDonald v. Mabee, supra; Milliken v. Meyer, supra. Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit. Compare Hess v. Pawloski, supra, with McDonald v. Mabee, supra, 243 U.S. 92, 37 S.Ct. 344, 61 L.Ed. 608, L.R.A.1917F, 458, *321 and Wuchter v. Pizzutti, 276 U.S. 13, 19, 24, 48 S.Ct. 259, 260, 262, 72 L.Ed. 446, 57 A.L.R. 1230; cf. Bequet v. MacCarthy, 2 B. & Ad. 951; Maubourquet v. Wyse, 1 Ir.Rep.C.L. 471. See State of Washington v. Superior Court, supra, 289 U.S. 365, 53 S.Ct. 626, 77 L.Ed. 1256, 89 A.L.R. 653.

[16] Only a word need be said of appellant's liability for the demanded contributions of the state unemployment fund. The Supreme Court of Washington, construing and applying the statute, has held that it imposes a tax on the privilege of employing appellant's salesmen within the state measured by a percentage of the wages, here the commissions payable to the salesmen. This construction we accept for purposes of determining the constitutional validity of the statute. The right to employ labor has been **161 deemed an appropriate subject of taxation in this country and England, both before and since the adoption of the Constitution. Steward Machine Co. v. Davis, 301 U.S. 548, 579 et seq., 57 S.Ct. 883, 887 et seq., 81 L.Ed. 1279, 109 A.L.R. 1293. And such a tax imposed upon the employer for unemployment benefits is within the constitutional power of the states. Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 508 et seq., 57 S.Ct. 868, 871 et seq., 81 L.Ed. 1245, 109 A.L.R. 1327.

Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit in personam to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For Washington has made one of those activities, which taken together establish appellant's 'presence' there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its 'presence' subject it alike to taxation by the state and to suit to recover the tax. Equitable Life Assur. Society v. Pennsylvania, 238 U.S. 143, 146, 35 S.Ct. 829, 830, 59 L.Ed. 1239; cf. International Harvester Co. v. Wisconsin Department of Taxation, 322 U.S. 435, 442 et seq., 64 S.Ct. 1060, 1064 et seq., 88 L.Ed. 1373; Hoopeston Canning Co. v. Cullen, supra, 318 U.S. 316--319, 63 S.Ct. 604--606, 87 L.Ed. 1722, 145 A.L.R. 113; *322 see General Trading Co. v. State Tax Com., 322 U.S. 335, 349, 64 S.Ct. 1028, 1030, 88 L.Ed. 1309, 1319.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK delivered the following opinion.

Congress, pursuant to its constitutional power to regulate commerce, has expressly provided that a State shall not be prohibited from levying the kind of unemployment compensation tax here challenged. 26 U.S.C. s 1606, 26 U.S.C.A. Int.Rev.Code, s 1606. We have twice decided that this Congressional consent is an adequate answer to a claim that imposition of the tax violates the Commerce Clause. Perkins v. Pennsylvania, 314 U.S. 586, 62 S.Ct. 484, 86 L.Ed. 473, affirming 342 Pa. 529, 21 A.2d 45; Standard Dredging Corp. v. Murphy, 319 U.S. 306, 308, 63 S.Ct. 1067, 1068, 87 L.Ed. 1416. Two determinations by this Court of an issue so palpably without merit are sufficient. Consequently that part of this appeal which again seeks to raise the question seems so patently frivolous as to make the case a fit candidate for dismissal. Fay v. Crozer, 217 U.S. 455, 30 S.Ct. 568, 54 L.Ed. 837. Nor is the further ground advanced on this appeal, that the State of Washington has denied appellant due process of law, any less devoid of substance. It is my view, therefore, that we should dismiss the appeal as unsubstantial, [FN1] Seaboard Air Line R. Co. v. Watson, 287 U.S. 86, 90, 92, 53 S.Ct. 32, 34, 35, 77 L.Ed. 180, 86 A.L.R. 174; and decline the invitation to formulate broad rules as to the meaning of due process, which here would amount to deciding a constitutional question 'in advance of the necessity for its decision.' Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389, 89 L.Ed. 1725, 1734.

FN1 This Court has on several occasions pointed out the undesirable consequences of a failure to dismiss frivolous appeals. Salinger v. United States, 272 U.S. 542, 544, 47 S.Ct. 173, 174, 71 L.Ed. 398; United Surety Co. v. American Fruit Product Co., 238 U.S. 140, 35 S.Ct. 828, 59 L.Ed. 1238; De Beam v. Safe Deposit & Trust Co., 233 U.S. 24, 33, 34, 34 S.Ct. 584, 586, 587, 58

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L.Ed. 833.

*323 Certainly appellant can not in the light of our past decisions meritoriously claim that notice by registered mail and by personal service on its sales solicitors in Washington did not meet the requirements of procedural due process. And the due process clause is not brought in issue any more by appellant's further conceptualistic contention that Washington could not levy a tax or bring suit against the corporation because it did not honor that State with its mystical 'presence.' For it is unthinkable that the vague due process clause was ever intended to prohibit a State from regulating or taxing a business carried on within its boundaries simply because this is done by agents of a corporation organized and having its headquarters elsewhere. **162 To read this into the due process clause would in fact result in depriving a State's citizens of due process by taking from the State the power to protect them in their business dealings within its boundaries with representatives of a foreign corporation. Nothing could be more irrational or more designed to defeat the function of our federative system of government. Certainly a State, at the very least, has power to tax and sue those dealing with its citizens within its boundaries, as we have held before. Hoopeston Canning Co. v. Cullen, 318 U.S. 313, 63 S.Ct. 602, 87 L.Ed. 1722, 145 A.L.R. 1113. Were the Court to follow this principle, it would provide a workable standard for cases where, as here, no other questions are involved. The Court has not chosen to do so, but instead has engaged in an unnecessary discussion in the course of which it has announced vague Constitutional criteria applied for the first time to the issue before us. It has thus introduced uncertain elements confusing the simple pattern and tending to curtail the exercise of State powers to an extent not justified by the Constitution.

The criteria adopted insofar as they can be identified read as follows: Due process does permit State courts to 'enforce the obligations which appellant has incurred' if *324 it be found 'reasonable and just according to our traditional conception of fair play and substantial justice.' And this in turn means that we will 'permit' the State to act if upon 'an 'estimate of the inconveniences' which would result to the corporation from a trial away from its 'home' or principal place of business', we conclude that it is 'reasonable' to subject it to suit in a State where it is doing business.

It is true that this Court did use the terms 'fair play' and 'substantial justice' in explaining the philosophy underlying the holding that it could not be 'due process of law' to render a personal judgment against a defendant without notice to and an opportunity to be heard by him. Milliken v. Meyer, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 278, 132 A.L.R. 1357. In McDonald v. Mabee, 243 U.S. 90, 91, 37 S.Ct. 343, 61 L.Ed. 608, L.R.A.1917F, 458, cited in the Milliken case, Mr. Justice Holmes speaking for the Court warned against judicial curtailment of this opportunity to be heard and referred to such a curtailment as a denial of 'fair play', which even the common law would have deemed 'contrary to natural justice.' And previous cases had indicated that the ancient rule against judgments without notice had stemmed from 'natural justice' concepts. These cases, while giving additional reasons why notice under particular circumstances is inadequate, did not mean thereby that all legislative enactments which this Court might deem to be contrary to natural justice ought to be held invalid under the due process clause. None of the cases purport to support or could support a holding that a State can tax and sue corporations only if its action comports with this Court's notions of 'natural justice.' I should have thought the Tenth Amendment settled that.

I believe that the Federal Constitution leaves to each State, without any 'ifs' or 'buts', a power to tax and to open the doors of its courts for its citizens to sue corporations whose agents do business in those States. Believing that the Constitution gave the States that power, I think it a judicial deprivation to condition its exercise upon this *325 Court's notion of 'fairplay', however appealing that term may be. Nor can I stretch the meaning of due process so far as to authorize this Court to deprive a State of the right to afford judicial protection to its citizens on the ground that it would be more 'convenient' for the corporation to be sued somewhere else.

There is a strong emotional appeal in the words 'fair play', 'justice', and 'reasonableness.' But they were not chosen by those who wrote the original Constitution or the Fourteenth Amendment as a measuring rod for this Court to use in invalidating State or Federal laws passed by elected legislative representatives. No one, not even those who most feared a democratic government, ever formally proposed that courts should be given power to invalidate legislation under any such elastic standards. Express prohibitions against certain types of legislation are found in the Constitution, and under the long settled practice, courts invalidate laws found to conflict with them. This requires interpretation,

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and interpretation, it is true, may result in extension of the Constitution's purpose. But that is no reason for reading the due process clause so as to restrict a State's power to tax and sue **163 those whose activities affect persons and businesses within the State, provided proper service can be had. Superimposing the natural justice concept on the Constitution's specific prohibitions could operate as a drastic abridgment of democratic safeguards they embody, such as freedom of speech, press and religion, [FN2] and the right to counsel. This *326 has already happened. Betts v. Brady, 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595. Compare Feldman v. United States, 322 U.S. 487, 494--503, 64 S.Ct. 1082, 1085--1089, 88 L.Ed. 1408, 154 A.L.R. 982. For application of this natural law concept, whether under the terms 'reasonableness', 'justice', or 'fair play', makes judges the supreme arbiters of the country's laws and practices. Polk Co. v. Glover, 305 U.S. 5, 17--18, 59 S.Ct. 15, 20, 21, 83 L.Ed. 6; Federal Power Commission v. Natural Gas Pipeline Co., 315 U.S. 575, 600, 62 S.Ct. 736, 750, 86 L.Ed. 1037, note 4. This result, I believe, alters the form of government our Constitution provides. I cannot agree.

> FN2 These First Amendment liberties--freedom of speech, press and religion--provide a graphic illustration of the potential restrictive capacity of a rule under which they are protected at a particular time only because the Court, as then constituted believes them to be a requirement of fundamental justice. Consequently, under the same rule, another Court, with a different belief as to fundamental justice, could at least as against State action, completely or partially withdraw Constitutional protection from these basic freedoms, just as though the First Amendment had never been written.

True, the State's power is here upheld. But the rule announced means that tomorrow's judgment may strike down a State or Federal enactment on the ground that it does not conform to this Court's idea of natural justice. I therefore find myself moved by the same fears that caused Mr. Justice Holmes to say in 1930:

'I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be the constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable.' Baldwin v. Missouri, 281 U.S. 586, 595, 50 S.Ct. 436, 439, 74 L.Ed. 1056, 72 A.L.R. 1303.

66 S.Ct. 154, 326 U.S. 310, 90 L.Ed. 95, 161 A.L.R. 1057

Briefs and Other Related Documents (Back to top)

- 1945 WL 27433 (Appellate Brief) Appellant's Reply Brief (Nov. 13, 1945)
- 1945 WL 27432 (Appellate Brief) Brief of Appellees (Oct. 27, 1945)
- 1945 WL 27431 (Appellate Brief) Appellant's Brief (Oct. 08, 1945)
- 1944 WL 28353 (Appellate Brief) Brief of Appellant Upon Appellees' Motion to Dismiss or Affirm (1944)

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EXHIBIT 3

C

United States Court of Appeals,
Fifth Circuit.

Stewart M. MANN, Plaintiff-Appellant,
v.
Dallas SMITH, et al., Defendants-Appellees.

No. 84-1985.

Aug. 4, 1986.

Pretrial detainee at county jail brought civil rights action against county sheriff and deputy sheriff. The United States District Court for the Western District of Texas, Lucius D esta B unton, III, J., entered take nothing judgment in favor of defendant, and plaintiff appealed. The Court of Appeals, Patrick E. Higginbotham, Circuit Judge, held that: (1) county jail's policy of banning newspapers and magazines violated plaintiff's First Amendment rights, and (2) county jail's policy of limiting inmates' access to law books did not violate pretrial detainee's right of access to courts.

Affirmed in part, reversed in part, and remanded.

West Headnotes

[1] Constitutional Law ⇐82(13)
92k82(13) Most Cited Cases

County jail's policy of banning newspapers and magazines violated pretrial detainee's First Amendment rights, where justification of policy was desire to prevent fires and clogged toilets, but jail permitted inmates to possess other material that was flammable and capable of being used to interfere with the plumbing. U.S.C.A. Const.Amend. 1.

[2] Prisons ⇐13(1)
310k13(1) Most Cited Cases

Absent express punitive purpose, intention to punish may nonetheless be imputed to jail officials if disability imposed on inmate is not reasonably related to legitimate governmental objective or an incident of legitimate nonpunitive governmental objective.

[3] Prisons ⇐4(11)
310k4(11) Most Cited Cases

[3] Prisons ⇐4(13)
310k4(13) Most Cited Cases

Government is obligated to provide prisoners wishing to make a constitutional claim in a civil rights complaint or habeas corpus petition with adequate law libraries or adequate assistance from persons trained in the law.

[4] Prisons ⇐4(11)
310k4(11) Most Cited Cases

Inmate who has lawyer and who wants to file a civil rights complaint has burden of requesting assistance from that lawyer.

[5] Prisons ⇐4(11)
310k4(11) Most Cited Cases

Pretrial detainee's representation by court-appointed attorney while he was incarcerated in county jail did not satisfy requirement that he have available to him a minimal level of legal assistance, where detainee had requested assistance from the attorney in connection with c ivil r ights c omplaint, a nd a ttorney refused his request.

[6] Prisons ⇐4(13)
310k4(13) Most Cited Cases

County jail's policy of limiting inmates' access to law books did not violate pretrial detainee's right of access to courts, where detainee was able to file legally sufficient civil rights complaint, despite detainee's contention that he could have obtained temporary restraining order if he had been provided with adequate legal assistance.

[7] Prisons ⇐4(11)
310k4(11) Most Cited Cases

Constitution does not require government to provide inmates with attorneys to represent them in their civil actions.

[8] Prisons ⇐17(1)
310k17(1) Most Cited Cases

Pretrial d etainee d id n ot h ave c onstitutional r ight t o sleep on elevated bed.

[9] Prisons ⇐17(1)
310k17(1) Most Cited Cases

Pretrial d etainee d id n ot h ave c onstitutional r ight t o receive hot water.

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[10] Prisons 4(4)
310k4(4) Most Cited Cases

Pretrial detainee's constitutional rights were not violated when unarmed guard expressed desire to shoot him, where guard made no actual threat to do so.

[11] Prisons 4(4)
310k4(4) Most Cited Cases

Pretrial detainee at county jail was not injured as result of county sheriff's department's request to state prison warden to question detainee about his lawsuit against jail.

[12] Prisons 4(4)
310k4(4) Most Cited Cases

Pretrial detainee's rights were not violated on grounds that inmates working at clerical tasks had access to files on other inmates, absent showing that any inmate ever examined his file or used any information in it against him.

[13] Federal Civil Procedure 736
170Ak736 Most Cited Cases

Filing answers to amended complaint which were identical to answer filed to original complaint was permissible. Fed.Rules Civ.Proc.Rules 8(b), 11, 28 U.S.C.A.

*81 Stewart M. Mann pro se.

Patrick C. Appel, Baker & Botts, William J. Dyer, Houston, Tex., (Court Appointed--Not under Act), for plaintiff-appellant.

Mark H. Dettman, Midland, Tex., for defendants-appellees.

Appeal from the United States District Court for the Western District of Texas.

Before GEE and HIGGINBOTHAM, Circuit Judges, and HARVEY [FN*], Senior District Judge.

FN* District Judge of the Eastern District of Michigan, sitting by designation.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

A pretrial detainee at a county jail was subjected to a general rule under which inmates were forbidden to receive newspapers and magazines. The proffered justification for this rule was a desire to reduce the threat of fires and clogged toilets. In view of the jail's policy of allowing inmates to possess other material that was flammable and capable of being used to interfere with the plumbing, we hold that the rule is too underinclusive to be upheld under the applicable first amendment test.

The plaintiff also claims that he was denied his constitutional right of access to the courts because jail officials refused to let him visit a law library while he was preparing this case. We conclude that the plaintiff in fact had meaningful access to the courts even though he was denied the use of a law library.

I

Stewart Mann was held on criminal charges in the Midland County (Texas) Jail for 98 days as a pretrial detainee. After pleading guilty to the charges, he was held an additional 13 days before being transferred to the Texas Department of Corrections. During this time, he chose to live in a small private cell because prisoners in larger, general-population cells sometimes had to sleep on mattresses on the floor. Mann complains that he was subjected to the following conditions by the defendants: [FN1]

FN1. Some of Mann's factual allegations were disputed at trial. He also pressed a number of other claims in the district court, but these have not been pursued on appeal.

(1) Pursuant to a general policy at the jail, he was denied access to newspapers and magazines.

(2) Although he was permitted to request that specific law books be brought to him at the jail, he was denied the opportunity to visit a law library and was not provided by the jail with personal assistance from persons trained in the law.

(3) He was seldom or never permitted to go outside his cell for physical exercise.

(4) Because of plumbing problems at the jail, he was deprived of access to hot water for some period of time.

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(5) On one occasion, an unarmed guard expressed a desire to take Mann outside and murder him.

(6) In his complaint in this lawsuit, Mann alleged that a crime information computer in the jail building was being misused by other inmates. After being transferred to the state prison, the Midland County Sheriff's Department asked the warden of that institution to question Mann about his knowledge of the problem. The warden did so.

(7) Some inmates who worked as file clerks at the jail had access to files on other inmates.

Mann also complains (8) that the defendants' answers to his amended complaints in this lawsuit were identical to their answer to his original complaint; and (9) that the guilty plea he entered while he was living in the jail was coerced.

While at the county jail, Mann filed a *pro se* § 1983 complaint against the Midland County Sheriff and a Deputy Sheriff, in *82 which he asked for declaratory and injunctive relief. After being transferred to the state prison, he amended his complaint to ask for damages. Following discovery and other procedural preliminaries, the district court held a bench trial, concluded that Mann had not been deprived of any federally protected right, and entered a take-nothing judgment in favor of the defendants. Mann appealed, and this court ordered that an attorney be appointed to represent him.

II

[1] Mann's single meritorious argument is that the district court erred in concluding that the jail's policy of banning newspapers and magazines left his constitutional rights untouched. It is undisputed that the Midland County Jail had a policy that forbade inmates to receive or possess newspapers and magazines. The asserted justifications for this policy were that newspapers and magazines are fire hazards, and that they can be used to clog up the plumbing. It is also undisputed, however, that smoking by prisoners was banned; that the inmates were permitted to have softcover books; that writing paper and toilet paper were freely available; and that the inmates had sheets, blankets, pillows, and clothing that could be used to interfere with the plumbing.

[2] Mann contends that the jail's policy on newspapers and magazines violated his rights under the first and fourteenth amendments. Because it is unconstitutional to inflict deliberate punishment on pretrial detainees, it is necessary to distinguish such punishment from justifiable "regulatory restraints." *Bell v. Wolfish*, 441 U.S. 520, 535-37, 99 S.Ct. 1861, 1871-73, 60 L.Ed.2d 447 (1979). Absent an expressed punitive purpose, an intention to punish may nonetheless be imputed to jail officials if a disability imposed on an inmate is not "reasonably related to a legitimate governmental objective" or an "incident of a legitimate nonpunitive governmental objective." *Id.* at 538-39 & n. 20, 99 S.Ct. at 1874 & n. 20.

The defendants, who have not expressed an intention to punish Mann, assert that the purpose of the ban on newspapers and magazines is to prevent fires and clogged toilets. Because the jail has a no smoking rule for inmates and because the jailers permit the inmates to have other forms of paper and similar materials, the official rationale seems tenuous at best. Nevertheless, it is hard to deny that the rule might slightly reduce the possibility of fire and that it might remove some opportunities and temptations for the inmates to do mischief to the plumbing; furthermore, the jail's rule would rather obviously serve the convenience of the jailers by helping to keep trash from piling up in the inmates' living areas. Under the general test articulated in *Bell v. Wolfish*, which is designed to root out intentional punishment rather than self- serving inconsiderateness, we doubt that the jail's rule constitutes unconstitutional punishment.

We need not decide this question, however, because the ban on newspapers and magazines must be struck down under the first amendment [FN2] if it represents an "exaggerated response" by jail officials to the legitimate need to "preserve internal order and discipline and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. at 547-48, 99 S.Ct. at 1878-79. The patently underinclusive nature of the regulation strongly suggests that it is indeed an exaggerated response; certainly it contrasts with the carefully tailored restriction on hardbound books that was upheld in *Bell v. Wolfish* itself. Perhaps the jail officials who established this policy had some very important and legitimate purpose that could not be accomplished without denying the inmates access to newspapers and magazines. If so, the defendants' lawyers have not brought it to our attention, and we have not been able to imagine what it could have been.

FN2. The free speech clause of the first amendment operates against the states through the Supreme Court's construction of the fourteenth amendment's due process

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clause. *See Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 629, 69 L.Ed. 1138 (1925).

*83 The defendants seek to defend the regulation by noting that the jail provides the inmates in general-population cells (where Mann could have lived had he so chosen) with access to television, which the defendants contend is an adequate substitute for newspapers and magazines. They accordingly argue that the ban on certain printed materials is a legitimate "time, place, and manner" restriction. *See, e.g., Grayned v. City of Rockford*, 408 U.S. 104, 115, 92 S.Ct. 2294, 2303, 33 L.Ed.2d 222 (1972). Whatever the intrinsic merits of television in comparison with newspapers and magazines, the contents of television are different from what one finds in the printed media. It is not up to the Midland County Sheriff or this court to decide that television can adequately serve the first amendment right to receive protected materials. [FN3] Rather, we must apply the principle that "a prison inmate retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804, 41 L.Ed.2d 495 (1974). Although jail officials may find it inconvenient to give inmates access to newspapers and magazines, the defendants have not suggested how such access is inconsistent with any legitimate jail function. Because it is undisputed that Mann sought to obtain newspapers and magazines while he was being held at the jail, we must conclude that Mann's constitutional rights were infringed by the jail's policy and reverse the judgment of the court below. [FN4]

FN3. On the first amendment right to receive information and ideas, *see Kleindienst v. Mandel*, 408 U.S. 753, 762-63, 92 S.Ct. 2576, 2581-82, 33 L.Ed.2d 683 (1972) (collecting cases).

FN4. In *Kincaid v. Rusk*, 670 F.2d 737 (7th Cir.1982), the court found a violation of the first amendment on facts that were similar to those in the present case.

III

[3] Mann also makes a colorable argument that his right of access to the courts was violated because the jail's "checkout" system for law books did not conform with the minimum standards prescribed by *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), and *Morrow v. Harwell*, 768 F.2d 619 (5th Cir.1985). Under *Bounds*, the government is obliged to provide prisoners wishing to make a constitutional claim in a civil rights complaint or habeas corpus petition "with adequate law libraries or adequate assistance from persons trained in the law." 430 U.S. at 828, 97 S.Ct. at 1498. In *Morrow*, we concluded that pretrial detainees, some of whom had been held for about the same length of time that Mann was held, had a right to more legal assistance than Mann was provided with. This strongly suggests that the Midland County Jail's policy on legal assistance for inmates was not what it should have been.

[4][5] *Morrow*, however, was a class action in which declaratory and injunctive relief was sought, while this is an individual suit brought by a person who is no longer being held at the Midland County Jail. Although *Bounds* held that prison authorities are required to provide inmates with certain assistance, it did not say that there is a constitutional right to such assistance. Rather, the Court spoke of a "constitutional right of access to the courts" and emphasized that "our main concern here is 'protecting the *ability* of an inmate to prepare a petition or complaint.' " 430 U.S. at 828 & n. 17, 97 S.Ct. at 1498 n. 17 (citation omitted) (emphasis added). The defendants point out that during the time Mann was in the county jail, he had access to an attorney, who had been appointed to represent him in connection with the criminal charges on which he was being held. The defendants argue that because Mann was represented by an attorney at the time in question, we should presume that he had available to him the minimal level of legal assistance required by *Bounds*. We agree that an inmate who has a lawyer and who wants to file a civil rights complaint has the burden of requesting assistance from that lawyer. This is not to say that the *84 lawyer is compelled to represent the inmate in the proposed civil rights action. It is only to acknowledge that attorneys can often rather easily give inmates the information that they need to proceed *pro se*, and that if they do so, unnecessary *Bounds* problems may be avoided. This reasoning, however, does not help the defendants in this case. Mann testified, without rebuttal, that he requested assistance from his court-appointed attorney, and that this request was refused: "[H]e told me himself he was restricted to those criminal charges, and he could not help me file lawsuits. And it was just as simple as that." We therefore cannot conclude that Mann's access to his court-appointed

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attorney was insufficient to satisfy the requirements of *Bounds*.

[6] There are other grounds, however, on which Mann's right-of-access argument must be rejected. *Morrow* concluded that the *Bounds*-created "right of access includes the ability to file a legally sufficient claim." 768 F.2d at 623 (citation omitted). As the court below pointed out to Mann:

> You were denied access to the law library. You were not denied access to the Courts, because obviously you are here. You have filed a lawsuit, you have had a trial.

It is true, of course, that the filing of a paper "that, without determination of whether it states a claim legally sufficient and within the court's jurisdiction, is subject to dismissal on grounds of convenience to court and litigants," would not by itself constitute meaningful access to the courts under *Bounds*. *Bonner v. City of Prichard*, 661 F.2d 1206, 1212 (11th Cir.1981) (en banc). But as the trial judge knew very well, and as we have confirmed by examining the record, Mann in fact filed a detailed civil complaint along with an affidavit in support of a request to proceed *in forma pauperis*. The IFP request was granted, and the court ordered that a copy of the complaint be served on each of the defendants. While Mann was still at the county jail, the defendants answered, the court ordered that discovery proceed, and Mann amended his complaint to state additional claims and to ask for additional relief. Mann himself proved in an irrefutable manner that he was able to file a legally sufficient complaint: by doing so. [FN5]

> FN5. *Accord Hudson v. Robinson*, 678 F.2d 462, 466 & n. 5 (3d Cir.1982) (holding that actual injury must be shown in order to make out a *Bounds* claim).

[7] Mann, however, contends that if the county jail had provided him with adequate legal assistance, he might also have been able to obtain a temporary restraining order against the unconstitutional condition to which he was being subjected. As we pointed out in *Morrow*, the principles stated in *Bounds* "suffer for lack of internal definition and prove far easier to state than to apply," perhaps because they have no clear textual footing in the Constitution. 768 F.2d at 623. *Bounds* is vague about exactly what kinds of claims by inmates trigger the "right of access" to the courts, how long a person must be detained before the right is triggered, and what level of legal assistance is required to protect the right. *See Morrow*, 768 F.2d at 622-23. This much, however, is clear: the Constitution does not require the government to provide inmates with attorneys to represent them in their civil actions, and *Bounds* cannot have meant to require legal assistance equivalent to the provision of a lawyer. *Morrow* held that the right of access under *Bounds* "includes the ability to file a legally sufficient claim." 768 F.2d at 623 (citation omitted). Extending the right this far is manageable in a case like the one before us because a court can examine the record and determine, as a threshold question, whether a legally sufficient claim was filed. To determine whether an individual's right of access to the courts was violated by a failure to provide him with the means of pursuing a temporary restraining order, or other emergency relief in equity, is a much more uncertain and problematic venture.

Perhaps the most obvious way to proceed would be to put ourselves in the shoes of a hypothetical trial judge faced with a hypothetical *85 motion for emergency relief and then try to guess how this hypothetical judge would have exercised his wide discretion in ruling on the hypothetical motion. We think that such an exercise would serve little purpose other than to dress up a judgment call by us in the formal clothes of legal reasoning. Better, we think, simply to examine the record and decide whether Stewart Mann had "meaningful access" to the U.S. District Court. We conclude that he did. Mann's IFP request, which was accompanied by a civil complaint that was technically more sophisticated than many complaints drawn up by licensed attorneys, was granted within nine days after it was filed. Mann's single meritorious claim was the first one listed on his complaint, and the defendants soon responded with an answer in which they admitted the facts that formed the basis for that claim. Thus, the exact nature of Mann's one valid claim, as well as his *pro se* status, was before the district judge in a clear form from the very beginning, and the judge handled the case in an appropriately expeditious manner. [FN6] We have no reason to assume that the district judge would have handled this case differently had he been given a paper that was styled as a motion for a temporary restraining order. Accordingly, we conclude that Mann had meaningful access to the courts, and we affirm the rejection of his *Bounds* claim.

> FN6. Only eight days after the defendants' answer was filed, Mann was transferred out of the jail to the state prison, and it seems quite unlikely that a hearing would have

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been scheduled before Mann's departure.

IV

[8] The remainder of Mann's claims are meritless and easily disposed of. First, Mann complains that his cell, unlike the larger general-population cells, was too small to allow him to get adequate physical exercise. Mann himself, however, chose to stay in a small private cell because he did not want to sleep on a mattress on the floor. He contends that this does not affect his physical-exercise claim because "[r]equiring pretrial detaine[e]s to sleep on mattresses placed on the floor is unconstitutional," and he could not legitimately be forced to choose between two unconstitutional conditions. Mann has cited no case holding that the Constitution requires elevated beds for prisoners, and we know of no source for such a right. The district court correctly rejected Mann's physical-exercise claim.

[9] Mann contends that he was deprived of hot water for some period of time, but he neither alleged nor proved that any such deprivation was intentional or the result of knowing neglect by jail officials. At trial, in fact, he specifically denied that he was making any such allegation. The district court correctly assumed that there is no constitutional right to hot water and correctly held that punitive intent could not be inferred from the record.

[10] Mann asserts that his constitutional rights were violated when a guard expressed a desire to murder him. The record, although skimpy on this issue, suggests that an unarmed guard told Mann that he *wished* he could take him outside the jail and shoot him, but that the guard made no actual threat to do so. Whatever the law might say about an actual threat of murder, this guard's intemperate remark falls under the maxim *de minimis non curat lex.*

[11] The district court found that the warden of the state prison questioned Mann about his lawsuit at the request of the Midland County Sheriff's Department; that the inquiry was minimal and non-threatening; and that Mann was not subjected to any kind of punishment or restriction at the prison as a result of the request by the Sheriff's Department. The record suggests that the Midland County request was triggered by Mann's own allegation that crime information computers in the Midland County jail building were being illegally used by other inmates. The fact that Mann put this allegation into a civil complaint could not insulate him from being *86 asked about it, and the district court correctly concluded that Mann suffered no injury as a result of the defendant's request to the state prison warden.

[12] Mann also complains that inmates working at clerical tasks had access to the files on other inmates. Whether or not this occurred, the district court found that Mann had failed to show at trial that any inmate ever examined his file or used any information in it against him; the court held that Mann's rights could not have been violated by inmates looking at the files of other inmates. The district judge's finding is supported by the record, and his legal conclusion was correct.

[13] Finally, Mann raises two issues that were not properly pursued below. First, he complains that the defendants filed answers to his amended complaints that were identical to the answer they filed to his original complaint. The defendants' answers admitted certain of Mann's allegations and generally denied the others. Fed.R.Civ.P. 8(b) permits this practice, and Mann did not ask the trial judge to impose sanctions under Fed.R.Civ.P. 11. In any case, there is no cause of action for failure to comply with Rule 11, and there is certainly no need for defendants to think up new ways of stating a general denial in response to each amended complaint. Second, Mann now alleges for the first time that he was somehow pressured by the defendants to plead guilty to the criminal charges on which he was being held at the jail. This appears to be an attack on the validity of his criminal conviction, and we decline to address it. *See Williams v. Dallas County Commissioners*, 689 F.2d 1212 (5th Cir.1982).

V

The judgment of the district court is affirmed in all respects except as to the first amendment claim. On remand, the court will declare unconstitutional the rule forbidding inmates to receive or possess newspapers and magazines. The district court will also make findings as to damages, giving due consideration to the rule that nominal damages should be awarded if actual damages are not established. *See, e.g., Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 106 S.Ct. 2537, 91 L.Ed.2d 249 (1986); *Familias Unidas v. Briscoe*, 619 F.2d 391, 402 (5th Cir.1980). Injunctive relief, however, should not be given. *See Morrow v. Harwell*, 768 F.2d 619, 627-28 (5th Cir.1985).

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

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EXHIBIT 4

2003 Revised Edition
Supersedes 2003 Edition

Federal
CIVIL JUDICIAL PROCEDURE and RULES

Includes Proposed Rules for:

- RULES OF CIVIL PROCEDURE
- RULES OF EVIDENCE
- RULES OF APPELLATE PROCEDURE

THOMSON
WEST

2003 REVISED EDITION

FEDERAL CIVIL JUDICIAL PROCEDURE and RULES

As amended to May 23, 2003

Includes Proposed Amendments adopted March 27, 2003, to become effective December 1, 2003, absent contrary Congressional action for Federal Rules of Civil Procedure, Evidence and Appellate Procedure.

Rules of Civil Procedure
Rules of Judicial Panel on Multidistrict Litigation
Rules—Habeas Corpus Cases
Rules—Motion Attacking Sentence
Rules of Evidence
Rules of Appellate Procedure
Rules of the Supreme Court

Includes laws through Public Law 108–23, May 19, 2003

Title 28, Judiciary and Judicial Procedure
Act June 25, 1948, c. 646, §§ 2 to 39
Appendix:
    Judicial Personnel Financial Disclosure Requirements [Repealed]
    Development of Mechanisms for Resolving Minor Disputes [Codified]
Constitution of the United States
Title 5, Government Organization and Employees
    App. 4—Financial Disclosure Requirements of Federal Personnel
Consolidated Index

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HISTORICAL NOTES

Effective and Applicability Provisions

1946 Amendments. Effective date of amendment to this rule, see rule 86(b).

Rule 7.1. Disclosure Statement

(a) Who Must File: Nongovernmental Corporate Party. A nongovernmental corporate party to an action or proceeding in a district court must file two copies of a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

(b) Time for Filing; Supplemental Filing. A party must:

(1) file the Rule 7.1(a) statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court, and

(2) promptly file a supplemental statement upon any change in the information that the statement requires.

(Added Apr. 29, 2002, eff. Dec. 1, 2002.)

ADVISORY COMMITTEE NOTES

2002 Adoption

Rule 7.1 is drawn from Rule 26.1 of the Federal Rules of Appellate Procedure, with changes to adapt to the circumstances of district courts that dictate different provisions for the time of filing, number of copies, and the like. The information required by Rule 7.1(a) reflects the "financial interest" standard of Canon 3C(1)(c) of the Code of Conduct for United States Judges. This information will support properly informed disqualification decisions in situations that call for automatic disqualification under Canon 3C(1)(c). It does not cover all of the circumstances that may call for disqualification under the financial interest standard, and does not deal at all with other circumstances that may call for disqualification.

Although the disclosures required by Rule 7.1(a) may seem limited, they are calculated to reach a majority of the circumstances that are likely to call for disqualification on the basis of financial information that a judge may not know or recollect. Framing a rule that calls for more detailed disclosure will be difficult. Unnecessary disclosure requirements place a burden on the parties and on courts. Unnecessary disclosure of volumes of information may create a risk that a judge will overlook the one bit of information that might require disqualification, and also may create a risk that unnecessary disqualifications will be made rather than attempt to unravel a potentially difficult question. It has not been feasible to dictate more detailed disclosure requirements in Rule 7.1(a).

Rule 7.1 does not prohibit local rules that require disclosures in addition to those required by Rule 7.1. Developing experience with local disclosure practices and advances in electronic technology may provide a foundation for adopting more detailed disclosure requirements by future amendments of Rule 7.1.

Changes Made After Publication and Comment. The provisions that would require disclosure of additional information that may be required by the Judicial Conference have been deleted.

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required,

other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

(As amended Feb. 28, 1966, eff. July 1, 1966; Mar. 2, 1987, eff. Aug. 1, 1987.)

ADVISORY COMMITTEE NOTES

1937 Adoption

Note to Subdivision (a). See [former] Equity Rules 25 (Bill of Complaint—Contents), and 30 (Answer—Contents—Counterclaim). Compare 2 Ind.Stat.Ann. (Burns, 1933) §§ 2–1004, 2–1015; 2 Ohio Gen.Code Ann. (Page, 1926) §§ 11305, 11314; Utah Rev.Stat.Ann. (1933) §§ 104–7–2, 104–9–1.

See Rule 19(c) for the requirement of a statement in a claim for relief of the names of persons who ought to be parties and the reason for their omission.

See Rule 23(b) for particular requirements as to the complaint in a secondary action by shareholders.

Note to Subdivision (b). 1. This rule supersedes the methods of pleading prescribed in U.S.C., Title 19, § 508 (Persons making seizures pleading general issue and proving special matter); U.S.C. Title 35, [former] §§ 40d (Proving under general issue, upon notice, that a statement in application for an extended patent is not true), 69 [now 282] (Pleading and proof in actions for infringement) and similar statutes.

2. This rule is, in part, [former] Equity Rule 30 (Answer—Contents—Counterclaim), with the matter on denials largely from the Connecticut practice. See Conn. Practice Book (1934) §§ 107, 108, and 122; Conn.Gen.Stat. (1930) §§ 5508 to 5514. Compare the English practice, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r.r. 17–20.

Note to Subdivision (c). This follows substantially *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 15 and N.Y.C.P.A. (1937) § 242, with "surprise" omitted in this rule.

Note to Subdivision (d). The first sentence is similar to former Equity Rule 30 (Answer—Contents—Counterclaim). For the second sentence see former Equity Rule 31 (Reply—When Required—When Cause at Issue). This is similar to *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r.r. 13, 18; and to the practice of the States.

Note to Subdivision (e). This rule is an elaboration upon [former] Equity Rule 30 (Answer—Contents—Counterclaim), plus a statement of the actual practice under some codes. Compare also [former] Equity Rule 18 (Pleadings—Technical Forms Abrogated). See Clark, *Code Pleading* (1928), pp. 171–4, 432–5; Hankin, *Alternative and Hypothetical Pleading* (1924), 33 Yale L.J. 365.

Note to Subdivision (f). A provision of like import is of frequent occurrence in the codes. Smith-Hurd Ill.Stats. ch. 110, § 157(3); 2 Minn.Stat. (Mason, 1927) § 9266; N.Y.C.P.A. (1937) § 275; 2 N.D.Comp.Laws Ann. (1913) § 7458.

1966 Amendment

The change here is consistent with the broad purposes of unification.

1987 Amendment

The amendments are technical. No substantive change is intended.

Rule 9. Pleading Special Matters

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver

occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

ADVISORY COMMITTEE NOTES

1937 Adoption

The first sentence is derived in part from the opening statement of former Equity Rule 25 (Bill of Complaint—Contents). The remainder of the rule is an expansion in conformity with usual state provisions. For numbered paragraphs and separate statements, see Conn.Gen.Stat., 1930, § 5513; Smith-Hurd Ill.Stats. ch. 110, § 157(2); N.Y.R.C.P., (1937) Rule 90. For incorporation by reference, see N.Y.R.C.P., (1937) Rule 90. For written instruments as exhibits, see Smith-Hurd Ill.Stats. ch. 110, § 160.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,—

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against

the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 22, 1993, eff. Dec. 1, 1993.)

ADVISORY COMMITTEE NOTES

1937 Adoption

This is substantially the content of [former] Equity Rules 24 (Signature of Counsel) and 21 (Scandal and Impertinence) consolidated and unified. Compare former Equity Rule 36 (Officers Before Whom Pleadings Verified). Compare to similar purposes, *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 19, r. 4, and *Great Australian Gold Mining Co. v. Martin*, L.R. 5 Ch.Div. 1, 10 (1877). Subscription of pleadings is required in many codes. 2 Minn.Stat. (Mason, 1927) § 9265; N.Y.R.C.P. (1937) Rule 91; 2 N.D.Comp.Laws Ann. (1913) § 7455.

This rule expressly continues any statute which requires a pleading to be verified or accompanied by an affidavit, such as: U.S.C., Title 28:

§ 381 [former] (Preliminary injunctions and temporary restraining orders)

§ 762 [now 1402] (Suit against the United States)

U.S.C., Title 28, § 829 [now 1927] (Costs; attorney liable for, when) is unaffected by this rule.

For complaints which must be verified under these rules, see Rules 23(b) (Secondary Action by Shareholders) and 65 (Injunctions).

For abolition of former rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances, see 12 P.S.Pa. § 1222; for the rule in equity itself, see *Greenfield v. Blumenthal*, C.C.A.3, 1934, 69 F.2d 294.

1983 Amendment

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, *Sanctions Imposable for Violations of the Federal Rules of Civil Procedure* 64–65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, Federal Practice ¶ 7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. See, e.g., *Roadway Express, Inc. v. Piper*, 447 U.S. 752 (1980); *Hall v. Cole*, 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, e.g., *Browning Debenture Holders' Committee v. DASA Corp.*, 560 F.2d 1078 (2d Cir.1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. See, e.g., *Heart Disease Research Foundation v. General Motors Corp.*, 15 Fed.R.Serv.2d 1517, 1519 (S.D.N.Y.1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See *Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n*, 365 F.Supp. 975 (E.D.Pa.1973). This standard is more stringent than the original good-faith formula and thus it is expected that a greater range of circumstances will trigger its violation. See *Nemeroff v. Abelson*, 620 F.2d 339 (2d Cir.1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after *in camera* inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged them-

selves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in *pro se* situations. See *Haines v. Kerner*, 404 U.S. 519 (1972).

The provision in the original rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. See generally Risinger, *Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed.R.Civ.P. 11*, 61 Minn.L.Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See *Murchison v. Kirby*, 27 F.R.D. 14 (S.D.N.Y.1961); 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See *National Hockey League v. Metropolitan Hockey Club*, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The references in the former text to wilfulness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See *North American Trading Corp. v. Zale Corp.*, 73 F.R.D. 293 (S.D.N.Y.1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1334 (1969); 2A Moore, *Federal Practice* ¶ 11.02, at 2104 n. 8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See *Browning Debenture Holders' Committee v. DASA Corp.*, supra. This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

1987 Amendment

The amendments are technical. No substantive change is intended.

1993 Amendments

Purpose of revision. This revision is intended to remedy problems that have arisen in the interpretation and application of the 1983 revision of the rule. For empirical examination of experience under the 1983 rule, see, *e.g.*, New York State Bar Committee on Federal Courts, *Sanctions and Attorneys' Fees* (1987); T. Willging, *The Rule 11 Sanctioning Process* (1989); American Judicature Society, *Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11* (S. Burbank ed., 1989); E. Wiggins, T. Willging, and D. Stienstra, *Report on Rule 11* (Federal Judicial Center 1991). For book-length analyses of the case law, see G. Joseph, *Sanctions: The Federal Law of Litigation Abuse* (1989); J. Solovy, *The Federal Law of Sanctions* (1991); G. Vairo, *Rule 11 Sanctions: Case Law Perspectives and Preventive Measures* (1991).

The rule retains the principle that attorneys and pro se litigants have an obligation to the court to refrain from conduct that frustrates the aims of Rule 1. The revision broadens the scope of this obligation, but places greater

constraints on the imposition of sanctions and should reduce the number of motions for sanctions presented to the court. New subdivision (d) removes from the ambit of this rule all discovery requests, responses, objections, and motions subject to the provisions of Rule 26 through 37.

Subdivision (a). Retained in this subdivision are the provisions requiring signatures on pleadings, written motions, and other papers. Unsigned papers are to be received by the Clerk, but then are to be stricken if the omission of the signature is not corrected promptly after being called to the attention of the attorney or pro se litigant. Correction can be made by signing the paper on file or by submitting a duplicate that contains the signature. A court may require by local rule that papers contain additional identifying information regarding the parties or attorneys, such as telephone numbers to facilitate facsimile transmissions, though, as for omission of a signature, the paper should not be rejected for failure to provide such information.

The sentence in the former rule relating to the effect of answers under oath is no longer needed and has been eliminated. The provision in the former rule that signing a paper constitutes a certificate that it has been read by the signer also has been eliminated as unnecessary. The obligations imposed under subdivision (b) obviously require that a pleading, written motion, or other paper be read before it is filed or submitted to the court.

Subdivisions (b) and (c). These subdivisions restate the provisions requiring attorneys and pro se litigants to conduct a reasonable inquiry into the law and facts before signing pleadings, written motions, and other documents, and prescribing sanctions for violation of these obligations. The revision in part expands the responsibilities of litigants to the court, while providing greater constraints and flexibility in dealing with infractions of the rule. The rule continues to require litigants to "stop-and-think" before initially making legal or factual contentions. It also, however, emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable and by generally providing protection against sanctions if they withdraw or correct contentions after a potential violation is called to their attention.

The rule applies only to assertions contained in papers filed with or submitted to the court. It does not cover matters arising for the first time during oral presentations to the court, when counsel may make statements that would not have been made if there had been more time for study and reflection. However, a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit. For example, an attorney who during a pretrial conference insists on a claim or defense should be viewed as "presenting to the court" that contention and would be subject to the obligations of subdivision (b) measured as of that time. Similarly, if after a notice of removal is filed, a party urges in federal court the allegations of a pleading filed in state court (whether as claims, defenses, or in disputes regarding removal or remand), it would be viewed as "presenting"—and hence certifying to the district court under Rule 11—those allegations.

The certification with respect to allegations and other factual contentions is revised in recognition that sometimes a litigant may have good reason to believe that a fact is true or false but may need discovery, formal or informal, from opposing parties or third persons to gather and confirm the evidentiary basis for the allegation. Tolerance of factual contentions in initial pleadings by plaintiffs or defendants when specifically identified as made on information and belief does not relieve litigants from the obligation to conduct an appropriate investigation into the facts that is reasonable under the circumstances; it is not a license to join parties, make claims, or present defenses without any factual basis or justification. Moreover, if evidentiary support is not obtained after a reasonable opportunity for further investigation or discovery, the party has a duty under the rule not to persist with that contention. Subdivision (b) does not require a formal amendment to pleadings for which evidentiary support is not obtained, but rather calls upon a litigant not thereafter to advocate such claims or defenses.

The certification is that there is (or likely will be) "evidentiary support" for the allegation, not that the party will prevail with respect to its contention regarding the fact. That summary judgment is rendered against a party does not necessarily mean, for purposes of this certification, that it had no evidentiary support for its position. On the other hand, if a party has evidence with respect to a contention that would suffice to defeat a motion for summary judgment based thereon, it would have sufficient "evidentiary support" for purposes of Rule 11.

Denials of factual contentions involve somewhat different considerations. Often, of course, a denial is premised upon the existence of evidence contradicting the alleged fact. At other times a denial is permissible because, after an appropriate investigation, a party has no information concerning the matter or, indeed, has a reasonable basis for doubting the credibility of the only evidence relevant to the matter. A party should not deny an allegation it knows to be true; but it is not required, simply because it lacks contradictory evidence, to admit an allegation that it believes is not true.

The changes in subdivisions (b)(3) and (b)(4) will serve to equalize the burden of the rule upon plaintiffs and defendants, who under Rule 8(b) are in effect allowed to deny allegations by stating that from their initial investigation they lack sufficient information to form a belief as to the truth of the allegation. If, after further investigation or discovery, a denial is no longer warranted, the defendant should not continue to insist on that denial. While sometimes helpful, formal amendment of the pleadings to withdraw an allegation or denial is not required by subdivision (b).

Arguments for extensions, modifications, or reversals of existing law or for creation of new law do not violate subdivision (b)(2) provided they are "nonfrivolous." This establishes an objective standard, intended to eliminate any "empty-head pure-heart" justification for patently frivolous arguments. However, the extent to which a litigant has researched the issues and found some support for its theories even in minority opinions, in law review articles, or through consultation with other attorneys should certainly be taken into account in determining whether paragraph (2) has been violated. Although arguments for a change of law are not required to be specifically so identified, a contention that is so identified should be viewed with greater tolerance under the rule.

The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities (or, in the case of government attorneys, to the Attorney General, Inspector General, or agency head), etc. *See Manual for Complex Litigation, Second,* § 42.3. The rule does not attempt to enumerate the factors a court should consider in deciding whether to impose a sanction or what sanctions would be appropriate in the circumstances; but, for emphasis, it does specifically note that a sanction may be nonmonetary as well as monetary. Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants: all of these may in a particular case be proper considerations. The court has significant discretion in determining what sanctions, if any, should be imposed for a violation, subject to the principle that the sanctions should not be more severe than reasonably necessary to deter repetition of the conduct by the offending person or comparable conduct by similarly situated persons.

Since the purpose of Rule 11 sanctions is to deter rather than to compensate, the rule provides that, if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty. However, under unusual circumstances, particularly for (b)(1) violations, deterrence may be ineffective unless the sanction not only requires the person violating the rule to make a monetary payment, but also directs that some or all of this payment be made to those injured by the violation. Accordingly, the rule authorizes the court, if requested in a motion and if so warranted, to award attorney's fees to another party. Any such award to another party, however, should not exceed the expenses and attorneys' fees for the services directly and unavoidably caused by the violation of the certification requirement. If, for example, a wholly unsupportable count were included in a multi-count complaint or counterclaim for the purpose of needlessly increasing the cost of litigation to an impecunious adversary, any award of expenses should be limited to those directly caused by inclusion of the improper count, and not those resulting from the filing of the complaint or answer itself. The award should not provide compensation for services that could have been avoided by an earlier disclosure of evidence or an earlier challenge to the groundless claims or defenses. Moreover, partial reimbursement of fees may constitute a sufficient deterrent with respect to violations by persons having modest financial resources. In cases brought under statutes providing for fees to be awarded to prevailing parties, the court should not employ cost-shifting under this rule in a manner that would be inconsistent with the standards that govern the statutory award of fees, such as stated in *Christiansburg Garment Co. v. EEOC,* 434 U.S. 412 (1978).

The sanction should be imposed on the persons—whether attorneys, law firms, or parties—who have violated the rule or who may be determined to be responsible for the violation. The person signing, filing, submitting, or advocating a document has a nondelegable responsibility to the court, and in most situations is the person to be sanctioned for a violation. Absent exceptional circumstances, a law firm is to be held also responsible when, as a result of a motion under subdivision (c)(1)(A), one of its partners, associates, or employees is determined to have violated the rule. Since such a motion may be filed only if the offending paper is not withdrawn or corrected within 21 days after service of the motion, it is appropriate that the law firm ordinarily be viewed as jointly responsible under established principles of agency. This provision is designed to remove the restrictions of the former rule. *Cf. Pavelic & LeFlore v. Marvel Entertainment Group,* 493 U.S. 120 (1989) (1983 version of Rule 11 does not permit sanctions against law firm of attorney signing groundless complaint).

The revision permits the court to consider whether other attorneys in the firm, co-counsel, other law firms, or the party itself should be held accountable for their part in causing a violation. When appropriate, the court can make an additional inquiry in order to determine whether the sanction should be imposed on such persons, firms, or parties either in addition to or, in unusual circumstances, instead of the person actually making the presentation to the court. For example, such an inquiry may be appropriate in cases involving governmental agencies or other institutional parties that frequently impose substantial restrictions on the discretion of individual attorneys employed by it.

Sanctions that involve monetary awards (such as a fine or an award of attorney's fees) may not be imposed on a represented party for causing a violation of subdivision (b)(2), involving frivolous contentions of law. Monetary responsibility for such violations is more properly placed solely on the party's attorneys. With this limitation, the rule should not be subject to attack under the Rules Enabling Act. See *Willy v. Coastal Corp.,* — U.S. — (1992); *Business Guides, Inc. v. Chromatic Communications Enter. Inc.,* — U.S. — (1991). This restriction does not limit the court's power to impose sanctions or remedial orders that may have collateral financial consequences upon a party, such as dismissal of a claim, preclusion of a defense, or preparation of amended pleadings.

Explicit provision is made for litigants to be provided notice of the alleged violation and an opportunity to respond before sanctions are imposed. Whether the matter should be decided solely on the basis of written submissions or should be scheduled for oral argument (or, indeed, for evidentiary presentation) will depend on the circumstances. If the court imposes a sanction, it must, unless waived, indicate its reasons in a written order or on the record; the court should not ordinarily have to explain its denial of a motion for sanctions. Whether a violation has occurred and what sanctions, if any, to impose for a violation are matters committed to the discretion of the trial court; accordingly, as under current law, the standard for appellate review of these decisions will be for abuse of discretion. *See Cooter & Gell v. Hartmarx Corp.,* 496 U.S. 384 (1990) (noting, however, that an abuse would be established if the court based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence).

The revision leaves for resolution on a case-by-case basis, considering the particular circumstances involved, the ques-

tion as to when a motion for violation of Rule 11 should be served and when, if filed, it should be decided. Ordinarily the motion should be served promptly after the inappropriate paper is filed, and, if delayed too long, may be viewed as untimely. In other circumstances, it should not be served until the other party has had a reasonable opportunity for discovery. Given the "safe harbor" provisions discussed below, a party cannot delay serving its Rule 11 motion until conclusion of the case (or judicial rejection of the offending contention).

Rule 11 motions should not be made or threatened for minor, inconsequential violations of the standards prescribed by subdivision (b). They should not be employed as a discovery device or to test the legal sufficiency or efficacy of allegations in the pleadings; other motions are available for those purposes. Nor should Rule 11 motions be prepared to emphasize the merits of a party's position, to exact an unjust settlement, to intimidate an adversary into withdrawing contentions that are fairly debatable, to increase the costs of litigation, to create a conflict of interest between attorney and client, or to seek disclosure of matters otherwise protected by the attorney-client privilege or the work-product doctrine. As under the prior rule, the court may defer its ruling (or its decision as to the identity of the persons to be sanctioned) until final resolution of the case in order to avoid immediate conflicts of interest and to reduce the disruption created if a disclosure of attorney-client communications is needed to determine whether a violation occurred or to identify the person responsible for the violation.

The rule provides that requests for sanctions must be made as a separate motion, i.e., not simply included as an additional prayer for relief contained in another motion. The motion for sanctions is not, however, to be filed until at least 21 days (or such other period as the court may set) after being served. If, during this period, the alleged violation is corrected, as by withdrawing (whether formally or informally) some allegation or contention, the motion should not be filed with the court. These provisions are intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. Under the former rule, parties were sometimes reluctant to abandon a questionable contention lest that be viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of a contention will protect a party against a motion for sanctions.

To stress the seriousness of a motion for sanctions and to define precisely the conduct claimed to violate the rule, the revision provides that the "safe harbor" period begins to run only upon service of the motion. In most cases, however, counsel should be expected to give informal notice to the other party, whether in person or by a telephone call or letter, of a potential violation before proceeding to prepare and serve a Rule 11 motion.

As under former Rule 11, the filing of a motion for sanctions is itself subject to the requirements of the rule and can lead to sanctions. However, service of a cross motion under Rule 11 should rarely be needed since under the revision the court may award to the person who prevails on a motion under Rule 11—whether the movant or the target of the motion—reasonable expenses, including attorney's fees, incurred in presenting or opposing the motion.

The power of the court to act on its own initiative is retained, but with the condition that this be done through a show cause order. This procedure provides the person with notice and an opportunity to respond. The revision provides that a monetary sanction imposed after a court-initiated show cause order be limited to a penalty payable to the court and that it be imposed only if the show cause order is issued before any voluntary dismissal or an agreement of the parties to settle the claims made by or against the litigant. Parties settling a case should not be subsequently faced with an unexpected order from the court leading to monetary sanctions that might have affected their willingness to settle or voluntarily dismiss a case. Since show cause orders will ordinarily be issued only in situations that are akin to a contempt of court, the rule does not provide a "safe harbor" to a litigant for withdrawing a claim, defense, etc., after a show cause order has been issued on the court's own initiative. Such corrective action, however, should be taken into account in deciding what—if any—sanction to impose if, after consideration of the litigant's response, the court concludes that a violation has occurred.

Subdivision (d). Rules 26(g) and 37 establish certification standards and sanctions that apply to discovery disclosures, requests, responses, objections, and motions. It is appropriate that Rules 26 through 37, which are specially designed for the discovery process, govern such documents and conduct rather than the more general provisions of Rule 11. Subdivision (d) has been added to accomplish this result.

Rule 11 is not the exclusive source for control of improper presentations of claims, defenses, or contentions. It does not supplant statutes permitting awards of attorney's fees to prevailing parties or alter the principles governing such awards. It does not inhibit the court in punishing for contempt, in exercising its inherent powers, or in imposing sanctions, awarding expenses, or directing remedial action authorized under other rules or under 28 U.S.C. § 1927. *See Chambers v. NASCO*, — U.S. — (1991). Chambers cautions, however, against reliance upon inherent powers if appropriate sanctions can be imposed under provisions such as Rule 11, and the procedures specified in Rule 11—notice, opportunity to respond, and findings—should ordinarily be employed when imposing a sanction under the court's inherent powers. Finally, it should be noted that Rule 11 does not preclude a party from initiating an independent action for malicious prosecution or abuse of process.

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on Pleadings

(a) When Presented.

(1) Unless a different time is prescribed in a statute of the United States, a defendant shall serve an answer

(A) within 20 days after being served with the summons and complaint, or

(B) if service of the summons has been timely waived on request under Rule 4(d), within 60 days after the date when the request for waiver was

11-6-03 JAM

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FILED
OCT 27 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.,

Defendants.

CASE NO: 26-22191

[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION

Date: November 6, 2003
Time: 8:30 a.m.
Dept: B

I. ORDER

Having considered Plaintiffs' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Plaintiffs' Opposition to Defendants' Motions to Quash Service of Summons, and finding good cause therefor,

IT IS HEREBY ORDERED THAT Plaintiffs' request to file a Memorandum of Points and Authorities in Support of his Opposition to Defendants' Motions to Quash of up to 23 pages is GRANTED.

Dated: 10-1-03

By: _____
Judge of the California Superior Court
County of Napa

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

_____ **FACSIMILE** – On October 24, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 27 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

I. INTRODUCTION

Plaintiffs, Charissa W. and Nicole D., identified in the concurrently filed *ex parte* application hereby request permission pursuant to California Rules of Court, Rule 313(d) to file a Memorandum of Points and Authorities in support of their Opposition to

Defendants' Motions to Quash Service of Summons of up to 23 pages in length. Written notice of this application was made to defendants' counsel on October 20, 2003.

II. REASONS NECESSITATING PAGE LIMIT

"A party may apply to the court *ex parte* but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application shall state the reasons why the argument cannot be made within the state limit." California Rules of Court, Rule 313(d).

Plaintiffs require up to 23 pages to adequately address all of the necessary elements and legal authorities related to their Opposition to Defendants' Motions to Quash Service of Summons. The Opposition to Defendants' Motions to Quash involves, among other things, complex constitutional law issues involving jurisdictional issues and a "religious" entity. Specifically, defendants' contend certain corporate entities under their control are not subject to the jurisdiction of the state. An extension to the page limit is needed to adequately explain why the Watchtower defendants, which moved to quash service of summons, are subject to this State's jurisdiction.

Additionally, if Plaintiffs are not granted the extension to adequately explain why certain defendants are subject to jurisdiction in California, Plaintiffs risk losing the ability to hold culpable defendants liable for their injuries and defendants' wrongdoing.

III. CONCLUSION

For each of the forgoing reasons, Plaintiffs respectfully request they be permitted to file a Memorandum of Points and Authorities in support of their Opposition to Defendants' Motions to Quash Service of Summons up to 23 pages in length.

Dated: October 23, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for Charissa W. and Nicole D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

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Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **DECLARATION OF WILLIAM L. BRELSFORD OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

I, William L. Brelsford, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. On October 20, 2003, I sent a written notice to defendants' counsel, Robert Schnack, that Plaintiffs would file with the Court this *ex parte* application for an order to extend page limits pursuant to California Rules of Court, Rule 313 (d).

3. Attached as Exhibit A is a true and correct copy of my October 20, 2003 letter to defendants' counsel.

4. I have personally reviewed and evaluated defendants' Motions to Quash.

5. Defendants' Motions to Quash raise complex jurisdictional issues as discussed in the concurrently filed memorandum of points and authorities in support of the ex parte application and requires a lengthy discussion regarding why moving defendants are subject to jurisdiction in the state of California.

6. Plaintiffs reasonably require up to 23 pages in order to adequately address and discuss the applicable legal authorities raised in Defendants' Motions to Quash.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Dated: October 23, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for CHARISSA W. and NICOLE D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 24, 2003, I caused the within **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF OPPOSITION TO MOTION TO QUASH SERVICE OF SUMMONS** the original of which was produced on recycled paper, to be served as follows:

_____ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

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XXXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

EXHIBIT 71

[redacted]

350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

October 20, 2003

Robert Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670
Via Facsimile (916) 852-5777

Re: Watchtower Cases

Dear Mr. Schnack

As we discussed on October 18, 2003, we intend to file ex parte applications requesting page limit extensions pursuant to CRC 313(d) in the following cases:

- *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
- *Tim W. v. Watchtower Bible and Tract Society, et al.*
- *West, et al. v. Watchtower Bible and Tract Society, et al.*
- *Wimberley, et al. v. Watchtower Bible and Tract Society, et al.*

Specifically, the opposition to Watchtower defendants' Demurrers will total 33 pages. The oppositions to defendants' Motions to Quash Service of Summons will total 23 pages.

We understand you have no opposition to our request for page limit extensions. If you would like to discuss these matters further, please contact our office.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

WB/dc

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 27 2003

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO QUASH SERVICE OF SUMMONS** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

APPLICATION

Pursuant to California Rules of Court, Rule 313(d) Plaintiffs apply to the Court ex

parte for an Order extending the page limit for their Memorandum of Points and Authorities in Support of their Opposition to Defendant's Motions to Quash Service of Summons. Counsel for Plaintiffs advised Defendants' counsel in writing this *ex parte* request will be made to this Court. Counsel for Plaintiffs requests permission to file a Memorandum of Points and Authorities in support of his Opposition to Defendants' Motions to Quash to Plaintiffs' Complaint of up to 23 pages.

This application will be based upon the contents of this application, the Memorandum of Points and Authorities filed herewith, the declaration of William L. Brelsford, and other papers filed in the above-entitled action. Pursuant to the practice of this Court, no hearing has been set for this *ex parte* application. Should the Court subsequently schedule a hearing on this application, Plaintiffs will provide opposing counsel with the earliest possible notice of such hearing.

Dated: October 23, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for CHARISSA W. and NICOLE D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

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Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

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Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 27 2003

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.,

Defendants.

CASE NO: 26-22191

~~[PROPOSED]~~ ORDER GRANTING PAGE LIMIT EXTENSION

Date: November 6, 2003
Time: 8:30 a.m.
Dept: B

I. ORDER

Having considered Plaintiffs' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Plaintiffs' Opposition to Defendants' Demurrers, and finding good cause therefor,

IT IS HEREBY ORDERED THAT Plaintiffs' request to file a Memorandum of Points and Authorities in Support of their Opposition to Defendants' Demurrers of up to 33 pages is GRANTED.

Dated: 10/27/23

By: _____
Judge of the California Superior Court
County of Napa

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 27 2003

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' DEMURRERS** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

APPLICATION

Pursuant to California Rules Court, Rule 313(b) Plaintiffs apply to the Court *ex*

parte for an Order extending the page limit for their Memorandum of Points and Authorities in Support of their Opposition to Defendants' Demurrers to Plaintiffs' Complaint. Counsel for Plaintiffs has advised Defendants' counsel that this *ex parte* request will be made to this Court. Counsel for Plaintiffs requests permission to file a Memorandum of Points and Authorities in support of their Opposition to Defendants' Demurrers to Plaintiffs' Complaint of up to 33 pages.

This application will be based upon the contents of this application, the Memorandum of Points and Authorities filed herewith, the declaration of William L. Brelsford, and other papers filed in the above-entitled action. Pursuant to the practice of this Court, no hearing has been set for this *ex parte* application. Should the Court subsequently schedule a hearing on this application, Plaintiffs will provide opposing counsel with the earliest possible notice of such hearing.

Dated: October 23, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for Charissa W. and Nicole D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

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FILED
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By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., Defendants.	CASE NO: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT** **Date: November 6, 2003** **Time: 8:30 a.m.** **Dept: B**

I. INTRODUCTION

Plaintiffs, Charissa W. and Nicole D., identified in the concurrently filed *ex parte* application hereby request permission pursuant to California Rules of Court, Rule 313(d) to file a Memorandum of Points and Authorities in support of their Opposition to

Defendants' Demurrers to Plaintiffs' Complaint of up to 33 pages in length. Defendants' counsel was mad aware this application in writing on October 20, 2003.

II. REASONS NECESSITATING PAGE LIMIT

"A party may apply to the court *ex parte* but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer memorandum. The application shall state the reasons why the argument cannot be made within the state limit." California Rules of Court, Rule 313(d).

Plaintiffs require up to 33 pages to adequately address all of the necessary elements and legal authorities related to their Opposition to Defendants' Demurrers to Plaintiffs' Complaint. The Opposition to Defendants' Demurrers involve, among other things, complex constitutional law issues involving the First Amendment and its effect on the entanglement between courts and religion. Such issues dealing with church and state necessarily require an extensive discussion of the applicable legal authorities and case law.

Further, request is predicated on responding to plaintiff's lengthy demurrer. Plaintiffs contend defendants misstated multiple case holdings to this Court in its Demurrer, requiring an extensive and lengthy discussion of landmark cases.

III. CONCLUSION

For each of the forgoing reasons, Plaintiffs respectfully request that they be permitted to file a Memorandum of Points and Authorities in support of their Opposition to Defendants' Demurrers up to 33 pages in length.

Dated: October 23, 2003

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for Charissa W. and Nicole D.

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
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I, William L. Brelsford, declare as follows:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. On October 20, 2003, I sent a written notice to defendants' counsel, Robert Schnack, that Plaintiffs would file with the Court this *ex parte* application for an order to extend page limits pursuant to California Rules of Court, Rule 313 (d).

3. Attached as Exhibit A is a true and correct copy of my October 20, 2003 letter to Defendants' counsel.

4. I have personally reviewed and evaluated defendants' Demurrers.

5. Defendants' Demurrers raise complex constitutional and legal issues including First Amendment issues as discussed in the concurrently filed memorandum of points and authorities in support of the ex parte application.

6. Plaintiffs reasonably require up to 33 pages in order to adequately address and discuss the applicable legal authorities raised in Defendants' Demurrers.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

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CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
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BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2003, at Sacramento, California.

William L. Brelsford

EXHIBIT A

350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

October 20, 2003

Robert Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670
Via Facsimile (916) 852-5777

Re: Watchtower Cases

Dear Mr. Schnack

As we discussed on October 18, 2003, we intend to file ex parte applications requesting page limit extensions pursuant to CRC 313(d) in the following cases:

- *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
- *Tim W. v. Watchtower Bible and Tract Society, et al.*
- *West, et al. v. Watchtower Bible and Tract Society, et al.*
- *Wimberley, et al. v. Watchtower Bible and Tract Society, et al.*

Specifically, the opposition to Watchtower defendants' Demurrers will total 33 pages. The oppositions to defendants' Motions to Quash Service of Summons will total 23 pages.

We understand you have no opposition to our request for page limit extensions. If you would like to discuss these matters further, please contact our office.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

WB/dc

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. **(G)** **Judge: W. Scott Snowden** **Courtroom: Department B** **Event: Motion: General** **PID # :**	**Case # 26-22191** **Event Date: October 15, 2003** **Clerk: D. Rey** **Reporter: Jeanine Miro** **Cite/Report #:**

Appearances:

No appearance by either party

By order of the Court, the tentative ruling is adopted and incorporated into the minutes as follows:

The three applications to appear pro hac vice are granted.

-o0o-

SUMMONS
(CITACION JUDICIAL) - Amended

NOTICE TO DEFENDANT: (*Aviso a Acusado*)

Watchtower Bible and Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Watchtower Enterprises, L.L.C., Watchtower Foundation, Inc., Watchtower Associates, Ltd., Kingdom Support Services, Inc., Christain Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Kingdom Hall now doing business as Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses, Napa, CA, Inc.

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)
Charissa W. and Nichole D.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de* 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosasde su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*
SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA
825 Brown Street
Napa, CaA 94559

CASE NUMBER *(Número del Caso)*
26-22191

DELAY REDUCTION CASE

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
RUDY NOLEN, SBN 59808 916-564-9990
WILLIAM L. BRELSFORD, JR., SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

DATE: *(Fecha)* AUG 13 2003 Stephen A. Bouch Clerk, by *(Actuario)* _____, Deputy *(Delegado)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
   ☐ other:
4. ☐ by personal delivery on *(date)*:

PROOF OF SERVICE - SUMMONS
(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
   [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management, Acknowledgement
   b. on defendant *(name)*: Watchtower Bible and Tract Society of New York, Inc.
   c. by serving [ ] defendant [X] other *(name and title or relationship to person served)*: James McCabe, agent of service of process
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service.** By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [X] **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [ ] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Watchtower Bible and Tract Society of New York, Inc.
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
      [ ] other:
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: August 21, 2003

▶ Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.
Date:

▶ _____
(SIGNATURE)

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Watchtower Bible and Tract
Society of New York, Inc.
James M. McCabe
4817 Santa Monica Avenue
San Diego, CA 92107

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Jesse McCabe C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

APR 26 2002

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2030 0001 4119 5575

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS
(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Watchtower Bible and Tract Society of Pennsylvania
   c. by serving [X] defendant [ ] other *(name and title or relationship to person served)*:
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service**. By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate**. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service**. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Watchtower Bible and Tract Society of Pennsylvania
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
      [ ] other:
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: _____ Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: August 21, 2003

▶ Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.
Date:

▶ _____
(SIGNATURE)

7002 2030 0001 4119 5582

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Sent To: Watchtower B+T of Penn
Street, Apt. No.; or PO Box No.:
City, State, ZIP+4:

PS Form 3800, June 2002 — See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Watchtower Bible and Tract
Society of Pennsylvania
1630 Spring Run Road
Extension
Coraopolis, Pennsylvania
15108

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* | C. Date of Delivery 8/25/03

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number *(Transfer from service label)* 7002 2030 0001 4119 5582

PS Form 3811, August 2001 — Domestic Return Receipt — 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS
(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Watchtower Enterprises, LLC.
   c. by serving [X] defendant [ ] other *(name and title or relationship to person served)*:
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service**. By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate**. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service**. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Watchtower Enterprises, LLC.
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor) [ ] other:
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
   d. [ ] by personal delivery on *(date)*:
4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: August 21, 2003
▶ Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.
Date:
▶
(SIGNATURE)

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

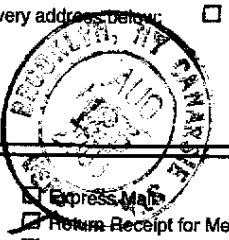
Watchtower Enterprises, Llc
934 East 84th Street
Brooklyn, NY 11236

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Pamila Mendez ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No



3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2030 0001 4119 5599

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS

(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Watchtower Foundation, Inc.
   c. by serving [X] defendant [ ] other *(name and title or relationship to person served)*:
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service**. By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service**. By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Watchtower Foundation, Inc.
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor) [ ] Other:
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarniecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 21, 2003

Deanna Czarniecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

982(a)(9) [Rev. January 1, 1984]

4

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Watchtower Foundation, Inc.
934 East 84th Street
Brooklyn, NY 11236

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2030 0001 4119 3434

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS

(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Kingdom Support Services, Inc.
   c. by serving [ ] defendant [X] other *(name and title or relationship to person served)*: Philip Brumley, agent of service of process
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service.** By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Kingdom Support Services, Inc.
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual) [ ] other:
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 21, 2003

Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Kingdom Support Services, Inc.
Attn: Philip Brumley
2823 Route 22
Patterson, NY 12563-2236

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X James Meyri ☑ Agent ☐ Addressee

B. Received by (Printed Name) James Meyri

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2030 0001 4119 3441

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS

(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Christian Congregation of Jehovah's Witnesses
   c. by serving [ ] defendant [X] other *(name and title or relationship to person served)*: Philip Brumley, agent of service of process
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service**. By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate**. By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Christian Congregation of Jehovah's Witnesses
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
      [ ] other:
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 21, 2003

Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

(SIGNATURE)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christian Congregation of
Jehovah's Witnesses
Attn: Philip Brumley
2821 Route 22
Patterson, NY 12563-2236

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X James Meyer ☑ Agent ☐ Addressee

B. Received by (Printed Name) James Meyer | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2030 0001 4119 3465

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

PROOF OF SERVICE - SUMMONS

(Use separate proof of service for each person served)

1. I served the
   a. [X] summons [X] complaint [ ] amended summons [ ] amended complaint
      [ ] completed and blank Case Questionnaires [X] Other *(specify)*: Civil Case Cover Sheet, Civil Case Management
   b. on defendant *(name)*: Religious Order of Jehovah's Witnesses
   c. by serving [ ] defendant [X] other *(name and title or relationship to person served)*: Philip Brumley, agent of service of process
   d. [ ] by delivery [ ] at home [ ] at business
      (1) date:
      (2) time:
      (3) address:
   e. [X] by mailing
      (1) date: August 21, 2003
      (2) place: Sacramento, CA
2. Manner of service *(check proper box)*:
   a. [ ] **Personal service.** By personally delivering copies. (CCP 415.10)
   b. [ ] **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
   c. [ ] **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) ***(Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.)***
   d. [ ] **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) ***(Attach completed acknowledgment of receipt.)***
   e. [X] **Certified or registered mail service.** By mailing to an address outside California (by first-class mail, postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) ***(Attach signed return receipt or other evidence of actual delivery to the person served.)***
   f. [ ] Other *(specify code section)*:
      [ ] additional page is attached.
3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):
   a. [ ] as an individual defendant.
   b. [ ] as the person sued under the fictitious name of *(specify)*:
   c. [X] on behalf of *(specify)*: Religious Order of Jehovah's Witnesses
      under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
      [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
      [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
      [ ] other:
   d. [ ] by personal delivery on *(date)*:

FILED
OCT 10 2003
Clerk of the Napa Superior Court
By: Deputy

4. At the time of service I was at least 18 years of age and not a party to this action.
5. Fee for service: $
6. Person serving:
   a. [ ] California sheriff, marshal, or constable.
   b. [ ] Registered California process server.
   c. [ ] Employee or independent contractor of a registered California process server.
   d. [X] Not a registered California process server.
   e. [ ] Exempt from registration under Bus. & Prof. Code 22350(b).
   f. Name, address and telephone number and, if applicable, country of registration and number:
      Deanna Czarnecki
      350 University Avenue, Suite 280
      Sacramento, CA 95825
      (916) 564-9990

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: August 21, 2003

▶ Deanna Czarnecki
(SIGNATURE)

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:

▶
(SIGNATURE)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Religious Order of Jehovah's Witnesses
Attn: Philip Brumley
2891 Route 22
Patterson, NY 12563-2236

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☑ Agent ☐ Addressee

B. Received by (Printed Name) James Myers C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
if YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☑ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7002 2030 0001 4119 3458

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985

10/15/03 JAH

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 858-2263
E-mail: bob.schnack@bullivant.com

September 26, 2003

Via Facsimile and U.S. Mail

Clerk
Napa County Superior Court
825 Brown Street
Napa, CA 94559

Re: *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
Napa County Superior Court Case No.: 26-22191

Dear Clerk:

Please be advised that we request the court continue defendants' demurrers and motion to quash service currently set to be heard on October ~~20~~ 23, 2003 at 8:30 a.m. in Department B, to November 6, 2003. Plaintiffs' counsel has agreed to such a continuance.

Thank you.

Very truly yours,

Robert J. Schnack

RJS:cp
cc: William L. Brelsford, Jr. (via facsimile)
4102247.1

10/1/03
Case continued to November 6, 2003 pursuant to request of parties re: demurrer and motion to quash.
Staff Atty; calendaring dept notified D

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 24 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

NOTICE OF ENTRY OF ORDER GRANTING PAGE LIMIT EXTENSION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that the Court has entered its Order dated September 18, 2003, granting the Church Defendants' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Defendants' Demurrers. A true and correct copy of the Order is attached hereto.

DATED: September 22, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4102036.1

*****

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

ENDORSED
SEP 18 2003
Clerk of the Napa Superior Court
By: J. GILBERT
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION

HEARING OF UNDERLYING MOTION
DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

I. ORDER

Having considered the Church Defendants' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Defendants' Demurrers, and finding good cause therefor,

IT IS HEREBY ORDERED THAT the Church Defendants' request to file a memorandum of Points and Authorities in Support of their Demurrers of up to 23 pages is GRANTED.

DATED: 9/19/03

By: W. SCOTT SNOWDEN
Judge of the Superior Court

4101661.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 22 2003, the following ordinary business practice., I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER GRANTING PAGE LIMIT EXTENSION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 22, 2003, at Gold River, California.

By Claudia A Perry
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

DEFENDANTS' NOTICE OF DEMURRERS TO PLAINTIFFS' COMPLAINT

DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

CALENDARED:

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on October 23, 2003 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Dept. B of the above-entitled Court, Defendants, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, NAPA CONGREGATION OF JEHOVAH'S WITNESSES, and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES (collectively hereinafter "Church Defendants"), will move the Court for an Order granting or sustaining their demurrers to each of the causes of action alleged in plaintiffs' amended complaint under California Code

of Civil Procedure ("CCP") §§ 430.10(e) and 430.30(a), on the grounds that plaintiffs' pleading does not state facts sufficient to constitute the causes of action alleged.

Plaintiffs' first cause of action as pled does not state a claim for *respondeat superior* liability for alleged sexual assaults under California law.

Plaintiffs' second, fourth, fifth, and seventh causes of action are in substance and effect improperly alleged clergy malpractice claims that violate the First Amendment and thus fail to state a claim.

Plaintiffs' third cause of action also violates the First Amendment and thus fails to state a claim.

Plaintiffs' sixth and tenth causes of action fail to state a claim because the alleged violation of CANRA does not create a civil cause of action.

Plaintiffs' eighth cause of action fails to state a claim because this is not an independent and cognizable cause of action and plaintiffs do not plead facts to support the claimed ratification of co-defendant Silva's alleged sexual misconduct with plaintiffs.

Plaintiffs' ninth cause of action does not plead an independent or cognizable cause of action.

Plaintiffs' eleventh and twelfth causes of action fail to state claims because there is no private right of action for the alleged state criminal code violations.

These demurrers are based on this notice, the supporting memorandum of points and authorities, all papers and records on file in this action, and such other oral and documentary information and evidence as may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel for the Church Defendants hereby certifies that he met and conferred by telephone with plaintiffs' attorney William Brelsford concerning these demurrers before filing these demurrers with the court.

DATED: September 15, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4101733.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANTS' NOTICE OF DEMURRERS TO PLAINTIFFS' COMPLAINT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670
Tel.: 916-852-9100
Fax: 916-852-5777

Attorneys for Church Defendants:
Watchtower Bible and Tract Society of New York, Inc., et al.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS** Amended Complaint Filed: August 13, 2003 DATE: October 23, 2003 TIME: 8:30 a.m. DEPT.: B TRIAL DATE: Not yet set

Defendants, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, NAPA CONGREGATION OF JEHOVAH'S WITNESSES, and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES (collectively hereinafter "Church Defendants"),[1] by and through their attorney of record, submit this Memorandum of Points and Authorities in support of Church

[1] This appearance is not made on behalf of Watchtower Enterprises L.L.C., Watchtower Foundation, Inc., Watchtower Associates, Ltd., also named as Defendants in this matter. Edward Villegas, the alleged abuser of Plaintiffs, is not named as a Defendant because he died on September 16, 1995.

Defendants' Motion for Demurrer to CHARISSA W. and NICOLE D.'s (hereinafter "Plaintiffs") *Amended Complaint*.

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BRIEF STATEMENT OF FACTS

Plaintiffs allege twelve causes of action against the Church Defendants. Each of these causes of action is based on and related to: (1) the underlying alleged sexual abuse of the Plaintiffs by Edward Villegas (hereinafter "Villegas"), occurring from approximately 1972 to 1985 (*Amended Complaint*, ¶¶ 27, 28, 30); (2) the Church Defendants' alleged failure to report that abuse and/or to prevent, protect, or warn the Plaintiffs about Villegas's propensity toward child abuse (*Amended Complaint*, ¶¶ 23, 33, 34); and (3) the Church Defendants' internal policies, procedures, and actions regarding childhood sexual abuse.

As set forth more fully below, the Church Defendants demurrers on all twelve causes of action should be granted for the following reasons: 1) as a matter of law, California does not recognize the tort of clergy malpractice; 2) the Church Defendants cannot be held vicariously or directly liable for Villegas's alleged acts of abuse; 3) Plaintiffs have failed to state a claim under the Child Abuse and Neglect Reporting Act (CANRA), Penal Code §§ 11164-74; and 4) Plaintiffs' remaining claims are not recognized causes of action in California.

DEMURRER STANDARD

For the purposes of a demurrer, "the rule is that we accept as true all the material allegations of the complaint." *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 7. The Court thus treats the demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law. Demurrers do not test the truth of a plaintiff's allegations or the accuracy with which they describe a defendant's alleged conduct. *E.g.*, *Baltins v. James* (1995) 36 Cal.App.4th 1193, 1196-97.

OPENING SUMMARY OF ARGUMENT

The heart of Plaintiffs' complaint is in essence a prohibited claim of clergy malpractice – i.e., that the Church Defendants tortiously failed to provide adequate advice and protection when counseling Plaintiffs and their families. *See Amended Complaint*, ¶¶ 31, 33. After examining why clergy malpractice claims are constitutionally impermissible, it will be shown that Plaintiffs' allegations for common law negligence, gross negligence, breach of fiduciary duty, and fraud are little more than clergy malpractice in disguise. Nomenclature aside, the gravamen of each claim is the allegation that the Church Defendants gave Plaintiffs bad advice during spiritual counseling. As such, Plaintiffs' claims are in substance and effect clergy malpractice, regardless of the labels attached to the claims by Plaintiffs.

Plaintiffs have also asserted several causes of action against the Church Defendants based on agency principles. However, Plaintiffs' vicarious liability claims fail because Villegas was not acting within the course and scope of his duties when the alleged abuse took place. Also, the First Amendment bars Plaintiffs' claims of direct liability.

Additionally, one theme repeated in the amended complaint is the Church Defendants' failure to report Plaintiffs' alleged abuse to the authorities. However, the Child Abuse and Neglect Reporting Act (CANRA), Penal Code §§ 11164-74, did not apply to clergy members prior to January 1, 1997, and no California court has ever permitted a civil cause of action against a religious organization for violation of this statute. Finally, Plaintiffs' remaining claims are not recognized causes of action in California.

This Court should grant the Church Defendants' demurrers and hold (1) that claims for common law negligence, gross negligence, breach of fiduciary duty, and fraud cannot arise out of advice given during spiritual counseling because, in substance and effect, they are merely

claims for clergy malpractice with different names; (2) that the Church Defendants are not vicariously or directly liable for the alleged criminal acts independently committed by Villegas; (3) the reporting requirements imposed by CANRA are not a basis for a civil cause of action; and (4) Plaintiffs' remaining claims are not recognized causes of action.

ARGUMENT

I. Claims for Clergy Malpractice Violate the First Amendment Because They Entangle Courts in Ecclesiastical Affairs and Intrude Upon the Constitutionally-Protected Autonomy of Churches.

The United States Supreme Court has long held that the First Amendment prohibits government, including courts, from becoming entangled in religious affairs or intruding upon the institutional autonomy of churches. Both entanglement and church autonomy problems are at the heart of why clergy malpractice claims are unconstitutional. As shown in Section II below, such problems are equally inherent in several of Plaintiffs' claims.

A. The First Amendment Bars Claims for Clergy Malpractice Because Such Claims Unavoidably Entangle Courts in the Interpretation of Religious Doctrine, Practices, and Beliefs.

A bedrock principle of First Amendment law is that the state cannot entangle itself in religious affairs. *See Lemon v. Kurtzman* (1971) 403 U.S. 602, 612-13. Among religious matters in which government absolutely cannot become involved is the interpretation of religious doctrine, practices, and beliefs. Since *Watson v. Jones* (1871) 80 U.S. (13 Wall.) 679, the United States Supreme Court has repeatedly held that "'civil courts exercise no jurisdiction'" over "'a matter which concerns theological controversy.'" *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 713-14 (quoting *Watson v. Jones*). Thus, civil courts can never "engage in the forbidden process of interpreting and weighing church doctrine." *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church* (1969) 393 U.S. 440, 451. The First Amendment bars courts from undertaking "an analysis or examination of

ecclesiastical polity or doctrine in settling [civil] disputes." *Jones v. Wolf* (1979) 443 U.S. 595, 605.

Given the absolute bar on civil courts entangling themselves in the interpretation or examination of religious doctrines, beliefs, or church polity, the unconstitutionality of clergy malpractice claims is evident. In *Schmidt v. Bishop* (S.D.N.Y. 1991) 779 F. Supp. 321, the court analyzed a claim for clergy malpractice against a Presbyterian pastor for engaging in sexual relations during a counseling relationship. The court rejected the claim because it would necessarily entail the examination of religious doctrine, thus fostering excessive entanglement with religion:

> It would be impossible for a court or jury to adjudicate a typical case of clergy malpractice, without first ascertaining whether the cleric, in this case a Presbyterian pastor, performed within the level of expertise expected of a similar professional (the hypothetical "reasonably prudent Presbyterian pastor"), following his calling, or practicing his profession within the community.... Any effort by this Court to instruct the trial jury as to the duty of care which a clergyman should exercise, would of necessity require the Court or jury to define and express the standard of care to be followed by other reasonable Presbyterian clergy of the community. This in turn would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion.

Id. at 327-28 (citations omitted).

Numerous courts have reached the same result on the same grounds. *See, e.g., Dausch v. Rykse* (7th Cir. 1994) 52 F.3d 1425, 1432 (noting that courts have unanimously rejected clergy malpractice claims "based on the difficulty that would be encountered in evaluating such a claim without entangling the civil courts in extensive investigation and evaluation of religious tenets") (citation omitted); *Amato v. Greenquist* (Ill. Ct. App. 1997) 679 N.E.2d 446, 450 ("To permit claims for clergy malpractice would require courts to establish a standard of reasonable care for

religious practitioners practicing their respective faiths, which necessarily involves the interpretation of [religious] doctrine.").

B. In Addition, Clergy Malpractice Claims Violate the First Amendment Because They Infringe Upon the Constitutionally-Protected Autonomy of Churches.

For well over a century, the Supreme Court's "church autonomy doctrine" has protected the right of churches to govern their ecclesiastical affairs free from government interference. The Supreme Court's church autonomy doctrine is rooted in the decision in *Watson v. Jones, supra,* where the Court first outlined the broad principles of judicial abstention in disputes over fundamentally ecclesiastical matters. The Court stated:

> The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned. All who unite themselves to such a body do so with an implied consent to this government, and are bound to submit to it. But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed. It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for.

Id., 80 U.S. at 728-29.

In *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*, the Court held that the rule of judicial noninterference "applies with equal force to church disputes over church polity and church administration." *Id.* 425 U.S. at 710. Again drawing from *Watson*, the Court reiterated that under the First Amendment, civil courts cannot adjudicate "'a matter which concerns ... church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them.'" *Id.* at 714.

Clergy malpractice claims directly inject civil courts into ecclesiastical affairs and thus are an unconstitutional infringement upon the right of church autonomy. Adjudication of such

claims requires civil courts to interpret church doctrine, displacing the role of authoritative church interpreters. Also, in cases where deficient ecclesiastical counseling is alleged, clergy malpractice claims interfere with the right of a church to determine its own standards for ecclesiastical counseling, replacing the church's norms with either the court's interpretation of those norms or an outright secular rule.

In sum, although churches do not have blanket immunity from civil liability, the First Amendment's church autonomy doctrine bars claims like clergy malpractice that, by their nature or as a practical matter, inject the state into important ecclesiastical concerns.

II. Under the Facts of This Case, Plaintiffs' Tort Claims Are in Substance and Effect Claims for Clergy Malpractice; Plaintiffs Cannot Avoid the First Amendment Bar Against Clergy Malpractice Claims by Creative Pleading.

Sections I.A. and I.B. demonstrated that clergy malpractice claims violate the First Amendment because (1) they unavoidably entangle courts in the interpretation of religious doctrine and ecclesiastical canons, and (2) they require courts to infringe upon the constitutionally-protected autonomy of churches. Although Plaintiffs strain to distance their various tort claims from clergy malpractice, it is clear that such claims suffer from the exact same constitutional infirmities. Artful pleading is no *salvo*.

A. Plaintiffs' Common Law Negligence Claim Is Barred as Clergy Malpractice.

It is elementary that a tort, whether intentional or negligent, involves the violation of a legal duty owed by the alleged wrongdoer to the person injured. *Nally v. Grace Cmty. Church of the Valley* (1988) 47 Cal.3d 278, 292. To support a finding of negligence, a plaintiff must show the defendant had a duty of care, that the duty was breached, and that the breach was the proximate cause of the resulting injury. *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594. However, "one is ordinarily not liable for the actions of another and is under *no duty to protect another from harm, in the absence of a special relationship* of custody

or control." *Nally*, 47 Cal.3d at 293 (emphasis added). Furthermore, absent a special relationship, one has "no duty to warn those who may be endangered by such conduct." *Peterson v. San Francisco Cmty. College Dist.* (1984) 36 Cal.3d 799, 806.

The California Supreme Court in *Nally* firmly rejected the extension of a duty of care to personal or religious counseling relationships as a form of clergy malpractice. *Nally*, 47 Cal.3d at 294. The Court reasoned "that access to the clergy for counseling should be free from state imposed counseling standards, and that 'the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations.'" *Id.* at 298 (citation omitted). Thus, *Nally* is widely recognized for the proposition that a negligence cause of action cannot be brought against a clergy member or church for alleged improper counseling.

In *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257, the Court of Appeal recently reiterated that a clergy member cannot be held liable for "breach of a duty arising out of a special relationship" with a parishioner. *Id.* at 270. The Court of Appeal stated:

> Even if a reasonable standard could be devised, which is questionable, it could not be uniformly applied without restricting the free exercise rights of religious organizations which could not comply without compromising the doctrines of their faith. The application of such a standard would also result in the establishment of judicially acceptable religions, because it would inevitably differentiate ecclesiastical counseling practices that are judicially acceptable from those that are not.

Id. Thus, the court in *Richelle L.* concluded that the plaintiffs' causes of action for negligence could not be sustained without running afoul of the clergy malpractice doctrine.

In this case, Plaintiffs' principal fault with the Church Defendants is that they rendered inadequate or improper spiritual counseling before and/or after they were informed of the alleged child abuse. As the amended complaint alleges, "[Church Defendants] did not act to help Plaintiffs or their families deal with the trauma of abuse and actively prevented them from

obtaining help from trained professionals and other available sources." *Amended Complaint*, ¶ 33. Notwithstanding the fact that no "special relationship" existed between Plaintiffs and the Church Defendants, they are alleged to have breached various duties to the Plaintiffs. As outlined in the amended complaint, these various duties include a duty to "protect," "warn," "train," "adopt adequate policies," "properly investigate matters," and "provide child abuse victims and their families with any assistance in coping with the trauma." *Amended Complaint*, ¶¶ 34, 40.

How can a secular court evaluate the alleged inadequacy of internal church policies and procedures and whether clergy members properly counseled parishioners without restricting the free exercise rights of the religious organization? *Richelle L.*, 106 Cal.App.4th at 270. As the California Supreme Court noted in *Nally*, it is unconstitutional to impose a duty of care on pastoral counselors. *Nally*, 47 Cal.3d at 299. Thus, Plaintiffs' negligence claim here for the "bad advice" and the improper policies of the Church Defendants are "simply an elliptical way to state a clergy malpractice claim." *Dausch v. Rykse, supra*, 52 F.3d at 1429. The Court should grant the Church Defendants' demurrer on Plaintiffs' second cause of action for negligence.

B. Plaintiffs' Gross Negligence Claim Fails Constitutional Scrutiny.

Plaintiffs' claim for gross negligence necessarily fails for the same reasons as their claim for common law negligence. It is a fundamental tenet of tort law that "an indispensable factor to liability founded upon negligence is the existence of a duty of care owed by the alleged wrongdoer to the person injured." *Routh v. Quinn* (1942) 20 Cal.2d 488, 491. Thus, as a species of negligence, Plaintiffs' claim for gross negligence cannot proceed unless the Court first determines that the Church Defendants owed Plaintiffs a duty of care. As demonstrated above, the imposition and adjudication of such a duty is fraught with constitutional problems.

The *Nally* decision is instructive in this regard. There, the California Supreme Court unequivocally declared that it was unwilling even to begin to recognize a duty on the part of lay clergy in circumstances very similar to those here: "We have previously refused to impose a duty when to do so would involve complex policy decisions, and we are unpersuaded by plaintiffs that we should depart from this policy in the present case." *Nally*, 47 Cal.3d at 299. If the viability of Plaintiffs' claim here for gross negligence were upheld, this Court would be required to ignore the constitutional morass explained above and recognize the precise duty of care that has already been rejected by the California Supreme Court. The Court here should decline to recognize any such duty and instead grant the Church Defendants' demurrer on Plaintiffs' fourth cause of action for gross negligence.

C. Plaintiffs' Breach of Fiduciary Duty Claim Is Constitutionally Indistinguishable from a Clergy Malpractice Claim Because It Requires the Examination of Religious Doctrine and Infringes on the Autonomy of the Jehovah's Witnesses.

Plaintiffs' cause of action for breach of fiduciary duty requires reference to and reliance upon church doctrine. Thus, the claim for breach of fiduciary duty is indistinguishable from a claim for clergy malpractice; the two claims are unconstitutional for the same reasons.

Earlier this year, the Court of Appeal in *Richelle L.* allowed a claim for breach of fiduciary duty against a Catholic priest who was accused of sexual exploitation, but specifically limited its holding because of the constitutional sensitivities of these types of claims. The court held:

> Accordingly, we conclude that a pastor may be subject to tort liability for sexually inappropriate and injurious conduct that breaches a fiduciary duty arising out of a confidential relation with a parishioner, *provided* the alleged injurious conduct was not dictated by a sincerely held religious belief or carried out in accordance with established beliefs and practices of the religion to which the pastor belongs, and there is no other reason the issues cannot be framed for the trier of fact in secular rather than sectarian terms.

Richelle L., 106 Cal.App.4th at 279 (emphasis in original). First, it is noteworthy that the court allowed the breach of fiduciary duty claim against a pastor who was accused of sexual misconduct, but not against the religious organization itself. *Id.* Second, the court expressly prohibited a fiduciary duty cause of action against a clergyman when the "alleged injurious conduct" was "dictated by a sincerely held religious belief." *Id.*[2]

The reason for the limitation imposed by the *Richelle L.* court is evident when considering other fiduciary duty claims that have been brought against religious organizations. For example, in *Franco v. Church of Jesus Christ of Latter-Day Saints* (Utah 2001) 21 P.3d 198, the Supreme Court of Utah did not allow a cause of action for breach of fiduciary duty to be brought against a church for a claim that arose from counseling duties. *Id.* at 205. The court considered that the claim for "giving bad advice" was "necessarily directed at the LDS Church Defendants' performance of their ecclesiastical counseling relationship." *Id.* Although the plaintiff's claim in *Franco* was framed as breach of fiduciary duty, the "real issue was clergy malpractice." *Id.*; *see also H.R.B. v. J.L.G.* (Mo. Ct. App. 1995) 913 SW.2d 92, 99; *Langford v. Roman Catholic Diocese of Brooklyn* (N.Y. 1998) 677 N.Y.S.2d 436, 439; *Amato v. Greenquist*, 679 N.E.2d at 446; *Schmidt v. Bishop*, 779 F. Supp. at 321; *Dausch v. Rykse*, 52 F.3d at 1425; *and Schieffer v. Catholic Archdiocese of Omaha* (Neb. 1993) 508 N.W.2d 907, 912.

Plaintiffs and their parents here were not the patients of these clergymen but rather members of their flocks to whom they ministered. When counseling Plaintiffs, the Elders were not acting as secular counselors. Instead, they were lay clergymen whose counsel was rooted in Scripture, and Church doctrine and policy. *Amended Complaint*, ¶¶ 31, 33, 34(f). Therefore, any determination that the Church Defendants breached a fiduciary duty owed to Plaintiffs

[2] In *Richelle L.*, the pastor's sexual misconduct was not defended as a sincerely held religious belief or practice of

would necessarily lead to examination of the Church Defendants' spiritual counsel based on religious beliefs, doctrines, and ecclesiastical canons. To paraphrase *H.R.B.*, "[r]eligion was not merely incidental to [Plaintiffs'] relationship with [the Elders]; *it was the foundation for it.*" 913 S.W.2d at 99 (emphasis added).

Even assuming the entanglement problem could be avoided by the imposition of a purely secular fiduciary duty standard for spiritual counseling, Plaintiffs' breach of fiduciary duty claim would still be unconstitutional as a deep incursion into the protected autonomy of the Church Defendants. Indeed, imposition of a state-defined fiduciary duty might well be an even worse infringement of the First Amendment entanglement problem because, by dictating the parameters of proper clergy counseling, such a duty would force upon churches a secular orthodoxy. It is beyond debate that the state lacks any authority whatsoever to "prescribe what shall be orthodox in ... religion." *West Virginia State Bd. of Educ. v. Barnette* (1943) 319 U.S. 624, 642; *cf. Sanders v. Casa View Baptist Church* (5th Cir. 1998) 134 F.3d 331, 336 ("[T]he Free Exercise Clause protects religious relationships, including the counseling relationship between a minister and his or her parishioner ...."), *cert. denied* (1998) 525 U.S. 868.

The potential impact on the autonomy of churches would be severe if the state began imposing and enforcing on clergymen secular fiduciary duties. How would such a standard work as a practical matter given the extremely diverse religious traditions in our society, each with its own unique conceptions of the role of clergy in an ecclesiastical polity? If a state can second-guess religious policy, procedure, or action by requiring a church to meet secular standards of "care," the state will effectively control the religious organization and its operations by threat of tort litigation and liability. Such judicial review of church decision-making would

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the Roman Catholic Church. 106 Cal.App.4th at 280.

> cause the State to intrude upon matters of church administration and government which have so many times before been proclaimed to be matters of a singular ecclesiastical concern. Control of strictly ecclesiastical matters could easily pass from the church to the State. The church would then be without the power to decide for itself, free from state interference, matters of church administration and government.

McClure v. Salvation Army (5th Cir. 1972) 460 F.2d 553, 560; *see also Schmidt*, 779 F. Supp. at 328 (noting that courts would be on a "slippery slope" if they attempted to impose fiduciary duties on clerical counseling; "Where could we stop?").

Because the alleged injurious conduct giving rise to the fiduciary duty claim is the "bad advice" purportedly given by the Church Defendants, it amounts to clergy malpractice. This cause of action is prohibited by *Richelle L.* because the "alleged injurious conduct" – the Elders' spiritual counseling – was "dictated by a sincerely held religious belief." *Id.*, 106 Cal.App.4th at 279. Thus, the Court should grant the Church Defendants' demurrer on Plaintiffs' sixth cause of action for breach of fiduciary duty.

D. Plaintiffs' Claim for Fraud is Likewise Unconstitutional.

The First Amendment bars Plaintiffs' fraud claim for many of the same reasons. The elements of fraud are: 1) misrepresentation; 2) knowledge of falsity; 3) intent to defraud; 4) justifiable reliance; and 5) resulting damages. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

Even assuming, *arguendo,* the allegations of Plaintiffs' pleading for fraud are adequate, this claim "suffers from deficiencies similar to those of [their] fiduciary duty claim." *Schmidt*, 779 F. Supp. at 326 (rejecting fraud claim as redundant of malpractice claim). Once again, the gravamen of the claim is clergy malpractice. As with the negligence and breach of fiduciary duty claims, any in-depth inquiry into the nature of the Church Defendants' counseling relationship would require a forbidden examination of the Church Defendants' doctrine and policies.

Plaintiffs allege that the Church Defendants were in a "fiduciary relationship" with them "by undertaking the religious instruction and spiritual and emotional counseling and training of Plaintiffs." *Amended Complaint*, ¶ 64. The Plaintiffs allege that they received defective counseling from the Church Defendants because it was given with the intent to "conceal" and "misrepresent" certain allegations made against Villegas and that they were induced to rely on the allegedly false representations. *Id.*, ¶ 66. To determine the merits of that claim, a court and jury would have to inquire into the *intent* of the Church Defendants in giving such advice. Did they intend to deceive or were they attempting to give appropriate spiritual advice based on their understanding of Scripture and Church doctrine? Such an inquiry will clearly enmesh the court in an unconstitutional interpretation of religious doctrine, beliefs, and policies. *Nally*, 47 Cal.3d at 299.

Church autonomy concerns arise as well because Plaintiffs' fraud claim is a direct assault on the freedom of the Church Defendants to impart spiritual counsel to church members without fear that civil courts will later second-guess their spiritual advice. An Elder in a congregation of Jehovah's Witnesses has a First Amendment right to counsel and advise the members of his flock based on his understanding of the right course in light of the Scriptures, and Church doctrines and policies. Civil courts have no business chilling frank and open discussions during ecclesiastical counseling sessions by the threat of post-hoc inquests into the intentions and motivations behind a clergyman's spiritual advice. Plaintiffs' fraud claim is plainly unconstitutional. Thus, the Court should grant the Church Defendants' demurrer on Plaintiffs' seventh cause of action for fraud, fraudulent concealment and conspiracy.

III. Plaintiffs' Agency Arguments Fail to State a Claim as a Matter of Law.

A. The Church Defendants May Not Be Held Vicariously Liable for Villegas's Actions Because They Were Not Committed Within the Course and Scope of His Duties.

The doctrine of *respondeat superior* provides that "[a]n employer may be held responsible for tortious conduct by an employee only if the tort is committed within the course and scope of employment." *Rita M. v. Roman Catholic Archbishop of Los Angeles* (1987) 187 Cal.App.3d 1453, 1461. However, it is well settled in California that employees who commit sexual assaults, apart from police officers in some situations, act outside of the scope of their employment as a matter of law. *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 218 n. 11. Thus, in "an action against a religious institution based on allegations of childhood sexual abuse perpetrated by one of its clergy[,] ... the abuse is committed outside the scope of the cleric's employment [and] the doctrine of respondeat superior is not available." *Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609; *see also Richelle L.*, 106 Cal.App.4th at 283 n.15.

In this case, Plaintiffs have alleged a claim against the Church Defendants under the theory of *respondeat superior* for the alleged sexual batteries committed by Villegas when he was serving as an Elder in the Napa Congregation. *Amended Complaint*, ¶¶ 24, 29, 36. As the Court of Appeal has noted, a religious institution cannot be held vicariously liable under this theory for the independent self-serving pursuits of a minister. *Mark K.*, 67 Cal.App.4th at 609. Thus, the Court should grant the Church Defendants' demurrer on the Plaintiffs' first cause of action for *respondeat superior*.

B. The Church Defendants May Not Be Held Directly Liable for Villegas's Actions Under the Theories of Negligent Appointment, Retention, or Supervision.

1. The First Amendment Bars Plaintiffs' Claims for Negligent Appointment and Retention.

Plaintiffs claim that the Church Defendants negligently appointed and retained Villegas as an Elder in the Napa Congregation. *Amended Complaint*, ¶¶ 24, 29, 43. However, questions of hiring, ordaining, and retaining clergy or ministers necessarily require interpretation of religious doctrine, policy and administration and are barred by the First Amendment.

It is well settled that when a court is required to interpret internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion. *Serbian*, 426 U.S. at 696; s*ee also Gonzalez v. Roman Catholic Archbishop* (1929) 280 U.S. 1 (civil courts may not inquire into clergy hiring decisions of church). Furthermore, judicial inquiry into hiring, ordaining, and retaining clergy or ministers would result in an endorsement of religion, by approving one model for church hiring, ordination, and retention of clergy. "Freedom to select the clergy ... must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church* (1952) 344 U.S. 94, 116.

Although no California court has directly addressed the constitutionality of negligent appointment and retention claims made against religious organizations, the federal courts have found such claims to be constitutionally dubious. As one federal district court noted:

> [T]his Court finds that consideration of the hiring policies of the Archdiocese Defendants would inevitably require examination of church policy and doctrine. The choice of individuals to serve as ministers is one of the most fundamental rights belonging to a religious institution. It is one the most important exercises of a church's freedom from government control. For this Court to insert itself into the process by which priests are chosen would substantially burden these Defendants' free exercise of a crucial power to control the future of the church and therefore

> constitute interference with the practice of their religion.
>
> It would also cause excessive entanglement in church operations by fostering inappropriate government involvement. The application of even general tort law principles to church procedures on the choice of priests would require an inquiry into present practices with an intent to pass on their reasonableness. Such court examination and oversight of internal church policies would constitute an encroachment on the church's religious functions.

Ayon v. Gourley (D. Colo. 1998) 47 F. Supp. 2d 1246, 1250; *see also Doe v. Hartz* (N.D. Iowa 1997) 970 F. Supp. 1375, 1431; *Isely v. Capuchin Province* (E.D. Mich. 1995) 880 F. Supp. 1138, 1150.

In one related California case, *Schmoll v. Chapman Univ.* (1999) 70 Cal.App.4th 1434, the Court of Appeal examined the constitutionality of proposed restrictions on the employment decisions of a church-affiliated university. In a "case of first impression," the court stated:

> It is irrelevant whether the action involves hiring, firing or discipline or simply changes the terms and conditions of the employment. The rule is about as absolute as a rule of law can be: The First Amendment guarantees to a religious institution the right to decide matters affecting its ministers' employment, free from the scrutiny and second-guessing of the civil courts.

Id. at 1436. Thus, at least one California decision recognizes the seriousness and the First Amendment implications of a secular tribunal's review of a religious organization's "hiring, firing or discipline" of its clergy or ministers.

Plaintiffs assert a claim against the Church Defendants for the negligent appointment and retention of Villegas as an Elder in the Napa Congregation. *Amended Complaint*, ¶ 43. As the foregoing cases make clear, any inquiry into the decision of who should be permitted to become or remain an Elder in the Jehovah's Witnesses' religion necessarily would involve both a prohibited excessive entanglement with religion and a burden on the Church Defendants' free exercise rights. Thus, on the basis of the First Amendment, this Court should grant the Church

Defendants' demurrer on Plaintiffs' third cause of action for negligent appointment and retention.

2. The First Amendment Also Bars Plaintiffs' Claim for Negligent Supervision.

Plaintiffs' argument that the Church Defendants had a duty to supervise Villegas and failed to do so is barred by the First Amendment for the same reasons articulated for the negligent hiring and retention claims.

Again, no California court has addressed the constitutionality of a negligent supervision claim when applied against a religious organization. However, several federal courts have found such claims prohibited by the First Amendment:

> [A]ny inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement discussed above, which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of a Presbyterian Church is not analogous to a common law employee. ... The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. ...
>
> It would therefore also be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained the defendant Bishop. Any award of damages would have a chilling effect leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause.

Schmidt v. Bishop, 779 F. Supp. at 332; *Ehrens v. Lutheran Church-Missouri Synod* (S.D.N.Y. June 18, 2003) No. 02 CIV. 2771(CLB), 2003 WL 21448323, at *4 ("Because it would be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained Reverend Chapman, this case must be dismissed."); *Ayon*, 47 F. Supp. 2d at 1250-51 (inappropriate for court to examine whether church procedures for supervision were "reasonable and adequate").

Here, Plaintiffs assert a claim that the Church Defendants failed to properly supervise Villegas, an Elder in the Napa Congregation, some twenty to thirty years ago. However,

adjudicating the reasonableness of a church's supervision of a cleric would require a civil court to examine and weigh the church's internal policies and practices concerning "disciplinary actions, reprimand write-ups and grievance procedures." *Ayon*, 47 F. Supp. 2d at 1250. To establish a duty, the court would have to determine whether these church policies were reasonable and adequate. Such an examination would excessively entangle the court in the church's internal affairs, thereby inhibiting the church's religious freedom and resulting in the state endorsement of one model of church supervision. Thus, on the basis of the First Amendment, the Court should grant the Church Defendants' demurrer on Plaintiffs' third cause of action for negligent supervision.

C. Plaintiffs Have Failed to Adequately Plead Their Theory for Ratification.

The elements for ratification have been long established: "'Ratification is the voluntary election by a person to adopt in some manner as his own *an act which was purportedly done on his behalf* by another person, the effect of which, as to some or all persons, is to treat the act as if originally authorized by him.'" *Fretland v. County of Humboldt* (1999) 69 Cal.App.4th 1478, 1490-91 (citation omitted) (emphasis added); *see also Emery v. Visa Int'l Serv. Ass'n* (2002) 95 Cal.App.4th 952, 961 (agent must act on behalf of principal). Regarding the issue of ratification, one reference work states, "[m]ere acquiescence in the commission of a tort after the act does not make the person thus acquiescing a party to the wrong or liable therefor as a joint tort-feasor. In order to be liable he must not only have assented to the wrong, but the act must have been done for his benefit or have been of a nature to benefit him." 86 C.J.S. *Torts* § 38 (1997).

The four corners of Plaintiffs' amended complaint state that the Church Defendants ratified the actions of Villegas that were outside the course and scope of his agency. *Amended Complaint*, ¶ 69. But the amended complaint fails to make any allegation that the alleged abuse committed by Villegas was done "on behalf of" the Church Defendants or with any intent to

"benefit" the Church Defendants. Because the necessary elements for the alleged tort of ratification have not been adequately pled, the Court should grant the Church Defendants' demurrer on Plaintiffs' eighth cause of action for ratification.

IV. Plaintiffs Cannot State a Cause of Action Based on the Church Defendants' Alleged Failure to Report Suspected Child Abuse.

A. No Cause of Action Exists for Failure to Report Suspected Child Abuse.

Plaintiffs allege that the Church Defendants failed to report suspected child abuse pursuant to the Child Abuse and Neglect Reporting Act, Penal Code §§ 11164-74. This allegation fails for two reasons: 1) the Church Defendants, as clergy members, were under no duty to report the alleged abuse at the time it allegedly took place; and 2) no California court has ever allowed a civil cause of action against a church for its failure to report alleged child abuse.

In 1963, under former Penal Code section 11161.5, the mandatory reporting obligations were limited to only physicians and surgeons. *Stecks v. Young* (1995) 38 Cal.App.4th 365, 370-71. In 1996, the Legislature amended the Child Abuse and Neglect Reporting Act (CANRA) to add "clergy members" to the list of mandated reporters of allegations of child abuse. Stats.1996, ch. 1081, § 3.5. This provision became effective, as a matter of law, on January 1, 1997.

In this case, Plaintiffs' amended complaint alleges that Plaintiff Charissa W. was abused between approximately 1972 and 1985 and that Plaintiff Nicole D. was abused once in approximately 1978. *Amended Complaint*, ¶¶ 28, 30. The Church Defendants were allegedly informed of the abuse in 1978. *Id.*, ¶ 31. Thus, even assuming, *arguendo,* those allegations are true, between the Church Defendants, as clergy members, had no duty to report under CANRA between 1972 and 1985 or in 1978; this duty was statutorily imposed upon clergy members some nineteen years later, in 1997, long after both Plaintiffs had become adults.

Furthermore, even if, *arguendo,* a statutory duty to report was somehow imposed on the Church Defendants, no California court has ever held that CANRA contains a private right to sue

for damages resulting from alleged violations of the statute. As the Court of Appeal recently noted:

> Adoption of a regulatory statute does not automatically create a private right to sue for damages resulting from violations of the statute. Such a private right of action exists only if the language of the statute or its legislative history clearly indicates the Legislature *intended* to create such a right to sue for damages. If the Legislature intends to create a private cause of action, we generally assume it will do so "directly [,] ... in clear, understandable, unmistakable terms...."

Vikco Ins. Serv., Inc. v. Ohio Indem. Co. (1999) 70 Cal.App.4th 55, 62-63 (citations omitted) (emphasis in original). Because CANRA and its predecessors have been repeatedly amended, "if the Legislature had intended to create such a private action, it would have done so by clear and direct language." *Schaefer v. Williams* (1993) 15 Cal.App.4th 1243, 1248; CCP § 1858 (When interpreting statutes, office of judge is "to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted.").

Because the Church Defendants were not required to report by CANRA in 1978 and because no private cause of action exists under CANRA, the Church Defendants' demurrer should be granted on the sixth cause of action for "Failure to Report Suspected Child Abuse."

B. Plaintiffs' "Negligent Usurpation of Investigatory Function" Claim is Not a Recognized Cause of Action Under California Law.

Plaintiffs' tenth cause of action is for "Negligent Usurpation of Investigatory Function." This is not a recognized cause of action in California (or any other State). Additionally, this cause of action presumes that CANRA had been violated. Because this claim is merely a restatement of Plaintiffs' cause of action for failure to report and because CANRA was not violated, as discussed above, the Church Defendants' demurrer on the tenth cause of action should be granted.

V. Plaintiffs' Remaining Causes of Action Fail to State Claims for Civil Liability.

A. Plaintiffs' "Alter Ego and Single Business Enterprise" Claim is Not a Recognized Cause of Action Under California Law.

Plaintiffs' amended complaint contains an allegation of "alter ego and single business enterprise," which is a contract law *theory* that has never been recognized as an independent cause of action in California courts. "Under the 'alter ego' doctrine, the separate corporate entity may be disregarded and personal liability imposed upon its shareholders, where a corporation is found to be the alter ego of the shareholders ...." 18 C.J.S. *Corporations* § 12 (2003). Because the theory of "alter ego" is not a separate or cognizable cause of action, but rather a theory concerning relationships between corporate entities, the Court should grant the Church Defendants' demurrer on Plaintiffs' ninth cause of action for alter ego.

B. Plaintiffs' "Violation of Penal Code" Claims are Not Recognized Causes of Action Under California Law.

Plaintiffs have asserted two causes of action one under Penal Code section 182, Criminal "Conspiracy" "Definition; punishment; venue; evidence necessary to support conviction," and another under Penal Code section 32, "Accessories defined." However, no California court has found that violation of either one of these Penal Code statutes may serve as an independent basis for civil liability. As noted earlier, "If the Legislature intends to create a private cause of action, we generally assume it will do so 'directly[,] ... in clear, understandable, unmistakable terms....'" *Vikco*, 70 Cal.App.4th at 62-63 (citation omitted).

Furthermore, if the alleged violation of the Penal Code's definition for conspiracy is really a poorly pled claim for civil conspiracy, "[a]s is 'well established' under California law[,] 'civil conspiracy is not an independent tort.' ... Rather, it is a "'legal doctrine.'" *Idema v. Dreamworks, Inc.* (C.D. Cal. 2001) 162 F. Supp. 2d 1129, 1196-97 (citations omitted). Thus, the

Court should grant the Church Defendants' demurrer on Plaintiffs' eleventh and twelfth causes of action for alleged violations of the Penal Code.

CONCLUSION

For each of the independent reasons set forth above, this Court should grant Church Defendants' demurrers on all twelve causes of action set forth in Plaintiffs' amended complaint.

September 15, 2003

BULLIVANT HOUSER BAILEY PC

Robert J. Schnack, Esq.
Attorney for Church Defendants

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
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E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF DEFENDANTS' DEMURRERS

I. INTRODUCTION

The moving Church Defendants submit this Appendix of Non-California Authorities in Support of their Demurrers. Pursuant to Napa County Local Rule 3.1, copies of all cited authorities from other jurisdictions, except federal authorities, have been included. Copies of the cited federal authorities will thus be separately submitted only upon request.

II. APPENDIX OF NON-CALIFORNIA AUTHORITIES

A. Cases **Exhibit No.**

Amato v. Greenquist
(Ill. Ct. App. 1997) 679 N.E.2d 446 1

Ehrens v. Lutheran Church-Missouri Synod
(S.D.N.Y. June 18, 2003) No. 02 CIV. 2771(CLB), 2003 WL 21448323 2

Franco v. Church of Jesus Christ of Latter-Day Saints
(Utah 2001) 21 P.3d 198 3

H.R.B. v. J.L.G.
(Mo. Ct. App. 1995) 913 SW.2d 92 4

Langford v. Roman Catholic Diocese of Brooklyn
(N.Y. 1998) 677 N.Y.S.2d 436 5

Schieffer v. Catholic Archdiocese of Omaha
(Neb. 1993) 508 N.W.2d 907 6

B. Other Authorities **Exhibit No.**

18 C.J.S. *Corporations* § 12 (2003) 7

86 C.J.S. *Torts* § 38 (1997) 8

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF DEFENDANTS' DEMURRERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

EXHIBIT 1

Service: **Get by LEXSEE®**
Citation: **679 ne2d 446**

*287 Ill. App. 3d 921, *; 679 N.E.2d 446, **;*
*1997 Ill. App. LEXIS 220, ***; 223 Ill. Dec. 261*

DUANE F. AMATO, Plaintiff-Appellant, v. PASTOR VERNON C. GREENQUIST, an individual, BISHOP SHERMAN HICKS, an individual, METROPOLITAN CHICAGO SYNOD OF THE EVANGELICAL LUTHERAN CHURCH OF AMERICA, an Illinois not-for-profit corporation, EVANGELICAL LUTHERAN CHURCH IN AMERICA a/k/a ELCA, a foreign not-for-profit corporation, and PEACE LUTHERAN CHURCH OF LAKE ZURICH, an Illinois not-for-profit corporation, Defendants-Appellees.

1-94-2763, 1-95-0350 consolidated

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT, THIRD DIVISION

287 Ill. App. 3d 921; 679 N.E.2d 446; 1997 Ill. App. LEXIS 220; 223 Ill. Dec. 261

April 16, 1997, Decided

SUBSEQUENT HISTORY: [*1]** As Corrected April 28, 1997. Released for Publication June 2, 1997.

PRIOR HISTORY: Appeal from the Circuit Court of Cook County. The Honorable Kenneth Gillis, Judge Presiding.

DISPOSITION: Affirmed in part, vacated in part and remanded for further proceedings.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff husband sought review of a decision of the Circuit Court of Cook County, which granted defendant clergy's motion to dismiss in an action involving intentional infliction of emotional distress, breach of fiduciary duty, clergy malpractice, and common law fraud.

OVERVIEW: Defendant, who was plaintiff's marriage counselor, had an affair with plaintiff's wife. The court affirmed the dismissal of plaintiff's fraud, breach of fiduciary duty, and clergy malpractice claims. Fraud allegations were not germane to a count alleging professional negligence because fraud was a distinct cause of action in Illinois. Clergy were exempt from the standards for social workers, psychotherapists, and marriage counselors. Plaintiff could not recover for clergy malpractice. The court held that there was no action in Illinois for breach of fiduciary duty premised upon the counseling relationship between a cleric and a church member. The court held that defendant's bosses were not responsible for his behavior under respondeat superior because his actions were not in furtherance of his employer's business. The court reversed the lower court's dismissal of plaintiff's intentional infliction of emotional distress claim because plaintiff alleged facts that established that defendant's conduct was extreme and outrageous, that defendant intended his conduct to inflict severe emotional distress, and that defendant's conduct did cause severe emotional distress.

OUTCOME: The court affirmed the decision dismissing plaintiff's breach of fiduciary duty, clergy malpractice, and fraud causes of action. Allegations of fraud were not germane to a count alleging professional negligence. Illinois did not recognize clergy malpractice or breach of fiduciary duty claims. The court reversed the decision dismissing plaintiff's intentional infliction of emotional distress claim because his allegations supported his claim.

CORE TERMS: counselling, church, malpractice, cleric, clergy, marriage, counsellor, religious, psychotherapy, duty, counsellee, confidence, counselled, training, secular, licensed, intentional infliction of emotional distress, breach of fiduciary duty, sexual relationship, first amendment, respondeat superior, marital, session, social worker, practitioner, parishioner, breached, transference, furtherance, actionable

LexisNexis (TM) HEADNOTES - Core Concepts - ✦ Hide Concepts

Torts > Malpractice Liability > Misconduct Generally

HN1 To permit claims for clergy malpractice would require courts to establish a standard of reasonable care for religious practitioners practicing their respective faiths, which necessarily involves the interpretation of doctrine. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN2 When doctrinal controversy is not involved in a dispute between a claimant and a church, the first amendment does not require judicial deference to religious authority. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion
Torts > Malpractice Liability > Misconduct Generally

HN3 Illinois courts may entertain lawsuits alleging tortious conduct by churches and their employees, so long as the resolution does not require interpretation of either religious doctrine or religious duties imposed on an individual by a particular church. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion
Torts > Malpractice Liability > Misconduct Generally

HN4 In the context of spiritual counseling, the free exercise clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact part of the belief and practices of the religious group. Clerics cannot, using the shield of the first amendment, masquerade in the form of marriage counsellors and then prey on a counselee. More Like This Headnote

Civil Procedure > Pleading & Practice > Pleadings

HN5 No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim. More Like This Headnote

Torts > Business & Employment Torts > Deceit & Fraud

HN6 Fraud is a distinct cause of action in Illinois. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN7 The statutes in force authorizing the licensing of and the establishment of standards for practitioners of marriage counseling, social work, and psychotherapy specifically exempted religious practitioners from their ambit, so long as they do not hold themselves out as qualified under the acts. More Like This Headnote

Torts > Malpractice Liability

HN8 Under Illinois law, a fiduciary relationship is recognized to exist when a special confidence is reposed in one who, by reason of such confidence, must act in good faith and with due regard to the interests of the person reposing such confidence. Such a relationship may exist as a matter of law, or it may be the result of a more informal relationship--moral, social, domestic or even personal in its origin. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN9 Illinois law, in conjunction with the First Amendment, prohibits the recognition of an action for breach of fiduciary duty premised upon the counseling relationship between a cleric and a church member with whom the cleric had been sexually involved. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN10 Under Illinois law, a contention that a cleric has breached his duty as a fiduciary is not actionable. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress

HN11 In order to plead an intentional infliction of emotional distress claim, the plaintiff must allege facts establishing that the defendant's conduct was extreme and outrageous and that the defendant either intended his conduct to inflict severe emotional distress or knew that there was a high probability that the conduct would cause such distress. The plaintiff also must allege that the conduct, in fact, caused severe emotional distress. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress

HN12 A complaint for intentional infliction of emotional distress may stand only where the conduct complained of is so outrageous as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civil community. The court may assess the outrageousness of a defendant's actions based, in part, upon a defendant's improper use of a position of power which gives him the ability to adversely affect the plaintiff's interests. More Like This Headnote

Torts > Vicarious Liability > Respondeat Superior

HN13 Under the doctrine of respondeat superior, an employer may be liable for the torts of his servant when such acts are committed in the course of employment and in furtherance of the employer's business; however, the employer is not liable if the employee commits the acts solely for his own benefit. More Like This Headnote

COUNSEL: George S. Bellas and Mary Ann Jacoby Miller, both of Bellas & Wachowski, P.C., and E. William Maloney, Jr., of Maloney, Craven & Longstreet, P.C., both of Des Plaines, for appellant.

Edward D. D'Arcy, of Johnson & Bell, Ltd., of Chicago, for appellees Metropolitan Chicago Synod of the Evangelical Lutheran Church in America and Evangelical Lutheran Church in America.

JUDGES: Justice Leavitt delivered the opinion of the Court. McNamara, J., and Rakowski, J., concur.

OPINIONBY: Leavitt

OPINION: [*923]

[448]** Justice Leavitt delivered the opinion of the Court:

Until late 1990, the plaintiff, Duane Amato, had thought himself a happily married man. According to a complaint he filed, he and his wife, Linda, had been married for eighteen years and had two children. In 1987, the Amatos joined Peace Lutheran Church of Lake Zurich (Peace), a fledgling parish headed by the defendant, Pastor Vernon C. Greenquist. The Amatos became active in the church, and in October 1990, Linda began "faith counseling" with Pastor Greenquist. During November 1990, the plaintiff and Linda began experiencing marital problems which were accompanied by a "religious transformation" within her. Unbeknownst to Duane, during the course of faith counseling, Linda had begun an affair with Pastor Greenquist, who was also married. On December 22, the plaintiff **[***2]** sought and began a course of counselling with Greenquist. Greenquist obliged Duane's request for counselling without informing him of the continuing affair with Linda.

Duane discovered the relationship between Greenquist and Linda on February 15, 1991. He notified church authorities, including the defendant, Bishop Sherman Hicks, who was Greenquist's immediate superior within the church hierarchy. Bishop Hicks suspended Greenquist, and Greenquist resigned his position with Peace. Bishop Hicks also suggested that Duane seek professional counselling. Soon after, **[*924]** Linda filed for a divorce from the plaintiff. Greenquist divorced his wife. Greenquist and Linda are now married.

The plaintiff's initial multi-count complaint against Greenquist alleged intentional infliction of emotional distress, breach of a fiduciary **[**449]** duty, clergy malpractice and common law fraud. He also sued Bishop Hicks, alleging breach of a fiduciary duty and clergy malpractice. Finally, alleging respondeat superior, he sued Peace and the institutional hierarchy of the Lutheran church, which consists of the Evangelical Lutheran Church in America (ELCA) and the Metropolitan Chicago Synod of the Evangelical Lutheran Church **[***3]** of America (Met Synod) (collectively the "church defendants").

Pursuant to motions filed by all of the defendants under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 1994)), the trial judge dismissed most of the counts for varying reasons stemming from the plaintiff's failure to state causes of action, but most particularly because (1) Illinois does not recognize the tort of clergy malpractice; and (2) the relationship between cleric and parishioner is not a fiduciary one. The trial judge granted the plaintiff leave to amend, and he filed a second amended complaint consisting of 14 counts restating many of the same allegations, except that he denominated the clergy malpractice claims against Greenquist and Bishop Hicks as "psychotherapy malpractice (gross negligence)."

The church defendants and Bishop Hicks renewed their section 2-615 motions to dismiss, and the trial judge granted them in their entirety, dismissing 10 of the 14 counts of the complaint. Pastor Greenquist also renewed his section 2-615 motion to dismiss, and in a separate order the trial judge dismissed, with prejudice, all of the counts against him with the exception of that alleging **[***4]** common law fraud. The judge entered findings pursuant to Supreme Court Rule 304(a) (134 Ill. 2d R. 304(a)), and the plaintiff seeks to overturn the dismissal, contending that he has alleged facts sufficient to withstand a motion to dismiss as to each of the counts dismissed.

Because the counts at issue were dismissed pursuant to section 2-615, we review the allegations of the complaint de novo accepting as true all well-pleaded allegations and drawing all reasonable inferences in a light most favorable to the plaintiff. T & S Signs, Inc. v. Village of Wadsworth, 261 Ill. App. 3d 1080, 1083, 634 N.E.2d 306, 199 Ill. Dec. 467 (1994). We will uphold the dismissal only if "it clearly appears that no set of facts can be proved" which will entitle the plaintiff to recover. People ex rel. Daley v. Datacom Systems Corp., 146 Ill. 2d 1, 11, 585 N.E.2d 51, 165 Ill. Dec. 655 (1991). Additional allegations pertinent to this appeal are as follows.

ELCA is "a nationwide organization of churches of the Lutheran **[*925]** faith." Met Synod is "the local administrative 'branch' of the ELCA and directly oversees the operation and function of ELCA churches in the Chicago area, including PEACE." Bishop **[***5]** Hicks is the Met Synod's principal cleric. He oversees the operations of local ELCA churches in Chicago.

Greenquist received his training as a minister and counsellor through ELCA. In 1990, he had approximately 11 years experience in preaching and counselling. His professional counselling experience included marriage counselling, faith counselling and general family counselling. Greenquist "held himself out as a skilled professional in matters of counselling." He, along with Peace and Met Synod, "encouraged [congregants] to seek counselling from the church and its clergy before seeking secular professionals in order 'to promote unity, closeness and interdependence within members of the congregation' (in accordance with stated church doctrine)." Furthermore, Greenquist "was acting within the scope and parameters of his employment duties on behalf of [the church defendants] and in furtherance of stated church doctrine when he counselled" the plaintiff.

When the plaintiff first approached Greenquist regarding marriage counselling, he had no knowledge of the ongoing relationship between Linda and Greenquist. Greenquist neither referred the plaintiff to an independent counsellor nor **[***6]** indicated that he would be unable to render "objective professional assistance." Rather, he "welcomed the opportunity to counsel [the plaintiff] in order to further his own personal goals *** to foster and promote his own sexual gratification, and to further undermine the marital relationship of" the Amatos. Furthermore, Greenquist revealed to Linda confidences he **[**450]** learned from the plaintiff during the counselling sessions in order to foster his relationship with Linda.

On March 5, 1991, the plaintiff advised Bishop Hicks of the circumstances. The plaintiff made an appointment for "counselling" with the Bishop. Linda accompanied him to this session. The plaintiff alleged that this session constituted "professional counselling." However, he also alleges that the Bishop counselled him "in furtherance of church doctrine." The Bishop acted merely to protect the interests of the church. He "took no steps to remedy the situation" and "made no effort to save the marriage." Rather, he "counselled that [the plaintiff] should get further 'professional' counselling but that Linda did not need professional counselling because she had close spiritual friends she could pray with."

In recent **[***7]** years, an increasing number of cases have been brought by laity against clergy alleging abuse of the cleric-parishioner **[*926]** relationship. The plaintiffs in these cases generally have denominated their claims "clergy malpractice." Our courts have refused to entertain such claims because the first amendment's free exercise clause prohibits courts from considering claims requiring the interpretation of religious doctrine. Baumgartner v. First Church of Christ, Scientist, 141 Ill. App. 3d 898, 904-906, 490 N.E.2d 1319, 96 Ill. Dec. 114 (1986). HN1 To permit claims for clergy malpractice would require courts to establish a standard of reasonable care for religious practitioners practicing their respective faiths, which necessarily involves the interpretation of doctrine. Baumgartner, 141 Ill. App. 3d at 906.

Nonetheless, HN2 when doctrinal controversy is not involved in a dispute between a claimant and a church, the first amendment does not require judicial deference to religious authority. Bivin v. Wright, 275 Ill. App. 3d 899, 903, 656 N.E.2d 1121, 212 Ill. Dec. 287 (1995). For instance, "in disputes over church property, Illinois courts have applied a 'neutral principles of law' approach, **[***8]** objectively examining pertinent church characteristics, constitutions and bylaws, deeds, State statutes, and other evidence to resolve the matter the same as it would a secular dispute ***, using purely secular analyses without relying on religious precepts." Bivin, 275 Ill. App. 3d at 903.

Applying these principles, the court in Bivin reinstated a claim of negligent supervision against a church brought by a husband and wife who had sued their reverend, the reverend's superior and the church, alleging that during the course of marital counselling, the reverend

entered into a sexual relationship with the wife which exacerbated the marital problems. The court noted that "the church defendant does not claim that the alleged sexual misconduct of its minister was part of its religious beliefs or practices or was in any way sanctioned by the church." Bivin, 275 Ill. App. 3d at 902. Thus, the court held that it could "not conclude from plaintiffs' complaint that their cause of action will infringe upon, or place a burden upon, the church's freedom to exercise its religion." Bivin, 275 Ill. App. 3d at 903.

The decision in Bivin clarifies that HN3 Illinois courts may entertain **[***9]** lawsuits alleging tortious conduct by churches and their employees, so long as the resolution does not require interpretation of either religious doctrine or religious duties imposed on an individual by a particular church. We believe the approach announced in Bivin reflects a reasoned approach to determining the justiciability of disputes of this nature. It is also the approach which other jurisdictions have adopted in assessing the particular type of claims raised by the plaintiff in this case.

[*927] In F.G. v. MacDonell, 291 N.J. Super. 262, 677 A.2d 258, 264 (N.J. Super. A.D. 1996), the court permitted a claim of negligent pastoral care and counselling against a cleric-counsellor who had "used his position to sexually exploit the counsellee." In so holding, the court recognized the constitutional limitations on the judiciary in such disputes, but nonetheless stressed that whether such a claim is cognizable requires a determination that the court will not need to evaluate "dogma or ritual, or other matters of ecclesiastical concern." **[**451]** MacDonell, 677 A.2d at 263. Likewise, the Colorado Supreme Court has recognized that HN4 in the context of spiritual counselling, the free exercise **[***10]** clause is relevant only if the defendant can show that the conduct that allegedly caused plaintiff's distress was in fact part of the belief and practices of the religious group." DeStefano v. Grabrian, 763 P.2d 275, 283-84 (Colo. 1988). See also Sanders v. Casa View Baptist Church, 898 F. Supp. 1169, 1174 (N.D.Tex. 1995). Accordingly, one court has observed that clerics cannot, using the shield of the first amendment, "masquerade[] in the form of marriage counsellors" and then "prey" on a counsellee. Sanders, 898 F. Supp. at 1175.

The plaintiff contends that he has properly pled claims of "psychotherapy malpractice" against both Pastor Greenquist and Bishop Hicks. The defendants n1 contend that these counts merely restate the allegations of the clergy malpractice claim previously dismissed by the trial judge -- claims the plaintiff concedes are not cognizable in an Illinois court. Although we acknowledge that the second amended complaint is not, in substance, radically different from the one previously dismissed, we will not determine the justiciability of these counts based upon the nomenclature used by the plaintiff in entitling the counts. That is, if the plaintiff's **[***11]** allegations, as a whole, can be fairly construed as claims of negligence directed at conduct other than the defendants' performance of their clerical duties, his claims must be reinstated. See 735 ILCS 5/2-612 (West 1994) HN5 ("No pleading is bad in substance which contains such information as reasonably informs the opposite party of the nature of the claim.") On the other hand, if the factual allegations of the claims lead only to the conclusion that they allege malpractice by the defendants in their practice as members of the clergy, that would require us to adjudicate them pursuant to a reasonable cleric standard, hence rendering them non-justiciable as in Baumgartner.

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 Pastor Greenquist has not filed an appellate brief in this matter. We review the claims as to him under the standards announced in First Capitol Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 345 N.E.2d 493 (1976).

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[*928] The plaintiff's complaint clearly alleges that the plaintiff sought marital counselling from Pastor Greenquist **[***12]** and that Greenquist held himself out as a professional counsellor. Yet, the complaint also states that Greenquist "encouraged [congregants] to seek counselling from the church and its clergy before seeking secular professionals in order 'to promote unity, closeness and interdependence within members of the congregation' (in accordance with stated church doctrine)." Furthermore, Greenquist "was acting *** in furtherance of stated church doctrine when he counselled" the plaintiff. The plaintiff then lodges six specific charges against Pastor Greenquist, all premised on the allegation that the Pastor "failed to exercise ordinary care" and "wilfully defrauded and deceived" the plaintiff. According to the complaint the Pastor (1) co-conspired with the plaintiff's wife to undermine the marriage; (2) did not divulge his conflict of interest; (3) failed to refer the plaintiff to a neutral counsellor; (4) rendered bad advice to further his own goals and sexual gratification; (5) divulged confidences to Linda; and (6) disregarded "all indicia of the transference and countertransference phenomena which normally occurs in the course of psychotherapy."

We note, initially, that each of these **[***13]** allegations are based, in part, on an underlying allegation of fraud. The trial judge has permitted the plaintiff to replead a separate fraud count, the allegations of which essentially duplicate the ones above. ***HN6*** Fraud is a distinct cause of action in Illinois. To that extent, we do not believe the allegations of fraud are germane to a count alleging professional negligence, be it that of a psychotherapist or a cleric. Cf. Williams v. Chicago Osteopathic Health Systems, 274 Ill. App. 3d 1039, 1048, 654 N.E.2d 613, 211 Ill. Dec. 151 (1995) (recognizing differing elements and standard of proof between medical malpractice and fraud.) Therefore, we address the count for malpractice solely to the extent it alleges that the Pastor breached a duty of care owed to the plaintiff. Furthermore, the allegation regarding the Pastor's conspiracy with Linda also has nothing to do **[**452]** with the Pastor's counselling relationship with the plaintiff, and, hence, we find that it fails to state a claim for professional negligence.

As to the remaining allegations, were this case to involve directly the sexual relationship between cleric and counsellee, we might be inclined to consider the reasoning of the **[***14]** court in MacDonell, 677 A.2d at 263, which, as noted, permitted a claim of clergy malpractice, stressing the "bright line between counselling culminating in a sexual relationship with a counsellee **[*929]** and other types of harm allegedly resulting from a failed counselling relationship." As in Bivin, the MacDonell court considered that when sexual misconduct is involved, the fear of treading on doctrinal matters is minimal, and to establish a standard of care involved "no impenetrable barrier." MacDonell, 677 A.2d at 264.

However, unlike in Bivin and MacDonell, the sexual liaison here, while impacting upon the plaintiff, involved his wife, who is not a plaintiff. Furthermore, to the extent the plaintiff alleges mishandling of the transference phenomenon, the Pastor did so with regard to Linda. Indeed, the plaintiff concedes in his brief that the Pastor's sexual liaison with Linda is not the focal point of his claim of negligent counselling.

In essence, the plaintiff's complaint alleges that Pastor Greenquist, while counselling him in accordance with duties established by church doctrine, breached his duty as a professional marriage counsellor. We believe there is **[***15]** an inherent contradiction in this core allegation which exposes the problem with claims of malpractice against members of the clergy, even when couched in terms of professional or psychotherapy malpractice.

Nonetheless, the plaintiff urges, relying on the allegations of his complaint in conjunction with the decision in Horak v. Biris, 130 Ill. App. 3d 140, 474 N.E.2d 13, 85 Ill. Dec. 599 (1985), that Pastor Greenquist was required "to exercise the same professional care expected of other professionals in the field of psychotherapy." In Horak, a licensed social worker counselled the plaintiff on marital matters while he was engaged in a sexual relationship with the plaintiff's wife. The court recognized an action for social worker malpractice. However, central to the decision in that case was that the defendant held himself out as a social worker

licensed by the State of Illinois. As such, he was required to exercise the degree of skill possessed by members of that profession.

The plaintiff's complaint does not allege that Greenquist is either a licensed social worker, licensed psychotherapist or a licensed marriage counsellor or that he held himself out as one. Indeed, during **[***16]** the time when the plaintiff's claims accrued, HN7 the statutes in force authorizing the licensing of and the establishment of standards for practitioners of these professions specifically exempted religious practitioners from their ambit, so long as they do not hold themselves out as qualified under the acts. E.g. 225 ILCS 55/15(d) (West 1994) (Marriage and Family Therapy Licensing Act); 225 ILCS 20/4(2) (West 1994) (Clinical Social Work and Social Work Practice Act). Furthermore, to the extent Illinois has, subsequent to the alleged actions **[*930]** involved in this case, statutorily recognized an action for sexual exploitation within the confines of a psychotherapeutic relationship, it has limited recovery under that act to the victims of the exploitation and, in addition, excluded "counselling of a religious nature" from the definition of "psychotherapy." 740 ILCS 140/1(e) (West 1992) (Sexual Exploitation in Psychotherapy Act).

Finally, although the plaintiff does allege that Greenquist mishandled psychotherapeutic principles, such as the transference phenomenon, he does not allege that Pastor Greenquist had either formal training in and knowledge of these principles or any counselling training **[***17]** outside of his training by the defendant ELCA. Indeed, the plaintiff's allegations presuppose that a Pastor is under the same ethical obligations the State imposes upon therapists it licenses. We cannot impose such obligations on a church within the constricts of the first amendment. That is the holding of Baumgartner, in which the court refused to impose the standards of the licensed medical professional upon a Christian Science practitioner. Accordingly, we will not uphold the plaintiff's complaint based upon the Horak decision.

[453]** The plaintiff also urges that our supreme court's decision in Corgan v. Muehling, 143 Ill. 2d 296, 574 N.E.2d 602, 158 Ill. Dec. 489 (1991), permits his claims. The plaintiff contends that, as in Corgan, because he alleged that Greenquist held himself out as a "professional counsellor," Greenquist may be held accountable for his negligent counselling, generally. Corgan involved the allegations of a plaintiff involved in a sexual relationship with the defendant psychologist. Even accepting Corgan for the broad proposition advanced by the plaintiff, we note again that the allegations of the complaint indicate that Pastor Greenquist's **[***18]** training as a counsellor was solely under the aegis of ELCA and was, thus, religious in nature.

The complaint does allege that the Pastor held himself out as a "skilled professional" in matters of counselling, but it also admits that the Pastor counselled in accordance with stated church doctrine and encouraged members to seek counselling within the church "before seeking secular professionals." The plaintiff alleged that Pastor Greenquist provided marriage counselling to him in accordance with church doctrine. That is not the same as a situation in which a plaintiff alleges that "a particular church *** also offers purely secular counselling as a service to members of its congregation or to a broader segment of the population in need of such services." Dausch v. Rykse, 52 F.3d 1425, 1433 (7th Cir. 1994). We believe that given the particular facts alleged by the plaintiff, a trial court would be required to investigate the nature of counselling, as well as the training **[*931]** of counsellors, within this particular church. That is not permitted in Illinois (Baumgartner v. First Church of Christ, Scientist, 141 Ill. App. 3d 898, 490 N.E.2d 1319, 96 Ill. Dec. 114 (1986)), or in any other jurisdiction. See Dausch, **[***19]** 52 F.3d at 1432 n.2.

This area requires, as the MacDonell court recognized, that a bright line be drawn between those claims actionable and those which impinge on first amendment guarantees. In the factual context of this case, we believe that "line" requires us to uphold the trial judge's ruling. At core, the plaintiff has alleged that Pastor Greenquist is a very bad counsellor who

tried during counselling sessions to hide an illicit affair with the plaintiff's wife. Yet, according to the complaint, he was performing the counselling itself in the context of duties imposed upon him as a cleric by church doctrine. And, as the plaintiff concedes, this case is about the counselling. We believe that to permit the plaintiff's claims would effectively erase the bright line espoused by the MacDonell court, a line we agree must be drawn. Accordingly, the trial judge did not err in dismissing the count for psychotherapy malpractice against Pastor Greenquist.

As to the plaintiff's allegations of malpractice against Bishop Hicks, we hold that the plaintiff has not properly alleged a counselling relationship, let alone an actionable duty. In response to the plaintiff's request that Bishop **[***20]** Hicks render counselling services to him as a result of Pastor Greenquist's activities, the Bishop responded that the plaintiff should seek professional counselling. The plaintiff fails to allege any facts that support a conclusion that this was a "counselling" session. Rather, his complaint centers on the Bishop's refusal to counsel him. First, we believe that the allegations clearly indicate that the plaintiff approached the Bishop within the context of his duties as the head of the church. As such, the claim is clearly non-justiciable. Furthermore, we fail to perceive how the Bishop's response is actionable, even if he was acting in order to effect damage control, as the plaintiff alleges. We also conclude that the disciplinary action that Bishop Hicks subsequently did or did not take with regard to Pastor Greenquist is, as regards this case, outside any relationship he had with the plaintiff. The trial judge properly dismissed the psychotherapy malpractice claim against Bishop Hicks.

The plaintiff also alleges that both Pastor Greenquist and Bishop Hicks breached a fiduciary duty owed to the plaintiff. In the count against the Pastor, the plaintiff assigns, as breaches of the **[***21]** duty, the same allegations, save the mishandling of the transference phenomenon, as he did in his count for malpractice. That is, that the Pastor "wilfully defrauded" him by undermining the marital relationship; divulging confidences to Linda; not revealing his conflict of **[**454]** interest; and rendering advice against the plaintiff's best interest.

HN8 **[*932]** Under Illinois law, a fiduciary relationship is recognized to exist when "a special confidence [is] reposed in one who, by reason of such confidence, must act in good faith and with due regard to the interests of the person reposing such confidence." Estate of Osborn, 128 Ill. App. 3d 453, 455, 470 N.E.2d 1114, 83 Ill. Dec. 694 (1984). Such a relationship may exist as a matter of law, "or it may be the result of a more informal relationship--moral, social, domestic or even personal in its origin." Estate of Osborn, 128 Ill. App. 3d at 455.

Applying this definition in Dausch v. Rykse, the United States Court of Appeals for the Seventh Circuit held that HN9 Illinois law, in conjunction with the first amendment, prohibited the recognition of an action for breach of fiduciary duty premised upon the counselling relationship between a cleric **[***22]** and a church member with whom the cleric had been sexually involved. Dausch, 52 F.2d at 1438.

The Dausch court reasoned that in order to determine such a duty would require the court

> "to define a reasonable duty standard and to evaluate [the cleric's] conduct against that standard, an inquiry identical to that which Illinois has declined to undertake in the context of a clergy malpractice claim and one that is of doubtful validity under the Free Exercise Clause. It is clear that Illinois would not entertain a claim for breach of fiduciary obligation under the circumstances alleged here." Dausch, 52 F.3d at 1438.

However, other jurisdictions which have faced this question have had "no difficulty" in concluding that a cleric's sexual activity with a counsellee or the spouse of a counsellee may be used by the counsellee as the basis to state a cause of action for breach of fiduciary duty. DeStefano v. Grabrian, 763 P.2d 275, 289 (Colo. 1988). See also MacDonell, 677 A.2d at 264-65; Sanders v. Casa View Baptist Church, 898 F. Supp. 1169 (N.D.Tex. 1995).

Although we agree with the courts in these jurisdictions that the relationship between a cleric **[***23]** and parishioner reflects many aspects of a fiduciary one, we hold that HN10 under Illinois law, a contention that a cleric has breached his duty as a fiduciary is not actionable. We believe that when a parishioner lodges such a claim, religion is not "merely incidental" to a plaintiff's relationship with a defendant, "it [is] the foundation for it." H.R.B. v. J.L.G., 913 S.W.2d 92, 99 (Mo. App. 1995). The fiduciary relationship is inescapably premised upon the cleric's status as an expert in theological and spiritual matters. The plaintiff's complaint confirms this.

In lodging his claim for breach of fiduciary duty, the plaintiff alleged that in divulging confidences to the Pastor, he relied on the Pastor's "representations concerning his professionalism, training, **[*933]** skill, and experience, as well as [his] commitment to God and religion." We consider it imprudent for a court to attempt to dissect the secular from the sectarian in this equation. While we would consider unlikely the Pastor's ability to establish that his behavior in this case was religiously motivated (cf. H.R.B., 913 S.W.2d at 98-99), the plaintiff's relief lies in other well-recognized causes of action, such **[***24]** as the count alleging intentional infliction of emotional distress, which we reinstate, as well as the fraud count which the trial judge permitted the plaintiff to replead and which repeatedly finds its way into every allegation of both malpractice and breach of fiduciary duty raised by the plaintiff. Thus, we affirm the dismissal of the counts for breach of fiduciary duty as against both Pastor Greenquist and Bishop Hicks. Furthermore, in light of our holding in this regard, we affirm the dismissal of counts seven, nine, twelve and thirteen of the plaintiff's complaint in that they are all claims of respondeat superior against the church defendants arising out of the alleged breaches of fiduciary duty by Pastor Greenquist and Bishop Hicks.

The trial judge also dismissed the plaintiff's count alleging intentional infliction of emotional distress against Pastor Greenquist. HN11 In order to plead such a claim, the plaintiff must allege facts establishing that the defendant's conduct was "extreme and **[**455]** outrageous and that the defendant either intended his conduct to inflict severe emotional distress or knew that there was a high probability that the conduct would cause such distress." The plaintiff **[***25]** also must allege that the conduct, in fact, caused severe emotional distress. McGrath v. Fahey, 126 Ill. 2d 78, 86, 533 N.E.2d 806, 127 Ill. Dec. 724 (1988).

HN12 A complaint for intentional infliction of emotional distress may stand "only where the conduct complained of [is] so outrageous 'as to go beyond all bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civil community.'" Pavilon v. Kaferly, 204 Ill. App. 3d 235, 245, 561 N.E.2d 1245, 149 Ill. Dec. 549 (1990). We may assess the outrageousness of a defendant's actions based, in part, upon a "defendant's improper use of a position of power which gives him the ability to adversely affect the plaintiff's interests." Kolegas v. Heftel Broadcasting Corp., 154 Ill. 2d 1, 22, 607 N.E.2d 201, 180 Ill. Dec. 307 (1992).

The plaintiff alleged that he sought counselling "concerning his failing marriage." Pastor Greenquist acted in an extreme and outrageous manner by counselling the plaintiff while the Pastor was involved with Linda Amato and by counselling in a manner designed to "covertly undermine" the couple's marriage. The plaintiff discovered the relationship between

Greenquist and Linda when **[***26]** he found correspondences the two had been exchanging, including **[*934]** Christmas and Valentine's Day cards, as well as "enclosed love letters." Greenquist told the plaintiff that his relationship with Linda was "God's will." The plaintiff concludes that as a result of the Pastor's actions, he has suffered "depression, despair, insomnia, anxiety, nervousness and emotional trauma."

We believe these allegations satisfy the plaintiff's pleading burden. The defendant allegedly used his position to learn confidential information, which he divulged to Linda in an effort to destroy the plaintiff's marriage. The plaintiff has alleged that the Pastor's actions were intentional and that he has suffered various and severe emotional distresses as a result. Cf. Kolegas, 154 Ill. 2d at 21-25. Therefore, we vacate the portion of the trial judge's order dismissing count II of the plaintiff's complaint.

The remaining counts are against the church defendants and sound in respondeat superior based upon the intentional infliction of emotional distress by Greenquist, as well as emotional distress occasioned by Bishop Hicks. HN13 Under the doctrine of respondeat superior, an employer may be liable for the torts **[***27]** of his servant when such acts are committed in the course of employment and in furtherance of the employer's business; however, the employer is not liable if the employee commits the acts solely for his own benefit. Giraldi v. Lamson, 205 Ill. App. 3d 1025, 1030, 563 N.E.2d 956, 150 Ill. Dec. 829 (1990).

As to the church defendants' liability for Pastor Greenquist's actions (counts VIII, X and XIV), we hold that the complaint fails to allege that the Pastor's actions in deceiving and otherwise counselling the plaintiff were for anything other than his own benefit. For instance, paragraph 25 of the common allegations states, "PASTOR did not reject DUANE'S requests for counselling or refer said request to an independent third party ***, but rather welcomed the opportunity to counsel DUANE in order to further his own personal goals." Furthermore, paragraph 26 of the common allegations states that "PASTOR *** counselled DUANE against DUANE'S best interests in order to further PASTOR'S own material goals, to foster and promote his own sexual gratification, and to further undermine the relationship of his parishioners." Because these core factual allegations underlie all of the plaintiff's **[***28]** respondeat superior counts involving Pastor Greenquist, the plaintiff cannot establish liability on this basis.

Count XI is entitled "respondeat superior-negligent infliction of emotional distress," and is based upon the actions of Bishop Hicks. In stating this claim, the plaintiff specifically incorporates the allegations against the Bishop in count V, which was a claim for psychotherapy malpractice. We agree with the church defendants that the **[*935]** essence of this claim is one for respondeat **[**456]** superior based upon psychotherapy malpractice, a claim which we have already rejected with regard to Bishop Hicks. Therefore, that claim may not stand against the church defendants.

For all of the forgoing reasons, we affirm the judgment of the circuit court in dismissing all of the counts in the plaintiff's second amended complaint, with the exception of count II for intentional infliction of emotional distress against Pastor Greenquist, which we reinstate.

Affirmed in part, vacated in part and remanded for further proceedings.

McNamara, J., and Rakowski, J., concur.

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EXHIBIT 2

Source: Legal > / . . . / > Federal & State Cases, Combined
Terms: name(ehrens and lutheran) (Edit Search)

*2003 U.S. Dist. LEXIS 10405, **

KARL **EHRENS,** Plaintiff, - against - THE **LUTHERAN** CHURCH-MISSOURI SYNOD, THE **LUTHERAN** CHURCH-MISSOURI SYNOD ATLANTIC DISTRICT and RONALD F. FINK, Individually and as PRESIDENT OF THE **LUTHERAN** CHURCH-MISSOURI SYNOD ATLANTIC DISTRICT, Defendants.

02 Civ. 2771 (CLB)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2003 U.S. Dist. LEXIS 10405

June 18, 2003, Decided

DISPOSITION: [*1] Defendants motion for summary judgment granted.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff church member sought damages for sexual abuse he suffered while a minor at the hands of a pastor on retired status, now deceased. Defendants included the national religious organization of which the church was a part and the district where the pastor had previously served before retiring. Defendants moved for summary judgment pursuant to Fed. R. Civ. P. 56.

OVERVIEW: The member's church, where the pastor served on retired status, was part of a different district than the district being sued. Neither the national organization nor the district had the power to remove a pastor once called by a congregation. The pastor was convicted on criminal charges relating to the misconduct with the member. The member's legal theory was that defendants employed or supervised or retained the pastor in a position of trust with the knowledge that he had a history of sexually assaulting minors. The court held that the First Amendment prevented it from determining whether ecclesiastical authorities negligently supervised or retained a clergyman. Furthermore the member's evidence failed to satisfy the essential elements necessary to prevail in an action for negligence. He had not provided any admissible evidence that either the national organization or the district had requisite notice of the pastor's alleged proclivities to commit sexual assault.

OUTCOME: Defendants' motion for summary judgment was granted.

CORE TERMS: church, pastor, clergy, congregation, denomination, roster, supervision, retention, misconduct, religious, founded, priest, duty of care, ecclesiastical, sexual, inappropriate behavior, serious problem, sexual assault, governance, supervised, retired, assault, commit, hiring, summary judgment, genuine issue, material fact, matter of law, entanglement, negligently

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Civil Procedure > Summary Judgment > Supporting Papers & Affidavits

HN1 A court's analysis on a motion for summary judgment must be based on the facts well pleaded as amplified by the affidavits and exhibits, without regard to the legal theories or labels attached by the pleader. More Like This Headnote

Civil Procedure > Summary Judgment > Summary Judgment Standard

HN2 Fed. R. Civ. P. 56 provides that summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In evaluating the record to determine whether there is a genuine issue as to any material fact, the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Torts > Business & Employment Torts > Negligent Hiring & Supervision

HN3 Courts are prevented by the First Amendment to the United States Constitution from determining, after the fact, that ecclesiastical authorities negligently supervised or retained a clergyman. It is constitutionally dubious for a court or jury to set a standard of reasonable care for religious bodies which maintain rosters of clergy eligibility for employment by congregations. New York courts have ruled that any attempt to define the duty of care owed by a member of the clergy to a parishioner fosters excessive entanglement with religion. The same is true with regard to the duty of care in determining the continued eligibility of a priest to serve as a pastor. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN4 Any inquiry into the policies and practices of church defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement which might involve the court in making sensitive judgments about the propriety of the church defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor of some churches are not analogous to common law employees. The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millennia. As the United States Supreme Court stated long before the Lemon formulation was developed: It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN5 The so-called "third prong" of the much maligned case of Lemon v. Kurtzman, which forbade the state to foster excessive government entanglement with religion remains valid. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN6 The mainstream denominations differ greatly in their rules and policies for "calling" and removing clergy. For a court to intervene to set standards of care for the performance of this work, which is founded in scripture and in history, implicating apostolic succession in some denominations, is as unconstitutional as it is impossible. When such intervention is directed to retention, the problem becomes worse and such claims become a pleading substitute for the doctrine of respondent superior. More Like This Headnote

Torts > Negligence > Negligence Generally

HN7 Under New York law, to establish a prima facie case of negligence, the following must be shown: (i) a duty owed to the plaintiff; (ii) a breach of that duty; (iii) a reasonably close casual connection between the contact and the resulting injury, and (iv) actual loss, harm or damage. More Like This Headnote

Torts > Business & Employment Torts > Negligent Hiring & Supervision

HN8 To state a claim under New York law for negligent hiring, supervision, and retention, the plaintiff must show that the employer knew or should have known of the employee's propensity for the conduct which caused the injury. More Like This Headnote

COUNSEL: For Plaintiff: David B. Stein, Esq. of Rubin Weisman Colasanti, Kajko & Stein, LLP, Lexington, MA.

For Plaintiff: John Haris, Esq. of Epstein, Becker and Green, New York, NY.

For Defendant: Renee Simon Lesser Esq., New York, NY.

JUDGES: CHARLES L. BRIEANT, U.S.D.J.

OPINIONBY: CHARLES L. BRIEANT

OPINION: ***Memorandum and Order***

Brieant, J.

In this diversity case controlled by New York law, seeking damages for sexual abuse of a minor, Defendants move for summary judgment pursuant to Fed.R.Civ.P. 56 on various grounds. n1 The motion was heard and fully submitted on May 23, 2003.

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 This action was originally filed in Bronx County Supreme Court on November 19, 2001. Pursuant to 28 U.S.C. § 1441, Defendants removed this action to this Court based on diversity of citizenship, 28 U.S.C. § 1332(a)(1).

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

The following facts are not in dispute except as noted. Plaintiff Karl Ehrens ("Ehrens") **[*2]** is a citizen of Wollaston, Massachusetts. Defendant The Lutheran Church-Missouri Synod is a national religious organization with its principal place of business in St. Louis, Missouri. Defendant The Lutheran Church-Missouri Synod Atlantic District is a religious organization conducting business within the State of New York and having its principal office in Bronxville, New York. The Individual Defendant, Reverend Ronald F. Fink ("Rev. Fink"), was President of the Lutheran Church-Missouri Synod Atlantic District until 1989 and is a resident of the State of North Carolina. n2

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n2 Defendant Fink has never been served with the summons and complaint in this action. The time to serve him has passed. Plaintiff has waived his opportunity to depose Rev. Fink. He was required by a prior direction of this Court to depose him by March 14, 2003 and did

not do so.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

The complaint pleads two claims against Defendant The Lutheran Church Missouri Synod framed as claims for negligence imposing responsibility for the wrongful conduct **[*3]** of Reverend Frederick Chapman, not sued, and now deceased, (count I), and negligent infliction of emotional distress (count II). These same two claims are alleged separately against Defendant The Lutheran Church Missouri Synod - Atlantic District. Plaintiff characterizes his claims as for "negligent hiring, supervision or retention" of a clergyman. See Plaintiff's Opposition brief filed May 14, 2003 at 10.

Because Reverend Fink was not served with process the action is dismissed against him at the outset and the counts pleaded against him are not considered.

Factual Background

HN1 Our analysis must be based on the facts well pleaded as amplified by the affidavits and exhibits, without regard to the legal theories or labels attached by the pleader. The facts, denied by Defendants, but assumed to be true for purposes of the motion, are found in the Plaintiff's complaint and brief in opposition (Doc. 24).

Some knowledge of the history and organization of the Lutheran Church in America is necessary to resolve the motion. Defendants take their name from the Rev. Dr. Martin Luther (1483-1546) a Roman Catholic priest whose act in posting his *95 theses* on the church door **[*4]** in Wittenberg, in what is now Germany, on October 31, 1517, causes that day to be considered as the "Birthday of the Protestant Reformation". The *95 theses* are also known as the *Lutheran Confessions*. The Lutheran Church itself was founded June 25, 1530. Its origin and growth parallel that of the Presbyterian Church, said to have been founded in Scotland by John Knox (1514-1572) and the Reformation of the Anglican Church under the leadership of Archbishop Thomas Cranmer (1489-1556) in England, and other subsequent European Protestant denominations.

Lutherans today are the third largest grouping of Christians, worldwide. Defendant Lutheran Church - Missouri Synod ("the Synod") was organized in 1847 and is but one of a number of similar bodies which constitute a unity, for purposes of self-government of their constituent member Lutheran churches in the United States and Canada. Defendant The Lutheran Church - Missouri Synod - Atlantic District, is an administrative facility within the Synod responsible for approximately 100 congregations in Metropolitan New York, Long Island and Eastern New York State. Massachusetts is within the New England District of the Synod.

Under the **[*5]** governance of the Synod, a congregation cannot become a member of the Synod until its Constitution and bylaws are approved by a District of the Synod. The Wollaston Church discussed *infra* was not a member of the Atlantic District although it did belong to the Missouri Synod.

A congregation may "call" (retain or employ) only ordained and commissioned workers who are members of the Synod. This requirement applies to a Pastor, as well as certain other church offices not material to this action. The right to call a Pastor remains exclusively with the Congregation, but one so called must be endorsed by and a member of the Synod. Such a person eligible to serve as a Pastor is said to be "rostered", in that his name appears on a list or roster of eligible priests maintained by the Synod. A Pastor once called may be removed from office only for cause by a two-thirds vote of the members of the congregation assembled. Neither the Synod nor the District has the power to remove a Pastor once called.

Reverend Frederick Chapman, now deceased, was Pastor of a Lutheran church in Laurelton, New York. Chapman served in the Atlantic District as a Pastor until 1981. At that time he requested and **[*6]** was granted *emeritus* (retired) status and moved to New England. His roster membership was subsequently transferred to the New England District, and Rev. Fink had no further contact with him of any kind. Reverend Chapman resigned from the national clergy roster in 1997. Frederick Chapman was retired on pension as of 1978 or 1979. Although retired he continued to remain on the roster and to serve at the Wollaston Church, until 1997.

Plaintiff Karl Ehrens was a member of Wollaston Lutheran Church, in the New England District. Plaintiff alleges that beginning in the Spring of 1994 until July 1995, while he was under age, Chapman took advantage of his pastoral role within the church (as Pastor Emeritus at Wollaston) and began to develop an inappropriate sexual relationship with Ehrens. Ehrens alleges that while he was alone with Ehrens, Chapman committed a series of sexual assaults upon him. Chapman was convicted in 1997 in Massachusetts on criminal charges relating to that misconduct.

Defendant Synod provides evidence that it was not until 1997 that the Atlantic District learned of allegations of sexual misconduct lodged against Frederick Chapman in Massachusetts. "No allegations **[*7]** of sexual misconduct are on record in the Atlantic District office." Exhibit B. There is no evidence to the contrary. Since, organizationally, the District is part of the Synod, its knowledge would be imputed to the Synod.

Discussion

HN2 F.R.Civ.P. 56 provides that summary judgment shall be rendered if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In evaluating the record to determine whether there is a genuine issue as to any material fact, "the evidence of the non-movant is to be believed and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986).

Plaintiff's legal theory is that Defendants employed or supervised or retained Chapman as a Pastor in a position of trust with the knowledge that he had a history of sexually assaulting minors. Plaintiff alleges that in 1977, while serving as Pastor in New York, Chapman was forced to leave that post because of inappropriate **[*8]** behavior towards female members including minors. Reverend Ronald Fink was the President of the Atlantic District in 1977 and is claimed to have had personal knowledge concerning that misconduct. In August 1980, in connection with Chapman's transfer to the New England District, Rev. Fink failed to inform the New England District of Chapman's prior misconduct, and Defendants allowed him to remain rostered, knowing that during his ministry in the New England District, Chapman would have unsupervised access to children, including Plaintiff. This failure is alleged to be the cause of Plaintiff's injuries which are the subject of the suit.

This Court agrees that Plaintiff's allegation that Chapman was "working for the Atlantic District" at the time of the alleged assaults is not supported by the evidence, and indeed is contradicted by his claims previously filed by Mr. Ehrens in his two prior lawsuits in Massachusetts.

Defendants point out, and this Court agrees that the HN3 Court is prevented by the First Amendment to the United States Constitution from determining, after the fact, that the ecclesiastical authorities of the Lutheran Church negligently supervised or retained a clergyman, **[*9]** as Plaintiff contends. It is constitutionally dubious for a court or jury to set a standard of reasonable care for religious bodies which maintain rosters of clergy eligibility for employment by congregations. New York courts have ruled that "any attempt to define

the duty of care owed by a member of the clergy to a parishioner fosters excessive entanglement with religion." *Langford v. Roman Catholic Diocese*, 271 A.D.2d 494, 705 N.Y.S.2d 661, 662 (2d Dep't 2000). The same is true with regard to the duty of care in determining the continued eligibility of a priest to serve as a Pastor. As this Court has previously held in *Schmidt v. Bishop*, 779 F. Supp. 321 (S.D.N.Y. 1991) in which Plaintiff's claims against the Church Defendants were dismissed as a matter of law:

> HN4 "Any inquiry into the policies and practices of the Church Defendants in hiring or supervising their clergy raises the same kind of First Amendment problems of entanglement ... which might involve the Court in making sensitive judgments about the propriety of the Church Defendants' supervision in light of their religious beliefs. Insofar as concerns retention or supervision, the pastor **[*10]** of a Presbyterian Church is not analogous to a common law employee. He may not demit his charge nor be removed by the session, without the consent of the presbytery, functioning essentially as an ecclesiastical court. The traditional denominations each have their own intricate principles of governance, as to which the state has no rights of visitation. Church governance is founded in scripture, modified by reformers over almost two millenia.
>
> As the Supreme Court stated long before the *Lemon* formulation was developed: It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own. It would therefore be an appeal from the more learned tribunal in the law which should decide the case, to one which is less so. *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 729, 20 L. Ed. 666 (1871). *See also St. Nicholas Cathedral of Russian Orthodox Church of North America v. Kedroff*, 302 N.Y. 2, 13, 96 N.E.2d 56 (1950) rev'd on other grounds, 344 U.S. 94, 73 S. Ct. 143, 97 L. Ed. 120 (1952).

HN5 The so-called "third **[*11]** prong" of the much maligned case of *Lemon v. Kurtzman*, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971) which forbade the state to "foster excessive government entanglement with religion" remains valid. We know from history that the First Amendment was passed in light of concern by Congress and the states that their new national government might at some future time follow the practices of European states in which the ruler for the time being presumed to dictate the religious affiliations of his subjects and interfere with the free exercise of their own conscience. We may not forget that "the men and women who left Scrooby for Leyden and eventually came to Plymouth in order to worship God where they wished and in their own way must have thought they had terminated the interference of public authorities with free and unhandicapped exercise of religion." n3

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n3 Chief Judge Albert Conway writing for the New York Court of Appeals in *Matter of Community Synagogue v. Bates*, 1 N.Y.2d 445, 458, 154 N.Y.S.2d 15, 136 N.E.2d 488 (1956).

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[*12]**

Any effort of this Court to instruct the trial jury as to the duty of care by which a denomination keeps its "roster" of those priests (and others) authorized to accept canonical employment by a parish church would of necessity require the court and jury to consider the

fundamental perspective and approach to ordination and supervision of clergy and constituent churches inherent in the beliefs and practices of the particular denomination. The selection and deployment of clergy is about as central to the life and purpose of a group of affiliated churches as anything we can imagine. HN6 The mainstream denominations differ greatly in their rules and policies for "calling" and removing clergy. For a court to intervene to set standards of care for the performance of this work, which is founded in scripture and in history, implicating apostolic succession in some denominations, is as unconstitutional as it is impossible. When such intervention is directed to retention, the problem becomes worse and such claims become a pleading substitute for the doctrine of *respondent superior,* inapplicable in New York to crimes committed by clergy, and not alleged by Plaintiff in this case. *Bassile v. Covenant House,* 152 Misc.2d 88, 575 NYS 2d 233 (1991); **[*13]** *Joshua S. v. Casey,* 206 A.D.2d 839, 615 NYS 2d 200 (1994 App. Div. 4th Dept.); *Paul J.H. v. Lum,* 291 A.D.2d 894, 736 NYS 2d 561 (2002 App. Div. 4th Dept.)

Any award of damages would have a chilling effect, leading indirectly to state control over the future conduct of affairs of a religious denomination, a result violative of the text and history of the establishment clause. Because it would be inappropriate and unconstitutional for this Court to determine after the fact that the ecclesiastical authorities negligently supervised or retained Reverend Chapman, this case must be dismissed.

Defendants also contend alternatively that there is no proof of prior notice to them that Chapman would commit a sexual assault against a young man sixteen years after he left the Atlantic District and moved to Massachusetts, simply by reason of a prior history of misconduct of an unspecified sexual nature years earlier with women.

HN7 Under New York law, to establish a *prima facie* case of negligence, the following must be shown: (i) a duty owed to the plaintiff; (ii) a breach of that duty; (iii) "a reasonably close casual connection between the contact and the resulting **[*14]** injury", and (iv) "actual loss, harm or damage." *See Dooner v. Keefe, Bruyette & Woods, Inc.,* 157 F. Supp. 2d 265 (S.D.N.Y. 2001). Plaintiff's evidence fails to satisfy the essential elements necessary to prevail in an action for negligence.

Plaintiff argues that Defendants knew of "Chapman's pedophilic activities ... [as] confirmed by Chapman's subsequent conviction." See Id. at P 7. The conviction of Chapman occurred after the alleged assault in 1994. See Id. at P 18. It is illogical that Chapman's post- 1994 conviction could be used to create a foreseeable duty of care on the part of the Atlantic District and the Synod dating back to 1980, when Chapman's membership in the Atlantic District ended. n4

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n4 The pre-sentence report used in connection with Chapman's Massachusetts conviction contains reference to an unidentified prior conviction of a sexual nature in New York. The report is not admissible evidence that such a conviction exists or that these Defendants knew of it at the time Chapman was called by the Wollaston Church.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[*15]**

Plaintiff has not pointed to admissible evidence that either the Synod or the Atlantic District had requisite notice of Chapman's alleged proclivities to commit sexual assault. See Def. Memo at p. 14.

HN8 To state a claim under New York law for negligent hiring, supervision, and retention, the plaintiff must show that "the employer knew or should have known of the employee's

propensity for the conduct which caused the injury." *Wilson v. the Diocese of New York of the Episcopal Church*, 1998 U.S. Dist. LEXIS 2051 *10 (S.D.N.Y. Feb. 23, 1998); *Kenneth R. v. Roman Catholic Diocese of Brooklyn*, 229 A.D.2d 159, 654 N.Y.S.2d 791, 793 (2d Dep't), cert. denied, 522 U.S. 967, 118 S. Ct. 413, 139 L. Ed. 2d 316 (1997). There must be evidence to establish that the employer knew or should have known of any alleged propensity on Chapman's part to commit sexual assault both prior to hiring him and throughout the period of his employment. See *Kenneth R.*, 654 N.Y.S.2d at 795 ("There is no common-law duty to institute specific procedures for hiring employees unless the employer knows of facts that would lead a reasonably prudent person to **[*16]** investigate the prospective employee.").

Plaintiff directs this Court to a June 2, 1994 letter (Pl. Mem. in Opp. Ex. 8) concerning the evaluation of Chapman by a psychologist Dr. David B. Doolittle. The letter makes a reference to "a previous incident of [Chapman] touching a child ... on the leg in about 1976." See Id. Absent from the letter is whether the Defendants had knowledge of the incident. Plaintiff also refers to two letters in 1977 and 1978, one from Reverend Fink and one from Frederick Chapman. These letters refer to a serious problem concerning Chapman. They do not indicate that the problem was related to child molestation. Reverend Fink addressed this letter in his affidavit:

> I have reviewed a September 12, 1977 letter I wrote to the President of the Iowa District West concerning Mr. Chapman. In that letter, I noted I was not enclosing a "Confidential Information Blank" (which is a form that has basic *curriculum vitae* and background information about clergy members) because of what I described as a "serious problem" that had "not yet been resolved". The "serious problem" I was referring to did not involve any inappropriate behavior on the part of Mr. Chapman **[*17]** towards any members of any congregation, and it certainly did not involve any immoral or illegal acts on the part of Mr. Chapman.
>
> ****
>
> Moreover, Fink's affidavit dated December 6, 2002 states:
>
> "Prior to the lawsuit commenced by the plaintiff in Massachusetts, I knew of no allegations, complaints, charges or claims concerning Mr. Chapman's conduct, let alone any claim or allegation that he engaged in any purported 'inappropriate behavior toward female members of the Church, including minors' as alleged in the complaint filed in this action."

Reverend Fink Aff. 56.1 Ex. K P6.

Defendants show that "on or about July 27, 1977, Mr. Chapman submitted a letter informing Mr. Fink of his decision to resign from the pastorate of the Laurelton [New York] parish. The reason given for his resignation was due to a change in the ethnic [racial] makeup of the parishioners." See Doc. 11, Exhibit E, P3.

Because there is no evidence of notice which would support the existence of a duty to disclose, there is no negligence. Because, as noted earlier, these Defendants lack the power to remove a Pastor from a Congregation, there is no claim for negligent retention.

For the foregoing **[*18]** reasons, the motion is granted. The Clerk shall file a final judgment.

SO ORDERED.

Dated: White Plains, New York

June 18, 2003

CHARLES L. BRIEANT

U.S.D.J.

Source: Legal > / . . . / > **Federal & State Cases, Combined**
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EXHIBIT 3

Service: **Get by LEXSEE®**
Citation: **21 p.3d 198**

*2001 UT 25, *; 21 P.3d 198, **;*
*416 Utah Adv. Rep. 32; 2001 Utah LEXIS 43, ****

Lynette Earl Franco, Ralph Earl, and Janice Earl, Plaintiffs and Appellants, v. The Church of Jesus Christ of Latter-day Saints, Dennis Casaday, David Christensen, Dennis Strong, Marian Strong, Paul Browning, Craig Berthold, and Bountiful Health Center, Defendants and Appellees.

No. 981873

SUPREME COURT OF UTAH

2001 UT 25; 21 P.3d 198; 416 Utah Adv. Rep. 32; 2001 Utah LEXIS 43

March 9, 2001, Filed

SUBSEQUENT HISTORY: [*1]** Released for Publication April 5, 2001.

PRIOR HISTORY: Third District, Salt Lake. The Honorable J. Dennis Frederick.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs appealed an order from the Third District Court, Salt Lake County (Utah) dismissing their tort claims against defendants church and individual clerics, holding their tort claims required an impermissible imposition of a secular duty of care on pastoral counselors in the performance of their ecclesiastical counseling duties which was prohibited by the First Amendment.

OVERVIEW: Plaintiffs, a 14 year old sexually abused girl and her parents, claimed defendants mishandled their ecclesiastical counseling relationship by advising her to forgive, forget, and seek atonement or by advising her to seek outside help from an unlicensed therapist. Despite plaintiffs' allegations of gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty, the court found the real issue was clergy malpractice. Malpractice required the court to determine whether defendants breached a duty to act with that degree of skill and knowledge normally possessed by members of the profession. Such a duty would need the court to express a standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties, which would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy. This was as impossible as it was unconstitutional, and would foster an excessive government entanglement with religion in violation of the Establishment Clause. The complaint did not plead fraud with sufficient particularity to withstand summary judgment.

OUTCOME: The judgment dismissing plaintiffs' tort claims against defendant church was affirmed. The trial court correctly determined plaintiff's claims for gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty were barred by the First Amendment.

CORE TERMS: malpractice, clergy, First Amendment, religion, ecclesiastical, counseling, entanglement, religious, intentional infliction of emotional distress, church, matter of law, licensed, Utah Rules of Civil Procedure, clergyman, summary judgment, duty, establishment of religion, cleric, breach of fiduciary duty, gross negligence, negligence-based, outrageous, excessive, ward, motion to dismiss, establishment, infliction of emotional distress, emotional

distress, secular, bishop

LexisNexis (TM) HEADNOTES - Core Concepts - ♦ Hide Concepts

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

HN1 An appeal from a motion to dismiss under Utah R. Civ. P. 12(b)(6) reviews only the facts alleged in the complaint. In so doing, the court accepts the factual allegations in the complaint as true and considers all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

Civil Procedure > Appeals > Standards of Review > De Novo Review

HN2 Under rule Utah R. Civ. P. 12(b)(6), a motion to dismiss is proper only where it clearly appears that the plaintiff would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim. Accordingly, the reviewing court will affirm the trial court's dismissal only if it is apparent that as a matter of law, the plaintiff could not recover under the facts alleged. Because the reviewing court considers only the legal sufficiency of the complaint, it grants the trial court's ruling no deference; it reviews it for correctness. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN3 The First Amendment, applicable to the states through the Fourteenth Amendment, provides that Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof. These two clauses are known, respectively, as the Establishment Clause and the Free Exercise Clause. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN4 The Establishment Clause does not merely prohibit the establishment of a state church or a state religion, but commands that there should be no law respecting an establishment of religion. U.S. Const. amend. I. Accordingly, laws that do not establish a religion but that are a step that could lead to such establishment may violate the First Amendment. Moreover, the United States Supreme Court has broadly interpreted the command to make no law respecting an establishment of religion as prohibiting all forms of governmental action, including both statutory law and court action through civil lawsuits. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN5 Lemon v. Kurtzman adopted a three-part test to determine whether governmental activity constitutes a law respecting an establishment of religion. Specifically, for governmental action not to be a law respecting an establishment of religion, the action (1) must have a secular legislative purpose, (2) must neither advance nor inhibit religion, and (3) must not foster an excessive government entanglement with religion. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Torts > Malpractice Liability > Misconduct Generally

HN6 In addressing the tort liability of clergy under the Establishment Clause, courts have focused on the "third prong" of the Lemon test, excessive government entanglement. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN7 The excessive entanglement test is, by necessity, one of degree. Indeed, separation of church and state cannot mean the absence of all governmental contact with religion, since the complexities of modern life inevitably produce some contact. In light of this reality, the entanglement doctrine does not bar tort claims against clergy for misconduct not within the purview of the First Amendment, because the claims are unrelated to the religious efforts of a cleric. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion
Torts > Malpractice Liability > Misconduct Generally
HN8 Civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by the First Amendment under the entanglement doctrine. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion
Torts > Malpractice Liability > Misconduct Generally
HN9 Courts throughout the United States have uniformly rejected claims for clergy malpractice under the First Amendment. A determination of such claims would necessarily entangle the courts in the examination of religious doctrine, practice, or church polity--an inquiry that is prohibited by the Establishment Clause. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion > Establishment of Religion
Torts > Malpractice Liability > Misconduct Generally
HN10 Regardless of whether a claim against a cleric is one for malpractice, the claim will not survive constitutional scrutiny if an adjudication of the claim would foster an excessive governmental entanglement with religion in violation of the Establishment Clause. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress
HN11 Due to the highly subjective and volatile nature of emotional distress and the variability of its causation, the courts have historically been wary of dangers in opening the door to recovery therefor. This is partly because such claims may easily be fabricated: or as sometimes stated, are easy to assert and hard to defend against. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress
HN12 To state a claim for intentional infliction of emotional distress, a plaintiff must allege that the defendant intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable person would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality. More Like This Headnote

Civil Procedure > Pleading & Practice > Pleadings > Interpretation
HN13 The sufficiency of a plaintiff's pleadings must be determined by the facts pleaded rather than the conclusions stated. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress
HN14 To be considered outrageous for a claim of intentional infliction of emotional distress, the conduct must evoke outrage or revulsion; it must be more than unreasonable, unkind, or unfair. Furthermore, an act is not necessarily outrageous merely because it is tortious, injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal. More Like This Headnote

Civil Procedure > Appeals > Reviewability > Preservation for Review

HN15 It is a "fundamental rule" that constitutional questions should not be reached if the merits of the case can be determined on other than constitutional grounds. More Like This Headnote

Civil Procedure > Summary Judgment > Summary Judgment Standard

HN16 A grant of summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Utah R. Civ. P. 56(c). On appeal from a summary judgment, the appellate court accepts the facts and inferences in the light most favorable to the losing party. Because the appellate court resolves only legal issues in reviewing a summary judgment, it gives no deference to the trial court's view of the law; it reviews the trial court for correctness. More Like This Headnote

Torts > Business & Employment Torts > Deceit & Fraud

HN17 To establish fraud under Utah law, a party must prove by clear and convincing evidence each of the following elements: (1) That a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage. More Like This Headnote

Civil Procedure > Pleading & Practice > Pleadings > Heightened Pleading Requirements

HN18 To state a claim for fraud, a plaintiff must plead not only that the defendant made a material representation that was false, but also that the defendant either knew the representation to be false or made the representation recklessly, knowing that he or she had insufficient knowledge upon which to base such a representation. Moreover, a claim for fraud must state the circumstances constituting fraud or mistake with particularity. Utah R. Civ. P. 9(b). Mere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude summary judgment. More Like This Headnote

COUNSEL: Edward R. Montgomery, Salt Lake City, for appellants.

Paul H. Matthews, Randy T. Austin, Alexander Dushku, Amy S. Thomas, Salt Lake City, for appellees.

JUDGES: RUSSON, Associate Chief Justice. Chief Justice Howe and Justice Durham concur in Associate Chief Justice Russon's opinion. DURRANT, Justice, concurring.

OPINIONBY: RUSSON

OPINION: [200]**

RUSSON, Associate Chief Justice:

[*P1] Plaintiffs Lynette Earl Franco ("Franco") and her parents Ralph and Janice Earl appeal the district court's dismissal of their tort claims against defendants The Church of Jesus Christ of Latter-day Saints (the "LDS Church"), Dennis Casaday, an LDS Church ward n1 bishop, n2 and David Christensen, an LDS Church stake n3 president n4 (collectively, "the LDS Church Defendants"). Franco sued the LDS Church Defendants for injuries she allegedly suffered as a result of advice she received during ecclesiastical counseling. We affirm.

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n1 A "ward" is an ecclesiastical division of the LDS Church, based upon geographical area. **[***2]**

n2 A "bishop" is the ecclesiastical leader of a ward.

n3 A "stake" is an ecclesiastical division of the LDS Church that consists of several wards.

n4 A "stake president" is the ecclesiastical leader of a stake.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

BACKGROUND

[*P2] Because this is HN1 an appeal from a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure, n5 "we review only the facts alleged in the complaint." Educators Mut. Ins. Ass'n v. Allied Property & Cas. Ins. Co., 890 P.2d 1029, 1029 (Utah 1995). "In so doing, we 'accept the factual allegations in the complaint as true and consider all reasonable inferences to be drawn from those facts in a light most favorable to the plaintiff.'" 890 P.2d at 1029-30 (quoting Prows v. State, 822 P.2d 764, 766 (Utah 1991)); see also Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989).

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n5 In its memorandum decision, the trial court stated that it had considered evidence outside of the parties' memoranda and therefore, although entitled a motion to dismiss, the LDS Church Defendants' motion was more appropriately treated as a motion for summary judgment under rule 56(c) of the Utah Rules of Civil Procedure. However, the only outside evidence presented by the parties related solely to Franco's claim for fraud. Therefore, we treat the LDS Church Defendants' motion to dismiss Franco's fraud claim as one for summary judgment as provided for in rule 56 of the Utah Rules of Civil Procedure. See part IIIC infra. However, with regard to Franco's remaining claims, we treat the LDS Church Defendants' motion as a motion to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[***3]**

[*P3] Applying this standard, the complaint alleged the following operative facts: Beginning in July 1986, seven-year-old Lynette Earl Franco was sexually abused by fourteen-year-old Jason Strong ("Strong"). At the time the abuse occurred, both Franco and Strong were members of the same local ward of the LDS Church. The sexual abuse perpetrated against Franco was so extreme that she repressed the memory of the abuse until 1992, when she was fourteen years old. Upon recalling these incidents, Franco and her parents sought ecclesiastical counseling from the bishop of their local LDS Church ward, Dennis Casaday ("Casaday"), and from their LDS Church stake president, David **[**201]** Christensen ("Christensen"). During these ecclesiastical counseling sessions, Casaday and Christensen advised Franco to "forgive, forget, and seek Atonement." Moreover, at some point in the

process of the ecclesiastical counseling, Franco determined that she needed additional help and therefore asked Casaday and Christensen to refer her to a licensed mental health professional. In accordance with this request, Casaday and Christensen referred Franco and her parents to Dr. Paul Browning ("Browning"), allegedly stating **[***4]** that Browning was "well qualified to help them." Browning was employed by the Bountiful Mental Health Center, where he worked under Craig Berthold ("Berthold"), a licensed clinical social worker. On his business card, Browning held himself out as practicing "Individual, Marital, and Family Counseling," under the heading of "General Psychiatry." However, Browning was not a licensed mental health professional in the state of Utah. Upon receiving the referral from Casaday and Christensen, Browning counseled with Franco and her parents at the Bountiful Mental Health Center, advising Franco to forgive Strong and forget the incidents of sexual abuse rather than to inform the police. Finding Browning's advice unsatisfactory, Franco and her parents sought advice from another secular counselor, who then reported the incidents of sexual abuse to the police. After the incidents of sexual abuse were reported to the police, Franco alleged that she was "ostracized and denigrated" by the members of her local LDS Church ward, with the acquiescence of Casaday and Christensen, and therefore withdrew from the LDS Church.

[*P4] Based on the above-described allegations, Franco asserted six claims **[***5]** against the LDS Church Defendants, n6 all in tort: (1) clerical malpractice; (2) gross negligence; (3) negligent infliction of emotional distress; (4) breach of fiduciary duty; (5) intentional infliction of emotional distress; and (6) fraud. On April 18, 1997, Franco voluntarily dismissed her case, and she refiled it on April 4, 1998, asserting the same claims.

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n6 In addition to asserting claims against the LDS Church Defendants, Franco also asserted claims against Dennis Strong and Marian Strong, Jason Strong's parents (collectively, the "Strongs") and Browning, Berthold, and the Bountiful Mental Health Center (collectively, the "Mental Health Defendants"). However, the Strongs and the Mental Health Defendants each filed separate motions to dismiss Franco's claims against them under rule 12(b)(6) of the Utah Rules of Civil Procedure, which the trial court granted. In this appeal, Franco does not argue that the trial court erred in dismissing her claims against the Strongs or the Mental Health Defendants.

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[*P5] **[***6]** The LDS Church Defendants did not file an answer to Franco's complaint but moved to dismiss under rule 12(b)(6) of the Utah Rules of Civil Procedure. In their motion, the LDS Church Defendants argued that as a matter of law, Franco could not recover under any of her theories. Specifically, the LDS Church Defendants contended that a determination of Franco's claims would necessarily implicate an excessive governmental entanglement with religion because resolution of the claims would require the courts to impose a secular duty of care on pastoral counselors and therefore the claims were barred by the First Amendment to the United States Constitution. The LDS Church Defendants further contended that even if Franco's claims were not barred by the First Amendment, her fraud and emotional distress claims failed as a matter of Utah law.

[*P6] In response, Franco argued that her tort claims did not require an inquiry into the LDS Church's religious doctrines, practices, or beliefs and therefore the First Amendment was inapplicable. Moreover, Franco argued that she had sufficiently stated claims for fraud and emotional distress under Utah law.

[*P7] On October 13, 1998, the trial **[***7]** court issued a memorandum decision n7 dismissing Franco's tort claims against the LDS Church Defendants. The trial court held that

each of Franco's tort claims was based on allegations that the LDS Church Defendants (1) counseled with Franco in an ecclesiastical setting and (2) recommended Browning as someone whom Franco might consult for further counseling and that, by doing so, the LDS Church Defendants departed from accepted **[**202]** practices in the services rendered. In light of these allegations, the trial court concluded that Franco's claims were essentially asking the court to impose a secular duty of care on pastoral counselors in the performance of their ecclesiastical counseling duties, which the trial court concluded was prohibited by the First Amendment to the United States Constitution. In addition, the trial court held that there were no allegations that the LDS Church Defendants "had any indication their conduct might cause bodily harm or that they engaged in conduct of such a nature as to be considered outrageous and intolerable" and therefore any claims for negligent or intentional infliction of emotional distress failed as a matter of law.

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n7 The trial court's memorandum decision was contained in a minute entry.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[***8]**

[*P8] On December 23, 1998, Franco appealed to this court. Franco argues that the trial court erred in holding that her claims for gross negligence, negligent infliction of emotional distress, breach of fiduciary duty, intentional infliction of emotional distress, and fraud are barred by the First Amendment. Specifically, Franco argues that her tort claims do not require an inquiry into the LDS Church's practices or religious beliefs and therefore the First Amendment does not offer the LDS Church Defendants any protection from her claims. Franco does not argue on appeal, however, that the trial court erred in its determination that her claim for clerical malpractice was barred by the First Amendment.

[*P9] In response, the LDS Church Defendants argue that the essence of Franco's claims, like her clerical malpractice claim, was that the clergymen failed to properly perform their ecclesiastical counseling duties and that based on these allegations, the trial court correctly dismissed the claims under the First Amendment. Moreover, the LDS Church Defendants argue that Franco's claims for fraud, gross negligence, and negligent and intentional infliction of emotional distress **[***9]** fail as a matter of Utah law.

STANDARD OF REVIEW

[*P10] HN2 Under rule 12(b)(6) of the Utah Rules of Civil Procedure, a motion to dismiss is proper "only where it clearly appears that the plaintiff or plaintiffs would not be entitled to relief under the facts alleged or under any state of facts they could prove to support their claim." Prows v. State, 822 P.2d 764, 766 (Utah 1991) (citing Colman v. Utah State Land Bd., 795 P.2d 622, 624 (Utah 1990)). Accordingly, we will affirm the trial court's dismissal "'only if it is apparent that as a matter of law, the plaintiff could not recover under the facts alleged.'" Educators Mut. Ins. Ass'n v. Allied Property & Cas. Ins. Co., 890 P.2d 1029, 1030 (Utah 1995) (quoting Lowe v. Sorenson Research Co., 779 P.2d 668, 669 (Utah 1989)). "Because we consider only the legal sufficiency of the complaint, we grant the trial court's ruling no deference"; we review it for correctness. Id.

ANALYSIS

I. OVERVIEW OF FIRST AMENDMENT PRINCIPLES

[*P11] HN3 The First Amendment to the United States Constitution, applicable to the states through the Fourteenth Amendment, **[***10]** see Cantwell v. Connecticut, 310 U.S.

296, 303, 84 L. Ed. 1213, 60 S. Ct. 900 (1940), provides in pertinent part: "Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof . . . ." These two clauses are known, respectively, as the Establishment Clause and the Free Exercise Clause. In this case, the LDS Church Defendants rely primarily on the Establishment Clause in making their constitutional argument that Franco's claims are barred by the First Amendment. n8

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n8 Justice Durrant states in his concurring opinion that although he agrees with our analysis of the issues presented in this case under the Establishment Clause, he believes that the issues could also be analyzed under the Free Exercise Clause. However, as noted above, the LDS Church Defendants rely primarily on the Establishment Clause in making their constitutional argument. Specifically, the LDS Church Defendants argue, inter alia, that the First Amendment bars Franco's claims because an adjudication of the claims would foster an excessive governmental entanglement with religion. As we will discuss in greater detail infra, the analytical framework set forth by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971), places the entanglement assessment under the Establishment Clause. Therefore, because the LDS Church Defendants relied primarily on the Establishment Clause in making their constitutional argument, and because the Establishment Clause is dispositive of the issues before us, we do not address the Free Exercise Clause in this case.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[***11]**

[*P12] **[**203]** In Lemon v. Kurtzman, 403 U.S. 602, 29 L. Ed. 2d 745, 91 S. Ct. 2105 (1971), the United States Supreme Court explained that HN4 the Establishment Clause does not merely prohibit the establishment of a state church or a state religion, but commands "that there should be 'no law respecting an establishment of religion.'" Id. at 612 (quoting U.S. Const. amend. I). Accordingly, laws that do not establish a religion but that are "a step that could lead to such establishment" may violate the First Amendment. Id. Moreover, the United States Supreme Court has broadly interpreted the command to "make no law respecting an establishment of religion" as prohibiting all forms of governmental action, including both statutory law and court action through civil lawsuits. See Kreshik v. St. Nicholas Cathedral, 363 U.S. 190, 191, 4 L. Ed. 2d 1140, 80 S. Ct. 1037 (1960) (per curiam).

[*P13] Lemon and subsequent cases have relied on HN5 a three-part test to determine whether governmental activity constitutes a "law respecting an establishment of religion." Specifically, for governmental action not to be a law respecting an establishment **[***12]** of religion, the action (1) must have a "secular legislative purpose," (2) must "neither advance[] nor inhibit[] religion," and (3) must not foster "'an excessive government entanglement with religion.'" Lemon, 403 U.S. at 612-13 (quoting Walz v. Tax Comm'n, 397 U.S. 664, 668, 25 L. Ed. 2d 697, 90 S. Ct. 1409 (1970)). HN6 In addressing the tort liability of clergy under the Establishment Clause, courts have focused on the "third prong" of the Lemon test, "excessive government entanglement." See Dausch v. Rykse, 52 F.3d 1425, 1432 (7th Cir. 1994) (Ripple, J., concurring in part and dissenting in part, joined by Coffey, J., concurring) (applying entanglement doctrine to tort claim against clergyman); Schmidt v. Bishop, 779 F. Supp. 321, 328 (S.D.N.Y. 1991) (same); Nally v. Grace Community Church of the Valley, 47 Cal. 3d 278, 763 P.2d 948, 960, 253 Cal. Rptr. 97 (Cal. 1988), cert. denied, 490 U.S. 1007, 104 L. Ed. 2d 159, 109 S. Ct. 1644 (1989) (same); Konkle v. Henson, 672 N.E.2d 450, 454 (Ind. Ct. App. 1996) (same); H.R.B. v. J.L.G., 913 S.W.2d 92, 98-99 (Mo. Ct. App. 1995) **[***13]** (same); Turner v. Church of Jesus Christ of Latter-day Saints, 18 S.W.3d 877, 897 (Tex. App. 2000) (same); L.L.N. v. Clauder, 209 Wis. 2d 674, 563 N.W.2d 434, 440 (Wis. 1997) (same).

[*P14] HN7 The excessive entanglement test is, by necessity, one of degree. Indeed, separation of church and state cannot mean the absence of all governmental contact with religion, "since the complexities of modern life inevitably produce some contact." 16A Am. Jur. 2d Constitutional Law § 422, at 405 (1998). In light of this reality, the entanglement doctrine does not bar tort claims against clergy for misconduct not within the purview of the First Amendment, because the claims are unrelated to the religious efforts of a cleric. See, e.g., Heath v. First Baptist Church, 341 So. 2d 265 (Fla. Dist. Ct. App.), cert. denied, 348 So. 2d 946 (Fla. 1977) (holding that church may be held liable for slip and fall on the premises under negligence claim); Fintak v. Catholic Bishop of Chicago, 51 Ill. App. 3d 191, 366 N.E.2d 480, 9 Ill. Dec. 223 (Ill. App. Ct. 1977) (same); Bass v. Aetna Ins. Co., 370 So. 2d 511 (La. 1979) **[***14]** (holding church liable for negligence of pastor who created an unreasonable risk of injury by not clearing aisles to make way for running "in the Spirit," a form of religious expression in that church).

[*P15] However, it is well settled that HN8 civil tort claims against clerics that require the courts to review and interpret church law, policies, or practices in the determination of the claims are barred by the First Amendment under the entanglement doctrine. See Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709-10, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976); Dausch, 52 F.3d at 1432; L.L.N., 563 N.W.2d at 440. For, as the Supreme Court stated in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 97 L. Ed. 120, 73 S. Ct. 143 (1952), churches must have "power to decide for themselves, free **[**204]** from state interference, matters of church government as well as those of faith and doctrine." Id. at 116.

II. CLAIMS FOR CLERGY MALPRACTICE

[*P16] In light of the First Amendment principles discussed above, the question of whether courts can adjudicate a claim for clergy malpractice has become a **[***15]** frequently litigated issue in recent years. See, e.g., Nally v. Grace Community Church of the Valley, 47 Cal. 3d 278, 763 P.2d 948, 960, 253 Cal. Rptr. 97 (Cal. 1988), cert. denied, 490 U.S. 1007, 104 L. Ed. 2d 159, 109 S. Ct. 1644 (1989); Destefano v. Grabrian, 763 P.2d 275, 285 (Colo. 1988); Hester v. Barnett, 723 S.W.2d 544, 550 (Mo. Ct. App. 1987); Byrd v. Faber, 57 Ohio St. 3d 56, 565 N.E.2d 584, 586 (Ohio 1991). Moreover, "the issue has generated a growing body of scholarly commentary." Schmidt v. Bishop, 779 F. Supp. 321, 327 (S.D.N.Y. 1991) (citing Samuel E. Ericsson, Clergyman Malpractice: Ramifications of a New Theory, 16 Val. U. L. Rev. 163 (1981); Michael J. Florillo, Comment, Clergy Malpractice: Should Pennsylvania Recognize a Cause of Action for Improper Counseling by a Clergyman?, 192 Dick. L. Rev. 223 (1987); G. Grace McCaffrey, Note, Nally v. Grace Community Church of the Valley: Clergy Malpractice--A Threat to Both Liberty and Life, 11 Pace L. Rev. 137 (1990)).

[*P17] However, despite the apparent controversy, HN9 **[***16]** courts throughout the United States have uniformly rejected claims for clergy malpractice under the First Amendment. See Dausch v. Rykse, 52 F.3d 1425, 1432 (7th Cir. 1994) (Ripple, J., concurring in part and dissenting in part, joined by Coffey, J., concurring) ("Indeed, a cause of action for clergy malpractice has been rejected uniformly by the states that have considered it."). These courts have generally held that a determination of such claims would necessarily entangle the courts in the examination of religious doctrine, practice, or church polity--an inquiry that we have already explained is prohibited by the Establishment Clause. See, e.g., Destefano, 763 P.2d at 285; Amato v. Greenquist, 287 Ill. App. 3d 921, 679 N.E.2d 446, 453, 223 Ill. Dec. 261 (Ill. App. Ct. 1997); Baumgartner v. First Church of Christ, Scientist, 141 Ill. App. 3d 898, 490 N.E.2d 1319, 1324, 96 Ill. Dec. 114 (Ill. App. Ct.), cert. denied, 479 U.S. 915, 93 L. Ed. 2d 290, 107 S. Ct. 317 (1986); Schieffer v. Catholic Archdiocese, 244 Neb. 715, 508 N.W.2d 907, 912 (Neb. 1993).

[*P18] For example, **[***17]** in Nally, like the case at hand, parishioners sued a clergyman for allegedly mishandling the pastoral counseling relationship. Specifically, the

plaintiffs alleged that the clergyman was negligent in failing to warn them of the mental state of their son, whom the clergyman had counseled, but who ultimately committed suicide. Nally, 763 P.2d at 952. In resolving the case, the California Supreme Court considered and rejected the clergy malpractice theory of liability, stating:

Because of the differing theological views espoused by the myriad of religions in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional, to impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity.

763 P.2d at 960 (emphasis added).

[*P19] Similarly, in White v. Blackburn, 787 P.2d 1315 (Utah Ct. App. 1990), under strikingly similar facts to the case at hand, the Utah Court of Appeals also considered and rejected the clergy malpractice theory of liability. **[***18]** See 787 P.2d at 1318-19. In White, parents asserted a claim for malpractice against a clergyman, not for negligently referring a parishioner to outside counseling--the factual allegations in the case at hand, but for negligently failing to refer their son "to trained professionals." Id. at 1318. In dismissing the clergy malpractice claim, the court of appeals stated:

Appellant wishes to impose a duty upon [clergy] to make further inquiry into the alleged family conflicts, and then, if beyond [their] expertise, refer [parishioners] to others who are qualified to treat such problems. Under the present circumstances, charging lay clergy with this duty of care goes too far because it approaches **[**205]** the same level of care imposed upon trained professionals in medicine and psychology.

. . .

"Even assuming that workable standards of care could be established in the present case, . . . such a duty would necessarily be intertwined with the religious philosophy of the particular denomination or ecclesiastical teachings of the religious entity."

787 P.2d at 1318-19 (quoting Nally, 763 P.2d at 960). We find the **[***19]** reasoning of the Nally and White courts to be sound.

III. FRANCO'S CLAIMS

A. Negligence-Based Claims

[*P20] Franco's complaint pleads claims against the LDS Church Defendants for gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty ("negligence-based claims"). Franco argues that these claims are different from a clergy malpractice claim in substance and effect and therefore the First Amendment is inapplicable. The LDS Church Defendants argue, however, that despite Franco's "creative pleading," her claims are merely a roundabout way of alleging clergy malpractice and therefore the claims are barred by the First Amendment.

[*P21] As an initial matter, we must emphasize that HN10 regardless of whether a claim against a cleric is one for malpractice, the claim will not survive constitutional scrutiny if an adjudication of the claim would foster an excessive governmental entanglement with religion in violation of the Establishment Clause. However, that said, we agree with the LDS Church Defendants that Franco's negligence-based claims are merely an elliptical way of alleging clergy malpractice.

[*P22] An examination of Franco's **[***20]** complaint reveals that each of her

negligence-based claims alleges that while counseling with Franco in the context of an ecclesiastical counseling relationship, the LDS Church Defendants breached a duty owed to Franco by advising her to "forgive, forget, and seek Atonement" or by advising her to seek outside help from Browning, an unlicensed therapist. Accordingly, like her clergy malpractice claim, which she abandoned on appeal, the essence of each of Franco's negligence-based claims is that the LDS Church Defendants generally mishandled the pastoral counseling relationship by giving bad advice--claims necessarily directed at the LDS Church Defendants' performance of their ecclesiastical counseling duties. Therefore, despite Franco's characterization of her negligence-based claims as gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty, we must deal with the real issue here--clergy malpractice. See Dausch v. Rykse, 52 F.3d 1425, 1438 (7th Cir. 1994) (Ripple, J., concurring in part and dissenting in part, joined by Coffey, J., concurring) (stating that district court correctly determined that plaintiff's claim for breach of fiduciary **[***21]** duty was "simply an elliptical way of alleging clergy malpractice"); Schmidt v. Bishop, 779 F. Supp. 321, 327 (S.D.N.Y. 1991) ("As with her negligence claim, [plaintiff's] fiduciary duty claim is merely another way of alleging that the [clergyman] grossly abused his pastoral role, that is, that he engaged in malpractice."); Amato v. Greenquist, 287 Ill. App. 3d 921, 679 N.E.2d 446, 451, 223 Ill. Dec. 261 (Ill. App. Ct. 1997) (stating that "we will not determine the justiciability of [plaintiff's] counts based upon the nomenclature used by the plaintiff in entitling the counts" in determining whether a negligence claim against a cleric is essentially a malpractice claim).

[*P23] Because Franco's negligence-based claims allege that the LDS Church Defendants generally mishandled their ecclesiastical counseling duties, a determination of the claims, like the clergy malpractice claims asserted in Nally and White, could not be made without first ascertaining whether the LDS Church Defendants performed within the level of expertise expected of a similar professional, i.e., a reasonably prudent bishop, priest, rabbi, minister, or other **[***22]** cleric in this state. Indeed, malpractice is a theory of tort that would involve the courts in a determination of whether the cleric in a particular case--here an LDS Church bishop--breached the duty to act with that degree of "skill and knowledge normally possessed by members **[**206]** of that profession." Restatement (Second) of Torts § 299A (1965). Defining such a duty would necessarily require a court to express the standard of care to be followed by other reasonable clerics in the performance of their ecclesiastical counseling duties, which, by its very nature, would embroil the courts in establishing the training, skill, and standards applicable for members of the clergy in this state in a diversity of religions professing widely varying beliefs. This is as impossible as it is unconstitutional; to do so would foster an excessive government entanglement with religion in violation of the Establishment Clause. See, e.g., Dausch v. Rykse, 52 F.3d at 1432 (Ripple, Circuit J., concurring in part and dissenting in part) (stating that an evaluation of a clergy malpractice claim would require courts to evaluate and investigate religious tenets and doctrines); Hester v. Barnett, 723 S.W.2d 544, 553 (Mo. Ct. App. 1987) **[***23]** (stating that clergy malpractice would force courts to judge "competence, training, methods and content of the pastoral function"); F.G. v. MacDonell, 150 N.J. 550, 696 A.2d 697, 706 (N.J. 1997) (O'Hern, J., dissenting) (stating that creating a tort of clergy malpractice would "establish an official religion of the state"); Bladen v. First Presbyterian Church of Sallisaw, 857 P.2d 789, 797 (Okla. 1993) ("Once a court enters the realm of trying to define the nature of advice a minister should give a parishioner serious First Amendment issues are implicated.").

[*P24] Accordingly, we conclude that the trial court correctly determined that Franco's claims against the LDS Church Defendants for gross negligence, negligent infliction of emotional distress, and breach of fiduciary duty are barred by the First Amendment to the United States Constitution.

B. Intentional Infliction of Emotional Distress

[*P25] In addition to her negligence-based claims, Franco also asserted a claim against the LDS Church Defendants for intentional infliction of emotional distress. In Samms v. Eccles, 11

Utah 2d 289, 358 P.2d 344 (1961), this **[***24]** court stated:

HN11 Due to the highly subjective and volatile nature of emotional distress and the variability of its causations, the courts have historically been wary of dangers in opening the door to recovery therefor. This is partly because such claims may easily be fabricated: or as sometimes stated, are easy to assert and hard to defend against.

Samms, 11 Utah 2d at 291, 358 P.2d at 345. Accordingly, HN12 to state a claim for intentional infliction of emotional distress, a plaintiff must allege that the defendant

"intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or, (b) where any reasonable person would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality."

Jackson v. Brown, 904 P.2d 685, 687-88 (Utah 1995) (emphasis added) (quoting Samms, 11 Utah 2d at 293, 358 P.2d at 347).

[*P26] HN13 The sufficiency of Franco's pleadings "must be determined by the facts pleaded rather than the conclusions stated." Ellefsen v. Roberts, 526 P.2d 912, 915 (Utah 1974). **[***25]** In light of this standard, Franco's claim under this cause of action pleads the following operative facts: that during ecclesiastical counseling, Franco asked the LDS Church Defendants to refer her to a licensed mental health professional; that in accordance with her request, the LDS Church Defendants referred Franco to Browning at the Bountiful Mental Health Center, allegedly stating that he was "well qualified to help"; and that despite this representation, Browning was not qualified to render the appropriate treatment. Franco alleges **[**207]** that the LDS Church Defendants referred her to Browning for the "purpose" of protecting Strong and the LDS Church and that these actions were made "in a reckless and intentional manner that was extreme and outrageous" and caused her severe emotional distress.

[*P27] However, despite the above, Franco's complaint is devoid of allegations that the LDS Church Defendants referred her to Browning for the purpose of inflicting emotional distress. Rather, Franco merely alleges that the LDS Church Defendants referred her to Browning, not for the purpose of inflicting emotional distress, but to protect Strong and the LDS Church and that as a result **[***26]** of this conduct, she suffered severe emotional distress. This bare allegation, however, even assuming its truth, is insufficient to state a claim under the "purpose" test established by Samms. See Samms, 11 Utah 2d at 293, 358 P.2d at 347; see also 86 C.J.S. Torts § 72, at 728 (1997) (stating that "it is not enough to establish a claim that defendant intentionally acted in a way that causes distress" (emphasis added)).

[*P28] Moreover, Franco's complaint alleges no action by the LDS Church Defendants that can be "considered outrageous and intolerable in that [it] offends against the generally accepted standards of decency and morality." Samms, 11 Utah 2d at 293, 358 P.2d at 347. HN14 To be considered outrageous, "the conduct must evoke outrage or revulsion; it must be more than unreasonable, unkind, or unfair." 86 C.J.S., supra P 27, § 70, at 722. Furthermore, "an act is not necessarily outrageous merely because it is tortious, injurious, or malicious, or because it would give rise to punitive damages, or because it is illegal." Id. at 722-23; see also Restatement (Second) of Torts § 46 cmt. d (1965).

[*P29] **[***27]** In this case, at worst, the LDS Church Defendants' actions consisted of referring Franco to an unlicensed counselor. However, the complaint contains no allegations that the LDS Church Defendants knew Browning was unlicensed when they made the referral or that the LDS Church Defendants had any other indication their conduct in referring Franco to Browning might cause emotional distress. Absent such evidence or allegations, the LDS

Church Defendants' actions cannot be considered outrageous and intolerable as a matter of law. To hold otherwise would leave every bishop, priest, rabbi, or minister of every church who seeks to help a parishioner having apparent psychiatric problems to receive outside secular counseling open to liability for intentional infliction of emotional distress.

[*P30] Based on the above, we hold that the trial court did not err in dismissing Franco's claim against the LDS Church Defendants for intentional infliction of emotional distress. Because we have determined that this claim fails as a matter of law, we do not reach the constitutional issue. See Hoyle v. Monson, 606 P.2d 240, 242 (Utah 1980) (stating that *HN15* it is a "fundamental rule" that **[***28]** constitutional questions should not be reached if the merits of the case can be determined on other than constitutional grounds).

C. Fraud

[*P31] Finally, we address Franco's claim against the LDS Church Defendants for fraud. As an initial matter, as noted in footnote 5 supra, matters outside the pleadings have been presented with regard to Franco's fraud claim that were not excluded by the trial court, and therefore, we treat the LDS Church Defendants' motion to dismiss this claim as one for summary judgment as provided for in rule 56 of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 12(b); Lind v. Lynch, 665 P.2d 1276, 1278 (Utah 1983).

[*P32] *HN16*A grant of summary judgment is appropriate only if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). On appeal from a summary judgment, "we accept the facts and inferences in the light most favorable to the losing party." Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991). Because we resolve only legal issues in reviewing a summary judgment, "we give no deference to the trial **[***29]** court's view of the law; we review it for correctness." Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989).

[*P33] *HN17*To establish fraud under Utah law, a party must prove by clear and convincing evidence each of the following elements:

"(1) That a representation was made; (2) concerning a presently existing material fact; (3) which was false; (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation; (5) for the purpose of inducing the other party to act upon it; (6) **[**208]** that the other party, acting reasonably and in ignorance of its falsity; (7) did in fact rely upon it; (8) and was thereby induced to act; (9) to his injury and damage."

Mikkelson v. Quail Valley Realty, 641 P.2d 124, 126 (Utah 1982) (emphasis added) (quoting Pace v. Parrish, 122 Utah 141, 144-45, 247 P.2d 273, 274-75 (1952)).

[*P34] In this case, in support of her fraud claim, Franco argues that the LDS Church Defendants "falsely" represented to her that Browning "had a Ph.D. in counseling or psychology or **[***30]** was a licensed psychiatrist." (Emphasis added.) However, in a letter from the Bountiful Mental Health Center to Franco, which Franco presented to the trial court as an exhibit, Craig Berthold, the director of the Bountiful Mental Health Center, stated: "Dr. Browning does have a doctorate degree in Counseling (Ph.D.), from the educational psychology department at the University of California at Los Angeles." Accordingly, Franco's own exhibit establishes that the LDS Church Defendants did not make a representation concerning a presently existing material fact "which was false," Pace, 122 Utah at 145, 247 P.2d at 275, and therefore, the LDS Church Defendants are entitled to a judgment as a matter of law on this count.

[*P35] Moreover, even if we were to ignore the evidence that Browning had a Ph.D. in

counseling or psychology, focusing solely on Franco's argument in this appeal that the LDS Church Defendants' false representation was that Browning was licensed, as Franco argues we should, her claim still fails as a matter of law because the complaint does not plead fraud with sufficient particularity to withstand summary judgment.

[*P36] HN18 To state a claim **[***31]** for fraud, a plaintiff must plead not only that the defendant made a material representation that was false, but also that the defendant either knew the representation to be false or made the representation recklessly, knowing that he or she had insufficient knowledge upon which to base such a representation. See Mikkelson, 641 P.2d at 126; see also 37 Am. Jur. 2d Fraud and Deceit § 41, at 66 (1968) (stating that one of the "necessary elements" upon which to base an action in fraud is that a false representation was made "and known to be false by the party making it"). Moreover, because this is a claim for fraud, "the circumstances constituting fraud or mistake [must] be stated with particularity." Utah R. Civ. P. 9(b). "We have stressed, and continue to hold, that mere conclusory allegations in a pleading, unsupported by a recitation of relevant surrounding facts, are insufficient to preclude . . . summary judgment." Chapman v. Primary Children's Hosp., 784 P.2d 1181, 1186 (Utah 1989) (citing Norton v. Blackham, 669 P.2d 857, 859 (Utah 1983); Ellefsen v. Roberts, 526 P.2d 912, 915 (Utah 1974)). **[***32]**

[*P37] In this case, as we stated with regard to Franco's claim for intentional infliction of emotional distress, the complaint is devoid of allegations that the LDS Church Defendants represented to Franco that Browning was licensed, knowing that he was unlicensed, or knowing that they had insufficient knowledge upon which to base such a representation. Moreover, as part of her general allegations, Franco stated that the Bountiful Mental Health Center "held . . . Browning out to [be] licensed or qualified to render the appropriate treatment" and that Browning held himself out on his business card as practicing "Individual, Marital, and Family Counseling," under the heading of "General Psychiatry." Therefore, even though we must consider all reasonable inferences to be drawn from the facts in a light most favorable to the plaintiff, the only reasonable inference that can be drawn from the facts alleged in this case, is that the LDS Church Defendants believed that Browning was licensed to provide the appropriate treatment when they made the referral.

[*P38] Accordingly, because Franco has failed to establish the necessary elements of fraud, the LDS Church Defendants **[***33]** are entitled to a judgment as a matter of law on this count, and consequently, we do not address the constitutional issue.

CONCLUSION

[*P39] We hold that the trial court correctly determined that Franco's claims against the LDS Church Defendants for gross negligence, **[**209]** negligent infliction of emotional distress, and breach of fiduciary duty are barred by the First Amendment to the United States Constitution. We further hold that Franco's claims for intentional infliction of emotional distress and fraud fail as a matter of law. Accordingly, we affirm the trial court's dismissal of Franco's tort claims against the LDS Church Defendants.

[*P40] Chief Justice Howe and Justice Durham concur in Associate Chief Justice Russon's opinion.

CONCURBY: DURRANT

CONCUR:

DURRANT, Justice, concurring:

[*P41] I concur. The court's analysis is consistent with Lemon and its progeny. To permit a plaintiff to enlist the judicial system to press a claim for clergy malpractice would clearly

result in the kind of governmental intrusion into religious practices that is prohibited by the entanglement prong of current Establishment Clause analysis. Further, in focusing exclusively **[***34]** on the Establishment Clause in its analysis, our opinion adopts the analytical approach commonly used by courts in assessing clergy malpractice claims. I write separately merely to note that I believe the plaintiff's claims are barred not only by the Establishment Clause, but by the Free Exercise Clause as well. n1

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 The LDS Church's brief on appeal presents arguments under the excessive entanglement prong of the Establishment Clause and under what it describes as the "'church autonomy doctrine' . . . grounded in both religion clauses of the First Amendment."

- - - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

[*P42] In my view, judicial analyses of religious issues under the First Amendment have too often come to focus exclusively on the Establishment Clause. I think this unfortunate because a significant part of the genius of the two religion clauses is in their mutually reinforcing dynamic. One of the central means of promoting the free exercise of religious beliefs protected by the Free Exercise Clause is to guard against the establishment of a state **[***35]** church, as proscribed by the Establishment Clause. One of the central means of guarding against the establishment of a particular religion is to protect the free exercise rights of adherents of all religions. While the clauses are complementary in this sense, in another sense they are in dynamic tension. To allow a particular state benefit to a religious group may implicate the Establishment Clause, yet to deny it to that group may impinge upon free exercise rights. Yet, notwithstanding their at once complementary and contradictory nature, I believe that the ultimate end of both religion causes is the same--the protection of religious liberty.

[*P43] However, as courts have expanded the reach of the Establishment Clause to include the prohibitions of state benefits to, or accommodations of, religion that in no realistic sense could lead to the establishment of a state church, they have tended to diminish the protections of the Free Exercise Clause. Or, they have made the Establishment Clause do the work of the Free Exercise Clause. For instance, the entanglement prong of the Lemon Establishment Clause analysis may actually be a better analytical fit with the Free Exercise **[***36]** Clause. The case before us illustrates this point. Under traditional Establishment Clause analysis, allowing clergy malpractice claims would clearly result in an excessive governmental entanglement with religion. The courts would be put in the position of overseeing, assessing, and passing judgment on a core activity of churches--the provision of ecclesiastical counseling. Clearly, this would be an unconstitutional governmental intrusion into religion. But on what basis is it unconstitutional? Is permitting this type of entanglement a step that is likely to lead to the establishment of religion? Does its constitutional infirmity lie in the fact that it benefits religion? I think that few religious denominations would view governmental intrusion into their core ecclesiastical functions as somehow benefitting them. The danger of such an intrusion is not so much that it could lead to the establishment of religion as that it directly impinges on the free exercise of religion. Yet, under the Lemon analytical framework, which places the entanglement assessment under the Establishment Clause, we are led to the Establishment Clause analysis upon which the court's opinion relies.

[*P44] **[***37]** It might be asked what difference it makes whether a governmental intrusion into religion is analyzed under the Establishment **[**210]** Clause or the Free Exercise Clause. In either case, the intrusion is proscribed. I think it matters because to the extent we blur the analytical distinction between the Establishment and Free Exercise Clauses, to the extent we make the Establishment Clause do the work of both clauses, we sap some of the life from the Free Exercise Clause. Further, we lose the benefits that come from

examining the clauses in tandem. I think we would be better served if, in the development of our religion clauses' jurisprudence, courts more often examined the full picture and conducted their analysis with reference to both clauses, taking into account both their mutually reinforcing aspects as well as the distinct rights they protect.

[*P45] Accordingly, while I concur in the court's opinion, I would also affirm on the ground that the claims determined by the court to be barred by the Establishment Clause are also barred by the Free Exercise Clause. Recognizing a cause of action that is in essence one for clergy malpractice would amount to a secular judicial restraint upon **[***38]** one of the core functions of many religious denominations. Indeed, given the fact that actions for malpractice in other contexts have developed within fields of employment reserved for professionals whose practices are heavily regulated, a common law action for clergy malpractice would necessarily borrow its criteria from those contexts. The consequence would be tantamount to regulatory oversight by the judiciary of ecclesiastical counseling. Neither the Free Exercise Clause nor the Establishment Clause permits such a result.

[*P46] Justice Wilkins concurs in Justice Durrant's concurring opinion.

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EXHIBIT 4

Service: **Get by LEXSEE®**
Citation: **913 sw2d 92**

*913 S.W.2d 92, *; 1995 Mo. App. LEXIS 2079, **

H.R.B. and B.B., Plaintiffs/Appellants, v. J.L.G., and ARCHBISHOP JUSTIN RIGALI of the Archdiocese of the City of St. Louis, Missouri, and CHURCH OF THE IMMACULATE CONCEPTION SCHOOL AND PARISH, by and through Father John Gavin, Defendants/Respondents.

No. 68010

COURT OF APPEALS OF MISSOURI, EASTERN DISTRICT, DIVISION THREE

913 S.W.2d 92; 1995 Mo. App. LEXIS 2079

December 19, 1995, Filed

PRIOR HISTORY: [1]** Appeal from the Circuit Court of the City of St. Louis. Hon. James R. Dowd, Judge.

DISPOSITION: AFFIRMED IN PART AND REVERSED AND REMANDED IN PART.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff husband and wife appealed the judgment from the Circuit Court of the City of St. Louis (Missouri), which dismissed their petition against defendant priest, archbishop, and church. The petition was based on injuries allegedly suffered by plaintiff husband years earlier when he was sexually abused by defendant priest while attending a church school.

OVERVIEW: Based on the statute of limitations, the trial court dismissed a petition by plaintiff husband and wife against defendants, priest, archbishop, and church. On appeal, the court affirmed in part, reversed in part, and remanded. Plaintiff husband alleged that defendant priest sexually abused him when he was 13. Plaintiffs alleged that their claim did not accrue at the time of the abuse where the damage was not capable of ascertainment until October 1992, due to plaintiff husband's "psychological coping mechanisms." Because the term could encompass involuntary repression of memory, the petition could withstand a motion to dismiss. However, the court had to affirm the dismissal if it could be sustained on another ground. The alleged acts of defendant priest clearly were not part of his duties as a priest or as a teacher. Thus, dismissal of the respondeat superior claim was proper. Religion was not merely incidental to plaintiff's relationship with defendants. Because U.S. Const. amend. I did not allow secular courts to judge sectarian matters, breach of fiduciary duty counts were not actionable. The loss of consortium action was properly dismissed for failure to state a claim.

OUTCOME: A decision dismissing claims by plaintiff husband and wife for damages arising from alleged child sexual abuse by defendant priest was affirmed in part and reversed and remanded in part. The court held that the statute of limitations did not bar suit, but no cause of action existed against defendant priest for breach of fiduciary duty or against defendant archbishop and church for respondeat superior.

CORE TERMS: church, archbishop, clergy, religious, breach of fiduciary duty, sexual abuse, cause of action, daughter, memory, statute of limitations, sexual misconduct, loss of consortium, psychological, First Amendment, ascertainable, coping, accrue, religion, parishioners, priest, causes of action, repressed, cleric, spouse, childhood sexual abuse,

respondeat superior, malpractice, confidence, duty, motion to dismiss

LexisNexis (TM) HEADNOTES - Core Concepts - ◆ Hide Concepts

Torts > Procedure > Statutes of Limitations

HN1 An action for sexual abuse may be brought as a battery action, in which case the plaintiff has two years to file the action, Mo. Rev. Stat. § 516.140; or the action may be brought pursuant to Mo. Rev. Stat. § 516.120(4), which requires that tort actions not specifically enumerated by statute (but recognized at law) be brought within five years. If the alleged abuse occurred when the plaintiff was a minor, Mo. Rev. Stat. § 516.170 tolls the applicable statute of limitations until the plaintiff turns 21. More Like This Headnote

Torts > Procedure > Statutes of Limitations

HN2 With respect to Mo. Rev. Stat. §§ 516.120(4) and 516.140, Mo. Rev. Stat. § 516.100 provides that the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and capable of ascertainment. Also, Mo. Rev. Stat. § 537.046.2 provides for independent civil actions for damages suffered as a result of childhood sexual abuse, if the action is brought within five years of the plaintiff's eighteenth birthday, or within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse, whichever is later. However, Mo. Rev. Stat. § 537.046 does not revive actions that have expired prior to its effective date of August 28, 1990, and, if a plaintiff's suit was already barred by an existing statute of limitations on that date, the defendant has obtained a vested right to be free from suit. More Like This Headnote

Torts > Procedure > Statutes of Limitations

Civil Procedure > Appeals > Standards of Review > Standards Generally

HN3 In determining when a statute of limitations begins running, damage is ascertainable when the fact of damage can be discovered or made known, not when a plaintiff actually discovers injury or wrongful conduct. When damage is ascertainable is an objective determination. If the statute of limitations is raised as an affirmative defense, the trial court may not dismiss unless it is clearly established, on the petition's face and without exception, that the action is barred. In reviewing the dismissal of a petition, reviewing courts must allow the pleading its broadest intendment, treating all facts alleged as true and construing the petition's allegations favorably to the plaintiff. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

Civil Procedure > Appeals > Standards of Review > Standards Generally

HN4 In reviewing a motion to dismiss, the court is required to allow the pleading its broadest intendment and to construe the petition's allegations favorably to the plaintiff. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Motions to Dismiss

Civil Procedure > Appeals > Standards of Review > Standards Generally

HN5 The appellate court will affirm the dismissal of a petition if it can be sustained on any ground presented to and considered by the trial court, regardless of whether the court relied on that ground. More Like This Headnote

Torts > Vicarious Liability > Respondeat Superior

HN6 Under the doctrine of respondeat superior, an employer is liable to third parties for torts committed by an employee, if the tort was committed while employee was engaged in activities within the course and scope of his or her employment. An act is committed within "the scope and course of employment" if it is done by virtue of the employment and in furtherance of the business or interest of the employer, regardless of the time or motive of the conduct. If the act is fairly and naturally incident to the employer's business, although mistakenly or ill advisedly done, and did not arise wholly from some external, independent or personal motive, it is done while engaged in the employer's business. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion
Torts > Procedure

HN7 Clergy and religious organizations are not absolutely immune from civil liability. Tort actions against religious groups or persons are not offensive to U.S. Const. amend. I if based on purely secular activities, unrelated to their religious functions; if the alleged wrongdoing was clearly outside the tenets of the religion, notwithstanding its religious pretext, then it is actionable. More Like This Headnote

Constitutional Law > Fundamental Freedoms > Freedom of Religion
Torts > Intentional Torts

HN8 The Court of Appeals of Missouri, Eastern District, aligns itself with the jurisdictions that have refused to recognize breach-of-fiduciary-duty actions against clergy for sexual misconduct. More Like This Headnote

Torts > Damages > Consortium Damages
Torts > Damages > Compensatory Damages

HN9 When a married person is injured, two independent, separate and distinct causes of action arise: one accrues to the injured person for the injuries, and the other accrues to the injured person's spouse for damages suffered as a result of his or her loss of the injured person's services, society and companionship. The latter action is derivative only; a spouse cannot recover for loss of consortium if the other spouse has no valid claim for personal injuries. More Like This Headnote

Torts > Damages > Consortium Damages

HN10 Claims for loss of consortium based on spousal injuries sustained prior to marriage are precluded, unless neither spouse is aware of the tortious conduct or injury at the time of their marriage. More Like This Headnote

JUDGES: GARY GAERTNER, Judge.

OPINIONBY: GARY GAERTNER

OPINION: [*94]

Appellants, H.R.B. ("plaintiff") and B.B. ("wife"), appeal from the judgment of the Circuit Court of the City of St. Louis dismissing their petition against respondents, J.L.G. ("defendant"), Archbishop Justin Rigali of the Archdiocese of St. Louis, Missouri ("the archbishop"), and Church of the Immaculate Conception School and Parish ("the church"). We affirm in part and reverse and remand in part.

On September 30, 1994, plaintiff and wife filed a ten-count petition alleging the following: In 1963, plaintiff was a thirteen-year-old student at a school run by the church, which was under the direct supervision and control of the archbishop. Through 1963 and 1964, plaintiff suffered various instances of sexual abuse by defendant J.L.G., a Roman Catholic priest employed by the church. As a direct result of defendant's conduct, plaintiff suffered, inter

alia, severe emotional distress, lost earnings and earning capacity, sexual addiction and dysfunction, depression, anxiety, **[**2]** panic attacks, "and other psychological and emotional sequelae."

The petition further alleged:

> 15. Plaintiff and defendant . . . had a confidential and/or fiduciary relationship. The power imbalance between defendant . . . and plaintiff increased the plaintiff's vulnerability to defendant . . . and had the effect of silencing plaintiff.
>
> 16. The nature of the relationship and the sexual exploitation perpetrated upon plaintiff caused him to develop certain psychological coping mechanisms. Plaintiff was unable to ascertain his injuries and their connection to the sexual abuse perpetrated upon him until approximately October 1992.
>
> 17. In approximately October 1992, plaintiff . . . was hospitalized as being suicidal. At this time, he discovered that his psychological illnesses and emotional difficulties were the result of sexual abuse suffered at the hands of [defendant]. Prior to this time, he had never been diagnosed nor had any indication that the events involving sexual abuse had caused injury and ascertainable damage.
>
> 18. Therefore, plaintiff brings this action in a timely fashion pursuant to R.S.Mo. [§§ 537.046] and 516.100, **[**3]** in that he did not discover and could not reasonably ascertain the damages he suffered as a result of the sexual abuse until October of 1992.

The first three counts of plaintiff's and wife's petition were brought by plaintiff against defendant: breach of fiduciary duty (Count I), intentional infliction of emotional distress (Count II), and childhood sexual abuse (Count III). The next five counts were brought by plaintiff against the archbishop n1 and the church: respondeat superior (Count IV), negligence (Count V), negligent infliction of emotional distress (Count VI), intentional infliction of emotional distress (Count VII), and breach of fiduciary duty (Count VIII). The final two counts were loss of consortium claims against all the respondents, brought by plaintiff (Count IX) and wife (Count X).

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n1 The petition named the archdiocese and the archbishop as separate parties, but the two are treated as one and the same in the trial court's judgment and by the parties on appeal.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

On October 12, 1994, **[**4]** the archbishop and the church moved to dismiss the claims against them in Counts IV through X of the petition. On November 3, 1994, defendant moved to dismiss the claims against him in Counts I, II, III, IX, and X. The motions were taken under submission on January 13, 1995.

On February 22, 1995, the trial court granted both motions to dismiss. The court **[*95]** determined plaintiff's damages were sustained and capable of ascertainment at the time of

the alleged sexual abuse, and his cause of action therefore accrued at that time. The court noted that "plaintiff attempts to avoid the five year statute of limitations [RSMo § 516.120 (4)] n2 by arguing that his psychological coping mechanisms repressed any memory of the abuse until 1992." However, the court found, in reliance on Doe v. Roman Catholic Diocese, 862 S.W.2d 338 (Mo.banc 1993) and Vandenheuvel v. Sowell, 886 S.W.2d 100 (Mo.App.W.D. 1994), that "repressed memory does not serve to extend the statute of limitations for Plaintiffs' claims to the time plaintiff's memory revived." The court further found RSMo § 537.046 did not extend the time for filing the petition, as the original statutes of limitations -- RSMo **[**5]** §§ 516.120 and 516.100 -- had already expired and the respondents had therefore acquired a vested right to be free from suit.

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n2 All statutory references are to RSMo 1994 unless otherwise indicated.

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The trial court dismissed all the counts against defendant: Counts I, II, and III were dismissed "based on the statute of limitations[;]" Count IX (plaintiff's claim of loss of consortium) was dismissed for failure to state a claim; and Count X (wife's claim of loss of consortium) was dismissed because wife was not married to plaintiff at the time his cause of action accrued. The court also dismissed Counts IV through X against the archbishop and the church. This appeal followed.

Several statutes of limitations are involved in this case. HN1 An action for sexual abuse may be brought as a battery action, in which case the plaintiff has two years to file the action, RSMo § 516.140; or the action may be brought pursuant to RSMo § 516.120(4), which requires that tort actions not specifically enumerated by statute (but **[**6]** recognized at law) be brought within five years. See Doe v. Roman Catholic Diocese, 862 S.W.2d at 339. If the alleged abuse occurred when the plaintiff was a minor, RSMo § 516.170 tolls the applicable statute of limitations until the plaintiff turns twenty-one. See J.D. v. M.F., 758 S.W.2d 177, 178 (Mo.App.E.D. 1988). HN2 With respect to RSMo §§ 516.120(4) and 516.140, RSMo § 516.100 provides that

> the cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and capable of ascertainment, ...

(emphasis added.) Also, RSMo § 537.046.2 provides for independent civil actions for damages suffered as a result of childhood sexual abuse, if the action is brought within five years of the plaintiff's eighteenth birthday, or "within three years of the date the plaintiff discovers or reasonably should have discovered that the injury or illness was caused by child sexual abuse," whichever is later. However, RSMo § 537.046 does not revive actions that have expired prior to its effective date of August 28, 1990, and, if a plaintiff's suit was already **[**7]** barred by an existing statute of limitations on that date, the defendant has obtained a vested right to be free from suit. Doe v. Roman Catholic Diocese, 862 S.W.2d at 342.

In this case, the petition alleges defendant's acts occurred in 1963 and 1964, when plaintiff was still a minor. If plaintiff's cause of action did accrue at the time these acts occurred, time would start running upon plaintiff's twenty-first birthday in 1971 and would have expired in 1976. In their petition, plaintiff and wife allege their cause of action did not accrue at the

time defendant allegedly sexually abused plaintiff, and claim the damage to plaintiff caused by defendant's alleged conduct was not capable of ascertainment until October of 1992, due to "certain psychological coping mechanisms" of plaintiff. According to plaintiff and wife, as their cause of action did not accrue until 1992, none of their claims were time-barred.

HN3 In determining when a statute of limitations begins running, "damage is ascertainable when the fact of damage 'can be discovered or made known,' not when a plaintiff actually discovers injury or wrongful conduct. . . . When damage is ascertainable is an objective determination." **[**8]** Sheehan v. Sheehan, 901 S.W.2d 57, 58-59 (Mo.banc **[*96]** 1995) (citations omitted). If the statute of limitations is raised as an affirmative defense, the trial court may not dismiss unless it is clearly established, on the petition's face and without exception, that the action is barred. Id. at 59. In reviewing the dismissal of a petition, reviewing courts must allow the pleading its broadest intendment, treating all facts alleged as true and construing the petition's allegations favorably to the plaintiff. Id.

Sheehan was handed down by the Missouri Supreme Court subsequent to the dismissal of plaintiff's and wife's claims. In that case, the trial court dismissed as barred by the statute of limitations a personal injury action by a daughter against her father for childhood sexual abuse. Daughter's petition alleged father committed numerous batteries and assaults when she was a minor, and was therefore subject to the two-year limit set out in RSMo § 516.140. Daughter's petition further alleged she "involuntarily repressed conscious memory" of the alleged abuse by father "throughout her childhood and young adulthood until August 1990 or thereafter." In granting **[**9]** father's motion to dismiss the petition, the trial court found that daughter's cause of action accrued when she was a minor and that she failed to bring her action within the two-year period allowed to her after her twenty-first birthday.

The Missouri Supreme Court reversed, ruling daughter's petition did not "clearly indicate on its face and without exception" that suit was barred before the effective dates of RSMo §§ 537.046.2 and 516.371. n3 Id. The Court stated:

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n3 RSMo § 516.371 provides an action for familial sexual abuse, and went into effect August 28, 1989.

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - -

> [Daughter] alleges that [father]'s conduct caused "consequential injuries and damages." The petition does not state the date [daughter] "sustained and suffered" these injuries and damages; it is ambiguous as to when she objectively could have discovered or made known the fact of damage. The only date alleged is that she "involuntarily repressed conscious memory" of the abuse "until August 1990 or thereafter." Construing the allegations **[**10]** of the petition broadly and favorably to [daughter], her damage may not have been ascertainable "until August 1990 or thereafter."

Id. The Court distinguished Vandenheuvel v. Sowell, 886 S.W.2d 100, 104 (Mo.App.W.D. 1994) -- in which the Western District held that involuntary repression of memories of sexual abuse did not toll the applicable statute of limitations -- on the ground Vandenheuvel was decided by summary judgment, "where matters outside the pleadings indicated when damages became ascertainable." Sheehan, 901 S.W.2d at 59. "In this case -- decided on a bare motion to dismiss -- there is no such record evidence." Id.

Here, plaintiff's and wife's petition claimed plaintiff was abused in 1963 and 1964, but was unable to ascertain the injuries he allegedly sustained due to "psychological coping mechanisms." The respondents argue this petition, unlike the petition in Sheehan, does not allege repression of memory, and its terms ("increased the plaintiff's vulnerability," "had the effect of silencing plaintiff," "coping") imply plaintiff was aware of the harm or legal wrong done to him at the time of the alleged abuse. However, HN4 we are required to **[**11]** allow the pleading its broadest intendment and to construe the petition's allegations favorably to the plaintiff. See id. The petition's term "psychological coping mechanisms" may encompass, and the trial court clearly regarded it as including, involuntary repression of memory. In other words, the petition is ambiguous enough as to when plaintiff could have objectively discovered or made known the fact of injury from defendant's alleged conduct, to withstand a motion to dismiss on limitations grounds. We must take all the allegations in the petition as true, suspending any skepticism as to the merits of plaintiff's allegations. Plaintiff's damages may not have been ascertainable until October, 1992. If such was the case, the September 30, 1994, petition was timely filed with respect to RSMo §§ 516.120(4) and 537.046.

[*97]

Pursuant to Sheehan, we find the petition does not clearly indicate on its face and without exception that Counts I through VIII, and Count X (wife's loss of consortium claim), are barred by the statute of limitations.

However, HN5 we will affirm the dismissal of a petition if it can be sustained on any ground presented to and considered by the trial **[**12]** court, regardless of whether the court relied on that ground. Property Exchange & Sales, Inc. v. King, 822 S.W.2d 572, 573 (Mo.App.E.D. 1992). The archbishop and the church argue Count IV, plaintiff's claim of respondeat superior, failed to state a cause of action and was properly dismissed. According to the archbishop and the church, the petition on its face shows defendant was not acting within the course and scope of his employment when he allegedly engaged in sexual contact with plaintiff.

HN6 Under the doctrine of respondeat superior, an employer is liable to third parties for torts committed by an employee, if the tort was committed while employee was engaged in activities within the course and scope of his or her employment. P.S. v. Psychiatric Coverage, Ltd., 887 S.W.2d 622, 624 (Mo.App.E.D. 1994). An act is committed within "the scope and course of employment" if it is done by virtue of the employment and in furtherance of the business or interest of the employer, regardless of the time or motive of the conduct. Id. "If the act is fairly and naturally incident to the employer's business, although mistakenly or ill advisedly done, and did not arise wholly from some **[**13]** external, independent or personal motive, it is done while engaged in the employer's business." Id. In Psychiatric Coverage, we held the employer was not vicariously liable under respondeat superior for the sexual misconduct of an employee therapist, as this misconduct did not occur as part of any therapy program nor was it intended to further the employer's business, but rather "resulted from purely private and personal desires." Id. at 625. Further, other jurisdictions have refused to find religious organizations vicariously liable on respondeat superior grounds for the sexual misconduct of individual clerics. See Tichenor v. Roman Catholic Church of New Orleans, 32 F.3d 953, 959-960 (5th Cir. 1994); Destefano v. Grabrian, 763 P.2d 275, 287 (Colo. 1988) (sexual misconduct of defendant priest "is contrary to the principles of Catholicism and is not incidental to the tasks assigned a priest by the diocese"); Byrd v. Faber, 57 Ohio St. 3d 56, 565 N.E.2d 584, 588 (Ohio 1991) (relied on by Psychiatric Coverage, 887 S.W.2d at 625 n.4).

The above reasoning applies here. The acts of defendant alleged in plaintiff's and wife's petition clearly were not part of **[**14]** defendant's duties as a priest or as a teacher, nor

were they intended to further any religious or educational interests of the Catholic Church. Accordingly, we affirm the dismissal of Count IV. The respondents also offer alternative justifications for affirming the trial court's dismissal of plaintiff's claims of breach of fiduciary duty against defendant (Count I) and the archbishop and the church (Count VIII). Count I of plaintiff's and wife's petition alleged defendant "gained the trust and confidence of plaintiff" by holding himself out as a "teacher, counselor and qualified parish priest" and alleged his actions "constitute a breach of his fiduciary duties and of his trusted, confidential relationship with the plaintiff." Count VIII alleged plaintiff "reposed trust and confidence" in the archbishop and the church "as safe, competent spiritual advisors and counselors" who "owed plaintiff a duty of trust and loyalty and the duty to work solely for the benefit of their parishioners and supplicants including plaintiff." Count VIII further alleged the archbishop and the church "breached their fiduciary duties towards their parishioners, including plaintiff, and abused their position **[**15]** of trust and confidence in failing to protect plaintiff and others similarly situated from defendant . . . after [they] knew or should have known of his dangerous propensities . . . ."

The respondents contend Missouri does not recognize the claims set out in Counts I and VIII of plaintiff's petition, citing Doe v. Roman Catholic Diocese as authority. In that case (wherein the plaintiff's claims of **[*98]** breach of fiduciary duty and clergy malpractice were found barred by the statutes of limitations) the Missouri Supreme Court noted:

> Although battery is clearly actionable, Missouri courts have not addressed the propriety of the causes of action for clergy malpractice or the tort of breach of fiduciary duty, at least in the context of childhood sexual assaults.

862 S.W.2d at 339 n.2. The respondents also contend Counts I and VIII are not justiciable controversies, on the ground the First Amendment prohibits secular courts from defining and analyzing the scope of fiduciary duties owed by clergy and churches to their parishioners.

HN7 Clergy and religious organizations are not absolutely immune from civil liability. See Hester v. Barnett, 723 S.W.2d 544, **[**16]** 552 (Mo.App.W.D. 1987). Tort actions against religious groups or persons are not offensive to the First Amendment if based on purely secular activities, unrelated to their religious functions; if the alleged wrongdoing was clearly outside the tenets of the religion, notwithstanding its religious pretext, then it is actionable. See 723 S.W.2d at 558-564.

Missouri courts have not addressed whether clergy and religious organizations can be held civilly liable in actions for breach of fiduciary duty with respect to sexual misconduct of clergy. Our review of the law in other jurisdictions compels us to conclude such actions should not be recognized, as they will inevitably entangle civil courts in religious matters.

Causes of action for breach of fiduciary duty with respect to sexual misconduct of clergy were recognized in Jones by Jones v. Trane, 153 Misc. 2d 822, 591 N.Y.S.2d 927, 931 (Sup. 1992), Moses v. Diocese of Colorado, 863 P.2d 310, 322 (Colo. 1993), Destefano v. Grabrian, 763 P.2d 275, 284 (Colo. 1988), and Erickson v. Christenson, 99 Ore. App. 104, 781 P.2d 383, 386 (Or.App. 1989). These cases reasoned that if the tortious behavior of the cleric was not **[**17]** religiously motivated, could be evaluated by means of "neutral principles" applicable to clergy and lay persons alike, and did not require inquiry into the tenets and beliefs of the particular cleric's faith, the First Amendment was not a defense to such actions. See Moses, 863 P.2d at 321. In other words,

> inasmuch as it is conduct, and not creed, that underlies plaintiffs' actions, and that the potential for civil consequences exists equally as to religious and non-religious persons, and as to clergy and lay persons of all religions alike, the Free

> Exercise aspect of the First Amendment does not come into play to preclude plaintiffs' [breach of fiduciary duty action] . . . .

Jones, 591 N.Y.S.2d at 931 (citation omitted).

Conversely, similar causes of action for breach of fiduciary duty were rejected in Schmidt v. Bishop, 779 F. Supp. 321, 325-326 (S.D.N.Y. 1991), Dausch v. Rykse, 52 F.3d 1425, 1438 (7th Cir. 1994), and Schieffer v. Catholic Archdiocese of Omaha, 244 Neb. 715, 508 N.W.2d 907, 912 (Neb. 1993). In those cases, the courts held that analyzing and defining the scope of fiduciary duty owed persons by their clergy (assuming pastoral **[**18]** relationships were "fiduciary") would require courts to define and express the standard of care followed by reasonable clergy of the particular faith involved, which in turn

> would require the Court and the jury to consider the fundamental perspective and approach to counseling inherent in the beliefs and practices of that denomination. This is as unconstitutional as it is impossible. It fosters excessive entanglement with religion.

Schmidt, 779 F. Supp. at 328. Further, while it may be argued that "it requires no excessive entanglement with religion to decide that reasonably prudent clergy of any sect do not molest children[,]" allowing actions for breach of fiduciary duty in such situations places courts "on the slippery slope and is an unnecessary venture, since existing laws . . . provide adequate protection for society's interests." Id.

HN8 We align ourselves with the jurisdictions that have refused to recognize breach-of-fiduciary-duty actions against clergy for sexual misconduct. It is true the alleged behavior of defendant was not religiously motivated; in fact, it contravened the tenets and principles of the Catholic Church. However, other causes of **[**19]** action are available for these acts **[*99]** (i.e., intentional infliction of emotional distress, childhood sexual abuse), which do not require the trial court to determine whether defendant breached "his trusted, confidential relationship with the plaintiff" or whether the archbishop and the church breached "their fiduciary duties towards their parishioners, including plaintiff, and abused their position of trust and confidence[,]" as alleged in plaintiff's petition.

Religion was not merely incidental to plaintiff's relationship with defendant, the archbishop, and the church; it was the foundation for it. Counts I and VIII will inevitably require inquiry into the religious aspects of this relationship, that is, the duty owed by Catholic priests, parishes, and dioceses to their parishioners. The First Amendment does not allow secular courts to judge sectarian matters. Counts I and VIII are not actionable and their dismissal is affirmed. n4

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n4 Plaintiff did not bring a clergy malpractice claim in the immediate case; however, we note courts in other jurisdictions have uniformly refused to recognize clergy malpractice as a cause of action for sexual misconduct of a cleric. See Dausch v. Rykse, 52 F.3d 1425, 1432 (7th Cir. 1994); Schmidt v. Bishop, 779 F. Supp. 321, 327-328 (S.D.N.Y. 1991); Schieffer v. Catholic Archdiocese of Omaha, 244 Neb. 715, 508 N.W.2d 907, 911 (Neb. 1993); Jones by Jones v. Trane, 153 Misc. 2d 822, 591 N.Y.S.2d 927, 930 (Sup. 1992); Byrd v. Faber, 57 Ohio St. 3d 56, 565 N.E.2d 584, 587 (Ohio 1991); Destefano v. Grabrian, 763 P.2d 275, 285 (Colo. 1988).

We further note that, while the archbishop and the church challenged Counts V, VI, and VII -- plaintiff's claims of negligence in the hiring and supervision of defendant, of negligent infliction of emotional distress, and of intentional interference with emotional distress, respectively -- on limitations grounds only and offered no alternative grounds for their dismissal at trial or on appeal, these allegations in these counts raise First Amendment concerns which may need to be addressed upon remand. See Isely v. Capuchin Province, 880 F. Supp. 1138, 1150-1158 (E.D.Mich. 1995); Pritzlaff v. Archdiocese of Milwaukee, 194 Wis. 2d 303, 533 N.W.2d 780, 789-792 (Wis. 1995).

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[**20]**

Finally, Count IX, plaintiff's action for loss of consortium, was properly dismissed by the trial court for failure to state a claim. HN9 When a married person is injured, two independent, separate and distinct causes of action arise: one accrues to the injured person for the injuries, and the other accrues to the injured person's spouse for damages suffered as a result of his or her loss of the injured person's services, society and companionship. Smith v. Paslode Corp., 799 F. Supp. 960, 964 (E.D.Mo. 1992). The latter action is derivative only; a spouse cannot recover for loss of consortium if the other spouse has no valid claim for personal injuries. Teschner v. Physicians Radiology, 761 S.W.2d 665, 667 (Mo.App.E.D. 1988).

Here, the petition does not allege any direct personal injury sustained by wife; she had no valid claim of her own. Plaintiff seeks to derive his loss of consortium claim from his own injuries, not those of wife, thereby duplicating the damages he seeks in his primary claim. Plaintiff failed to state a cause of action on this claim. We affirm the trial court's dismissal of Count IX. n5

- - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - -

n5 With respect to Count X, wife's claim of loss of consortium, we note if it is determined on remand that plaintiff's cause of action accrued prior to their marriage, wife will not be able to recover on this claim. HN10 Claims for loss of consortium based on spousal injuries sustained prior to marriage are precluded, unless neither spouse is aware of the tortious conduct or injury at the time of their marriage. Smith v. Paslode Corp., 799 F. Supp. at 964.

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[**21]**

The dismissal of Counts I, IV, VIII, and IX is affirmed; the dismissal of Counts II, III, V, VI, VII, and X is reversed and cause remanded for further proceedings.

GARY GAERTNER, Judge

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EXHIBIT 5

Service: **Get by LEXSEE®**
Citation: **677 nys2d 436**

*177 Misc. 2d 897, *; 677 N.Y.S.2d 436, **;*
*1998 N.Y. Misc. LEXIS 389, ****

Susan Langford, Plaintiff, v. Roman Catholic Diocese of Brooklyn et al., Defendants.

INDEX NO. 20336/95

SUPREME COURT OF NEW YORK, KINGS COUNTY

177 Misc. 2d 897; 677 N.Y.S.2d 436; 1998 N.Y. Misc. LEXIS 389

June 23, 1998, Decided

NOTICE: [*1]**

EDITED FOR PUBLICATION

DISPOSITION: Defendant's motion granted. Plaintiff's complaint dismissed.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff parishioner maintained a cause of action against defendant priest for damages she allegedly sustained when their pastoral relationship developed into a sexual relationship.

OVERVIEW: The parishioner was diagnosed with multiple sclerosis. She then turned to her priest because as a Catholic, she did not feel as though she had anywhere else to turn for help. She began to visit the priest three and four times a week and he encouraged her dependence upon him by emphasizing the mystical and esoteric nature of his power to cure her. The parishioner asserted that she lacked the power to resist the priest's subsequent physical advances because she was addicted to him and the religious power he possessed to halt the spread of her disease. The court dismissed the parishioner's complaint, holding that in order to rule in her favor, the jury would have had to be able to determine that a fiduciary duty existed between her and the priest and premise this finding on neutral facts. The court found that it would have been impossible to show the existence of a fiduciary duty without resorting to religious facts.

OUTCOME: The court dismissed the parishioner's cause of action against the priest for damages allegedly sustained when their pastoral relationship developed into a sexual relationship because the jury would have had to be able to determine that a fiduciary duty existed between her and the priest and premise this finding on neutral facts.

CORE TERMS: fiduciary relationship, religious, fiduciary, priest, breach of fiduciary duty, cause of action, stronger, weaker, partner, vulnerability, empowerment, narrative, secular, church, towel, confidence, First Amendment, religious parties, causes of action, parishioner, seduction, forbidden, emissary, disease, shareholders, beneficiary, tribunal, reposed, embraces, insure

LexisNexis (TM) HEADNOTES - Core Concepts - ◆ Hide Concepts

Constitutional Law > Fundamental Freedoms > Freedom of Religion

HN1 The First Amendment prohibits any law respecting the establishment of religion, or prohibiting the free exercise thereof. U.S. Const. amend. I. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN2 Four elements that are essential to the establishment of a fiduciary relationship include: (1) The vulnerability of one party to the other which (2) results in the empowerment of the stronger party by the weaker which (3) empowerment has been solicited or accepted by the stronger party and (4) prevents the weaker party from effectively protecting itself. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN3 The existence of a fiduciary relationship is a question of fact for the jury. More Like This Headnote

♦ Show Headnotes / Syllabus

COUNSEL:

Conway, Farrell, Curtin & Kelly, P. C., New York City, for Roman Catholic Diocese of Brooklyn and others, defendants. *White, Quinlan, Staley & Ledwith,* Garden City, for Nicholas Sivillo, defendant. *Michael L. Soshnick,* Mineola, for plaintiff.

JUDGES: HON. JUSTICE HERBERT KRAMER, J.S.C.

OPINIONBY: HERBERT KRAMER

OPINION: [*897] [437]**

Herbert Kramer, J.

Can plaintiff parishioner maintain a cause of action against **[*898]** her priest for damages she allegedly sustained when their pastoral relationship developed into a sexual relationship? Although this is a question of first impression in New York, n1 it has been vigorously litigated across the country. Some of the courts considering this question were willing to sustain a cause of action for breach of fiduciary duty, n2 while others declined on First Amendment grounds. n3 Defendants seek summary judgment contending that it is impossible to try this case without trespassing onto constitutionally forbidden territory. Thus, it is this court's task to determine whether the issues can be framed **[***2]** for the jury in secular rather than sectarian terms.

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n1 In New York the litigation has involved the alleged sexual abuse of minors. (*See, e.g., Jones v Trane,* 153 Misc 2d 822 [Sup Ct, Onondaga County 1992].)

n2 *See, e.g., F.G. v MacDonell,* 150 NJ 550, 696 A2d 697 (1997); *Sanders v Casa View Baptist Church,* 898 F Supp 1169 (ND Tex 1995); *Moses v Diocese of Colo.,* 863 P2d 310, 314 (Colo 1993); *DeStefano v Grabrian,* 763 P2d 275 (Colo 1988).

n3 *Amato v Greenquist,* 287 Ill App 3d 921, 679 NE2d 446 (1997); *Dausch v Rykse,* 52 F3d 1425 (7th Cir 1994); *Schmidt v Bishop,* 779 F Supp 321 (SD NY 1991); *H.R.B. v J.L.G.,* 913 SW2d 92 (ED Mo 1995).

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Plaintiff's complaint sets forth 12 causes of action, but if her cause is to survive, it will do so only on the strength of her claim of breach of fiduciary duty. n4 Plaintiff's narrative begins with her being diagnosed with multiple sclerosis in January of 1989. In February of 1989, "with nowhere and no one to turn **[***3]** to [she] looked to God for direction ... [and] as a Catholic, [her] only thought was to seek the assistance of a priest." Monsignor Sivillo began to visit plaintiff three and four times a week and encouraged her dependance upon him by emphasizing the mystical and esoteric nature of his power to cure her. n5 **[*899]** Plaintiff asserts that she lacked the power to resist the defendant's physical advances because she "was addicted to him and the [religious] power he possessed to halt the spread of the multiple sclerosis ... [she believed that if she angered **[**438]** him, she] would lose her lifeline to God and continued health." n6

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n4 Plaintiff has asserted claims sounding in negligence, professional negligence, negligent hiring, supervision and retention, breach of fiduciary duty, negligent infliction of emotional distress, intentional infliction of emotional distress and battery. With the exception of the claim of clergy malpractice, a cause of action not recognized in New York (*see,* Schmidt v Bishop, 779 F Supp 321, 324 [SD NY 1991], *supra;* Joshua S. v Casey, 206 AD2d 839 [4th Dept 1994]), the remaining causes of action either depend for their vitality on the claim of breach of fiduciary duty, or with respect to the alleged intentional torts, are time barred and lack factual support. **[***4]**

n5 Beginning in February of 1989, the defendant would visit her three and four times a week and "while sitting next to [her] on the couch would hold [her] cramped and contorted fingers and tell [her] how he spoke to God and how as God's emissary he would see to it that the disease would go into remission." Indeed, at one point during 1989, her physician informed her that the disease was indeed in remission and she "thanked God a million times for sending [her] this gentle savior."
n6 Indeed, the spiritual and supernatural aspects of the relationship dominated plaintiff's narrative. Thus, defendant allegedly told plaintiff that he believed that "water was imbued with a mystical power to cleanse and heal ... [and that] by standing under the water's spray, the two of [them] would be paying homage to the glory and goodness of God who, in return, would absolve [them] of sin." Plaintiff, allegedly at the defendant's behest, kept a towel in her night table which the defendant would use to wipe his semen from her body. "The towel symbolized his everlasting presence. The semen represented an impenetrable line of defense that would ward off fear, loneliness and disease. As long as [she] had the towel, [she] had the means to remain healthy and loved. Any onslaught by negative or destructive forces would be doomed to fail in the presence of the towel a/k/a the defendant."

- - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - - **[***5]**

Civil controversies involving religious parties or institutions may be adjudicated without offending the First Amendment n7 as long as neutral laws of general applicability are utilized in their resolution. (Presbyterian Church v Hull Church, 393 US 440, 449 [1969].) Neutral principles are "wholly secular legal rules whose application to religious parties or disputes does not entail theological or doctrinal evaluations." (Elmora Hebrew Ctr. v Fishman, 125 NJ 404, 414-415, 593 A2d 725, 730 [1991].)

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n7 HN1 The First Amendment prohibits any "law respecting the establishment of religion, or prohibiting the free exercise thereof." (US Const 1st Amend.) It "embraces two concepts,--freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society." (*Cantwell v Connecticut*, 310 US 296, 303-304 [1940].) Certainly, intentional, criminally offensive conduct is not insulated from prosecution. (*See, e.g., Joshua S. v Casey*, 206 AD2d 839 [4th Dept 1994]; *Kenneth R. v Roman Catholic Diocese*, 229 AD2d 159 [2d Dept 1997].)

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[***6]

The secular rule to be applied in this case is the law of fiduciaries. This area of the law recognizes that there is an imbalance inherent in certain relationships n8 which places one party at a disadvantage in its dealings with the other party. Courts have therefore imposed additional obligations upon the **[*900]** advantaged party to compensate for the disparity. n9 Because the parameters of a fiduciary relationship have been vaguely defined n10 and the range of relationships that can potentially be characterized as fiduciary is extensive, we are grateful for the guidance offered by one commentator who has distilled HN2 four elements that we believe are essential to the establishment of a fiduciary relationship: (1) The vulnerability of one party to the other which (2) results in the empowerment of the stronger party by the weaker which (3) empowerment has been solicited or accepted by the stronger party and (4) prevents the weaker party from effectively protecting itself. n11

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n8 "Historically, fiduciary relationships include: trustee to beneficiary; guardian to ward; agent to principal; attorney to client; executor to legatees or beneficiaries; partner to partner; corporate directors or officers to the corporation; majority shareholders to other shareholders; and bailor to bailee." (Villiers, *Clergy Malpractice Revisited: Liability for Sexual Misconduct in the Counseling Relationship*, 74 Denv U L Rev 1, 40 [1996].) **[***7]

n9 The fiduciary bears the burden of showing the fairness of the disputed transaction. The fiduciary is obligated to make full disclosure. The fiduciary may not be able to raise the defense of Statute of Frauds, or consent. The entrusting party may not bear the entire burden of discovery of the fraud. Moreover, the transaction must, regardless of consent, be deemed reasonable and be undertaken in good faith when judged by objective standards. (Villiers, *op. cit.*, at 39, n 255.)

n10 In *Penato v George* (52 AD2d 939, 942 [2d Dept 1976]) the Court opined that "a fiduciary relationship is one founded upon trust or confidence reposed by one person in the integrity and fidelity of another ... the relationship exists in all cases in which influence has been acquired and abused, in which confidence has been reposed and betrayed. The rule embraces both technical fiduciary relations and those informal relations which exist whenever one man trusts in, and relies upon, another ... Such a relationship might be found to exist, in appropriate circumstances, between close friends ... or even where confidence is based upon prior business dealings".

n11 These elements were derived through a careful review of the existing case law and an astute application of the philosophical and pragmatic aspects of this area of the law. (Scallen, *Promises Broken vs. Promises Betrayed: Metaphor, Analogy, and the New Fiduciary Principle*, 1993 U Ill L Rev 897, 922 [1993].)

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[***8]**

[439]** Finally, we must recognize that in making a "neutral principles" analysis, it is not sufficient to be able to identify relevant secular rules. It is also necessary to insure that there exist neutral facts to which to apply those rules. Neutral facts consist of "evidence from which the court may discern the objective intention of the parties" such as "the language of ... deeds, the terms of [a] local church charter ... State statutes governing the holding of church property [and the like]" (*First Presbyt. Church v United Presbyt. Church,* 62 NY2d 110, 121, 122 [1984]), without resorting to matters of doctrine or dogma. n12

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n12 (*See, Avitzur v Avitzur,* 58 NY2d 108 [1983].) In *Avitzur,* a four-to-three decision, the majority upheld the terms of a Ketubah, a Jewish religious marriage contract, finding neutral facts that evidenced the agreement between the parties, to wit, "[D]efendant promised that he would, at plaintiff's request, appear before the [rabbinical tribunal] for the purpose of allowing that tribunal to advise and counsel the parties concerning their marriage" which promise constituted nothing more than a "civil contract to submit a dispute to a nonjudicial forum". (*Supra,* at 113, 114.) However, the caution of the dissent, which did not find the contract susceptible to so neutral an interpretation was well taken. (*See also, Park Slope Jewish Ctr. v Congregation B'Nai Jacob,* 90 NY2d 517 [1997]; *Park Slope Jewish Ctr. v Stern,* 128 Misc 2d 909 [Sup Ct, Kings County 1985], *mod* 128 AD2d 847 [2d Dept 1987].)

- - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - **[***9]**

[*901]

Here, in order for plaintiff's cause of action to meet constitutional muster, the jury would have to be able to determine that a fiduciary relationship existed and premise this finding on neutral facts. n13 The insurmountable difficulty facing plaintiff, this court holds, lies in the fact that it is impossible to show the existence of a fiduciary relationship without resort to religious facts. In order to consider the validity of plaintiff's claims of dependency and vulnerability, the jury would have to weigh and evaluate, *inter alia,* the legitimacy of plaintiff's beliefs, the tenets of the faith insofar as they reflect upon a priest's ability to act as God's emissary and the nature of the healing powers of the church. To instruct a jury on such matters is to venture into forbidden ecclesiastical terrain. On the other hand, if we try to salvage plaintiff's claim by stripping her narrative of all religious nuance, what is left n14 makes out a cause of action in seduction--a tort no longer recognized in New York--but not in breach of a fiduciary duty. n15 **[*902]** **[**440]** Accordingly, the defendants' motion is granted. The plaintiff's complaint is dismissed. **[***10]**

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n13 "HN3↑The existence of a fiduciary relationship is a question of fact for the jury." (*Moses v Diocese of Colo.,* 863 P2d 310, 322 [Colo 1993], *supra; see also, Matter of Antoinette,* 238 AD2d 762 [3d Dept 1997].)

n14 Plaintiff's account of the relationship when considered without reference to her religious beliefs describes the development of an intimate personal relationship based upon the fact that she was seriously ill, lonely and isolated and needed a sympathetic ear. She found a willing and sympathetic friend and companion in defendant who, according to her narrative, was able to use this situation to his advantage and transform the relationship into a sexual

one.

This neutered account does not supply the facts necessary to support the existence of a fiduciary relationship because the most important element defining the fiduciary relationship, and distinguishing it from a merely confidential relationship--the inability of the weaker partner to resist the manipulation of the stronger partner--is missing from the neutered account. This element is present only in the religious account of their relationship in statements such as those pertaining to her belief that she would lose her lifeline to continued health if she resisted defendant's advances. (Villiers, *op. cit.*, at 41, nn 263, 264.) **[***11]

n15 "In 1935, New York adopted what has become known as a heart balm statute [Civil Rights Law §§ 80-a--84] which abolished all causes of action ... 'based upon alleged alienation of affections, criminal conversation, seduction and breach of contract to marry' " (*Gaden v Gaden*, 29 NY2d 80, 84 [1971]). The tort of seduction along with other causes of action for alienation of affection invited " 'grave abuses ... and in many cases ... resulted in the perpetration of frauds' ". (*Supra,* at 85 [1971].) The same abuses could attach to a cause of action for breach of fiduciary duty, under our facts, unless care is taken to insure that the duty is imposed only upon clear and unequivocal proof of the existence of a fiduciary relationship.

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EXHIBIT 6

Service: **Get by LEXSEE®**
Citation: **508 nw2d 907**

*244 Neb. 715, *; 508 N.W.2d 907, **;*
*1993 Neb. LEXIS 283, ****

Rosemary Schieffer, Appellant, v. Catholic Archdiocese of Omaha, a corporation, and Timothy Lange, Appellees.

No. S-91-388

SUPREME COURT OF NEBRASKA

244 Neb. 715; 508 N.W.2d 907; 1993 Neb. LEXIS 283

December 17, 1993, Filed

PRIOR HISTORY: [*1]**

Appeal from the District Court for Douglas County: Donald J. Hamilton, Judge.

DISPOSITION: AFFIRMED.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff wife filed an amended complaint against defendants, priest and church, alleging intentional infliction of emotional distress, negligence, and breach of fiduciary duty. The District Court for Douglas County (Nebraska) sustained the demurrers filed by the priest and church. The wife appealed.

OVERVIEW: After the wife began counseling with the priest at her church, a sexual relationship began and lasted seven years. The wife filed an action against the priest and the church that employed him, and the husband filed an action for loss of consortium. The trial court sustained the general demurrers of the priest and church. The wife filed an amended petition for intentional infliction of emotional distress, negligence, breach of fiduciary duty, and the husband's loss of consortium claim, which had been assigned to her. The trial court sustained the demurrers of the priest and church. On appeal, the court held that: (1) the wife's consent to the priest's sexual advances barred the intentional infliction of emotional distress claim; (2) no jurisdiction recognized a claim for clergy malpractice; (3) the theory of breach of fiduciary duty with regard to sexual misconduct of a clergy member was rejected; (4) the loss of consortium claim was barred by Neb. Rev. Stat. § 25-21,188 (Reissue 1989) and res judicata; (5) the church was not negligent because there was no cause of action against the priest; and (6) the trial court did not err by failing to allow the wife to amend her pleadings.

OUTCOME: The court affirmed the judgment from the district court, which sustained the demurrers brought by the priest and church and dismissed the wife's claims for intentional infliction of emotional distress, negligence, and breach of fiduciary duty.

CORE TERMS: cause of action, demurrer, amended petition, intentional infliction of emotional distress, clergy, loss-of-consortium, duty, outrageous, parish priest, counseling, breach of fiduciary duty, vulnerable, church, sustaining, pastoral, invasion, sexual, criminal conversation, parishioner, negligent supervision, sexual relationship, judicata, consenting, emotional, severe, adult, properly dismissed, amend, facts sufficient to constitute, fiduciary duty

LexisNexis (TM) HEADNOTES - Core Concepts - ♦ Hide Concepts

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action

HN1 In considering a demurrer, a court must assume that the pleaded facts, as distinguished from legal conclusions, are true as alleged and must give the pleading the benefit of any reasonable inference from the facts alleged, but cannot assume the existence of a fact not alleged, make factual findings to aid the pleading, or consider evidence which might be adduced at trial. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action

HN2 A petition is sufficient if, under the facts alleged, the law entitles a plaintiff to recover. That is to say, facts are sufficient to constitute a cause of action when they are a narrative of the events, acts, and things done or omitted which show a legal liability of the defendant to the plaintiff. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress

HN3 With regard to intentional infliction of emotional distress, there are delineated three elements that must be met for this cause of action: (1) that there has been intentional or reckless conduct; (2) that the conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community; and (3) that the conduct caused emotional distress so severe that no reasonable person should be expected to endure it. More Like This Headnote

Torts > Intentional Torts > Defenses > Consent

HN4 In tort law, consent ordinarily bars recovery for intentional interferences with person or property. It is a fundamental principle of common law that to one who is willing, no wrong is done. When the defendant by his conduct intentionally interferes with a legally protected interest of person or property, either consent to the invasion resulting from such conduct, or consent to the conduct that brought about the invasion, avoids liability. One, of course, consents to an invasion such as a sex contact if he or she wants or desires the invasion. Consent avoids recovery simply because it destroys the wrongfulness of the conduct as between the consenting parties, however harmful it might be to the interest of others, and even though it is perhaps both immoral and criminal. More Like This Headnote

Torts > Intentional Torts > Intentional Infliction of Emotional Distress

HN5 A sexual relationship between two consenting adults is not outrageous conduct such as to give rise to a claim for intentional infliction of emotional distress. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN6 No jurisdiction to date recognizes a claim for clergy malpractice. More Like This Headnote

Torts > Malpractice Liability > Misconduct Generally

HN7 The court rejects the cause of action allowing recovery on the theory of breach of fiduciary duty with regard to sexual misconduct of a member of the clergy with a parishioner. More Like This Headnote

Torts > Damages > Consortium Damages

HN8 See Neb. Rev. Stat. § 25-21, 188 (Reissue 1989).

Civil Procedure > Preclusion & Effect of Judgments > Res Judicata

HN9 The doctrine of res judicata is based on the principle that a final judgment on the merits by a court of competent jurisdiction is conclusive upon the parties in any later litigation involving the same cause of action. Res judicata is founded on a policy favoring termination of an action by preclusion or prevention of subsequent litigation on the same cause. More Like This Headnote

Labor & Employment Law > Employer Liability > Tort Liability > Respondeat Superior
Torts > Vicarious Liability > Respondeat Superior
HN10 For the doctrine of respondeat superior to apply, an employee must be liable for a tort committed in the scope of his employment. Likewise, an underlying requirement in actions for negligent supervision and negligent training is that the employee is individually liable for a tort or guilty of a claimed wrong against a third person, who then seeks recovery against the employer. More Like This Headnote

Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Defects of Form
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action
HN11 Neb. Rev. Stat. § 25-854 (Reissue 1989) provides that if a demurrer is sustained, the adverse party may amend, if the defect can be remedied by way of amendment. This statute, however, does not provide an absolute right of amendment, nor is it without limitation. More Like This Headnote

Civil Procedure > Pleading & Practice > Pleadings > Amended Pleadings
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Defects of Form
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action
Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
HN12 It is an abuse of discretion by the trial court to sustain a demurrer without leave to amend where there is a reasonable possibility that the defect can be cured by amendment, particularly in the case of an original complaint. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Defects of Form
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action
HN13 When a demurrer is interposed stating several grounds, the court should, when sustaining the demurrer, specify the grounds upon which the demurrer is sustained; otherwise, the reviewing court is not informed regarding wherein the complaint was deficient. More Like This Headnote

Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Defects of Form
Civil Procedure > Pleading & Practice > Defenses, Objections & Demurrers > Failure to State a Cause of Action
Civil Procedure > Appeals > Standards of Review > Standards Generally
HN14 Failure to specify the grounds for sustaining a demurrer does not affect the legal position of the parties in the case. The court will not presume, when a trial court fails to state a reason for the dismissal of an action, that the dismissal was based on an invalid ground. More Like This Headnote

✦ Show Headnotes / Syllabus

COUNSEL: Herbert J. Friedman, of Friedman Law Offices, for appellant.

Patrick G. Vipond and William R. Settles, of Kennedy, Holland, DeLacy & Svoboda, and Edward D. Hotz, of Zweiback, Hotz & Lamberty, for appellee Catholic Archdiocese of Omaha.

John M. Gerrard, of Gerrard, Stratton & Mapes, P.C., for appellee Lange.

JUDGES: Hastings, C.J., Boslaugh, White, Caporale, Shanahan, Fahrnbruch, and Lanphier, JJ.

OPINIONBY: BOSLAUGH

OPINION: [*716] [909]**
BOSLAUGH, J.

This is a suit for damages brought by the plaintiff, Rosemary Schieffer, against the defendants, Catholic Archdiocese of Omaha (Archdiocese), a corporation, and Timothy Lange. The original petition, filed March 27, 1990, was filed in the name of Jane Doe. Separate actions against the defendants were also filed by the plaintiff's husband and daughter. All of these actions were consolidated. General **[***4]** demurrers to the petitions of the plaintiff and her husband were sustained and the petitions dismissed on September 28, 1990. Apparently, there were no appeals from the order of dismissal.

Motions to strike and to make the plaintiff's original petition more definite and certain were filed by the defendants, and the demurrers to that petition were withdrawn. The motions were sustained in part, and on December 10, 1990, the plaintiff filed an amended petition. The amended petition alleged intentional infliction of emotional distress, negligence, and breach of fiduciary duty in separate causes of action. The amended petition also contained a fourth **[**910]** cause of action involving the plaintiff's husband's alleged loss-of-consortium claim that had been assigned to her. Demurrers to the amended petition were sustained on February 8, 1991, and the amended petition dismissed. This appeal followed.

The plaintiff's 11 assignments of error combine to assert that the trial court erred (1) by sustaining the defendants' demurrers and dismissing the amended petition, (2) by failing to allow the plaintiff an opportunity to amend her amended petition, and **[*717]** (3) by failing to specify the grounds for sustaining **[***5]** the defendants' demurrers.

HN1 In considering a demurrer, a court must assume that the pleaded facts, as distinguished from legal conclusions, are true as alleged and must give the pleading the benefit of any reasonable inference from the facts alleged, but cannot assume the existence of a fact not alleged, make factual findings to aid the pleading, or consider evidence which might be adduced at trial. Hamilton v. City of Omaha, 243 Neb. 253, 498 N.W.2d 555 (1993).

HN2 A petition is sufficient if, under the facts alleged, the law entitles a plaintiff to recover. That is to say, facts are sufficient to constitute a cause of action when they are a narrative of the events, acts, and things done or omitted which show a legal liability of the defendant to the plaintiff. Gerken v. Hawkins Constr. Co., 243 Neb. 157, 498 N.W.2d 97 (1993).

Viewed most favorably to the plaintiff, the amended petition alleges the following:

In 1979, the plaintiff began counseling with the defendant Lange concerning family matters. Lange was the plaintiff's parish priest and "spiritual leader." During this time period, the plaintiff **[***6]** was vulnerable because of prior emotional problems. While she was in this vulnerable state and during the course of pastoral counseling, Lange made sexual advances toward the plaintiff that continued for a period of 3 years. In 1982, Lange and the plaintiff began a sexual relationship that continued until approximately June 1989.

The amended petition further alleges that at all times applicable to this action, Lange was an employee of the defendant Archdiocese and at all times was acting within the scope and course of his employment. Further, Lange and the Archdiocese were charged with the obligation to administer pastoral and spiritual advice and care to the plaintiff and her family, and as such, held a position of trust and responsibility to the plaintiff and her family.

The first assignment of error is that the trial court erred by sustaining the demurrers of the defendants and dismissing the plaintiff's amended petition. The plaintiff argues that she stated facts sufficient to constitute a cause of action as to all of her **[*718]** claims. We discuss the various causes of action in turn, beginning first with the allegations against the defendant Lange. The plaintiff's claims against Lange, **[***7]** as alleged in the amended petition, are based on intentional infliction of emotional distress, negligence, and breach of fiduciary duty.

The plaintiff's first cause of action alleges that the conduct of Lange was outrageous and extreme and caused her severe emotional distress. As a proximate result of that conduct, the plaintiff suffered severe and permanent emotional injury and incurred current and future medical expenses. The plaintiff also claims that she has lost faith in the Catholic Church and in God.

HN3 With regard to intentional infliction of emotional distress, this court has delineated three elements that must be met for this cause of action:

> "(1) that there has been intentional or reckless conduct; (2) that the conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community; and (3) that the conduct caused emotional distress so severe that no reasonable person should be expected to endure it."

Nichols v. Busse, 243 Neb. 811, 817, 503 N.W.2d 173, (1993), quoting Gall v. Great Western Sugar Co., 219 Neb. 354, 363 N.W.2d 373 (1985). **[***8]**

There are several reasons why the plaintiff's alleged claim for intentional infliction **[**911]** of emotional distress was subject to demurrer. What is involved in this case is conduct between consenting adults. There is no allegation that the defendant used force or fraud to accomplish his sexual relations with the plaintiff during the period from 1982 to 1989. The amended petition does allege that the plaintiff was "vulnerable" because of prior emotional problems." This allegation falls far short of alleging that the plaintiff was incapable of consenting to what took place.

HN4 In tort law, consent ordinarily bars recovery for intentional interferences with person or property. According to W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 18 at 112 (5th ed. 1984), it is a fundamental principle of common law that "to one who is willing, no wrong is done." That text further **[*719]** states:

> When the defendant by his conduct intentionally interferes with a legally protected interest of person or property, either consent to the invasion resulting from such conduct, or consent to the conduct that brought about the invasion, avoids liability. One, of course, consents to an invasion such as **[***9]** a sex contact if he or she wants or desires the invasion. Consent avoids recovery simply because it destroys the wrongfulness of the conduct as between the consenting parties, however harmful it might be to the interest of others, and even though it is perhaps both immoral and criminal.

Id. at 113.

HN5 A sexual relationship between two consenting adults is not outrageous conduct such as to give rise to a claim for intentional infliction of emotional distress. This seems especially true given the fact that the plaintiff and Lange engaged in an approximate 7-year sexual relationship. See, also, Restatement (Second) of Torts § 892 A (1982).

The plaintiff cites two cases which held that a parishioner stated a claim for intentional infliction of emotional distress against a member of the clergy for sexual misconduct with a parishioner: Destefano v. Grabrian, 763 P.2d 275 (Colo. 1988), and Erickson v. Christenson, 99 Ore. App. 104, 781 P.2d 383 (1989).

We believe the Destefano and Erickson cases may be distinguished factually, at least in part. In the Destefano case, the court emphasized that the **[***10]** defendant had held himself out to be trained and capable of conducting marital counseling. The court further stated that on remand, it was for the trial court to determine in the first instance as to whether the conduct of the defendant priest at issue was "outrageous."

The Erickson case involved conduct against a 13-year-old girl. The case at bar involves an adult plaintiff, and there is no allegation that the defendant Lange held himself out as a professionally trained counselor.

In the second cause of action, the plaintiff alleged that Lange was negligent by failing to properly counsel her concerning her marital and family relationships when he knew or should have **[*720]** known she was having domestic difficulties and that, further, Lange was negligent by failing to remove himself as parish priest when he knew or should have known that a continuing relationship with her would cause her emotional harm. Finally, the plaintiff alleges that Lange was negligent by violating his oath of celibacy. In substance, the plaintiff alleged a claim for clergy malpractice, a purported breach of professional standards by a priest.

So far as we have been able to determine, HN6 no jurisdiction to date has **[***11]** recognized a claim for clergy malpractice. See, Nally v. Grace Com. Church of the Valley, 47 Cal. 3d 278, 763 P.2d 948, 253 Cal. Rptr. 97 (1988), cert. denied 490 U.S. 1007, 109 S. Ct. 1644, 104 L. Ed. 2d 159 (1989); Destefano v. Grabrian, supra; Byrd v. Faber, 57 Ohio St. 3d 56, 565 N.E.2d 584 (1991); Schmidt v. Bishop, 779 F. Supp. 321 (S.D.N.Y. 1991).

The allegations of negligence against Lange with regard to failing to remove himself as parish priest and violating his vows of celibacy were not discussed in the plaintiff's brief and will not be further considered.

The third cause of action alleges that Lange had a fiduciary obligation to the plaintiff to refrain from doing anything that might harm her relationship with her husband and **[**912]** children, in light of Lange's continuing duty to exercise reasonable care. The plaintiff alleges that Lange breached this duty and that this breach caused her damage.

Several cases have allowed recovery on the theory of breach **[***12]** of fiduciary duty with regard to sexual misconduct of a member of the clergy with a parishioner. See, Destefano v. Grabrian, supra; Erickson v. Christenson, supra.

However, HN7 this cause of action was rejected by the court in Schmidt v. Bishop, supra. The Schmidt court recognized that with regard to a breach-of-fiduciary cause of action against a member of the clergy, there are many constitutional difficulties with regard to defining a standard of care. The Schmidt court reasoned:

> In analyzing and defining the scope of a fiduciary duty owed persons by their clergy, the Court would be confronted by the same constitutional difficulties encountered in articulating the generalized standard of **[*721]** care for a

> clergyman required by the law of negligence. . . . As with her negligence claim, [the plaintiff's] fiduciary duty claim is merely another way of alleging that the defendant grossly abused his pastoral role, that is, that he engaged in malpractice.

(Emphasis omitted.) Schmidt v. Bishop, 779 F. Supp. at 326. We agree with the reasoning of the **[***13]** court in the Schmidt case.

The fourth cause of action alleges a loss-of-consortium claim assigned to the plaintiff by her husband, Sylvester Schieffer. The amended petition alleges that as a result of the defendants' intentional infliction of emotional distress, negligence, and breach of fiduciary duty, the husband has lost the care and comfort of his wife and has been deprived of her comfort and companionship and incurred pain, suffering, and mental anguish, past and future. With regard to this cause of action, the demurrers filed by the defendants alleged that the plaintiff failed to state facts sufficient to state a cause of action. The demurrers also alleged an additional ground for dismissal, because this cause of action alleged the same facts and issues as the separate previous action that had been filed by the husband. Since the husband's petition in the previous action was dismissed by the trial court, the present loss-of-consortium cause of action should be dismissed as res judicata.

It appears that the trial court properly dismissed this cause of action based on both reasons alleged in the defendants' demurrers. It is clear that the husband's loss-of-consortium claim, **[***14]** assigned to the plaintiff, was essentially a claim for criminal conversation and alienation of affection. Causes of action based on criminal conversation or alienation of affection are barred by Neb. Rev. Stat. § 25-21,188 (Reissue 1989). See Speer v. Dealy, 242 Neb. 542, 495 N.W.2d 911 (1993). HN8 The statute provides: "No cause of action for (1) alienation of affections or (2) criminal conversation shall be allowed to commence after January 9, 1986." Accordingly, since there could be no recovery on a claim for the "loss of consortium" in this case under § 25-21,188, the trial court properly dismissed the fourth cause of action.

The trial court also properly dismissed the loss-of-consortium cause of action on the basis of res judicata. **[*722]** The loss-of-consortium claim was originally alleged in a separate action filed by the plaintiff's husband. After the defendants demurred to the husband's petition, the district court dismissed the petition on October 2, 1990. It does not appear from the record that the husband amended his petition or appealed that order of dismissal. However, the husband subsequently assigned the loss-of-consortium claim to **[***15]** the plaintiff, who included it as the fourth cause of action in the amended petition. The defendants' demurrers alleged that this cause of action was barred as res judicata, since the same claim had been previously litigated and dismissed by the trial court in a separate action.

> HN9 "The doctrine of res judicata is based on the principle that a final judgment on the merits by a court of competent jurisdiction is conclusive upon the parties in any later litigation involving the same cause of action. . . .
>
> "Res judicata is founded on a policy favoring termination of an action by preclusion **[**913]** or prevention of subsequent litigation on the same cause."

In re Estate of Watkins, 243 Neb. 583, 586, 501 N.W.2d 292, 294-95 (1993), quoting NC +

Hybrids v. Growers Seed Assn., 228 Neb. 306, 422 N.W.2d 542 (1988). The loss-of-consortium claim was adjudicated in the prior action. Since the husband elected not to amend or appeal the trial court's dismissal of his suit, the plaintiff is now precluded from litigating the same issue again.

In the amended petition, the plaintiff alleges that the defendant Archdiocese **[***16]** was directly negligent by hiring Lange and placing him in the position of parish priest. The amended petition also alleges that the Archdiocese was negligent in failing to investigate Lange's background by inquiring into his relations with other women while acting as parish priest in other parishes, when the Archdiocese knew or should have known that Lange had been actively involved in relationships with women in the past, in violation of his celibacy vows. Finally, the plaintiff argues that the Archdiocese was negligent in failing to supervise Lange in connection with his pastoral duties when they knew or should have known of his past sexual affairs and by failing to remove Lange as a parish priest when they had this **[*723]** knowledge.

If there is no tort liability to the plaintiff against Lange individually, it follows that the Archdiocese cannot be held liable for his conduct. Strock v. Pressnell, 38 Ohio St. 3d 207, 527 N.E.2d 1235 (1988), supports this proposition.

In Strock, a husband and wife began marriage counseling with a Lutheran minister. The minister and the wife began a consensual sexual relationship, which eventually led to **[***17]** the divorce of the husband and the wife. The husband brought an action against both the minister and the church which employed him. The suit against the minister alleged clergy malpractice, breach of fiduciary duty, fraud, misrepresentation, nondisclosure, and intentional infliction of emotional distress. The suit against the church alleged liability based on agency principles and claims of negligent supervision and negligent training of the minister.

At trial, the husband's claims against both the minister and the church were dismissed. The Ohio Supreme Court affirmed the dismissals of the husband's claims With regard to the cause of action against the church, the court held that the church could not be liable to the husband either on agency principles or for negligent supervision or training of the minister. The court stated:

> It is axiomatic that HN10 for the doctrine of respondeat superior to apply, an employee must be liable for a tort committed in the scope of his employment. Likewise, an underlying requirement in actions for negligent supervision and negligent training is that the employee is individually liable for a tort or guilty of a claimed wrong against a third person, who **[***18]** then seeks recovery against the employer. Because no action can be maintained against [the minister] in the instant case, it is obvious that any imputed actions against the church are also untenable.

(Emphasis omitted.) Strock v. Presnell, 38 Ohio St. 3d at 217, 527 N.E.2d at 1244.

The plaintiff also assigns as error the failure of the district court to allow amendment of her amended petition upon the court's sustaining of the defendants' demurrers.

Since we have determined that the plaintiff failed to state **[*724]** facts sufficient to constitute a cause of action against the defendant Lange, it is unnecessary to consider the plaintiff's contention with regard to the Archdiocese. If the plaintiff has not established a

cause of action against Lange, then the plaintiff can have no cause of action against the Archdiocese for anything that the plaintiff claimed Lange did.

The plaintiff does not tell us what additional facts could be alleged in a further attempt to state a cause of action.

HN11 Neb. Rev. Stat. § 25-854 (Reissue 1989) provides that if a demurrer is sustained, "the adverse party may amend, if the defect can be remedied by way of amendment **[***19]** . . . ." This statute, however, does not provide an absolute right of amendment, nor is it without limitation. See, LaPan v. Myers, 241 Neb. 790, 491 N.W.2d 46 (1992); Knoell v. Huff, 224 Neb. 90, 395 N.W.2d 749 **[**914]** (1986). This court has also previously held that HN12 "it is an abuse of discretion by the trial court ""to sustain a demurrer without leave to amend where there is a reasonable possibility that the defect can be cured by amendment, particularly in the case of an original complaint.' . . ."" LaPan v. Myers, 241 Neb. at 793, 491 N.W.2d at 49-50, quoting Newman Grove Creamery Co. v. Deaver, 208 Neb. 178, 302 N.W.2d 697 (1981).

The record does not support a reasonable possibility that the plaintiff could allege additional facts so that the petition would state a cause of action. The plaintiff had already amended the petition once. Accordingly, the trial court did not err in dismissing the amended petition in this case without allowing the plaintiff an opportunity to further amend her pleading.

The **[***20]** final assignment of error is the failure of the district court to specify the grounds upon which it sustained the defendants' demurrers. The plaintiff argues that although the defendants stated more than one ground for the demurrers, the trial court's order was silent regarding which of the multiple theories were sustained. This court has previously held that HN13 when a demurrer is interposed stating several grounds, the court should, when sustaining the demurrer, specify the grounds upon which the demurrer is sustained; otherwise, this court is not informed regarding wherein the complaint was deficient See, Fulk v. McLellan, 243 Neb. 143, 498 N.W.2d 90 **[*725]** (1993); St. Paul Fire & Marine Ins. Co. v. Touche Ross & Co., 234 Neb. 789, 452 N.W.2d 746 (1990).

The defendants' demurrers in this case alleged that the amended petition "does not state facts sufficient to constitute a cause of action." The demurrers also alleged an additional ground for dismissal with regard to the husband's loss-of-consortium claim. The demurrers asserted that this cause of action pled the same facts and issues that existed **[***21]** in the previous action dismissed by the district court and therefore should be dismissed based on res judicata grounds. Thus, with the exception of the loss-of-consortium claim, the only grounds asserted for the demurrer was failure to allege facts sufficient to constitute a cause of action. Therefore, the grounds on which the trial court based its demurrer as to the first three counts of the amended petition were readily apparent.

> HN14 Failure to specify the grounds for sustaining a demurrer does not affect the legal position of the parties in the case. "This court will not presume, when a trial court fails to state a reason for the dismissal of an action, that the dismissal was based on an invalid ground."

LaPan v. Myers, 241 Neb. at 793, 491 N.W.2d at 49, quoting Bert Cattle Co. v. Warren, 238 Neb. 638, 471 N.W.2d 764 (1991).

For reasons stated previously, it was clear that the husband's loss-of-consortium claim was properly dismissed on both grounds asserted in the demurrers. Accordingly, the district

court's failure to specify the ground upon which the demurrers were sustained with regard **[***22]** to this cause of action did not prejudice the plaintiff. The final assignment of error is without merit.

The judgment of the district court sustaining the demurrers to the amended petition and dismissing the amended petition is affirmed.

AFFIRMED.

WHITE, J., dissents.

DISSENTBY: LANPHIER

DISSENT:
LANPHIER, J., dissenting.

I respectfully dissent. The majority decision concludes that a person cannot claim he is wronged by actions of another to **[*726]** which he consented. This is correct logic and law by itself. However, the proposition overlooks the question of how such consent was achieved.

Should consent bar a claim where such consent may have been achieved by the actions of a fiduciary which constitute overreaching by such fiduciary? That is a question which cannot be answered as a matter of law. The answer is best left to a jury after consideration of all of the facts. The only ground listed in the demurrers which is applicable to our consideration of this matter is failure to state a cause of action. The petition states a cause of action in three respects.

[915]** INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Plaintiff's amended petition states that plaintiff began counseling with Lange and that during the course of **[***23]** counseling, "Lange made numerous sexual advances on Plaintiff which lasted for approximately a three-year period." During this time, plaintiff alleged, she was "vulnerable because of prior emotional problems." Plaintiff also alleged that in 1982, Lange succeeded in "seducing" the plaintiff. The majority determined that these allegations are insufficient to state a cause of action for intentional infliction of emotional distress. This decision is based on a determination that "what is involved in this case is conduct between consenting adults."

The petition alleges, however, that plaintiff was not a fully consenting adult." Plaintiff alleges she was vulnerable and that she was seduced by a pastoral counselor whom she trusted. In considering a demurrer, a court must assume that the pleaded facts, as distinguished from legal conclusions, are true as alleged and must give the pleading the benefit of any reasonable inference from the facts alleged, but cannot assume the existence of a fact not alleged, make factual findings to aid the pleading, or consider evidence which might be adduced at trial. Gallion v. Woytassek, ante p. 15, 244 Neb. 15, 504 N.W.2d 76 (1993); Hamilton v. City of Omaha, 243 Neb. 253, 498 N.W.2d 555 (1993). **[***24]** Assuming, as we must, that plaintiff's allegations are true, that she was vulnerable and that she was so seduced, it cannot fairly be said as a matter of law that she was a **[*727]** "consenting adult" so as to bar a claim against one who would ordinarily be classified as a fiduciary.

Plaintiff cited two cases, Destefano v. Grabrian, 763 P.2d 275 (Colo. 1988), and Erickson v. Christenson, 99 Ore. App. 104, 781 P.2d 383 (1989), in which claims against members of the clergy for intentional infliction of emotional distress were upheld. The majority, however, concludes that these cases are factually distinct.

The defendant in Destefano was alleged to have held himself out as being trained and capable of conducting marital counseling, which is not alleged in this case. Alleging that the

defendant held himself out as a trained professional marital counselor may be necessary to establish one type of a fiduciary relationship to establish a breach of a fiduciary's duties. There is no need to establish such a relationship to establish a cause of action for intentional infliction of emotional distress. The outrageousness of **[***25]** Lange's conduct should not depend upon whether or not he held himself out as one type of professional. It may be one of many factors which should be considered when determining the degree of culpability.

Likewise, the fact that the plaintiff in Erickson was only 13 years old when the conduct at issue began is just one factor to consider when determining whether the conduct in question is outrageous. Certainly, the fact that the plaintiff here is an adult does not mean that Lange's conduct could not be outrageous.

To state a cause of action for intentional infliction of emotional distress, the plaintiff must allege facts that would show (1) there has been intentional or reckless conduct, (2) the conduct was so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency and is to be regarded as atrocious and utterly intolerable in a civilized community, and (3) the conduct caused emotional distress so severe that no reasonable person should be expected to endure it. Nichols v. Busse, 243 Neb. 811, 503 N.W.2d 173 (1993); Gall v. Great Western Sugar Co., 219 Neb. 354, 363 N.W.2d 373 (1985). **[***26]**

The petition alleges facts which, If viewed as true, establish that Lange's conduct was intentional. The petition further alleges that "the conduct of the Defendants, and each of them, was outrageous and extreme In nature and intended to cause **[*728]** and did cause severe emotional distress upon Plaintiff." In her petition, plaintiff alleges that "by virtue of the conduct hereinbefore set forth, that the conduct of the Defendants . . . was outrageous and extreme in nature . . . ." The petition set forth the following conduct:

> Starting in 1979, Plaintiff began counseling with Lange, concerning family matters having full confidence that he was her **[**916]** parish priest and spiritual leader. During this time, Plaintiff was vulnerable because of prior emotional problems. Commencing in about 1979, while the plaintiff was vulnerable, and during the course of pastoral counseling, Lange made numerous sexual advances on Plaintiff which lasted for approximately a three-year period. In 1982, Lange succeeded in seducing the Plaintiff, and a sexual relationship developed between Lange and Plaintiff that lasted until approximately June of 1989.
>
> . . . At all times herein, Defendants, and each of them, were **[***27]** charged with the obligation to administer pastoral and spiritual advice and care to the Plaintiff and her family, and as such, held a position of trust and responsibility to Plaintiff and her family.

Plaintiff alleges she "incurred severe and permanent emotional injury and was damaged as follows: A. Plaintiff incurred medical expenses of $ 2,500.00 and will incur medical expenses in the future. B. Plaintiff has lost her faith in the Catholic Church and God and incurred emotional pain, suffering and mental anguish, past and future."

The petition alleges sufficient facts to state a cause of action against defendant Lange for intentional infliction of emotional distress. The issue of consent would be an affirmative defense.

NEGLIGENCE

Plaintiff's petition also states a cause of action against the Archdiocese for negligence.

Nebraska has recognized that an employer is subject to liability for harm to third persons resulting from the employer's negligent selection of an improper employee. Greening v. School Dist. of Millard, 223 Neb. 729, 393 N.W.2d 51 (1986). To state a cause of action for negligence, one must plead facts **[*729]** from which it can **[***28]** be inferred that the defendant owed a duty to protect the plaintiff from injury, that the defendant failed to discharge that duty, and that damage proximately resulted from such failure. Christianson v. Educational Serv. Unit No. 16, 243 Neb. 553, 501 N.W.2d 281 (1993).

In Destefano v. Grabrian, 763 P.2d 275, 288 (Colo. 1988), the following allegations were held to state a viable claim for negligent supervision:

> "Defendant Diocese of Colorado Springs knew or should have known that Defendant Grabrian was engaging in conduct which was outrageous, negligent, and a breach of his fiduciary duty, and Defendant Diocese owed a duty of supervision of said Defendant Grabrian to the public and breached said duty, causing the injuries and damages set forth above."

With respect to this cause of action, plaintiff alleged the following:

A. Defendant Archdiocese was negligent as follows:

> (1) Hiring Defendant Lange in the position of parish priest in Plaintiff's parish.
>
> (2) Failing to properly investigate Defendant Lange's background by inquiring into his relations with other women while he was acting as a parish priest **[***29]** in other parishes when they [sic] knew, or should have known, that he had been actively Involved with relationships with women in violation of his vows of celibacy on more than one occasion.
>
> (3) Failing to train Lange to avoid sexual contact with parishioners.
>
> (4) Failing to supervise Lange in connection with his pastoral duties with respect to his relations with female parishioners when they [sic] knew, or should have known, that he had sexual affairs in the past.
>
> (5) Failing to remove Lange from a position of pastoral responsibility when the Defendant knew, or should have known, of Lange's sexual involvement with the Plaintiff.

From these allegations it can reasonably be inferred that the Archdiocese owed a duty to plaintiff, that it failed to discharge that duty, and that plaintiff's severe emotional distress **[*730]** proximately resulted from that failure. Plaintiff's petition therefore states a cause of action for negligence against the Archdiocese. The demurrer, therefore, should have been overruled in this respect also.

[917]** BREACH OF FIDUCIARY DUTY

The majority also rejected the third cause of action claimed by plaintiff, breach of fiduciary duty. In Destefano v. Grabrian, supra, **[***30]** the Supreme Court of Colorado held a cause of action for breach of fiduciary duty was stated where a woman alleged a member of the clergy had sexual intercourse with her while he was providing her with marriage counseling. The fiduciary duty, the court said, was created by his undertaking to counsel the woman. It was not created by the fact that he was a clergy member. The court stated:

> If the alleged conduct of Grabrian [the clergy member] was dictated by his sincerely held religious beliefs or was consistent with the practice of his religion, we would have to resolve a difficult first amendment issue. This, however, is not the case. It has not been asserted that Grabrian's conduct falls within the practices or beliefs of the Catholic church.

763 P.2d at 284. Likewise, here there has been no assertion that Lange's conduct falls within the practices or beliefs of the Catholic Church. Thus, there is no difficult First Amendment issue to confront.

Lange's duty to plaintiff, given the nature of the counseling relationship, was to help her with family matters. See Destefano v. Grabrian, supra. Seduction of plaintiff, **[***31]** if proved, would be an obvious breach of that duty. A person standing in a fiduciary relationship with another is subject to liability for harm resulting from a breach of the duty imposed by the relationship. Restatement (Second) of Torts § 874 (1979). Lange could, if the allegations contained in the petition are proven, be subject to liability for any harm he caused.

For the reasons cited, I would reverse the judgment of the district court.

SHANAHAN, J., joins in this dissent.

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EXHIBIT 7

18 C.J.S. Corporations § 12

Corpus Juris Secundum
Database updated June 2003

Corporations

I. In General

Topic Contents List of Topics

§ 12. "ALTER EGO" DOCTRINE; INSTRUMENTALITY OR AGENCY GENERALLY

The corporate entity may be disregarded where the corporation is found to be the alter ego of its stockholders.

Research References

West's Key Number Digest, Corporations ⚖1.4(4)

Under the "alter ego" doctrine, the separate corporate entity may be disregarded and personal liability imposed upon the shareholders, [FN56] where a corporation is found to be the alter ego of its shareholders, [FN57] that is, where the community of interest between the corporation and the shareholders is so great that they should be considered as one and the same. [FN58] The doctrine is merely a means of piercing the corporate veil [FN59] and imposing individual liability where none would otherwise exist. [FN60] In deciding whether to apply the alter ego theory, the corporate entity must be upheld unless specific, unusual circumstances call for piercing of the corporate veil. [FN61] Similarly, where a corporation operates as a mere instrumentality or agent of its owner [FN62] or a mere shell dominated and controlled by its owners [FN63] the corporate form may be disregarded. Some courts hold that even if a plaintiff shows that a dominator of the corporation had complete control over the corporation so that the corporation had no separate mind, will, or existence of its own, the corporate veil may not be pierced in the absence of a showing that this control was used to commit a wrong, fraud, or breach of a legal duty, or a dishonest and unjust act in contravention of the plaintiff's legal rights and that the control and breach of duty proximately caused the injury complained of. [FN63.5]
The alter ego doctrine is based in equity [FN64] and is remedial in nature. [FN65] It is designed to prevent persons or entities from escaping responsibility for their acts or liabilities by hiding behind the corporate shield, [FN66] and it is not a matter of punishment for the sloppy handling of intracorporate affairs which brings about an alter ego finding. [FN67]
The doctrine will not be applied so as to prejudice the rights of an innocent third party who has dealt with the corporation as such, [FN68] and it is not applied to eliminate consequences of corporate operations, but to avoid inequitable results. [FN69] A finding of bad faith is not a prerequisite to application of the alter ego doctrine. [FN70]
The alter ego doctrine applies when the facts are such that adherence to the corporate fiction of separate entity would, under the circumstances, sanction fraud, [FN71] but fraud is not essential, [FN72] since the courts will also disregard the corporate fiction when its retention would produce injustice [FN73] or inequitable consequences. [FN74]
Individual liaiblity under the doctrine of alter ego arises from fraud or injustice perpetrated not on the corporation but on third person's dealing with the corporation. [FN75]

Factors considered.

The test for determining whether a corporation is simply the alter ego of its owners is a practical one, [FN76] based largely on the particular factual circumstances of the individual case. [FN77]
There must exist specific unusual circumstances for the alter ego doctrine to apply. [FN78]
Factors which will be considered in determining whether a corporation's existence will be disregarded as being the mere alter ego of its controlling owner include whether the corporation is

undercapitalized, [FN79] whether there is commingling of funds of the corporation and the individual, [FN80] whether the dominant shareholder siphoned corporate funds, [FN81] whether individual obligations are paid by the corporation, [FN82] whether separate books are kept, [FN83] whether corporate assets are treated as the individual's own, [FN84] and whether the corporation was insolvent at the time of the transaction. [FN85]
Failure to hold regular shareholder and director meetings may also be a factor in the determination. [FN85.5]
The corporation's failure to conduct its business on a corporate footing, thereby disregarding the corporate entity to such an extent that the corporation ceases to be distinguishable from its shareholders, is another factor. [FN85.10]
In addition, other factors are considered, such as whether the corporation failed to pay dividends, [FN86] whether other officers and directors were nonfunctioning, [FN87] whether the corporation is used to promote fraud or illegality, [FN88] whether corporate formalities are followed, [FN89] and whether the corporation is merely a sham [FN90] or facade, [FN91] for individual dealings.
Such factors, however, are not conclusive [FN92] and disregarding of the corporate fiction is not justified on the basis of any one of the factors for establishing the alter ego basis, [FN93] or on the basis of the failure of any one of the corporate formalities. [FN94]
Whether the federal court is to equitably exercise the alter ego doctrine as to a particular entity must be determined in accordance with the law of the forum state. [FN94.5]

CUMULATIVE SUPPLEMENT:

Cases:

Piercing the corporate veil between a signatory and a nonsignatory party may bind the nonsignatory party to an arbitration agreement of its alter ego. American Fuel Corp. v. Utah Energy Development Co., Inc., 122 F.3d 130 (2d Cir. 1997).
Piercing the corporate veil may be based on the doctrine of equitable ownership, under which an individual who exercises sufficient control over the corporation may be deemed the "equitable owner," even if the individual is not a shareholder of the corporation. Freeman v. Complex Computing Co., Inc., 119 F.3d 1044 (2d Cir. 1997).
Issue of reverse piercing of corporate veil concerning seizure of assets of alter ego is undecided in Louisiana. Century Hotels v. U.S., 952 F.2d 107 (5th Cir. 1992).
Wilshire Credit Corp. v. Karlin, 988 F. Supp. 570 (D. Md. 1997).
In Second Circuit, district court can, in the exercise of its discretion and in the appropriate circumstances, apply disentitlement doctrine in civil forfeiture proceeding to claim of corporation alleged to be the alter ego of a fugitive; fundamental consideration in determining whether to exercise discretion and apply the doctrine in such situation is extent of control over the corporation exercised by the fugitive or the extent of independent dominion and control the corporation has over its assets. U.S. v. Funds Held in Name or for Ben. of Wetterer, 899 F. Supp. 1013 (E.D. N.Y. 1995).
Kissun v. Humana, Inc., 267 Ga. 419, 479 S.E.2d 751 (1997).
Smith v. Hawks, 182 Ga. App. 379, 355 S.E.2d 669 (1987).
Haywood v. Louisiana Sugar Cane Products, 692 So. 2d 524 (La. Ct. App. 3d Cir. 1997).
Pine Tree Associates v. Doctors' Associates, Inc., 654 So. 2d 735 (La. Ct. App. 1st Cir. 1995).
Although alter ego doctrine is typically employed to pierce corporate veil of controlled entity to reach assets of controlling party, doctrine can also be applied in reverse to reach assets of controlled entity; it is particularly appropriate to apply alter ego doctrine in reverse when controlling party uses controlled entity to hide assets or secretly to conduct business to avoid preexisting liability of controlling party. Olen v. Phelps, 200 Wis. 2d 155, 546 N.W.2d 176 (Ct. App. 1996).

[FN56]. U.S.--Burge v. Frey, D.C.Kan., 545 F.Supp. 1160.
Colo.--E.B. Roberts Const. Co. v. Concrete Contractors, Inc., 704 P.2d 859.
Kan.--Sampson v. Hunt, 665 P.2d 743, 233 Kan. 572.
N.Y.--Herman v. Siegmund, 2 Dept., 476 N.Y.S.2d 590, 102 A.D.2d 810.
Tex.--Griggs v. Capitol Mach. Works, Inc., App. 3 Dist., 690 S.W.2d 287, writ refused no reversible error 701 S.W.2d 238.

Distinct theory

Doctrine of alter ego is separate and distinct theory and is not to be confused with other reasons for disregarding corporate fiction.
Tex.--Hideca Petroleum Corp. v. Tampimex Oil Intern., Ltd., App.--Hous.(1 Dist.), 740 S.W.2d 838.

[FN57]. U.S.--Martin v. Pilot Industries, C.A.N.C., 632 F.2d 271.
Federal Deposit Ins. Corp. v. U.S., N.D.Ga., 654 F.Supp. 794.
Matter of Flanzbaum, Bkrtcy.Fla., 10 B.R. 420.
Ala.--Forester & Jerue, Inc. v. Daniels, 409 So.2d 830.
Ariz.--Honeywell, Inc. v. Arnold Const. Co., Inc., App., 654 P.2d 301, 134 Ariz. 153.
Colo.--Gude v. City of Lakewood, 636 P.2d 691.
D.C.--Pardo v. Wilson Line of Washington, Inc., 414 F.2d 1145, 134 U.S.App.D.C. 249.
Ga.--Smith v. Hawks, 355 S.E.2d 669, 182 Ga.App. 379, certiorari denied.
Ill.--McCracken v. Olson Companies, Inc., 1 Dist., 500 N.E.2d 487, 102 Ill.Dec. 594, 149 Ill.App.3d 104.
Ind.--Merchants Nat. Bank & Trust Co. of Indianapolis v. H.L.C. Enterprises, Inc., App. 1 Dist., 441 N.E.2d 509.
La.--Harris v. Best of America Inc., App. 1 Cir., 466 So.2d 1309, writ denied 470 So.2d 121.

[FN58]. U.S.--Loving Saviour Church v. U.S., D.C.S.D., 556 F.Supp. 688, affirmed 728 F.2d 1085.
Ariz.--Standage v. Standage, App., 711 P.2d 612, 147 Ariz. 473.
Ill.--Froehlich v. J.R. Froehlich Mfg. Co., 1 Dist., 416 N.E.2d 1134, 48 Ill.Dec. 612, 93 Ill.App.3d 179.

La.--Entech Systems Corp. v. Gaffney, App. 4 Cir., 466 So.2d 788.
Mich.--Kline v. Kline, 305 N.W.2d 297, 104 Mich.App. 700.
Neb.--J.L. Brock Builders, Inc. v. Dahlbeck, 391 N.W.2d 110, 223 Neb. 493.
Pa.--Cerami v. Dignazio, 424 A.2d 881, 283 Pa.Super. 424.
Tex.--Castleberry v. Branscum, 721 S.W.2d 270.

[FN59]. U.S.--North Pacific S.S. Co. v. Pyramid Ventures Group, Inc., D.C.La., 572 F.Supp. 1436, affirmed 760 F.2d 267.
Tex.--Weaver v. State, App. 1 Dist., 652 S.W.2d 420.

[FN60]. Tex.--Equinox Enterprises, Inc. v. Associated Media Inc., App.- Dallas, 730 S.W.2d 872.

[FN61]. U.S.--Reverse Vending Associates v. Tomra Systems US, Inc., E.D.Pa., 655 F.Supp. 1122.

[FN62]. U.S.--In re Black Ranches, Inc., C.A.Neb., 362 F.2d 19, certiorari denied Black v. Brando, 87 S.Ct. 596, 385 U.S. 990, 17 L.Ed.2d 450, and 87 S.Ct. 598, 385 U.S. 990, 17 L.Ed.2d 451.
Shearson Hayden Stone, Inc. v. Lumber Merchants, Inc., D.C.Fla., 500 F.Supp. 491.
In re Washington Medical Center, Inc., Bkrtcy.D.C., 10 B.R. 616.
Ala.--Barrett v. Odom, May and DeBuys, 453 So.2d 729.
Mich.--Kline v. Kline, 305 N.W.2d 297, 104 Mich.App. 700.
Or.--Amfac Foods, Inc. v. International Systems & Controls Corp., 654 P.2d 1092, 294 Or. 94.
W.Va.--Southern States Co-op., Inc. v. Dailey, 280 S.E.2d 821, 167 W.Va. 920.

[FN63]. U.S.--Mikropul Corp. v. Desimone & Chaplin-Airtech, Inc., D.C.N.Y., 599 F.Supp. 940.
Mo.--Krajcovic v. Krajcovic, App., 693 S.W.2d 884.

Business conduit of dominating personality

Ill.--Central Nat. Bank in Chicago v. Fleetwood Realty Corp., 1 Dist., 441 N.E.2d 1244, 65 Ill.Dec. 730, 110 Ill.App.3d 169.

[FN63.5]. U.S.--Freeman v. Complex Computing Co., Inc., 119 F.3d 1044 (2d Cir. 1997), on remand to, 1997 WL 634181 (S.D.N.Y. 1997).

[FN64]. U.S.--McKinney v. Gannett Co., Inc., C.A.10(N.M.), 817 F.2d 659-- Carpenters Health and

Welfare Fund of Philadelphia and Vicinity by Gray v. Kenneth R. Ambrose, Inc., C.A.Pa., 727 F.2d 279--Bucyrus-Erie Co. v. General Products Corp., C.A.Ohio, 643 F.2d 413.
Shearson Hayden Stone, Inc. v. Lumber Merchants, Inc., D.C.Fla., 500 F.Supp. 491.
Neb.--Brown v. Alron, Inc., 388 N.W.2d 67, 223 Neb. 1.
N.M.--Southern Union Exploration Co. v. Wynn Exploration Co., Inc., App., 624 P.2d 536, 95 N.M. 594, certiorari denied Wynn Oil Co. v. Southern Union Exploration Co., 624 P.2d 535, 95 N.M. 593, certiorari denied 102 S.Ct. 1276, 455 U.S. 920, 71 L.Ed.2d 461.
N.C.--Glenn v. Wagner, 329 S.E.2d 326, 313 N.C. 450.

[FN65]. U.S.--S.E.C. v. Elmas Trading Corp., D.C.Nev., 620 F.Supp. 231, affirmed 805 F.2d 1039.
Tex.--Weaver v. State, App. 1 Dist., 652 S.W.2d 420.

[FN66]. U.S.--Alkire v. N.L.R.B., C.A.4, 716 F.2d 1014.
Ala.--McKissick v. Auto-Owners Ins. Co., 429 So.2d 1030.
Alaska--Elliott v. Brown, 569 P.2d 1323.
Mont.--Phillips v. Montana Ed. Ass'n, 610 P.2d 154, 187 Mont. 419.
N.C.--Glenn v. Wagner, 329 S.E.2d 326, 313 N.C. 450.

[FN67]. **Sloppiness affecting creditors**
Court sees sloppiness as inequitably rendering creditors prone to overlook a corporate formality to their eventual detriment.
U.S.--Matter of Twin Lakes Village, Inc., Bkrtcy.Nev., 2 B.R. 532.

[FN68]. U.S.--S.E.C. v. Elmas Trading Corp., D.C.Nev., 620 F.Supp. 231, affirmed 805 F.2d 1039.
Cal.--U.S. Fire Ins. Co. v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 2 Dist., 165 Cal.Rptr. 726, 107 C.A.3d 456.

[FN69]. U.S.--S.E.C. v. Elmas Trading Corp., D.C.Nev., 620 F.Supp. 231, affirmed 805 F.2d 1039.

[FN70]. U.S.--RRX Industries, Inc. v. Lab-Con, Inc., C.A.9(Cal.), 772 F.2d 543 (under California law).

[FN71]. Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.
Utah--Colman v. Colman, App., 743 P.2d 782.

Particular creditor

Doctrine of alter ego does not rest upon particular creditor's dealings with or reliance on control entity, nor does it require showing of fraud on particular creditor.
U.S.--Matter of S.I. Acquisition, Inc., C.A.5(Tex.), 817 F.2d 1142.

[FN72]. U.S.--Bucyrus-Erie Co. v. General Products Corp., C.A.Ohio, 643 F.2d 413.

[FN73]. U.S.--Matter of S.I. Acquisition, Inc., C.A.5(Tex.), 817 F.2d 1142--Bucyrus-Erie Co. v. General Products Corp., C.A.Ohio, 643 F.2d 413.
Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.
Tex.--Robbins v. Robbins, App.-Eastland, 727 S.W.2d 743, error refused no reversible error.
Utah--Colman v. Colman, App., 743 P.2d 782.

[FN74]. U.S.--Bucyrus-Erie Co. v. General Products Corp., C.A.Ohio, 643 F.2d 413.
Utah--Colman v. Colman, App., 743 P.2d 782.

[FN75]. Kan.--Sampson v. Hunt, 665 P.2d 743, 233 Kan. 572.

[FN76]. D.C.--Valley Finance Inc. v. U.S., 629 F.2d 162, 203 U.S.App.D.C. 128, certiorari denied Pacific Development, Inc. v. U.S., 101 S.Ct. 3007, 451 U.S. 1018, 69 L.Ed.2d 389.

[FN77]. U.S.--Bucyrus-Erie Co. v. General Products Corp., C.A.Ohio, 643 F.2d 413.

Najran Co. for General Contracting and Trading v. Fleetwood Enterprises, Inc., S.D.Ga., 659 F.Supp. 1081--Wren Distributors, Inc. v. Phone-Mate, Inc., D.C.N.Y., 600 F.Supp. 1576.
Ark.--Humphries v. Bray, App., 611 S.W.2d 791, 271 Ark. 962.
D.C.--Valley Finance, Inc. v. U.S., 629 F.2d 162, 203 U.S.App.D.C. 128, certiorari denied Pacific Development, Inc. v. U.S., 101 S.Ct. 3007, 451 U.S. 1018, 69 L.Ed.2d 389.
Tex.--Rose v. Intercontinental Bank, N.A., App. 1 Dist., 705 S.W.2d 752, error refused no reversible error.

Degree and time of control

(1) Merely influencing and governing corporation does not necessarily demonstrate degree of control necessary for application of alter ego doctrine.
Nev.--Wyatt v. Bowers, 747 P.2d 881, 103 Nev. 593.
(2) For alter-ego doctrine to be satisfied, it must be shown that control was exercised at time the acts complained of transpired.
N.C.--J.M. Thompson Co. v. Doral Mfg. Co., Inc., 324 S.E.2d 909, 72 N.C.App. 419, review denied 330 S.E.2d 611, 313 N.C. 602.

[FN78]. U.S.--Galgay v. Gangloff, M.D.Pa., 677 F.Supp. 295.

[FN79]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.
Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.
Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.

[FN80]. Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.

Finances kept separate from individual finances

Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.

[FN81]. Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.
Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.

[FN82]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.

[FN83]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.

Corporate records absent

Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.

[FN84]. Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.

[FN85]. Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.

[FN85.5]. La.--Pine Tree Associates v. Doctors' Associates, Inc., 654 So.2d 735, 94 1193 (La.App. 1 Cir. 4/7/95), reh. den., writ den. 661 So.2d 467, 95-1608 (La. 10/6/95).
Haywood v. Louisiana Sugar Cane Products, 692 So. 2d 524 (La. Ct. App. 3d Cir. 1997).

[FN85.10]. La.--Haywood v. Louisiana Sugar Cane Products, 692 So. 2d 524 (La. Ct. App. 3d Cir. 1997).

[FN86]. Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.

[FN87]. Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.

[FN88]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.

[FN89]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.
Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.
Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 103 Nev. 598.

[FN90]. Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.

[FN91]. U.S.--Matter of Twin Lakes Village, Inc., Bkrtcy.Nev., 2 B.R. 532.
Iowa--Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868.
Minn.--Almac, Inc. v. JRH Development, Inc., App., 391 N.W.2d 919, review denied.
Tex.--State v. Nevitt, Civ.App. 5 Dist., 595 S.W.2d 140, error refused no reversible error.

[FN92]. Nev.--Polaris Indus. Corp. v. Kaplan, 747 P.2d 884, 102 Nev. 598.

[FN93]. Tex.--Castleberry v. Branscum, 721 S.W.2d 270.

[FN94]. Tex.--Castleberry v. Branscum, 721 S.W.2d 270.

[FN94.5]. U.S.--Wilshire Credit Corp. v. Karlin, 988 F.Supp. 570 (D. Md. 1997).

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EXHIBIT 8

V. Persons Entitled to Sue and Persons Liable
A. In General

Topic Contents List of Topics

§ 38. --RATIFICATION

Generally, the liability of one who has not actively participated in the commission of a tort may be established where the wrongful act is ratified by him.

Research References

West's Key Number Digest, Torts ⇐21

Generally, the liability of one who has not actively participated may be established where the wrongful act is ratified by him, [FN11] as where, with knowledge of a tort done for his benefit, he approves and avails himself of its fruits. [FN12]
Mere acquiescence in the commission of a tort after the act does not make the person thus acquiescing a party to the wrong or liable therefor as a joint tort-feasor. [FN13] In order to be liable he must not only have assented to the wrong, but the act must have been done for his benefit [FN14] or have been of a nature to benefit him. [FN15]
However, it has been held that mere approval of another's tort does not charge the one approving with liability even though the tort was for the latter's benefit. [FN16] The mere fact that a party innocently receives a benefit is not conclusive on the question of his liability. [FN17] The ratification must be founded on full knowledge of the facts constituting the wrong which has been committed or with a purpose on the part of the principal to take the consequences on himself without inquiry. [FN18]
Ratification will not be established from mere knowledge, approval, or satisfaction, [FN19] although where an act is simply in excess of authority, mere approval of the wrong may be sufficient. [FN20]

[FN11]. Ill.--Page v. Keeves, 199 N.E. 131, 362 Ill. 64.
N.H.--Vidal v. Town of Errol, 162 A. 232, 86 N.H. 1.
N.M.--New Mexico Products Co. v. New Mexico Power Co., 77 P.2d 634, 42 N.M. 311.

[FN12]. Colo.--Campbell v. Louisville Coal Min. Co., 89 P. 767, 39 Colo. 379.
Ill.--Page v. Keeves, 199 N.E. 131, 362 Ill. 64.
Ky.--Nisbet v. Lofton, 277 S.W. 828, 211 Ky. 487.
Vt.--Dansro v. Scribner, 187 A. 803, 108 Vt. 408.

[FN13]. Mo.--Cooper v. Johnson, 81 Mo. 483.

[FN14]. Idaho--McKean v. Idaho Irr. Co., 227 P. 1057, 39 Idaho 360.

[FN15]. Idaho--McKean v. Idaho Irr. Co., 227 P. 1057, 39 Idaho 360.

[FN16]. N.H.--Vidal v. Town of Errol, 162 A. 232, 86 N.H. 1.

[FN17]. Idaho--McKean v. Idaho Irr. Co., 227 P. 1057, 39 Idaho 360.

[FN18]. Iowa--Brown v. City of Webster City, 88 N.W. 1070, 115 Iowa 511.

[FN19]. Okl.--Frick-Reid Supply Co. v. Hunter, 148 P. 83, 47 Okl. 151.

[FN20]. Iowa--Brown v. City of Webster City, 88 N.W. 1070, 115 Iowa 511.

Copyright West, a Thomson business

CJS TORTS § 38

END OF DOCUMENT

Copr. (C) West 2003 No Claim to Orig. U.S. Govt. Works

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
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11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION

HEARING OF UNDERLYING MOTION
DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

I. ORDER

Having considered the Church Defendants' Ex Parte Application to Extend Page Limit for Memorandum of Points and Authorities in Support of Defendants' Demurrers, and finding good cause therefor,

IT IS HEREBY ORDERED THAT the Church Defendants' request to file a memorandum of Points and Authorities in Support of their Demurrers of up to 23 pages is GRANTED.

DATED: _____ By: _____

Judge of the Superior Court

4101661.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING PAGE LIMIT EXTENSION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX *(BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.*

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS

HEARING OF UNDERLYING MOTION
DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

I. APPLICATION

Defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, NAPA CONGREGATION OF JEHOVAH'S WITNESSES, and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES (hereinafter "Church Defendants")[1] hereby specially appear to

[1] This appearance is not made on behalf of Watchtower Enterprises L.L.C., Watchtower Foundation, Inc., or Watchtower Associates, Ltd., also named as Defendants in this matter. Edward Villegas, the alleged abuser, is unnamed as a Defendant because he died on September 16, 1995.

apply pursuant to California Rules of Court, Rule 313(d) to the Court *ex parte* for an Order extending the page limit for their Memorandum of Points and Authorities in Support of their Demurrers to Plaintiffs' Amended Complaint. Counsel for the Church Defendants has advised Plaintiffs' counsel in writing that this *ex parte* request will be made to this court. Counsel for the Church Defendants requests permission to file a Memorandum of Points and Authorities in support of their Demurrers to Plaintiff's Complaint of up to 23 pages.

This application will be based upon the contents of this application, the Memorandum of Points and Authorities filed herewith, the declaration of Robert J. Schnack, and other papers filed in the above-entitled action. Pursuant to the practice of this Court, no hearing has been set for this *ex parte* application. Should the Court subsequently schedule a hearing on this application, the Church Defendants will provide opposing counsel with the earliest possible notice of such hearing.

DATED: September 15, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4101654.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

EX PARTE APPLICATION TO EXTEND PAGE LIMIT FOR MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' DEMURRERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT

HEARING OF UNDERLYING MOTION
DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

I. INTRODUCTION

The "Church Defendants" identified in the concurrently filed *ex parte* application hereby specially appear to request permission pursuant to California Rules of Court, Rule 313(d) to file a Memorandum of Points and Authorities in support of their Demurrers to Plaintiffs' Amended Complaint of up to 23 pages in length. Written notice of this application was made to Plaintiffs' counsel on September 11, 2003 via facsimile. (Declaration of Robert J. Schnack, Exhibit A.)

II. REASONS NECESSITATING PAGE LIMIT EXTENSION

"A party may apply to the court *ex parte* but with written notice of the application to the other parties, at least 24 hours before the memorandum is due, for permission to file a longer

memorandum. The application shall state the reasons why the argument cannot be made within the stated limit." California Rules of Court, Rule 313(d).

Defendants require up to 23 pages to adequately address all of the necessary elements and legal authorities related to their Demurrers to Plaintiffs' Amended Complaint. The Demurrers to Plaintiffs' Amended Complaint involve, among other things, complex constitutional law issues involving the First Amendment and its effect on the entanglement between courts and religion. Such issues dealing with church and state necessarily require an extensive discussion of the applicable legal authorities and case law.

Plaintiffs' Amended Complaint is in essence a claim for clergy malpractice – i.e., that the Church Defendants failed to provide adequate advice and protection when counseling Plaintiffs and their families. Based on these claims, it is clear that the Church Defendants' Demurrers must discuss the extensive legal authorities that make clergy malpractice claims constitutionally impermissible. The issues of impermissible state entanglement with religion and of church autonomy are at the heart of why such clergy malpractice claims are impermissible.

Nomenclature aside, Plaintiffs' allegations for common law negligence, gross negligence, breach of fiduciary duty, and fraud are little more than clergy malpractice claims in disguise. These claims, therefore, also require a discussion of legal matters pertaining to the entanglement between church and state, including First Amendment issues.

Moreover, Plaintiffs' Amended Complaint contains 12 separately alleged causes of action with several pages of alleged factual history. In addition to the complex constitutional and First Amendment issues identified above, Plaintiffs' Amended Complaint also involves legal issues ranging from the application of California corporations law to the application of claims alleged for civil liability based on the California Penal Code.

The Church Defendants are demurring to all 12 separately alleged causes of action contained in Plaintiffs' Amended Complaint. Based on the allegations pled in the Amended Complaint, the Church Defendants contend that Plaintiffs' claims have no legal merit and should be dismissed. As such, the Church Defendants' Demurrers will conserve judicial

resources as well as those of the parties. The Church Defendants, however, require up to 23 pages to adequately address all of Plaintiffs' causes of action.

III. CONCLUSION

For each of the forgoing reasons, the Church Defendants respectfully request that they be permitted to file a Memorandum of Points and Authorities in support of their Demurrers of up to 23 pages in length.

DATED: September 15, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

4101657.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

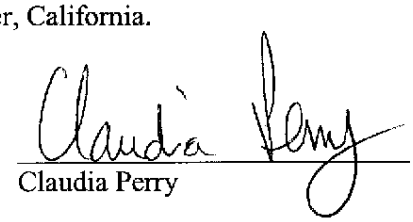
____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By 
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.

FILED
SEP 18 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT

HEARING OF UNDERLYING MOTION
DATE: October 23, 2003
TIME: 8:30 a.m.
DEPT: B

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in this action. I make the following statements from personal knowledge.

2. On September 11, 2003, I sent via facsimile a written notice to Plaintiffs' counsel, Rudy Nolen and William Brelsford, that Defendants would file with the Court this *ex parte* application for an order to extend page limits pursuant to California Rules of Court, Rule 313(d).

3. Attached as Exhibit A is a true and correct copy of my September 11, 2003 letter to Plaintiffs' counsel.

4. I have personally reviewed and evaluated Plaintiffs' 20+ page Amended Complaint, which contains 12 separately alleged causes of action.

5. Plaintiffs' Amended Complaint and the 12 causes of action alleged therein raise complex constitutional and legal issues including First Amendment issues, that are all subject to demurrer, as discussed in the concurrently filed memorandum of points and authorities in support of the *ex parte* application.

6. The Church Defendants reasonably require up to 23 pages in order to adequately address and discuss the applicable legal authorities for the Church Defendants' demurrers against all 12 of Plaintiffs' causes of action.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct.

Executed this 15th day of September, 2003, at Gold River, California.

By _____
Robert J. Schnack

4101659.1

*****

EXHIBIT A

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 858-2263
E-mail: bob.schnack@bullivant.com

September 11, 2003

Via Facsimile

Rudy Nolen
William Brelsford
Nolen Saul Brelsford
350 University Ave., Ste. 280
Sacramento, CA 95825

Re: *Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.*
Napa County Superior Court Case No. 26-22191

Dear Counsel:

Please be advised that, pursuant to California Rules of Court, Rule 313(d), Defendants Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses, and Oak Knoll Congregation of Jehovah's witnesses will be filing an *ex parte* application for an order extending the page limit for the memorandum of points and authorities in support of their Demurrers. Defendants' *ex parte* application will be filed along with the Demurrers on September 15, 2003, or later.

Those defendants expressly reserve any and all rights with respect to challenging jurisdiction in this matter. Pursuant to California Code of Civil Procedure Section 418.11, the filing of the enclosed *ex parte* application "is not a general appearance and does not constitute a waiver of the right to make a motion under Section 418.10."

Very truly yours,

Robert J. Schnack

RJS:cp
4101668.1

EXHIBIT A

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 15, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF EX PARTE APPLICATION TO EXTEND PAGE LIMIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 15, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Kenneth Fibich, Esq., SBN 06952600
Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON, LEEBRON &
GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 16 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	CASE NO: 26-22191 **NOTICE OF MOTION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

TO EACH PARTY AND THE ATTORNEY OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED that on October 15, 2003 at 8:30 a.m. in Department B of the above-entitled court, located at 825 Brown Street, Napa, California Plaintiffs CHARISSA W. and NICOLE D. will move the court for an order approving Hartley

Hampton's Application to Appear as Counsel Pro Hac Vice. Said motion will be based on this Notice, and the Application to Appear as Counsel Pro Hac Vice of Hartley Hampton.

Dated: 9/9/03

NOLEN SAUL BRELSFORD

By _____
William L. Brelsford
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On September 12, 2003, I caused the within **NOTICE OF MOTION TO APPEAR AS COUNSEL PRO HAC VICE,** the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On September 12, 2003 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

___ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

___ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

State Bar of California
180 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2003, at Sacramento, California.

Deanna Czarnecki

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Kenneth Fibich, Esq., SBN 06952600
Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON, LEEBRON &
GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
SEP 16 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	CASE NO: 26-22191 **APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

I, Kenneth T. Fibich, Esq., Petitioner, do hereby state as follows:

1. I have been retained by plaintiffs Charissa W. and Nicole D. to represent them in the above-entitled action. I will associate with Rudy Nolen, Jonathan Saul, and William L. Brelsford in the representation of the plaintiffs.

2. Attorneys Rudy Nolen, Jonathan Saul, and William L. Brelsford of the law firm of Nolen Saul Brelsford are members of good standing of the State Bar of California and are licensed to practice in all courts of the State of California. Their office is located at 350 University Avenue, Suite 280, Sacramento, California 95825.

3. I am not a California resident, nor am I regularly engaged in practice or other business in California.

4. My residence address is 3601 Albans, Houston, Harris County, Texas 77005, (713) 666-3030.

5. My office address is Fibich, Hampton, Leebron & Garth, L.L.P. with offices at Five Houston Center, 1401 McKinney, Suite 1800, Houston, Harris County, Texas 77010, (713) 751-0025.

6. The courts to which I am admitted to practice and the dates of such admissions are as follows:

Court	Date Admitted
United States District Court, Southern District	1976
United States District Court, Western District	1976
United States Supreme Court	1978
United States Court of Appeals, Fifth Circuit	1982

7. Since April 29, 1974, I have been, and am presently, a member of good standing of the bar of the highest court of the State of Texas where I regularly practice law.

8. I am not currently suspended or disbarred in any court.

9. I am not currently subject to any disciplinary proceedings by any organization with authority at law.

10. I have never received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law.

11. I have never had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked.

12. I, either by resignation, withdrawal, or otherwise, have never terminated or attempted to terminate my office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

13. In the preceding two years to the present, I have previously filed or am currently filing applications to appear as counsel *pro hac vice* in the State of California as follows:

Date	Title of Court	Case	Result
8/03	Tehama Co. Superior Court	*Guiterrez v. Watchtower, et al.*	Pending
8/03	Napa Co. Superior Court	*Charissa W. et al v. Watchtower, et al.*	Pending
8/03	Yolo Co. Superior Court	*West., et al v. Watchtower, et al.*	Pending

14. I and/or any member of my firm with which I am associated has/have filed application(s) to appear as counsel under Supreme Court Rule 42 during the past three (3) years in the following matters:

Date	Title of Court	Case	Result
10/31/02	Circuit Court of the State of Oregon, County of Benton	*Davidow v. Watchtower, et al.*	Granted
8/21/03	Circuit Court of the State of Oregon, County of Benton	*Morely et al v. North Albany Oregon Congregation, et al*	Pending

15. I agree to comply with the provisions of California Rules of Court, Rule 983 and I consent to the jurisdiction of the courts and disciplinary boards of the State of California in accordance with provisions as set forth in Rule 983. I respectfully request that I be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

16. I have disclosed in writing to the client that I am not admitted to practice in this jurisdiction and that the client has consented to such representation.

17. I am paying the State Bar of California the required fee in the amount of $50.00.

I declare under penalty of perjury under the laws of the State of California, the contents of this application are true and correct statements.

Executed this 9th day of September, 2003, at Houston, Texas.

FIBICH, HAMPTON, LEEBRON & GARTH, LLP

Kenneth T. Fibich, Esq.,
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On September 12, 2003, I caused the within **APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE**, the original of which was produced on recycled paper, to be served as follows:

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____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

State Bar of California
180 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2003, at Sacramento, California.

Deanna Czarnecki

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Kenneth Fibich, Esq., SBN 06952600
Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON, LEEBRON &
GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 16 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	CASE NO: 26-22191 **NOTICE OF MOTION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

TO EACH PARTY AND THE ATTORNEY OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED that on October 15, 2003 at 8:30 a.m. in Department B of the above-entitled court, located at 825 Brown Street, Napa, California Plaintiffs

CHARISSA W. and NICOLE D. will move the court for an order approving Kenneth Fibich's Application to Appear as Counsel Pro Hac Vice. Said motion will be based on this Notice, and the Application to Appear as Counsel Pro Hac Vice of Kenneth Fibich.

Dated: 9/9/03

NOLEN SAUL BRELSFORD

By _____
William L. Brelsford
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

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Deanna Czarnecki

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Jonathan Saul, Esq., SBN 189271
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1401 McKinney, Suite 1800
Houston, TX 77010
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Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
SEP 16 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	CASE NO: 26-22191 **APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

I, Hartley Hampton, Esq., Petitioner, do hereby state as follows:

1. I have been retained by plaintiffs Charissa W. and Nicole D. to represent them in the above-entitled action. I will associate with Rudy Nolen, Jonathan Saul, and William L. Brelsford in the representation of the plaintiffs.

2. Attorneys Rudy Nolen, Jonathan Saul, and William L. Brelsford of the law firm of Nolen Saul Brelsford are members of good standing of the State Bar of California and are licensed to practice in all courts of the State of California. Their office is located at 350 University Avenue, Suite 280, Sacramento, California 95825.

3. I am not a California resident, nor am I regularly engaged in practice or other business in California.

4. My residence address is 310 Park Laureate, Houston, Harris County, Texas 77024, (713) 957-3504.

5. My office address is Fibich, Hampton, Leebron & Garth, L.L.P. with offices at Five Houston Center, 1401 McKinney, Suite 1800, Houston, Harris County, Texas 77010, (713) 751-0025.

6. The courts to which I am admitted to practice and the dates of such admissions are as follows:

Court	Date Admitted
United States District Court, Southern District	1980
United States District Court, Eastern District	1980
United States District Court, Western District	1980
United States Court of Appeals, Fifth Circuit	1983

7. Since November 11, 1977, I have been, and am presently, a member of good standing of the bar of the highest court of the State of Texas where I regularly practice law.

8. I am not currently suspended or disbarred in any court.

9. I am not currently subject to any disciplinary proceedings by any organization with authority at law.

10. I have never received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law.

11. I have never had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked.

12. I, either by resignation, withdrawal, or otherwise, have never terminated or attempted to terminate my office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

13. In the preceding two years to the present, I have previously filed or am currently filing applications to appear as counsel *pro hac vice* in the State of California as follows:

Date	Title of Court	Case	Result
8/03	Tehama Co. Superior Court	*Guiterrez v. Watchtower, et al.*	Pending
8/03	Napa Co. Superior Court	*Charissa W. et al v. Watchtower, et al.*	Pending
8/03	Yolo Co. Superior Court	*West., et al v. Watchtower, et al.*	Pending

14. I and/or any member of my firm with which I am associated has/have filed application(s) to appear as counsel under Supreme Court Rule 42 during the past three (3) years in the following matters:

Date	Title of Court	Case	Result
10/31/02	Circuit Court of the State of Oregon, County of Benton	*Davidow v. Watchtower, et al.*	Granted
8/21/03	Circuit Court of the State of Oregon, County of Benton	*Morely et al v. North Albany Oregon Congregation, et al*	Pending

15. I agree to comply with the provisions of California Rules of Court, Rule 983 and I consent to the jurisdiction of the courts and disciplinary boards of the State of California in accordance with provisions as set forth in Rule 983. I respectfully request that I be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

16. I have disclosed in writing to the client that I am not admitted to practice in this jurisdiction and that the client has consented to such representation.

17. I am paying the State Bar of California the required fee in the amount of $50.00.

I declare under penalty of perjury under the laws of the State of California, the contents of this application are true and correct statements.

Executed this 9th day of September, 2003, at Houston, Texas.

FIBICH, HAMPTON, LEEBRON & GARTH, LLP

Hartley Hampton, Esq.,
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On September 12, 2003, I caused the within **APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE,** the original of which was produced on recycled paper, to be served as follows:

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___ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

___ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Bible & Tract Society of New York, Inc., Watchtower Bible and Tract Society of Pennsylvania, Inc., Kingdom Support Services, Inc., Christian Congregation of Jehovah's Witnesses, Religious Order of Jehovah's Witnesses, Napa Congregation of Jehovah's Witnesses and Oak Knoll Congregation of Jehovah's Witnesses
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

State Bar of California
180 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2003, at Sacramento, California.

Deanna Czarnecki

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
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Telephone: (916) 564-9990
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SBN 0227400
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Greg Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 16 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 **NOTICE OF MOTION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

TO EACH PARTY AND THE ATTORNEY OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED that on October 15, 2003 at 8:30 a.m. in Department B of the above-entitled court, located at 825 Brown Street, Napa, California Plaintiffs CHARISSA W. and NICOLE D. will move the court for an order approving Gregory Love's

Application to Appear as Counsel Pro Hac Vice. Said motion will be based on this Notice, and the Application to Appear as Counsel Pro Hac Vice of Gregory Love.

Dated: September 9, 2003

NOLEN SAUL BRELSFORD

By _____
William L. Brelsford
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2003, at Sacramento, California.

Deanna Czarnecki

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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
SEP 16 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	CASE NO: 26-22191 **APPLICATION TO APPEAR AS COUNSEL PRO HAC VICE** **Date: October 15, 2003** **Time: 8:30 a.m.** **Dept: B**

I, Gregory Love, Esq., Petitioner, do hereby state as follows:

1. I have been retained by plaintiff Charissa W. and Nicole D. to represent them in the above-entitled action. I will associate with Rudy Nolen, Jonathan Saul, and William L. Brelsford in the representation of the plaintiffs.

2. Attorneys Rudy Nolen, Jonathan Saul, and William L. Brelsford of the law firm of Nolen Saul Brelsford are members of good standing of the State Bar of California and are licensed to practice in all courts of the State of California. Their office is located at 350 University Avenue, Suite 280, Sacramento, California 95825.

3. I am not a California resident, nor am I regularly engaged in practice or other business in California.

4. My residence address is 4733 Hidden Lane, Forth Worth, Texas 76107, (817) 735-9698.

5. My office address is Love & Norris, 314 Main Street, Suite 300, Forth Worth, Texas 76102 (817) 335-2800.

6. The courts to which I am admitted to practice and the dates of such admissions are as follows:

Court	Date Admitted
United States District Court, Southern District	1994
United States District Court, Eastern District	1992
United States District Court, Western District	1992
United States District Court, Northern District	1990

7. Since November 3, 1990, I have been, and am presently, a member of good standing of the bar of the highest court of the State of Texas where I regularly practice law.

8. I am not currently suspended or disbarred in any court.

9. I am not currently subject to any disciplinary proceedings by any organization with authority at law.

10. I have never received public discipline including, but not limited to, suspension or disbarment, by any organization with authority to discipline attorneys at law.

11. I have never had any certificate or privilege to appear and practice before any regulatory administrative body suspended or revoked.

12. I, either by resignation, withdrawal, or otherwise, have never terminated or attempted to terminate my office as an attorney in order to avoid administrative, disciplinary, disbarment, or suspension proceedings.

13. In the preceding two years to the present, I have previously filed or am currently filing applications to appear as counsel *pro hac vice* in the State of California as follows:

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14. I and/or any member of my firm with which I am associated has/have filed application(s) to appear as counsel under Supreme Court Rule 42 during the past three (3) years in the following matters:

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15. I agree to comply with the provisions of California Rules of Court, Rule 983 and I consent to the jurisdiction of the courts and disciplinary boards of the State of California in accordance with provisions as set forth in Rule 983. I respectfully request that I be admitted to practice in the above-entitled court FOR THE PURPOSES OF THIS MATTER ONLY.

16. I have disclosed in writing to the client that I am not admitted to practice in this jurisdiction and that the client has consented to such representation.

17. I am paying the State Bar of California the required fee in the amount of $50.00.

I declare under penalty of perjury under the laws of the State of California, the contents of this application are true and correct statements.

Executed this 9th day of September, 2003, at Ft. Worth, Texas.

LOVE & NORRIS

Gregory Love, Esq.,
Attorney for Plaintiff

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

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Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310

State Bar of California
180 Howard Street
San Francisco, CA 94105

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 12, 2003, at Sacramento, California.

Deanna Czarnecki

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, et al.

FILED

SEP 11 2003

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **DEFENDANTS' NOTICE OF MOTION TO QUASH SERVICE OF SUMMONS BASED ON LACK OF PERSONAL JURISDICTION** DATE: October 23, 2003 TIME: 8:30 a.m. DEPT: B TRIAL DATE: Not yet set

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on October 23, 2003 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Dept. B of the above-entitled Court, defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., KINGDOM SUPPORT SERVICES, INC., AND RELIGIOUS ORDER OF JEHOVAH'S WITNESSES (collectively the "Moving Church Defendants") will each move the Court for an Order quashing service of summons upon them and dismissing plaintiffs' complaint against them on the ground that the Court lacks personal jurisdiction over each of the Moving Church Defendants.

This motion will be based on this notice, the supporting memorandum of points and authorities, the Affidavits of Richard E. Abrahamson, Alexander W. Reinmueller, and Patrick J. LaFranca, all other papers on file in this action, and such other oral and documentary evidence

as may be submitted and properly considered by the Court

DATED: September 9, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Moving Church Defendants

4101532.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 9, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANTS' NOTICE OF MOTION TO QUASH SERVICE OF SUMMONS BASED ON LACK OF PERSONAL JURISDICTION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 9, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
Suite 105
11335 Gold Express Drive
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

FILED
SEP 11 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS** DATE: October 23, 2003 TIME: 8:30 a.m. DEPT.: B TRIAL DATE: Not yet set

I. INTRODUCTION

Defendants WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC. (hereinafter "Watch Tower"), KINGDOM SUPPORT SERVICES, INC. (hereinafter "KSS"), and RELIGIOUS ORDER OF JEHOVAH'S WITNESSES (hereinafter "ROJW") each hereby move this Court for an Order quashing service of summons upon them and dismissing Plaintiff's Complaint on the grounds that this Court lacks personal jurisdiction over each of them. (These moving defendants will hereinafter be collectively referred to a the "Moving Church Defendants".)

II. RELEVANT UNDERLYING FACTS

Plaintiff's Complaint. Plaintiffs allege twelve causes of action against the Church

Defendants. Each of these causes of action is based on and related to: (1) the underlying alleged sexual abuse of the Plaintiffs by Edward Villegas (hereinafter "Villegas"), allegedly occurring from 1972 to about 1984-85 (Plaintiff Charissa W., *see* Complaint ¶ 28) and in 1978 (Plaintiff Nicole D., *see* Complaint ¶30); (2) the defendants' alleged failure to report that abuse, and/or to prevent, protect, or warn the Plaintiffs about Villegas' alleged propensity toward child abuse; and, (3) the defendants' internal policies, procedures, and actions regarding childhood sexual abuse. Certain defendants (identified as the Church Defendants in the demurrers) will file demurrers against each of Plaintiffs' causes of action. However, the three Moving Church Defendants also move herein to quash service of summons on each of them, on the basis that the California courts, including this Court, lack personal jurisdiction over them.

Facts Supporting the Moving Church Defendants' motion to quash service. The attached Affidavits of Richard E. Abrahamson (Secretary and Treasurer of Watch Tower), Alexander W. Reinmueller (Secretary and Treasurer of KSS), and Patrick J. LaFranca (President of ROJW) set forth the following facts to support this motion:

Watch Tower: Watch Tower is a Pennsylvania non-stock, not-for-profit corporation with its place of business in Brooklyn, New York. (Abrahamson Afft. at ¶3.) Watch Tower does not have an office, mailing address, or telephone number in California, nor does Watch Tower have any employees, officers, or directors who reside in California. (Abrahamson Afft. at ¶5.) Watch Tower has not and does not direct any commercial activity to California. (Abrahamson Afft. at ¶5.) Watch Tower has never maintained a place of business in California, has never paid taxes in California, has never maintained a bank account in California, and has never held any meeting, conference, or symposium in California. (Abrahamson Afft. at ¶6.) Watch Tower does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States (thus including California). (Abrahamson Afft. at ¶7.) Watch Tower does not act in a supervisory capacity to any of the congregations of Jehovah's Witnesses in the United States (thus including California). (Abrahamson Afft. at ¶7.)

KSS: KSS is a New York not-for-profit charitable corporation with its place of business in Brooklyn, New York. (Reinmueller Afft. at ¶3.) KSS does not have an office, mailing

address, or telephone number in California, nor does KSS have any employees, officers, or directors who reside in California. (Reinmueller Afft. at ¶5.) KSS has not and does not direct any commercial activity to California. (Reinmueller Afft. at ¶5.) KSS has never maintained a place of business in California, has never paid taxes in California, has never maintained a bank account in California, and has never held any meeting, conference, or symposium in California. (Reinmueller Afft. at ¶6.) KSS has never owned or controlled any real property or personal property in California. (Reinmueller Afft. at ¶7.) KSS does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States (thus including California). (Reinmueller Afft. at ¶8.) KSS does not act in a supervisory capacity to any of the congregations of Jehovah's Witnesses in the United States (thus including California). (Reinmueller Afft. at ¶8.) KSS does not direct any continuous or systematic activities toward California. (Reinmueller Afft. at ¶8.) Rather, KSS's primary duties involving cargo transportation and building design are conducted in the State of New York. (Reinmueller Afft. at ¶8.)

ROJW: ROJW is a New York not-for-profit charitable corporation with its place of business in Brooklyn, New York. (LaFranca Afft. at ¶3.) ROJW does not have an office, mailing address, or telephone number in California, nor does ROJW have any employees, officers, or directors who reside in California. (LaFranca Afft. at ¶5.) ROJW does not direct any commercial activity to California. (LaFranca Afft. at ¶5.) ROJW has never maintained a place of business in California, has never paid taxes in California, has never maintained a bank account in California, and has never held any meeting, conference, or symposium in California. (LaFranca Afft. at ¶6.) ROJW has never owned or controlled any real property or personal property in California. (LaFranca Afft. at ¶7.) ROJW does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States (thus including California). (LaFranca Afft. at ¶8.) ROJW does not act in a supervisory capacity to any of the congregations of Jehovah's Witnesses in the United States (thus including California). (LaFranca Afft. at ¶8.) ROJW primarily performs its duties within the State of New York. (LaFranca Afft. at ¶4.)

As discussed below, the facts established by the referenced Affidavits of Mssrs. Abrahamson, Reinmueller, and LaFranca demonstrate that this Court lacks personal jurisdiction

over each of the Moving Church Defendants.

III. LEGAL STANDARD ON MOTION TO QUASH

California Code of Civil Procedure ("CCP") § 418.10(a) provides as follows:

> "(a) [a] defendant on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes:
>
> (1) To quash service of summons on the ground of lack of jurisdiction of the court over him or her."

When a defendant moves the trial court to quash service of summons for lack of personal jurisdiction, the plaintiff has the initial burden of proving that sufficient contacts exist between the defendant and California to justify the exercise of personal jurisdiction. Vons Companies, Inc. v. Seabest Foods, Inc. (1996) 14 Cal.4th 434, 449. If a plaintiff meets that initial burden, the burden shifts to the defendant to demonstrate that the assumption of jurisdiction would be unreasonable. Id.

On a motion to quash service of summons for lack of personal jurisdiction, California courts require that, although the defendant is the moving party and must present some admissible evidence to place the issue before the court, *the burden of proof is on the plaintiff* to establish by a preponderance of the evidence a basis for jurisdiction and valid service of process. School Dist. of Okaloosa County v. Superior Court (1997) 58 Cal.App.4th 1126.

Moreover, *a plaintiff cannot merely rely upon allegations in his unverified complaint* to establish defendants' minimum contacts with California as a basis for specific jurisdiction over defendants. Goehring v. Superior Court (1998) 62 Cal.App.4th 894, 909; Mansour v. Superior Court (1995) 38 Cal.App.4th 1750, 1759.

IV. LEGAL ARGUMENT

California courts may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States. CCP § 410.10. However, "the forum state may not exercise jurisdiction over a nonresident unless the relationship of that person or entity to the state is such as to make the exercise of such jurisdiction reasonable." Boaz v. Boyle & Co. (1995) 40 Cal.App.4th 700, 716.

Personal jurisdiction is of two types: general and specific. Malone v. Equitas Reinsurance Ltd. (2000) 84 Cal.App.4th 1430, 1436. General jurisdiction exists when the activities of a nonresident in California are substantial, continuous and systematic, or extensive and wide-ranging. Boaz v. Boyle & Co., *supra*, 40 Cal.App.4th at 717. In such circumstances, it is not necessary that the cause of action be related to the defendant's in-state activities. Id. In contrast, under specific jurisdiction, the lawsuit must arise out of, or be related to, the defendant's contacts with the state. Id. at 716-17.

In determining whether a defendant corporation has continuous and systematic business contacts in the forum state sufficient to establish general jurisdiction, courts generally look to whether the nonresident corporation (1) maintains an office in the forum state, (2) has employees in the forum state, (3) uses bank accounts in the forum state, or (4) markets or sells products in the forum state. Helicopteros Nacionales de Colombia, S.A. v. Hall (1984) 466 U.S. 408, 414-16. The standard for establishing general jurisdiction is fairly high and requires that the defendant's contacts to California be of the sort that approximates physical presence. Bancroft & Masters, Inc. v. Augusta Nat. Inc. (9th Cir. 2000) 223 F.3d 1082.

On the other hand, specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc. (2002) 99 Cal.App.4th 228, 238. Specific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice. Id.

It is well established that jurisdiction over a wholly owned subsidiary does not give a court jurisdiction over the parent corporation. Northern Natural Gas Co. of Omaha, Neb. V. Superior Court (1976) 64 Cal.App.3d 983, 991.

Here, the affidavits submitted conclusively establish that each of the Moving Church Defendants lack the "substantial, continuous and systematic, or extensive and wide-ranging"

contacts with California necessary for this Court to assert general jurisdiction over them. See Boaz v. Boyle & Co., *supra*, 40 Cal.App.4th at 717.

Similarly, the affidavits submitted conclusively establish that this Court cannot exercise specific jurisdiction over any of the Moving Church Defendants, because (1) none of the Moving Church Defendants has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the claims alleged in Plaintiff's complaint are not related to and do not arise out of any of the Moving Church Defendant's contacts with California; and (3) the assertion of jurisdiction over the Moving Church Defendants in this case would not comport with fair play and substantial justice, given the complete absence of any nexus or connection between Plaintiff's claims in this action and the Moving Church Defendants. See Virtualmagic Asia, Inc. v. Fil-Cartoons, Inc., supra.

The Moving Church Defendants should not be haled into a California court to defend this action. As demonstrated above, this Court cannot constitutionally exercise either general or specific jurisdiction over any of the Moving Church Defendants, and an Order should be entered granting their motion and dismissing them each from this action.

DATED: September 9, 2003

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Moving Church Defendants

4101529.1

*****

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,	)	
Plaintiffs,	)	
vs.	)	Case No.: 26-22191
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.,	)	
Defendants.	)	

AFFIDAVIT OF RICHARD E. ABRAHAMSON

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Richard E. Abrahamson, after being duly sworn, depose and state as follows:

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

2. I am the Secretary and Treasurer of Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower"), which is a Defendant in this proceeding.

3. Watch Tower is a non-stock, non-profit corporation that was incorporated under the laws of the State of Pennsylvania in 1884 and is exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code. It maintains a place of business at 25 Columbia Heights, Brooklyn, New York 11201-2483.

4. The primary purpose of Watch Tower is to coordinate the worldwide activities of Jehovah's Witnesses.

5. Watch Tower does not have and has never had an office, mailing address, or telephone number in the State of California. Watch Tower does not have employees, officers, or directors residing in the State of California. Further, Watch Tower does not and never has directed any type of commercial activity towards the State of California.

6. Watch Tower is not required to maintain and has never maintained a place of business in California, has never been obligated to pay and never has paid taxes in California, has never maintained a bank account in California, has never held a Board of Directors, officers, or other meeting in California, and has never held any conference or symposium in California.

7. Watch Tower does not act in a supervisory capacity to any of the congregations of Jehovah's Witnesses in the United States. Watch Tower does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States.

SIGNED this the 5th day of September, 2003.

Richard E. Abrahamson
Secretary and Treasurer of Watch Tower Bible and Tract Society of Pennsylvania

SUBSCRIBED AND SWORN TO BEFORE ME on the 5th day of September 2003, to certify which witness my hand and official seal.

Notary Public, State of New York

HENRY CABAN
Notary Public, State of New York
No. 01CA6003803
Qualified in Kings County
Commission Expires 3/9/2006

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191

AFFIDAVIT OF ALEXANDER W. REINMUELLER

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

I, Alexander W. Reinmueller, after being duly sworn, depose and state as follows:

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

2. I am Secretary and Treasurer of Kingdom Support Services, Inc. ("KSS"), which is a Defendant in this proceeding.

3. KSS is a not-for-profit charitable corporation that was incorporated under the laws of the State of New York on September 26, 2000, and is exempt from federal taxes under Section 501(c)(3) of the Internal Revenue Code. It maintains a place of business at 98 Montague Street, Brooklyn, New York 11201-3492.

4. The purpose for which KSS was formed was to own, operate, and maintain vehicles for the use and benefit, and otherwise provide for the transportation needs, of the members of any religious order of Jehovah's Witnesses; provide for the transportation of religious literature and materials for the advancement of the religious activities of Jehovah's Witnesses; provide technical and construction services for the benefit of Jehovah's Witnesses in planning and erecting places of religious worship and other facilities used to further the religion of Jehovah's Witnesses worldwide. KSS's primary duties are to transport people and various items between the three complexes that the United States Branch Office of Jehovah's Witnesses uses in the State of New York, and to procure

Jehovah's Witnesses uses in the State of New York, and to procure designs and technical construction assistance for buildings used by Jehovah's Witnesses throughout the world.

5. KSS does not have, nor has it ever had, an office, mailing address, or telephone number in the State of California. KSS does not have employees, officers, or directors residing in the State of California. KSS does not direct any type of commercial activity toward the State of California.

6. KSS is not required to maintain and has never maintained a place of business in the State of California, has never been obligated to pay and never has paid taxes in the State of California, has never maintained a bank account in the State of California, has never held a Board of Directors, officers, or other meeting in the State of California, and has never held any conference or symposium in the State of California.

7. KSS does not maintain and has never maintained a place of business in California. KSS has never owned assets in California. KSS has never owned, leased, rented, or controlled any real or personal property in California.

8. KSS does not act in a supervisory capacity to any of the congregations of Jehovah's Witnesses in the United States. KSS does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States. KSS does not direct continuous and systematic activities toward the State of California. KSS's primary duties of cargo transportation and building design are carried out in the State of New York.

SIGNED this the 5th day of September, 2003.

Alexander W. Reinmueller
Secretary and Treasurer of Kingdom Support Services, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on the 5th day of September 2003, to certify which witness my hand and official seal.

Notary Public, State of New York
HENRY CABAN
Notary Public, State of New York
No. 01CA6003803
Qualified in Kings County
Commission Expires 3/9/2006

5. ROJW does not have, nor has it ever had, an office, mailing address, or telephone number in the State of California. ROJW does not have employees, officers, or directors residing in the State of California. Further, ROJW does not direct any type commercial activity toward the State of California.

6. ROJW is not required to maintain and has never maintained a place of business in California, has never been obligated to pay and never has paid taxes in California, has never maintained a bank account in California, has never held a Board of Directors, officers, or other meeting in California, and has never held any conference or symposium in California.

7. ROJW is not required to and has never maintained a registered agent for service in California. ROJW does not maintain, and has never maintained a place of business in California. ROJW has never owned assets in California. ROJW has never owned, leased, rented, or controlled any real or personal property in California.

8. ROJW does not act in a supervisory capacity to any of the congregations in the United States. ROJW does not give advice to or control any of the congregations of Jehovah's Witnesses in the United States.

SIGNED this the 5th day of September, 2003.

Patrick J. LaFranca

Patrick J. LaFranca
President of Religious Order of Jehovah's Witnesses

SUBSCRIBED AND SWORN TO BEFORE ME on the 5th day of September 2003, to certify which witness my hand and official seal.

Corlis M. Allen

Notary Public, State of New York

CORLIS M. ALLEN
Notary Public, State of New York
No. 01AL6066421
Qualified in Putnam County
Commission Expires November 13, 20 05

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 9, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH SERVICE OF SUMMONS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 9, 2003, at Gold River, California.

By Claudia Perry

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
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Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC., et al.

FILED
SEP 11 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF SUMMONS

I. APPENDIX OF NON-CALIFORNIA AUTHORITIES

A. Cases **Exhibit No.**

Helicopteros Nacionales De Colombia v. Hall
(1984) 466 U.S. 408 1

Bancroft & Masters, Inc. v. Augusta National Inc.
(9th Cir. 2000) 223 F.3d 1082 2

4101527.1

*****

EXHIBIT 1

Service: **Get by LEXSEE®**
Citation: **466 us 408**

*466 U.S. 408, *; 104 S. Ct. 1868, **;*
*80 L. Ed. 2d 404, ***; 1984 U.S. LEXIS 68*

HELICOPTEROS NACIONALES DE COLOMBIA, S. A. v. HALL ET AL.

No. 82-1127

SUPREME COURT OF THE UNITED STATES

466 U.S. 408; 104 S. Ct. 1868; 80 L. Ed. 2d 404; 1984 U.S. LEXIS 68; 52 U.S.L.W. 4491

November 8, 1983, Argued
April 24, 1984, Decided

PRIOR HISTORY:

CERTIORARI TO THE SUPREME COURT OF TEXAS.

DISPOSITION: 638 S. W. 2d 870, reversed.

CASE SUMMARY

PROCEDURAL POSTURE: Petitioner foreign corporation sought review of a decision of the Supreme Court of Texas, which ruled that the corporation's contacts with the state were sufficient to allow a state court to assert jurisdiction over the corporation in respondent representatives' cause of action against the corporation for the wrongful deaths of their decedents, which did not arise out of, and was unrelated to, the corporation's activities within the state.

OVERVIEW: The foreign corporation entered into contract negotiations in Texas with decedents' employer to provide helicopter services. They signed a contract in Peru that provided for decedents' employer to make payments to the corporation's United States bank account. The corporation did not maintain a place of business in Texas, but purchased helicopter parts there and sent employees there for training. The decedents' representatives filed a wrongful death action against the corporation following the decedents' deaths in a helicopter crash in Peru. Reversing the lower court, the Court held that the corporation's contacts with the state were not sufficient to subject it to the state court's in personam jurisdiction. Because the representatives' causes of action for wrongful death arose out of the crash in Peru, and were not related to the corporation's contacts with the state, and the corporation's business contacts with the state were not continuous and systematic enough to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment, the Court concluded that the state court lacked personal jurisdiction over the corporation.

OUTCOME: The Court reversed the state court's judgment that found the corporation subject to the in personam jurisdiction of the state courts.

CORE TERMS: cause of action, helicopter, training, personam jurisdiction, general jurisdiction, nonresident, pilot, personnel, underlying cause of action, continuous, trip, transportation, consortium, decedents, crash, assertion of jurisdiction, personal jurisdiction, systematic, Fourteenth Amendment, regular, joint venture, checks drawn, wrongful-death, doing business, manufacturer, negotiation, formally, pipeline, sending, notions of fair play

EXHIBIT 1

LexisNexis (TM) HEADNOTES - Core Concepts - ♦ Hide Concepts

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN1 See Tex. Rev. Civ. Stat. Ann. art. 2031(b).

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

HN2 The Due Process Clause of the Fourteenth Amendment operates to limit the power of a State to assert in personam jurisdiction over a nonresident defendant. U.S. Const. amend. XIV. Due process requirements are satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

HN3 When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a relationship among the defendant, the forum, and the litigation is the essential foundation of in personam jurisdiction. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits

HN4 Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum state, due process is not offended by a state's subjecting the corporation to its in personam jurisdiction when there are sufficient contacts between the state and the foreign corporation. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN5 Unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction. More Like This Headnote

♦ Show Lawyers' Edition Display

SYLLABUS: Petitioner, a Colombian corporation, entered into a contract to provide helicopter transportation for a Peruvian consortium, the alter ego of a joint venture that had its headquarters in Houston, Tex., during the consortium's construction of a pipeline in Peru for a Peruvian state-owned oil company. Petitioner has no place of business in Texas and never has been licensed to do business there. Its only contacts with the State consisted of sending its chief executive officer to Houston to negotiate the contract with the consortium, accepting into its New York bank account checks drawn by the consortium on a Texas bank, purchasing helicopters, equipment, and training services from a Texas manufacturer, and sending personnel to that manufacturer's facilities for training. After a helicopter owned by petitioner crashed in Peru, resulting in the death of respondents' decedents -- United States citizens who were employed by the consortium -- respondents instituted wrongful-death actions in a Texas state court against the consortium, the Texas manufacturer, and petitioner. Denying petitioner's motion to dismiss the actions for lack of *in personam* jurisdiction over it, the trial court entered judgment against petitioner on a jury verdict in favor of respondents. The Texas Court of Civil Appeals reversed, holding that *in personam* jurisdiction over petitioner was lacking, but in turn was reversed by the Texas Supreme Court.

Held: Petitioner's contacts with Texas were insufficient to satisfy the requirements of the Due Process Clause of the Fourteenth Amendment and hence to allow the Texas court to assert *in personam* jurisdiction over petitioner. The one trip to Houston by petitioner's chief executive officer for the purpose of negotiating the transportation services contract cannot be regarded as a contact of a "continuous and systematic" nature, and thus cannot support an assertion of

general jurisdiction. Similarly, petitioner's acceptance of checks drawn on a Texas bank is of negligible significance for purposes of determining whether petitioner had sufficient contacts in Texas. Nor were petitioner's purchases of helicopters and equipment from the Texas manufacturer and the related training trips a sufficient basis for the Texas court's assertion of jurisdiction. *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516. Mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to the purchases. And the fact that petitioner sent personnel to Texas for training in connection with the purchases did not enhance the nature of petitioner's contacts with Texas. Pp. 413-419.

COUNSEL: Thomas J. Whalen argued the cause for petitioner. With him on the briefs were Austin P. Magner, Cynthia J. Larsen, James E. Ingram, and Barry A. Chasnoff.

George E. Pletcher argued the cause and filed a brief for respondents. *

* Robert L. Stern, Stephen M. Shapiro, William H. Crabtree, and Edward P. Good filed a brief for the Motor Vehicle Manufacturers Association as amicus curiae urging reversal.

Solicitor General Lee, Assistant Attorney General McGrath, Deputy Solicitor General Geller, Kathryn A. Oberly, Michael F. Hertz, and Howard S. Scher filed a brief for the United States as amicus curiae.

JUDGES: BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, MARSHALL, POWELL, REHNQUIST, STEVENS, and O'CONNOR, JJ., joined. BRENNAN, J., filed a dissenting opinion, post, p. 419.

OPINIONBY: BLACKMUN

OPINION: [*409] [*408] [**1869]** JUSTICE BLACKMUN delivered the opinion of the Court.

[*HR1A]** [1A]
We granted certiorari in this case, 460 U.S. 1021 (1983), to decide whether the Supreme Court of Texas correctly ruled that the contacts of a foreign corporation with the State of Texas were sufficient to allow a Texas state court to assert jurisdiction over the corporation in a cause of action not **[**1870]** arising out of or related to the corporation's activities within the State.

I

Petitioner Helicopteros Nacionales de Colombia, S. A. (Helicol), is a Colombian corporation with its principal place of business in the city of Bogota in that country. It is engaged in the business of providing helicopter transportation for oil and construction companies in South America. On **[*410]** January 26, 1976, a helicopter owned by Helicol crashed in Peru. Four United States citizens were among those who lost their lives in the accident. Respondents are the survivors and representatives of the four decedents.

At the time of the crash, respondents' decedents were employed by Consorcio, a Peruvian consortium, and were working on a pipeline in Peru. Consorcio is the alter ego of a joint venture named Williams-Sedco-Horn (WSH). n1 The venture had its headquarters in Houston, Tex. Consorcio had been formed to enable the venturers to enter into a contract with Petro Peru, the Peruvian state-owned oil company. Consorcio was to construct a pipeline for Petro Peru running from the interior of Peru westward to the Pacific Ocean. Peruvian law forbade construction of the pipeline by any non-Peruvian entity.

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n1 The participants in the joint venture were Williams International Sudamericana, Ltd., a Delaware corporation; Sedco Construction Corporation, a Texas corporation; and Horn International, Inc., a Texas corporation.

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Consorcio/WSH n2 needed helicopters to move personnel, materials, and equipment into and out of the construction area. In 1974, upon request of Consorcio/WSH, the chief executive officer of Helicol, Francisco Restrepo, flew to the United States and conferred in Houston with representatives of the three joint venturers. At that meeting, there was a discussion of prices, availability, working conditions, fuel, supplies, and housing. Restrepo represented that Helicol could have the first helicopter on the job in 15 days. The **[***409]** Consorcio/WSH representatives decided to accept the contract proposed by Restrepo. Helicol began performing before the agreement was formally signed in Peru on November 11, 1974. n3 The contract was written in Spanish on **[*411]** official government stationery and provided that the residence of all the parties would be Lima, Peru. It further stated that controversies arising out of the contract would be submitted to the jurisdiction of Peruvian courts. In addition, it provided that Consorcio/WSH would make payments to Helicol's account with the Bank of America in New York City. App. 12a.

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n2 Throughout the record in this case the entity is referred to both as Consorcio and as WSH. We refer to it hereinafter as Consorcio/WSH.

n3 Respondents acknowledge that the contract was executed in Peru and not in the United States. Tr. of Oral Arg. 22-23. See App. 79a; Brief for Respondents 3.

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Aside from the negotiation session in Houston between Restrepo and the representatives of Consorcio/WSH, Helicol had other contacts with Texas. During the years 1970-1977, it purchased helicopters (approximately 80% of its fleet), spare parts, and accessories for more than $ 4 million from Bell Helicopter Company in Fort Worth. In that period, Helicol sent prospective pilots to Fort Worth for training and to ferry the aircraft to South America. It also sent management and maintenance personnel to visit Bell Helicopter in Fort Worth during the same period in order to receive "plant familiarization" and for technical consultation. Helicol received into its New York City and Panama City, Fla., bank accounts over $ 5 million in payments from Consorcio/WSH drawn upon First City National Bank of Houston.

Beyond the foregoing, there have been no other business contacts between Helicol and the State of Texas. Helicol never has been authorized to do business in Texas and never has had an agent for the **[**1871]** service of process within the State. It never has performed helicopter operations in Texas or sold any product that reached Texas, never solicited business in Texas, never signed any contract in Texas, never had any employee based there, and never recruited an employee in Texas. In addition, Helicol never has owned real or personal property in Texas and never has maintained an office or establishment there. Helicol has maintained no records in Texas and has no shareholders in that State. n4 None of the **[*412]** respondents or their decedents were domiciled in Texas, Tr. of Oral Arg. 17, 18, n5

but all of the decedents were hired in Houston by Consorcio/WSH to work on the Petro Peru pipeline project.

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n4 The Colombian national airline, Aerovias Nacionales de Colombia, owns approximately 94% of Helicol's capital stock. The remainder is held by Aerovias Corporacion de Viajes and four South American individuals. See Brief for Petitioner 2, n. 2.

n5 Respondents' lack of residential or other contacts with Texas of itself does not defeat otherwise proper jurisdiction. *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984); *Calder* v. *Jones*, 465 U.S. 783, 788 (1984). We mention respondents' lack of contacts merely to show that nothing in the nature of the relationship between respondents and Helicol could possibly enhance Helicol's contacts with Texas. The harm suffered by respondents did not occur in Texas. Nor is it alleged that any negligence on the part of Helicol took place in Texas.

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Respondents instituted wrongful-death actions in the District Court of Harris County, Tex., against Consorcio/WSH, Bell Helicopter Company, and Helicol. Helicol filed special appearances **[***410]** and moved to dismiss the actions for lack of *in personam* jurisdiction over it. The motion was denied. After a consolidated jury trial, judgment was entered against Helicol on a jury verdict of $ 1,141,200 in favor of respondents. n6 App. 174a.

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n6 Defendants Consorcio/WSH and Bell Helicopter Company were granted directed verdicts with respect to respondents' claims against them. Bell Helicopter was granted a directed verdict on Helicol's cross-claim against it. App. 167a. Consorcio/WSH, as cross-plaintiff in a claim against Helicol, obtained a judgment in the amount of $ 70,000. *Id.*, at 174a.

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The Texas Court of Civil Appeals, Houston, First District, reversed the judgment of the District Court, holding that *in personam* jurisdiction over Helicol was lacking. 616 S. W. 2d 247 (1981). The Supreme Court of Texas, with three justices dissenting, initially affirmed the judgment of the Court of Civil Appeals. App. to Pet. for Cert. 46a-62a. Seven months later, however, on motion for rehearing, the court withdrew its prior opinions and, again with three justices dissenting, reversed the judgment of the intermediate court. 638 S. W. 2d 870 (1982). In ruling that the Texas courts had **[*413]** *in personam* jurisdiction, the Texas Supreme Court first held that the State's long-arm statute reaches as far as the Due Process Clause of the Fourteenth Amendment permits. *Id.*, at 872. n7 Thus, the only question remaining **[**1872]** for the court to decide was whether it was consistent with the Due Process Clause for Texas courts to assert *in personam* jurisdiction over Helicol. *Ibid.*

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n7 The State's long-arm statute is Tex. Rev. Civ. Stat. Ann., Art. 2031b (Vernon 1964 and Supp. 1982-1983). HN1 It reads in relevant part:

"Sec. 3. Any foreign corporation . . . that engages in business in this State, irrespective of any Statute or law respecting designation or maintenance of resident agents, and does not maintain a place of regular business in this State or a designated agent upon whom service may be made upon causes of action arising out of such business done in this State, the act or acts of engaging in such business within this State shall be deemed equivalent to an appointment by such foreign corporation . . . of the Secretary of State of Texas as agent upon whom service of process may be made in any action, suit or proceedings arising out of such business done in this State, wherein such corporation . . . is a party or is to be made a party.

"Sec. 4. For the purpose of this Act, and without including other acts that may constitute doing business, any foreign corporation . . . shall be deemed doing business in this State by entering into contract by mail or otherwise with a resident of Texas to be performed in whole or in part by either party in this State, or the committing of any tort in whole or in part in this State. The act of recruiting Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas shall be deemed doing business in this State."

The last sentence of § 4 was added by 1979 Tex. Gen. Laws, ch. 245, § 1, and became effective August 27, 1979.

The Supreme Court of Texas in its principal opinion relied upon rulings in *U-Anchor Advertising, Inc.* v. *Burt*, 553 S. W. 2d 760 (Tex. 1977); *Hoppenfeld v. Crook*, 498 S. W. 2d 52 (Tex. Civ. App. 1973); and *O'Brien* v. *Lanpar Co.*, 399 S. W. 2d 340 (Tex. 1966). It is not within our province, of course, to determine whether the Texas Supreme Court correctly interpreted the State's long-arm statute. We therefore accept that court's holding that the limits of the Texas statute are coextensive with those of the Due Process Clause.

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II

[*HR2]** [2]
[*HR3]** [3]
[*HR4A]** [4A]
HN2 The Due Process Clause of the Fourteenth Amendment operates to limit the power of a State to assert *in personam* **[*414]** jurisdiction over a nonresident defendant. *Pennoyer v. Neff*, 95 U.S. 714 (1878). Due process requirements are satisfied when *in personam* jurisdiction is asserted over a nonresident corporate **[***411]** defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945), quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940).
HN3 When a controversy is related to or "arises out of" a defendant's contacts with the forum, the Court has said that a "relationship among the defendant, the forum, and the litigation" is the essential foundation of in *in personam* jurisdiction. *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977). n8

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n8 It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising "specific jurisdiction" over the defendant. See Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1144-1164 (1966).

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HN4 Even when the cause of action does not arise out of or relate to the foreign corporation's activities in the forum State, n9 due process is not offended by a State's subjecting the corporation to its *in personam* jurisdiction when there are sufficient contacts between the State and the foreign corporation. *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952); see *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 779-780 (1984). In *Perkins*, the Court addressed a situation in which state courts had asserted general jurisdiction over a defendant foreign corporation. During the Japanese **[*415]** occupation of the Philippine Islands, the president and general manager of a Philippine mining corporation maintained an office in Ohio from which he conducted activities on behalf of the company. He kept company files and held directors' meetings in the office, carried on correspondence relating to the business, distributed salary checks drawn on two active Ohio bank accounts, engaged an Ohio bank to act as transfer agent, and supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines. In short, the foreign corporation, through its president, "[had] been carrying on in Ohio a continuous and systematic, but limited, part of its general business," and the exercise of general jurisdiction over the Philippine corporation by an Ohio court was "reasonable and just." 342 U.S., at 438, 445.

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n9 When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant's contacts with the forum, the State has been said to be exercising "general jurisdiction" over the defendant. See Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 S. Ct. Rev. 77, 80-81; Von Mehren & Trautman, 79 Harv. L. Rev., at 1136-1144; *Calder* v. *Jones*, 465 U.S., at 786.

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All parties to the present case concede that respondents' claims against Helicol did not "arise out of," and are not related to, Helicol's activities within Texas. n10 We thus **[***412]** must **[*416]** explore the nature **[**1873]** of Helicol's contacts with the State of Texas to determine whether they constitute the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*. We hold that they do not.

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n10 See Brief for Respondents 14; Tr. of Oral Arg. 26-27, 30-31. Because the parties have not argued any relationship between the cause of action and Helicol's contacts with the State of Texas, we, contrary to the dissent's implication, *post*, at 419-420, assert no "view" with respect to that issue.

The dissent suggests that we have erred in drawing no distinction between controversies that "relate to" a defendant's contacts with a forum and those that "arise out of" such contacts. *Post*, at 420. This criticism is somewhat puzzling, for the dissent goes on to urge that, for purposes of determining the constitutional validity of an assertion of specific jurisdiction, there really should be no distinction between the two. *Post*, at 427-428.

We do not address the validity or consequences of such a distinction because the issue has not been presented in this case. Respondents have made no argument that their cause of

action either arose out of or is related to Helicol's contacts with the State of Texas. Absent any briefing on the issue, we decline to reach the questions (1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists. Nor do we reach the question whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.

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[*HR1C]** [1C]
It is undisputed that Helicol does not have a place of business in Texas and never has been licensed to do business in the State. Basically, Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from Bell Helicopter for substantial sums; and sending personnel to Bell's facilities in Fort Worth for training.

[*HR5]** [5]
[*HR6]** [6]
The one trip to Houston by Helicol's chief executive officer for the purpose of negotiating the transportation-services contract with Consorcio/WSH cannot be described or regarded as a contact of a "continuous and systematic" nature, as *Perkins* described it, see also *International Shoe Co.* v. Washington, 326 U.S., at 320, and thus cannot support an assertion of *in personam* jurisdiction over Helicol by a Texas court. Similarly, Helicol's acceptance from Consorcio/WSH of checks drawn on a Texas bank is of negligible significance for purposes of determining whether Helicol had sufficient contacts in Texas. There is no indication that Helicol ever requested that the checks be drawn on a Texas bank or that there was any negotiation between Helicol and Consorcio/WSH with respect to the location or identity of the bank on which checks would be drawn. Common sense and everyday experience suggest that, absent unusual circumstances, n11 the bank on which a check is drawn is generally of little **[*417]** consequence to the payee and is a matter left to the discretion of the drawer. HN5 Such unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction. See Kulko v. California Superior Court, 436 U.S. 84, 93 (1978) (arbitrary to subject one parent to suit in **[***413]** any State where other parent chooses to spend time while having custody of child pursuant to separation agreement); Hanson v. Denckla, 357 U.S. 235, 253 (1958) ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State"); see also Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va. L. Rev. 85, 99 (1983).

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n11 For example, if the financial health and continued ability of the bank to honor the draft are questionable, the payee might request that the check be drawn on an account at some other institution.

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The Texas Supreme Court focused on the purchases and the related training trips in **[**1874]** finding contacts sufficient to support an assertion of jurisdiction. We do not agree with that assessment, for the Court's opinion in *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923) (Brandeis, J., for a unanimous tribunal), makes clear that purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction.

The defendant in *Rosenberg* was a small retailer in Tulsa, Okla., who dealt in men's clothing and furnishings. It never had applied for a license to do business in New York, nor had it at any time authorized suit to be brought against it there. It never had an established place of business in New York and never regularly carried on business in that State. Its only connection with New York was that it purchased from New York wholesalers a large portion of the merchandise sold in its Tulsa store. The purchases sometimes were made by correspondence and sometimes through visits to New York by an officer of the defendant. The Court concluded: "Visits on such business, even if occurring at regular intervals, would not warrant the inference that the corporation was present within the jurisdiction of [New York]." *Id.*, at 518.

[*418]

[*HR7B]** [7B]
This Court in *International Shoe* acknowledged and did not repudiate its holding in *Rosenberg*. See 326 U.S., at 318. In accordance with *Rosenberg*, we hold that mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. n12 Nor can we conclude that the fact that Helicol sent personnel into Texas for training in connection with the purchase of helicopters and equipment in that State in any way enhanced the nature of Helicol's contacts with Texas. The training was a part of the package of goods and services purchased by Helicol from Bell Helicopter. The brief presence of Helicol employees in Texas for the purpose of attending the training sessions is no more a significant **[***414]** contact than were the trips to New York made by the buyer for the retail store in *Rosenberg*. See also *Kulko v. California Superior Court*, 436 U.S., at 93 (basing California jurisdiction on 3-day and 1-day stopovers in that State "would make a mockery of" due process limitations on assertion of personal jurisdiction).

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n12 This Court in *International Shoe* cited *Rosenberg* for the proposition that "the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it." 326 U.S., at 318. Arguably, therefore, *Rosenberg* also stands for the proposition that mere purchases are not a sufficient basis for either general or specific jurisdiction. Because the case before us is one in which there has been an assertion of general jurisdiction over a foreign defendant, we need not decide the continuing validity of *Rosenberg* with respect to an assertion of specific jurisdiction, *i. e.*, where the cause of action arises out of or relates to the purchases by the defendant in the forum State.

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III

[*HR1D]** [1D]
We hold that Helicol's contacts with the State of Texas were insufficient to satisfy the requirements of the Due Process **[*419]** Clause of the Fourteenth Amendment. n13

Accordingly, we reverse the judgment of the Supreme Court of Texas.

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n13 As an alternative to traditional minimum-contacts analysis, respondents suggest that the Court hold that the State of Texas had personal jurisdiction over Helicol under a doctrine of "jurisdiction by necessity." See *Shaffer* v. *Heitner*, 433 U.S. 186, 211, n. 37 (1977). We conclude, however, that respondents failed to carry their burden of showing that all three defendants could not be sued together in a single forum. It is not clear from the record, for example, whether suit could have been brought against all three defendants in either Colombia or Peru. We decline to consider adoption of a doctrine of jurisdiction by necessity -- a potentially far-reaching modification of existing law -- in the absence of a more complete record.

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It is so ordered .

DISSENTBY: BRENNAN

DISSENT: **[**1875]** JUSTICE BRENNAN, dissenting.

Decisions applying the Due Process Clause of the Fourteenth Amendment to determine whether a State may constitutionally assert *in personam* jurisdiction over a particular defendant for a particular cause of action most often turn on a weighing of facts. See, *e. g.*, *Kulko* v. *California Superior Court*, 436 U.S. 84, 92 (1978); *id.*, at 101-102 (BRENNAN, J., dissenting). To a large extent, today's decision follows the usual pattern. Based on essentially undisputed facts, the Court concludes that petitioner Helicol's contacts with the State of Texas were insufficient to allow the Texas state courts constitutionally to assert "general jurisdiction" over all claims filed against this foreign corporation. Although my independent weighing of the facts leads me to a different conclusion, see *infra*, at 423-424, the Court's holding on this issue is neither implausible nor unexpected.

What is troubling about the Court's opinion, however, are the implications that might be drawn from the way in which the Court approaches the constitutional issue it addresses. First, the Court limits its discussion to an assertion of general jurisdiction of the Texas courts because, in its view, the **[*420]** underlying cause of action does "not [arise] out of or [relate] to the corporation's activities within the State." *Ante*, at 409. Then, the Court relies on a 1923 decision in *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, 260 U.S. 516, without considering whether that case retains any validity after our more recent pronouncements concerning the permissible reach of a State's jurisdiction. By posing and deciding the question presented in this manner, I fear that **[***415]** the Court is saying more than it realizes about constitutional limitations on the potential reach of *in personam* jurisdiction. In particular, by relying on a precedent whose premises have long been discarded, and by refusing to consider any distinction between controversies that "relate to" a defendant's contacts with the forum and causes of action that "arise out of" such contacts, the Court may be placing severe limitations on the type and amount of contacts that will satisfy the constitutional minimum.

In contrast, I believe that the undisputed contacts in this case between petitioner Helicol and the State of Texas are sufficiently important, and sufficiently related to the underlying cause of action, to make it fair and reasonable for the State to assert personal jurisdiction over Helicol for the wrongful-death actions filed by the respondents. Given that Helicol has purposefully availed itself of the benefits and obligations of the forum, and given the direct relationship between the underlying cause of action and Helicol's contacts with the forum,

maintenance of this suit in the Texas courts "does not offend [the] 'traditional notions of fair play and substantial justice,'" *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken* v. *Meyer*, 311 U.S. 457, 463 (1940)), that are the touchstone of jurisdictional analysis under the Due Process Clause. I therefore dissent.

I

The Court expressly limits its decision in this case to "an assertion of general jurisdiction over a foreign defendant." **[*421]** *Ante*, at 418, n. 12. See *ante*, at 415, and n. 10. Having framed the question in this way, the Court is obliged to address our prior holdings in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Rosenberg Bros. & Co.* v. *Curtis Brown Co.*, *supra*. In *Perkins*, the Court considered a State's assertion of general jurisdiction over a foreign corporation that "[had] been carrying on . . . a continuous and systematic, but limited, part of its general business" in the forum. 342 U.S., at 438. Under the circumstances of that case, we held that such contacts were constitutionally sufficient "to make it reasonable and just to subject the corporation **[**1876]** to the jurisdiction" of that State. *Id.*, at 445 (citing *International Shoe*, *supra*, at 317-320). Nothing in *Perkins* suggests, however, that such "continuous and systematic" contacts are a necessary minimum before a State may constitutionally assert general jurisdiction over a foreign corporation.

The Court therefore looks for guidance to our 1923 decision in *Rosenberg*, *supra*, which until today was of dubious validity given the subsequent expansion of personal jurisdiction that began with *International Shoe*, *supra*, in 1945. In *Rosenberg*, the Court held that a company's purchases within a State, even when combined with related trips to the State by company officials, would not allow the courts of that State to assert general jurisdiction over all **[***416]** claims against the nonresident corporate defendant making those purchases. n1 **[*422]** Reasoning by analogy, the Court in this case concludes that Helicol's contacts with the State of Texas are no more significant than the purchases made by the defendant in *Rosenberg*. The Court makes no attempt, however, to ascertain whether the narrow view of *in personam* jurisdiction adopted by the Court in *Rosenberg* comports with "the fundamental transformation of our national economy" that has occurred since 1923. *McGee* v. *International Life Ins. Co.*, 355 U.S. 220, 222-223 (1957). See also *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292-293 (1980); *id.*, at 308-309 (BRENNAN, J., dissenting); **[**1877]** *Hanson* v. *Denckla*, 357 U.S. 235, 250-251 (1958); *id.*, at 260 (Black, J., dissenting). This failure, in my view, is fatal to the Court's analysis.

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n1 The Court leaves open the question whether the decision in *Rosenberg* was intended to address any constitutional limits on an assertion of "specific jurisdiction." *Ante*, at 418, n. 12 (citing *International Shoe*, 326 U.S., at 318). If anything is clear from Justice Brandeis' opinion for the Court in *Rosenberg*, however, it is that the Court was concerned only with general jurisdiction over the corporate defendant. See 260 U.S., at 517 ("The sole question for decision is whether . . . defendant was doing business within the State of New York in such manner and to such extent as to warrant the inference that it was present there"); *id.*, at 518 (the corporation's contacts with the forum "would not warrant the inference that the corporation was present within the jurisdiction of the State"); *ante*, at 417. The Court's resuscitation of *Rosenberg*, therefore, should have no bearing upon any forum's assertion of jurisdiction over claims that arise out of or relate to a defendant's contacts with the State.

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The vast expansion of our national economy during the past several decades has provided the primary rationale for expanding the permissible reach of a State's jurisdiction under the Due Process Clause. By broadening the type and amount of business opportunities available to

participants in interstate and foreign commerce, our economy has increased the frequency with which foreign corporations actively pursue commercial transactions throughout the various States. In turn, it has become both necessary and, in my view, desirable to allow the States more leeway in bringing the activities of these nonresident corporations within the scope of their respective jurisdictions.

This is neither a unique nor a novel idea. As the Court first noted in 1957:

"[Many] commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the **[*423]** same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity." *McGee, supra,* at 222-223.

See also *World-Wide Volkswagen, supra*, at 293 (reaffirming that "[the] historical developments noted in *McGee* . . . have only accelerated in the generation since that case was decided **[***417]** "); *Hanson v. Denckla, supra,* at 250-251.

Moreover, this "trend . . . toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents," *McGee, supra,* at 222, is entirely consistent with the "traditional notions of fair play and substantial justice," *International Shoe,* 326 U.S., at 316, that control our inquiry under the Due Process Clause. As active participants in interstate and foreign commerce take advantage of the economic benefits and opportunities offered by the various States, it is only fair and reasonable to subject them to the obligations that may be imposed by those jurisdictions. And chief among the obligations that a nonresident corporation should expect to fulfill is amenability to suit in any forum that is significantly affected by the corporation's commercial activities.

As a foreign corporation that has actively and purposefully engaged in numerous and frequent commercial transactions in the State of Texas, Helicol clearly falls within the category of nonresident defendants that may be subject to that forum's general jurisdiction. Helicol not only purchased helicopters and other equipment in the State for many years, but also sent pilots and management personnel into Texas to be trained in the use of this equipment and to consult with the seller on technical matters. n2 Moreover, negotiations for the **[*424]** contract under which Helicol provided transportation services to the joint venture that employed the respondents' decedents also took place in the State of Texas. Taken together, these contacts demonstrate that Helicol obtained numerous benefits from its transaction of business in Texas. In turn, it is eminently fair and reasonable to expect Helicol to face the obligations that attach to its participation in such commercial transactions. Accordingly, on the basis of continuous commercial contacts with the forum, I would conclude that the Due Process Clause allows the State of Texas to assert general jurisdiction over petitioner Helicol.

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n2 Although the Court takes note of these contacts, it concludes that they did not "[enhance] the nature of Helicol's contacts with Texas [because the] training was a part of the package of goods and services purchased by Helicol." *Ante*, at 418. Presumably, the Court's statement simply recognizes that participation in today's interdependent markets often necessitates the use of complicated purchase contracts that provide for numerous contacts between representatives of the buyer and seller, as well as training for related personnel. Ironically, however, while relying on these modern-day realities to denigrate the significance of Helicol's contacts with the forum, the Court refuses to acknowledge that these same realities require a

concomitant expansion in a forum's jurisdictional reach. See *supra*, at 421-423. As a result, when deciding that the balance in this case must be struck against jurisdiction, the Court loses sight of the ultimate inquiry: whether it is fair and reasonable to subject a nonresident corporate defendant to the jurisdiction of a State when that defendant has purposefully availed itself of the benefits and obligations of that particular forum. Cf. Hanson v. Denckla, 357 U.S. 235, 253 (1958).

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II

The Court also fails to distinguish the legal principles that controlled our prior decisions in *Perkins* and *Rosenberg*. In particular, the contacts between petitioner Helicol and **[***418]** the State of Texas, unlike the contacts between the defendant and the forum in each of those cases, are significantly related to the cause of action alleged in the original suit filed by the respondents. Accordingly, in my view, it is both fair and reasonable for the Texas courts to assert specific jurisdiction over Helicol in this case.

By asserting that the present case does not implicate the specific jurisdiction of the Texas courts, see *ante*, at 415, and nn. 10 and 12, the Court necessarily removes its decision **[*425]** from the reality of the actual facts presented for our consideration. n3 Moreover, the Court refuses to consider **[**1878]** any distinction between contacts that are "related to" the underlying cause of action and contacts that "give rise" to the underlying cause of action. In my view, however, there is a substantial difference between these two standards for asserting specific jurisdiction. Thus, although I agree that the respondents' cause of action did not formally "arise out of" specific activities initiated by Helicol in the State of Texas, I believe that the wrongful-death claim filed by the respondents is significantly related to the undisputed contacts between Helicol and the forum. On that basis, I would conclude that the Due Process Clause allows the Texas courts to assert specific jurisdiction over this particular action.

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n3 Nor do I agree with the Court that the respondents have conceded that their claims are not related to Helicol's activities within the State of Texas. Although parts of their written and oral arguments before the Court proceed on the assumption that no such relationship exists, other portions suggest just the opposite:

"If it is the concern of the Solicitor General [appearing for the United States as *amicus curiae*] that a holding for Respondents here will cause foreign companies to refrain from purchasing in the United States for fear of exposure to general jurisdiction on unrelated causes of action, such concern is not well founded.

"Respondents' cause is not dependent on a ruling that mere purchases in a state, together with incidental training for operating and maintaining the merchandise purchased can constitute the ties, contacts and relations necessary to justify jurisdiction over an unrelated cause of action. However, regular purchases and training coupled with other contacts, ties and relations may form the basis for jurisdiction." Brief for Respondents 13-14.

Thus, while the respondents' position before this Court is admittedly less than clear, I believe it is preferable to address the specific jurisdiction of the Texas courts because Helicol's contacts with Texas are in fact related to the underlying cause of action.

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The wrongful-death actions filed by the respondents were premised on a fatal helicopter crash that occurred in Peru. Helicol was joined as a defendant in the lawsuits because it provided transportation services, including the particular helicopter and pilot involved in the crash, to the joint venture **[*426]** that employed the decedents. Specifically, the respondent Hall claimed in her original complaint that "Helicol is . . . legally responsible for its own negligence through its pilot employee." App. 6a. Viewed in light of these allegations, the contacts between Helicol and the State of Texas are directly and significantly related to the underlying claim filed by the respondents. The negotiations that took place in Texas led to the contract in which Helicol agreed to provide the precise transportation services that were being used at the time of the crash. Moreover, the helicopter involved in the crash was purchased by Helicol in Texas, and the pilot whose negligence was alleged to have caused the crash was actually trained in Texas. **[***419]** See Tr. Of Oral Arg. 5, 22. This is simply not a case, therefore, in which a state court has asserted jurisdiction over a nonresident defendant on the basis of wholly unrelated contacts with the forum. Rather, the contacts between Helicol and the forum are directly related to the negligence that was alleged in the respondent Hall's original complaint. n4 Because Helicol should have expected to be amenable to suit in the Texas courts for claims directly related to these contacts, it is fair and reasonable to allow the assertion of jurisdiction in this case.

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n4 The jury specifically found that "the pilot failed to keep the helicopter under proper control," that "the helicopter was flown into a treetop fog condition, whereby the vision of the pilot was impaired," that "such flying was negligence," and that "such negligence . . . was a proximate cause of the crash." See App. 167a-168a. On the basis of these findings, Helicol was ordered to pay over $ 1 million in damages to the respondents.

- - - - - - - - - - - - - - End Footnotes- - - - - - - - - - - - - -

Despite this substantial relationship between the contacts and the cause of action, the Court declines to consider whether the courts of Texas may assert specific jurisdiction over this suit. Apparently, this simply reflects a narrow interpretation of the question presented for review. See *ante*, at 415-416, n. 10. It is nonetheless possible that the Court's opinion may be read to imply that the specific jurisdiction of the Texas courts is inapplicable because the cause of action **[*427]** did not formally "arise out of" the contacts between Helicol and the forum. In my view, however, such a rule would place unjustifiable limits on the **[**1879]** bases under which Texas may assert its jurisdictional power. n5

- - - - - - - - - - - - - - - Footnotes - - - - - - - - - - - - - - -

n5 Compare Von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1144-1163 (1966), with Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 S. Ct. Rev. 77, 80-88. See also Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 Va. L. Rev. 85, 100-101, and n. 66 (1983).

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Limiting the specific jurisdiction of a forum to cases in which the cause of action formally arose out of the defendant's contacts with the State would subject constitutional standards under the Due Process Clause to the vagaries of the substantive law or pleading requirements of each State. For example, the complaint filed against Helicol in this case alleged negligence based on pilot error. Even though the pilot was trained in Texas, the Court assumes that the

Texas courts may not assert jurisdiction over the suit because the cause of action "did not 'arise out of,' and [is] not related to," that training. See *ante*, at 415. If, however, the applicable substantive law required that negligent training of the pilot was a necessary element of a cause of action for pilot error, or if the respondents had simply added an allegation of negligence in the training provided for the Helicol pilot, then presumably the Court would concede that the specific jurisdiction of the Texas courts was applicable.

Our interpretation of the Due Process Clause has never been so dependent upon the applicable substantive law or the State's formal pleading requirements. At least since *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945), the principal focus when determining whether a forum may constitutionally assert jurisdiction over a nonresident defendant has been on fairness and reasonableness to the defendant. To this extent, a court's specific jurisdiction **[***420]** should be applicable whenever the cause of action arises out of *or* relates to the contacts between the defendant and the forum. It is eminently **[*428]** fair and reasonable, in my view, to subject a defendant to suit in a forum with which it has significant contacts directly related to the underlying cause of action. Because Helicol's contacts with the State of Texas meet this standard, I would affirm the judgment of the Supreme Court of Texas.

REFERENCES: ♦ Return To Full Text Opinion ♦ Go to Supreme Court Brief(s) ♦ Go to Oral Argument Transcript

20 Am Jur 2d, Courts 146; 36 Am Jur 2d, Foreign Corporations 472

12 Am Jur Pl & Pr Forms (Rev), Foreign Corporations, Forms 11-20

4 Am Jur Proof of Facts 483, Doing Business

3 Am Jur Trials 553, Selecting the Forum--Plantiff's Position

USCS, Constitution, Fourteenth Amendment

US L Ed Digest, Constitutional Law 748; Courts 173

L Ed Index to Annos, Corporations; Due Process of Law; In Rem or In Personam; Jurisdiction

ALR Quick Index, Due Process of Law; Foreign Corporations; Jurisdiction

Federal Quick Index, Due Process of Law; Foreign Corporations; In Personam and In Rem Proceedings; Jurisdiction; Minimum Contact Within State

Annotation References:

"Minimum contacts" requirement of Fourteenth Amendment's due process clause (Rule of International Shoe Co. v Washington) for state court's assertion of jurisdiction over nonresident defendant. 62 L Ed 2d 853.

Development of the doctrine of Pennoyer v Neff as regards jurisdiction over nonresident individuals and foreign corporations-- Supreme Court cases. 2 L Ed 2d 1664.

Construction and application, as to isolated acts or transactions, of state statutes or rules of court predicating in personam jurisdiction over nonresidents or foreign corporations upon the doing of an act or upon doing or transacting business or "any" business, within the state. 27 ALR3d 397.

Validity, as a matter of due process, of state statutes or rules of court conferring in personam jurisdiction over nonresidents or foreign corporations on the basis of isolated business

transactions within state. 20 ALR3d 1201.

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EXHIBIT 2

Service: **Get by LEXSEE®**
Citation: **223 f.3d 1082**

*223 F.3d 1082, *; 2000 U.S. App. LEXIS 20917, **;*
55 U.S.P.Q.2D (BNA) 1941; 2000 Cal. Daily Op. Service 6941

BANCROFT & MASTERS, INC., a California corporation, Plaintiff-Appellant, v. AUGUSTA NATIONAL INC., a Georgia corporation, Defendant-Appellee.

No. 99-15099

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

223 F.3d 1082; 2000 U.S. App. LEXIS 20917; 55 U.S.P.Q.2D (BNA) 1941; 2000 Cal. Daily Op. Service 6941; 2000 Daily Journal DAR 9197

April 13, 2000, Argued and Submitted, San Francisco, California
August 18, 2000, Filed

PRIOR HISTORY: [1]** Appeal from the United States District Court for the Northern District of California. D.C. No. CV-97-04412-TEH. Thelton E. Henderson, District Judge, Presiding.

DISPOSITION: REVERSED AND REMANDED.

CASE SUMMARY

PROCEDURAL POSTURE: California plaintiff in trademark dispute over internet domain name appealed from the United States District Court for the Northern District of California's dismissal of the action for lack of personal jurisdiction. The suit sought a declaratory judgment of non-dilution and non-infringement, and requested the court order the cancellation of Georgia defendant's federally registered trademarks. Defendant asserted the appeal was moot.

OVERVIEW: In trademark dispute over internet domain name, action was dismissed for lack of personal jurisdiction over Georgia defendant. Plaintiff sought declaratory judgment of non-dilution and non-infringement, and cancellation of defendant's trademarks. Plaintiff appealed. Defendant argued appeal was moot because it offered to waive its infringement, dilution, and unfair competition claims if plaintiff stayed out of the golf business. The promise was qualified; thus appeal was not moot. Defendant had license agreements with two television networks and some California vendors; this was doing business with California but not in California. There was no general jurisdiction. Plaintiff contented defendant deliberately triggered the dispute resolution procedures and intended to interfere with plaintiff's use of its domain name, by sending a letter to a nonresident domain registration company challenging plaintiff's use of the name. Wrongful conduct individually targeting a known forum resident was express aiming. Plaintiff demonstrated purposeful availment. The effects of the letter were primarily felt in California. Defendant did not show specific jurisdiction was unreasonable.

OUTCOME: The judgment was reversed. District court could exercise specific jurisdiction because the complaint alleged defendant engaged in wrongful conduct that individually targeted the plaintiff in California. Defendant deliberately triggered dispute resolution procedures and intended to interfere with plaintiff's use of its domain name, by sending a letter to the domain registration company challenging plaintiff's use of the name.

CORE TERMS: domain, trademark, general jurisdiction, resident, forum state, com,

EXHIBIT 2

purposeful, website, availment, registered, dispute resolution, aimed, moot, targeted, cancellation, targeting, personal jurisdiction, individually, declaratory judgment, doing business, cease-and-desist, reasonableness, continuous, systematic, triggered, infringer, aiming, wrongful conduct, lack of personal jurisdiction, insufficient to create

LexisNexis (TM) HEADNOTES - Core Concepts - ♦ Hide Concepts

Civil Procedure > Justiciability > Mootness
Civil Procedure > Remedies > Declaratory Relief
HN1 A declaratory judgment action is not moot unless it is absolutely clear that the defendant will never renew its allegedly wrongful behavior. More Like This Headnote

Civil Procedure > Justiciability > Mootness
Civil Procedure > Appeals > Reviewability
HN2 Obviously meritless and belatedly asserted damages claims cannot save an appeal from mootness. More Like This Headnote

Trademark Law > Infringement > Jurisdiction
Trademark Law > Infringement > Determinations
HN3 The Lanham Act authorizes district courts to order trademark cancellation in any action involving a registered mark. 15 U.S.C.S. § 1119. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
Civil Procedure > Appeals > Standards of Review
HN4 Where the district court does not hold an evidentiary hearing but rather decides the jurisdictional issue on the basis of the pleadings and supporting declarations, the court of appeals will presume that the facts set forth therein can be proven. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Constitutional Limits
HN5 California permits the exercise of personal jurisdiction to the full extent permitted by due process. Cal. Civ. Code § 410.10. Whether a California court has personal jurisdiction over a defendant thus depends on whether plaintiff has alleged "minimum contacts" between defendant and the state of California for purposes of general or specific jurisdiction. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
HN6 A defendant whose contacts with a state are "substantial" or "continuous and systematic" can be haled into court in that state in any action, even if the action is unrelated to those contacts. This is known as general jurisdiction. The standard for establishing general jurisdiction is fairly high, and requires that the defendant's contacts be of the sort that approximate physical presence. Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
HN7 Occasional sales to California residents is insufficient to create general jurisdiction. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction
HN8 Engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN9 Even though there is no general jurisdiction over a defendant in California, California courts may still exercise personal jurisdiction if the case arises out of certain forum-related acts. This "specific" jurisdiction exists if: (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum; (2) the claim arises out of or results from the defendant's forum-related activities; and (3) the exercise of jurisdiction is reasonable. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN10 A foreign act that is both aimed at and has effect in the forum state satisfies the purposeful availment prong of the specific jurisdiction analysis. To meet the effects test, the defendant must have: (1) committed an intentional act; which was (2) expressly aimed at the forum state; and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state. This does stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction. There must be something more. "Something more" is described as "express aiming" at the forum state. The requirement is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN11 "Express aiming," for purposes of specific jurisdiction, encompasses wrongful conduct individually targeting a known forum resident. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN12 The second requirement for specific jurisdiction is that the contacts constituting purposeful availment must be the ones that give rise to the current suit. We measure this requirement in terms of "but for" causation. More Like This Headnote

Civil Procedure > Jurisdiction > Personal Jurisdiction & In Rem Actions > Personal Jurisdiction

HN13 The final requirement for specific jurisdiction is reasonableness. For jurisdiction to be reasonable, it must comport with fair play and substantial justice. The defendant has the burden of demonstrating unreasonableness and requires the defendant to put on a "compelling case." The reasonableness determination requires the consideration of several specific factors: (1) the extent of the defendant's purposeful interjection into the forum state; (2) the burden on the defendant in defending in the forum; (3) the extent of the conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. More Like This Headnote

COUNSEL: Douglas A. Charkin, Peninsula IP Group, Morgan Hill, California, for the plaintiff-appellant.

Carla B. Oakley, Brobeck, Phleger & Harrison LLP, San Francisco, California, for the defendant-appellee.

JUDGES: Before: Joseph T. Sneed, Mary M. Schroeder, and Stephen S. Trott, Circuit Judges. Opinion by Judge Schroeder; Concurrence by Judge Snead.

OPINIONBY: Mary M. Schroeder

OPINION: [*1084]

SCHROEDER, Circuit Judge:

This is a trademark dispute. The principal issue is whether the district court in California has personal jurisdiction over the defendant, a Georgia corporation. We hold that the district court can exercise specific jurisdiction over this suit because the complaint alleges the defendant engaged in wrongful conduct that individually targeted the plaintiff in California.

BACKGROUND

Plaintiff-appellant Bancroft & Masters, Inc. ("B&M") is a small California corporation that sells computer and networking products and support services. B&M does almost all of its business in the San Francisco area. **[**2]** It brought this action against defendant-appellee Augusta National Inc. ("ANI"), which operates the Augusta National Golf Club in Augusta, Georgia and sponsors the annual PGA Tour event known as the Masters Tournament.

ANI holds several federally registered trademarks for the mark "Masters" and operates a website at the domain name "masters.org." B&M registered the domain name "masters.com" with Network Solutions, Inc. ("NSI") in 1995. Until recently, NSI was the sole registrar of domain **[*1085]** names in the United States, under an exclusive contract with the U.S. government. B&M alleges that sometime in late 1997, ANI sent a letter to NSI's Virginia headquarters challenging B&M's use of the domain name masters.com. ANI also sent a letter to B&M in California demanding that B&M cease and desist its use of masters.com and transfer it immediately to ANI.

ANI's letter to NSI triggered NSI's then-applicable dispute resolution policy. Under this policy, B&M had three options: (1) voluntarily transfer the masters.com domain name to ANI; (2) allow the domain name to be placed "on hold," meaning that it could not be used by either party; or (3) obtain a declaratory judgment establishing its right **[**3]** to use the masters.com domain name. *See* Lockheed Martin Corp. v. Network Solutions, Inc., 194 F.3d 980, 982 (9th Cir. 1999) (explaining NSI's procedures). Rather than give up its website, B&M chose the third option. B&M filed suit in the Northern District of California seeking a judgment declaring non-dilution and non-infringement. B&M's complaint also requested in a separate count that the court order the cancellation of ANI's federally registered trademarks.

The district court granted ANI's motion to dismiss for lack of personal jurisdiction, reasoning that the continuous and systematic contacts in California necessary for general jurisdiction were lacking and that B&M had not satisfied the criteria for specific jurisdiction. *See* Bancroft & Masters, Inc. v. Augusta Nat'l Inc., 45 F. Supp. 2d 777 (1998). B&M appeals this dismissal. We now hold that the district court had specific jurisdiction and reverse and remand. ANI's contention that its settlement offer moots this appeal is without merit.

DISCUSSION

ANI's threshold argument is that this appeal has been rendered moot because ANI has offered to waive all trademark infringement, dilution, and **[**4]** unfair competition claims against B&M, so long as B&M stays out of the golf business. B&M's request for a declaratory judgment that it is entitled to use the domain name is not moot, however, because ANI has not made the requisite showing that it is absolutely clear that it will never seek to prevent B&M from using its domain name in the future. *See* FTC v. Affordable Media, LLC, 179 F.3d 1228, 1238 (9th Cir. 1999) (HN1 A declaratory judgment action is not moot unless it is absolutely clear that the defendant will never renew its allegedly wrongful behavior.). ANI's promise was an incomplete and qualified one.

Furthermore, even if ANI's promise had been unqualified, it would not have mooted B&M's separate request for cancellation of ANI's "Masters" trademarks. The trademark cancellation count is separate from the declaratory judgment count in the complaint and does not appear to be obviously meritless. *Cf.* Arizonans For Official English v. Arizona, 520 U.S. 43, 71, 137 L. Ed. 2d 170, 117 S. Ct. 1055 (1997) (HN2 obviously meritless and belatedly asserted damages claim cannot save appeal from mootness). HN3 The Lanham Act authorizes district courts to order trademark **[**5]** cancellation in any action involving a registered mark. *See* 15 U.S.C. § 1119.

ANI further suggested at oral argument that the case may be moot because NSI's dispute resolution procedures have recently changed. This argument was neither developed on appeal nor adequately supported in the record. As a result, we are unable to evaluate that suggestion on the record before us.

ANI also contends that there is insufficient evidence in the record to establish jurisdiction. HN4 Where, as here, however, the district court does not hold an evidentiary hearing but rather decides the jurisdictional issue on the basis of the pleadings and supporting declarations, we will presume that the facts set forth therein can be proven. *See* Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 268 (9th Cir. 1995). ANI's challenge to the evidentiary **[*1086]** basis for the district court's ruling is therefore irrelevant.

General Jurisdiction

HN5

California permits the exercise of personal jurisdiction to the full extent permitted by due process. *See* Cal. Civ. Code § 410.10. Whether a California court has personal jurisdiction over ANI thus depends on whether B&M has **[**6]** alleged "minimum contacts" between ANI and the state of California for purposes of general or specific jurisdiction. *See* International Shoe Co. v. Washington, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154 (1945).

HN6 A defendant whose contacts with a state are "substantial" or "continuous and systematic" can be haled into court in that state in any action, even if the action is unrelated to those contacts. *See* Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415, 80 L. Ed. 2d 404, 104 S. Ct. 1868 (1984). This is known as general jurisdiction. The standard for establishing general jurisdiction is "fairly high," Brand v. Menlove Dodge, 796 F.2d 1070, 1073 (9th Cir. 1986), and requires that the defendant's contacts be of the sort that approximate physical presence. *See* Gates Lear Jet Corp. v. Jensen, 743 F.2d 1325, 1331 (9th Cir. 1984). Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state's markets, designates an agent for service of process, holds a license, or is incorporated there. *See* Hirsch v. Blue Cross, Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th Cir. 1986). **[**7]**

The district court correctly found general jurisdiction lacking in this case, because ANI's contacts do not qualify as either substantial or continuous and systematic. ANI is not registered or licensed to do business in California. It pays no taxes in California, maintains no bank accounts in California, and targets no print, television, or radio advertising toward California. ANI's masters.org website is "passive," i.e., consumers cannot use it to make purchases. Furthermore, ANI's occasional, unsolicited sales of tournament tickets and merchandise to California residents are insufficient to create general jurisdiction. *See* Brand, 796 F.2d at 1073 (HN7 occasional sales to California residents insufficient to create general jurisdiction).

ANI continues to have license agreements with two television networks and a handful of California vendors. These agreements constitute doing business with California, but do not constitute doing business in California. *See* Helicopteros, 466 U.S. at 418 (no general jurisdiction in Texas over helicopter transportation company that purchased 80 percent of its

helicopters, spare parts, and accessories from Texas sources **[**8]** over a four year period). This is because HN8 engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders. *See Id. Compare Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 447, 96 L. Ed. 485, 72 S. Ct. 413 (1951) (upholding Ohio's exercise of general jurisdiction over corporation where corporation's president worked out of an office in Ohio from which he drew and distributed payroll checks, performed corporation's filing and correspondence, and held regular directors' meetings, and where the corporation held two Ohio bank accounts). ANI's limited contacts with California are insufficient to establish general jurisdiction.

Specific Jurisdiction

HN9

Even though there is no general jurisdiction over ANI in California, California courts may still exercise personal jurisdiction if the case arises out of certain forum-related acts. This "specific" jurisdiction exists if (1) the defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum, (2) the claim **[**9]** arises out of or results from the defendant's forum-related activities, and (3) the exercise of jurisdiction is reasonable. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997). **[*1087]**

The claims in this case center on ANI's letter to NSI in Virginia, which forced B&M to bring suit or lose control of its website. B&M argues that this letter, addressed to Virginia but intended to affect B&M in California, constitutes "purposeful availment" under the "effects test" first announced by the Supreme Court in *Calder v. Jones*, 465 U.S. 783, 79 L. Ed. 2d 804, 104 S. Ct. 1482 (1984). ANI describes the letter as purely defensive, aimed only at protecting its intellectual property rights from incursion by B&M. B&M's complaint, however, contends that ANI deliberately triggered NSI's dispute resolution procedures not only to defend its own trademarks but also to interfere wrongfully with B&M's use of its domain name and to misappropriate that name, "masters.com," for ANI's own use. Because the prima facie jurisdictional analysis requires us to accept the plaintiff's allegations as true, we must adopt B&M's version of events for purposes of this appeal. **[**10]**

In *Calder*, the Supreme Court held that HN10 a foreign act that is both aimed at and has effect in the forum state satisfies the purposeful availment prong of the specific jurisdiction analysis. To meet the effects test, the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state. *See Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1321 (9th Cir. 1998). Subsequent cases have struggled somewhat with *Calder*'s import, recognizing that the case cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction. We have said that there must be "something more," but have not spelled out what that something more must be. *See Panavision*, 141 F.3d at 1322.

We now conclude that "something more" is what the Supreme Court described as "express aiming" at the forum state. *See Calder*, 465 U.S. at 789. Express aiming is a concept that in the jurisdictional context hardly defines itself. From the **[**11]** available cases, we deduce that the requirement is satisfied when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state. For example, in *Calder* itself, the defendants were a reporter and an editor of a nationally-circulated tabloid newspaper whom plaintiff, a well-known California resident, accused of libel. The defendants argued that the alleged wrong had no intended nexus with California and that they should be treated like "a welder employed in Florida who works on a boiler which subsequently explodes in California." *Id.* The Supreme Court rejected this proposed analogy, pointing out that "petitioners are not charged with mere untargeted negligence. Rather, their intentional, and allegedly tortious, actions were expressly aimed at California." *Id.*

Subsequent cases from this circuit bear out the conclusion that HN11"express aiming" encompasses wrongful conduct individually targeting a known forum resident. In Metropolitan Life Insurance Co. v. Neaves, 912 F.2d 1062 (9th Cir. 1990), we held that an Alabama resident could be haled into a California court on the basis **[**12]** of a letter she sent to an insurance company representing that she was entitled to an insurance payment that actually belonged to a California resident. We stated that under *Calder*, it was irrelevant where the letter was sent. The critical factor was that in sending the letter, the defendant "was purposefully defrauding [plaintiff] in California." 912 F.2d at 1065. Similarly, in Brainerd v. Governors of the University of Alberta, 873 F.2d 1257 (9th Cir. 1989), we held that an Arizona court could exercise specific jurisdiction over Canadian residents who, in response to telephone calls directed to them in Canada, made statements that allegedly defamed a person they knew resided in Arizona. *Id.* at 1259-60. Even though the Canadian defendants had not initiated the telephone **[*1088]** calls, the statements they made about the plaintiff during the conversations were not "untargeted negligence" but rather were "performed for the very purpose of having their consequences felt in the forum state." *Id. See also* Gordy v. Daily News, L.P., 95 F.3d 829, 833 (9th Cir. 1996) (holding that specific jurisdiction existed in light of evidence **[**13]** of "targeting" of the plaintiff, who was a forum resident); Lake v. Lake, 817 F.2d 1416, 1422-23 (9th Cir. 1987) (holding that specific jurisdiction existed where defendant performed foreign acts for the purpose of having their consequences felt in the forum state); Haisten v. Grass Valley Med. Reimbursement Fund, Ltd., 784 F.2d 1392, 1398 (9th Cir. 1986) (finding purposeful availment where forum effect of a foreign act "was not only foreseeable, it was contemplated and bargained for").

The presence of individualized targeting is what separates these cases from others in which we have found the effects test unsatisfied. In *Cybersell*, for example, there was no showing that the defendants even knew of the existence of the plaintiffs, let alone targeted them individually. *See* 130 F.3d at 420. *See also* Gordy, 95 F.3d at 833 (distinguishing certain cases holding that no personal jurisdiction existed under *Calder* on the ground that in those cases targeting was lacking).

Applying these concepts to the instant case, we conclude that B&M has demonstrated purposeful availment by ANI under the *Calder* effects test. **[**14]** ANI acted intentionally when it sent its letter to NSI. The letter was expressly aimed at California because it individually targeted B&M, a California corporation doing business almost exclusively in California. Finally, the effects of the letter were primarily felt, as ANI knew they would be, in California.

This case resembles *Panavision*, in which an Illinois resident registered as his domain name a California corporation's trademark. Though this activity was conducted outside of California, it was clear that the defendant's deliberate choice of the plaintiff's trademark, and his subsequent attempts to extort compensation for his conveyance of the domain name, targeted that individual plaintiff. *See* Panavision, 141 F.3d at 1321. Here, too, ANI was well aware that B&M currently held the masters.com website and that it was B&M that would be affected if the NSI dispute resolution procedures were triggered. This is sufficient to satisfy *Calder* and thereby demonstrate the purposeful availment necessary for an exercise of specific jurisdiction.

HN12The second requirement for specific jurisdiction is that the contacts constituting purposeful availment must be the **[**15]** ones that give rise to the current suit. We measure this requirement in terms of "but for" causation. *See* Ziegler v. Indian River County, 64 F.3d 470, 474 (9th Cir. 1995). This requirement is met here. But for the letter to NSI, which under the NSI dispute resolution procedures forced B&M to choose between bringing this suit and losing the use of its website, it is clear that B&M would have no need for a judicial declaration of its right to use masters.com.

HN13 The final requirement for specific jurisdiction, and the one that the district court apparently found to be lacking, is reasonableness. For jurisdiction to be reasonable, it must comport with fair play and substantial justice. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). *Burger King* explicitly places upon the defendant the burden of demonstrating unreasonableness and requires the defendant to put on a "compelling case." *Id.* at 476-77. The reasonableness determination requires the consideration of several specific factors: (1) the extent of the defendant's purposeful interjection into the forum state, (2) the burden on the **[**16]** defendant in defending in the forum, (3) the extent of the conflict with the sovereignty of the defendant's state, (4) the forum state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum. *Id.* **[*1089]**

In the district court, ANI attempted no factual showing with regard to the *Burger King* factors. Instead, ANI stated without elaboration that jurisdiction would be unreasonable. ANI supported this assertion with citations to various district court cases and two pre-*Burger King* cases from this circuit holding that a cease-and-desist letter sent by a trademark holder to a putative infringer is not, by itself, a sufficient basis for personal jurisdiction in the putative infringer's home state. *See Kransco Mf'g, Inc. v. Markwitz*, 656 F.2d 1376 (9th Cir. 1981); *Cascade Corp. v. Hiab-Foco AB*, 619 F.2d 36 (9th Cir. 1980); *Douglas Furniture Co. v. Wood Dimensions, Inc.*, 963 F. Supp. 899 (C. D. Cal. 1997). This is inadequate to discharge *Burger King* **[**17]** 's requirement that the defendant demonstrate a "compelling case," focused on the seven specific factors listed above, in order to establish unreasonableness. ANI did not focus on the *Burger King* factors and apply them to the particular circumstances of this case.

Moreover, the cases on which ANI relies are inapposite because they concern only cease-and-desist letters. This case does not arise solely out of ANI's cease-and-desist letter to B&M, which placed B&M on notice of ANI's competing claim. This case arises principally out of ANI's letter to NSI, and that letter did more than warn or threaten B&M. Under NSI procedures, the letter would have operated automatically to prevent B&M from using its website had B&M not filed suit. ANI has not demonstrated any hardship or any other specific factor suggesting that jurisdiction in California would be unreasonable. We therefore conclude that the reasonableness requirement is met.

CONCLUSION

The district court's order dismissing the case for lack of personal jurisdiction is reversed, and the case is remanded for further proceedings. We decline B&M's request for 28 U.S.C. § 1927 sanctions against ANI for its **[**18]** attempt to have this appeal dismissed as moot. ANI's mootness argument was neither unreasonable nor vexatious, and does not appear to have been raised in bad faith.

REVERSED AND REMANDED.

CONCURBY: Joseph T. Sneed

CONCUR:

SNEED, Circuit Judge, with whom TROTT, Circuit Judge, joins, Concurring:

The "effects test" has normally been restricted to tortious conduct in which the "aimer" in state Y was seeking to injure wrongfully the target in state X. I concur in the opinion only on the assumption that Augusta National, through its letter to NSI, engaged in tortious conduct, i.e., that they intended to effect a conversion of the <masters.com> domain name.

I am skeptical of Bancroft & Masters's selection of <masters.com> as its domain name. I

suspect that Augusta National's initial reaction was similar. Therefore, I do not find it implausible that Augusta National, through its letter to NSI, merely intended to protect its trademark from dilution and infringement. At this point, however, there is insufficient information with which to make such a judgment. Jurisdiction in California would be ripe for challenge if following the development of trial it should appear that Augusta National acted **[**19]** reasonably and in good faith to protect its trademark against an infringer.

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PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On September 9, 2003, the following ordinary business practice., I served the foregoing document(s) described as:

APPENDIX OF NON-CALIFORNIA AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO QUASH SERVICE OF SUMMONS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Rudy Nolen
Nolen Saul Brelsford
350 University Ave., Suite 280
Sacramento, CA 95825

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[ ] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 9, 2003, at Gold River, California.

By Claudia Perry
Claudia Perry

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
AUG 13 2003
Clerk of the Napa Superior Court
By _____ Deputy

DELAY REDUCTION CASE

SUMMONS ISSUED

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CASE MANAGEMENT CONFERENCE
DATE: 12-31-03
TIME: 8:30 AM
PLACE: Courtroom B, 2nd Floor
825 Brown St., Napa CA 94559

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND SOCIETY OF PENNSYLVANIA, WATCHTOWER ENTERPRISES, L.L.C., WATCHTOWER FOUNDATION, INC., WATCHTOWER ASSOCIATES, LTD., KINGDOM SUPPORT SERVICES, INC., CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, NAPA, CA, INC., and DOES 1 through 20, inclusive.

Defendants.

CASE NO: 26-22191

Jury Trial Demanded

Amended Complaint for Damages:

1. Sexual Battery and Respondeat Superior
2. Common Law Negligence
3. Negligent Appointment, Retention, and Supervision
4. Gross Negligence - Wilful Misconduct
5. Breach of Fiduciary Duty
6. Negligence Per Se and Common Law Negligence: Failure to Report Suspected Child Abuse
7. Fraud, Fraudulent Concealment, and Conspiracy
8. Ratification
9. Alter Ego and Single Business Enterprise
10. Negligent Usurpation of Investigatory Function
11. Violation of Penal Code § 182
12. Violation of Penal Code § 32

PLAINTIFFS' ORIGINAL COMPLAINT

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs in the above entitled cause, and files this, their Original Complaint, and allege as follows:

I.

PARTIES

1. Plaintiff CHARISSA W., born February 8, 1969, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

2. Plaintiff NICOLE D., born November 9, 1971, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Watchtower Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Watchtower Defendants' organization within the State of California.

3. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its California agent for service of process James M. McCabe, 4817 Santa Monica Avenue, San Diego CA 92107.

4. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of California through its agents and alter egos and may be served with process at its offices located at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108.

5. Defendant WATCHTOWER ENTERPRISES, LLC., a limited liability company organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be serve with process at its offices located at 934 East 84th Street Brooklyn, NY 11236.

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

California through its agents and alter egos and may be served with process at its offices located at 934 East 84th Street Brooklyn, NY 11236.

7. Defendant WATCHTOWER ASSOCIATES, LTD., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its New York agent of service of process Sheldon Stern 147 Holiday Drive, Westbury, New York 11797.

8. Defendant KINGDOM SUPPORT SERVICES, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its New York agent of service of process Philip Brumley 2823 Route 22, Patterson, NY 12563-2236.

9. Defendant CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its New York agent of service of process Philip Brumley 2821 Route 22, Patterson, NY 12563-2236.

10. Defendant RELIGIOUS ORDER OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its New York agent of service of process Philip Brumley 2891 Route 22, Patterson, NY 12563-2236.

11. Defendant NAPA KINGDOM HALL, now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and alter egos and may be served with process through its California agent for service of process, Benjamin Hernandez at 343 E. Thompson Avenue, Sonoma, CA 95476, and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES , NAPA, CA, INC., a corporation organized and existing under the laws of the State of California, has conducted business within the State of California through its agents and alter egos and may be served with process through its California agent for service of process, David Becker, 1034 Darms Ln, Napa, CA 94558.

12. Plaintiffs allege on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who therefore sues such defendants by such fictitious names, and will amend the complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

14. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" and each is the agent, servant and alter ego of each other and operates as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.

II.

JURISDICTION AND VENUE

15. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

16. Venue is proper in Napa County, California because most of the acts or omissions that give rise to Plaintiffs' claims occurred in Napa County, California and Defendant NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, NAPA, CA, INC. is a resident of Napa County.

III.

FACTS COMMON TO ALL CAUSES OF ACTION

17. In the past, certain Elders, Ministerial Servants, Pioneers, Male Publishers, agents,

volunteers and other leaders and representatives of the WATCHTOWER DEFENDANTS' organization, including Edward Villegas, have used their positions of authority within the WATCHTOWER DEFENDANTS' organization to sexually abuse minors, including Plaintiffs. The WATCHTOWER DEFENDANTS were notified of the abuse of these minors by their elder, Edward Villegas, and others, but failed to take reasonable steps to ensure the safety of Plaintiffs and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for Plaintiffs who were victims of this sexual abuse.

18. All paragraphs of this Complaint are based on information and belief, except for those allegations, which pertain to the Plaintiffs and their counsel. Plaintiffs' information and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint either has, or is likely to have, evidentiary support upon further investigation and discovery.

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

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

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

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

23. Despite knowledge of a problem with sexual abuse of minors by leaders in the WATCHTOWER DEFENDANTS' organization, the WATCHTOWER DEFENDANTS acted with willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the WATCHTOWER DEFENDANTS engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the WATCHTOWER DEFENDANTS' organization who committed acts of sexual molestation against children. The WATCHTOWER DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers, Male Publishers and other leaders in the organization. The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS furthered this conspiracy of concealment by, among other things, failing to properly report complaints of sexual misconduct to law enforcement authorities, failing to remove molesting leaders or prevent their access to children. Molesting leaders were allowed to remain as leaders in good standing in the organization and were allowed continued frequent and unsupervised access to children in the organization. At all material times, the WATCHTOWER DEFENDANTS prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers were not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual Abuse. Violation of this policy would lead to severe sanctions. The WATCHTOWER DEFENDANTS also failed to provide Plaintiffs and their

families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The WATCHTOWER DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The WATCHTOWER DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access and control over their victims.

24. Beginning in at least 1970, if not earlier, the WATCHTOWER DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women and children in the WATCHTOWER DEFENDANTS' organization.

25. In approximately 1970, Plaintiff CHARISSA W. and her mother, Betty Hopkins, came under the instruction and care of the WATCHTOWER DEFENDANTS' organization through their agent, Edward Villegas, and his wife, Marsha Villegas. The WATCHTOWER DEFENDANTS used the daycare center run out of the Villegas home to attract new converts. Plaintiff CHARISSA W. was approximately 1 year old at the time. Betty Hopkins became one of those new converts and entrusted her daughter, Plaintiff CHARISSA W. to the WATCHTOWER DEFENDANTS' care.

26. In approximately 1971, Plaintiff Nicole D. and her family came under the care of the WATCHTOWER DEFENDANTS' organization and entrusted Nicole D. to the leadership of the WATCHTOWER DEFENDANTS' agent, Edward Villegas. Through his position of leadership with the WATCHTOWER DEFENDANTS, Edward Villegas developed a relationship of trust and confidence with Plaintiff Nicole D. and her family, working with them at WATCHTOWER DEFENDANT events and inviting them into his home.

27. Beginning by at least 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the WATCHTOWER DEFENDANTS organization and to sexually abuse them.

28. In about 1972, the WATCHTOWER DEFENDANTS' agent, Edward Villegas began sexually molesting Plaintiff, CHARISSA W. by, among other things, fondling her genitals, digitally penetrating her vagina and forcing her to have oral sex. She was approximately three (3) or four (4) years old at the time. For the next twelve (12) to thirteen (13) years, the WATCHTOWER

DEFENDANTS' agent, Edward Villegas continued to use his leadership position as an Elder to gain access to and sexually abuse Plaintiff, CHARISSA W., who was under the WATCHTOWER DEFENDANTS' care. Plaintiff's position as a minor in the WATCHTOWER DEFENDANTS' organization, as well Edward Villegas' position as a spiritual leader and authority figure in the WATCHTOWER DEFENDANTS' organization allowed him to maintain control and influence over Plaintiff and others. The WATCHTOWER DEFENDANTS enabled Edward Villegas to abuse Plaintiff and others by placing him in positions of authority, and then actively concealing his sexual abuse. The WATCHTOWER DEFENDANTS, each of them, used their positions in the organization to aid and abet Edward Villegas and other leaders in the sexual abuse and exploitation of minors in the organization and in furtherance of the conspiracy to conceal the sexual molestation occurring within the WATCHTOWER DEFENDANTS' organization.

29. During this time period, the WATCHTOWER DEFENDANTS' agent, Edward Villegas, was also using his position of authority as an Elder to sexually abuse other children under the WATCHTOWER DEFENDANTS' care.

30. In approximately 1978, Edward Villegas used his position as an Elder and leader in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiff, NICOLE D., a child under the care of the WATCHTOWER DEFENDANTS' organization. Plaintiff, NICOLE D. was approximately seven (7) years old when the abuse occurred. Using his delegated authority as a leader in the WATCHTOWER DEFENDANTS' organization, Edward Villegas forced Plaintiff, NICOLE D. to have oral sex with him.

31. When Plaintiff, NICOLE D. told her parents about the abuse, her father immediately reported it to the Elders of Defendant, NAPA KINGDOM HALL pursuant to instructions by the WATCHTOWER DEFENDANTS. In response, the WATCHTOWER DEFENDANTS privately reproved their agent for his conduct, but took no other steps to hold him accountable or to otherwise notify members and the families of the children whom they had placed of under the authority of their agent, Edward Villegas. Therefore, Edward Villegas was able to continue to use his position of authority.

32. For over two decades, the WATCHTOWER DEFENDANTS knew or should have

known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents under the care of the organization. Nevertheless, the WATCHTOWER DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the WATCHTOWER DEFENDANTS' local congregations. The WATCHTOWER DEFENDANTS' agent then used his position of authority in the organization to sexually molest Plaintiffs and others. The WATCHTOWER DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the WATCHTOWER DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiffs and others. The WATCHTOWER DEFENDANTS also aided, abetted and ratified the abuse.

33. When the WATCHTOWER DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the WATCHTOWER DEFENDANTS assumed the responsibility for dealing with the problem. They told families of victims that they should leave the matter to the WATCHTOWER DEFENDANTS to handle. However, the WATCHTOWER DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with authority over children. They did not act to help Plaintiffs or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The WATCHTOWER DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

34. Edward Villegas used the authority of his position in the WATCHTOWER DEFENDANTS' organization to gain access to and sexually abuse Plaintiffs and others. The WATCHTOWER DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding, abetting and ratifying the abuse of children by their appointed agents;

b. blaming, humiliating, sanctioning and/or disciplining victims/accusers of sexual

abuse instead of the perpetrator;

c. negligently failing to report such sexual abuse, including the abuse by Edward Villegas to law enforcement and governmental child welfare agencies and requiring that members not make such reports;

d. negligently failing to warn Plaintiffs, their families, and others of the risk of abuse by Edward Villegas after they knew or should have known of his propensities to use his positions of leadership to engage in acts of sexual abuse against children entrusted to the WATCHTOWER DEFENDANTS' care;

e. negligently failing to train its Elders, Overseers, Ministerial Servants and other appointed leaders to identify, investigate, prevent and respond to or report child abuse;

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

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

h. negligently failing to provide child abuse victims and their families with any assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse;

j. concealing from Plaintiffs and their families that the WATCHTOWER DEFENDANTS had information that their agent, Edward Villegas was using his position of authority to abuse young children entrusted to their care by the WATCHTOWER DEFENDANTS;

k. negligently failing to undertake a sexual offender evaluation, provide sexual offender treatment and/or obtain psychiatric evaluation and treatment of Edward Villegas after they knew or should have known of his propensities to use his position of leadership

to engage in acts of sexual abuse;

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

FIRST CAUSE OF ACTION
SEXUAL BATTERY AND *RESPONDEAT SUPERIOR*

35. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Plaintiffs allege that for a number of years, beginning in 1972, as an agent and alter ego of the WATCHTOWER DEFENDANTS, Edward Villegas used his position of authority to gain access to Plaintiffs and to engage in un-permitted, harmful, and offensive sexual contact upon the bodies of Plaintiffs and each of them, as described herein, without each Plaintiff's consent, committing sexual abuse upon the persons of Plaintiffs in the State of California in violation of Code of Civil Procedure 340.1.

37. Plaintiffs further allege each of the WATCHTOWER DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and alter ego of the GOVERNING BODY and each other, utilized such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiffs. In such capacity, the WATCHTOWER DEFENDANTS are liable for the sexual abuse of Plaintiffs under the legal theory of *respondeat superior*.

38. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

39. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Plaintiffs allege that, at all times herein mentioned, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Edward Villegas, but failed to act to protect them from said harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

41. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

42. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Plaintiffs allege that at all times herein mentioned, the WATCHTOWER DEFENDANTS knew or should have known of their agents, Edward Villegas', propensities to use his position as a leader in the local congregation to engage in and/or aid and abet acts of sexual abuse. The WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, and otherwise research the background of their agent, Edward Villegas, prior to their hiring appointing him to leadership positions and entrusting children to his care.

44. Plaintiffs further allege that after Edward Villegas was retained by WATCHTOWER DEFENDANTS acting on behalf of and under the supervision of the WATCHTOWER

DEFENDANTS, WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate and otherwise monitor the conduct of their agent, Edward Villegas, during his interactions with children entrusted by WATCHTOWER DEFENDANTS to his care, thereby also failing to adequately supervise and discipline the conduct Edward Villegas.

45. Plaintiff's further allege that WATCHTOWER DEFENDANTS failed to provide adequate warning to Plaintiffs and their families of their agent's dangerous propensities and unfitness to lead.

46. Plaintiffs further allege the WATCHTOWER DEFENDANTS negligently investigated, appointed, retained and supervised Edward Villegas in the organization at a time when they knew or should have known of his propensities to use his appointed position to engage in acts of sexual abuse against Plaintiffs and other young children under the WATCHTOWER DEFENDANTS' care.

47. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION
GROSS NEGLIGENCE/WILFUL MISCONDUCT

48. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Plaintiffs allege the behavior of the WATCHTOWER DEFENDANTS as described hereinabove demonstrates a conscious indifference to the safety and welfare of Plaintiffs, in that WATCHTOWER DEFENDANTS knew or should have known of the dangerous propensities of their agents, Edward Villegas, yet failed to act to protect the health, safety and welfare of children in the custody and care of WATCHTOWER DEFENDANTS, thereby allowing Plaintiffs to be

sexually abused, which could have been prevented but for WATCHTOWER DEFENDANTS' wilful misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs, in violation of WATCHTOWER DEFENDANTS' duty to protect the children entrusted to Edward Villegas' care and custody.

50. Plaintiffs further allege that WATCHTOWER DEFENDANTS' actions, constituting wilful misconduct and gross negligence described hereinabove, caused significant mental, emotional, and physical injuries as a result of the acts of sexual abuse described hereinabove.

51. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

52. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Plaintiffs allege that by holding Edward Villegas out as a qualified Elder and leader in the WATCHTOWER DEFENDANTS' organization, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiffs, the WATCHTOWER DEFENDANTS, created a fiduciary relationship with Plaintiffs. The WATCHTOWER DEFENDANTS placed themselves in a position of trust and confidence with Plaintiffs, and that such relationship imposed on the WATCHTOWER DEFENDANTS a duty to act in Plaintiffs' best interests and to protect Plaintiffs' best interests.

54. Plaintiffs further allege that because of this special relationship, the WATCHTOWER DEFENDANTS, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would not allow harm to Plaintiffs or fail to warn

Plaintiffs of potential harm. Further, Plaintiffs and their families placed their trust and confidence in the WATCHTOWER DEFENDANTS that they would protect Plaintiffs from harm.

55. The above conduct, either independently or in conjunction with each other, constitutes a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

56. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SIXTH CAUSE OF ACTION
NEGLIGENCE *PER SE* and COMMON-LAW NEGLIGENCE:
FAILURE TO REPORT SUSPECTED CHILD ABUSE

57. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. Plaintiffs allege that the WATCHTOWER DEFENDANTS had a duty, under the California Child Abuse and Neglect Reporting Act, California Penal Code § 11164, *et. seq.*, (and predecessor provisions) and the common-laws, to report the abuse or suspected abuse of children.

59. Plaintiffs further allege that the WATCHTOWER DEFENDANTS failed to report to law enforcement the abusive and illegal acts of their agent, Edward Villegas, both prior to and after the abuse inflicted on Plaintiffs. By failing to report the actions of Edward Villegas, the WATCHTOWER DEFENDANTS violated California Child Abuse and Neglect Reporting Act, which is intended to safeguard and enhance the welfare of abused children. Plaintiffs were members of the class of persons that the California Child Abuse and Neglect Reporting Act was designed to protect and each was injured as a result of The WATCHTOWER DEFENDANTS' violation of the statute. Such violation constitutes negligence *per se*.

60. Plaintiffs further allege that the WATCHTOWER DEFENDANTS' failure to report constitutes common-law negligence. The WATCHTOWER DEFENDANTS asserted their authority

over both Plaintiffs and their abuser and agent, Edward Villegas, creating a special relationship of trust and confidence and power over Plaintiffs. In the context of this special relationship and the unequal relationship among the parties, the WATCHTOWER DEFENDANTS assumed a duty to handle all reports of child abuse and in doing so caused Plaintiffs and their families from reporting the abuse to, or seeking help from, sources and authorities outside the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS acted with conscious disregard for the safety and welfare of Plaintiffs and violated that duty to Plaintiffs' detriment.

61. As a legal result of the WATCHTOWER DEFENDANTS' failure to report the illegal conduct of their agent, Edward Villegas, law enforcement, Plaintiff was deprived of the benefits provided by the State of California and other trained professionals that would have decreased further harm to the Plaintiffs and prevented further abuse. Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SEVENTH CAUSE OF ACTION
FRAUD, FRAUDULENT CONCEALMENT AND CONSPIRACY

62. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. Plaintiffs allege that after receiving reports that their agent, Edward Villegas was using his position of authority in the organization to abuse adolescents, the WATCHTOWER DEFENDANTS, willfully and intentionally kept information from Plaintiffs, other victims similarly situated and the community-at-large. The WATCHTOWER DEFENDANTS intentionally misrepresented to Plaintiffs and their families that Edward Villegas was a leader in good standing with authority to instruct Plaintiff and other children in spiritual, ethical and moral matters and that these agents were to be obeyed. The WATCHTOWER DEFENDANTS further intentionally

misrepresented that they would act in the best interests of Plaintiffs and other children entrusted to their care. The WATCHTOWER DEFENDANTS failed to disclose that they knew of Edward Villegas' propensity to use his leadership positions to sexually abuse Plaintiffs and others and that they were doing nothing to protect the children under their care. Plaintiffs did not know of the falsity of the WATCHTOWER DEFENDANTS' representations, were entitled to rely upon them and did in fact rely upon them causing each of them serious injury and harm.

64. Plaintiffs further allege that by holding out Edward Villegas as an Elder and leader, qualified to provide religious instruction and counsel, and by undertaking the religious instruction and spiritual and emotional counseling and training of plaintiff, and by accepting, through their agents Edward Villegas and other Elders, the control and responsibility of the Plaintiffs as a minor, the WATCHTOWER DEFENDANTS and each of them entered into a fiduciary relationship with the minor plaintiff.

65. Plaintiffs further allege that as fiduciaries to Plaintiffs, the WATCHTOWER DEFENDANTS, and each of them, had a duty to obtained and disclose information relating to sexual misconduct by their agent Edward Villegas. The WATCHTOWER DEFENDANTS failed to disclose and later conspired to conceal such information from Plaintiffs.

66. The WATCHTOWER DEFENDANTS, in concert with each other and with the intent to conceal and defraud, conspired whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of their agent, Edward Villegas. By concealing such information, the WATCHTOWER DEFENDANTS and each of them committed at least one act in furtherance of the conspiracy.

67. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

EIGHTH CAUSE OF ACTION
RATIFICATION

68. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. Plaintiffs allege that upon learning that their agent, Edward Villegas had sexually abused children, the WATCHTOWER DEFENDANTS failed to take appropriate steps to hold Edward Villegas accountable for their actions and continued to appoint or maintain Edward Villegas to leadership positions in the organization throughout the period of abuse. The WATCHTOWER DEFENDANTS thereby ratified their agent, Edward Villegas's conduct in using his appointed position of authority to sexually abuse Plaintiffs and other children.

70. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

NINTH CAUSE OF ACTION
ALTER EGO AND SINGLE BUSINESS ENTERPRISE

71. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 70 of this Complaint as if fully set forth herein.

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

73. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical

manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

TENTH CAUSE OF ACTION
NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

74. Plaintiffs incorporates herein by this reference and re-allege paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75. Plaintiffs alleges that California Penal Code Section 11164 *et. seq.*, (and predecessor provisions) requires officials to perform specific responsibilities to carry out the policy of the statute described in the Act (and its predecessors). The WATCHTOWER DEFENDANTS assumed these duties and responsibilities, but negligently failed to perform them.

76. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

ELEVENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA PENAL CODE SECTION 182

77. Plaintiffs incorporate herein this reference and re-allege paragraphs 1 through 76 of this Complaint as if fully set forth herein.

78. Plaintiffs allege the WATCHTOWER DEFENDANTS' acts described herein violate California Penal Code Section 182 in that the WATCHTOWER DEFENDANTS conspired with one or more other person to commit acts injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

79. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

TWELFTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA PENAL CODE SECTION 32

80. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 79 of this Complaint as if fully set forth herein.

81. Plaintiffs allege that the WATCHTOWER DEFENDANTS' acts described herein violate California Penal Code Section 32 in that the WATCHTOWER DEFENDANTS harbored, concealed and/or aided their agent, Edward Villegas, after their agent, Edward Villegas, had committed a felony, with the intent that their agent, Edward Villegas, might avoid or escape arrest, trial, conviction and/or punishment, and the WATCHTOWER DEFENDANTS having knowledge that their agent, Edward Villegas had committed a felony.

82. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

PRAYER

WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;

2. For past and future medical expenses according to proof;

3. For past and future loss of earnings according to proof;

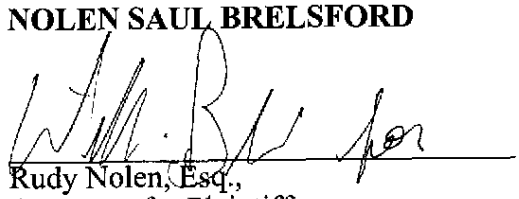
4. For prejudgment interest;

5. For costs of suit incurred herein; and

6. For such other and further relief as the Court deems just and proper.

Dated: 8/8/03

NOLEN SAUL BRELSFORD



Rudy Nolen, Esq.,
Attorneys for Plaintiffs.

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Attorneys for Plaintiffs
CHARISSA W.

FILED
JUL 31 2003
Clerk of the Napa Superior Court
By _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

EX PARTE APPLICATION FOR IN CAMERA FINDING OF REASONABLE AND MERITORIOUS CAUSE FOR FILING OF ACTION; FOR IN CAMERA REVIEW AND ORDER PERMITTING AMENDMENT OF COMPLAINT TO SUBSTITUTE THE TRUE NAMES OF DEFENDANTS FOR FICTITIOUS DESIGNATION; AND FOR ORDER TO SEAL AND KEEP CONFIDENTIAL ALL CERTIFICATES OF MERIT AND CERTIFICATES OF CORROBORATIVE FACT.

Plaintiff, CHARRISA W. hereby applies to the Court ex parte for the following reviews and orders:

1. For In Camera Review of the Certificates of Merit submitted in this action by a mental health professional pursuant to C.C.P. §341.1(f)(2) and by plaintiff's attorney Rudy Nolen and William L. Brelsford, submitted pursuant to §340.1(f)(1), and for a finding that there is reasonable and meritorious cause for the filing of the action against each defendant, pursuant to §340.1(h)

2. For In Camera Review of the Certificate of Corroborative Fact submitted with this Application, and based thereon, for Orders permitting the Complaint to be amended to substitute the true names of the defendants, and that the Certificates of Merit and of Corroborative Fact be kept under seal and confidential from the public and all parties, pursuant to §340.1(l)(m) and (n).

Dated: July 24, 2003

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.,
Attorneys for Plaintiff

IT IS HEREBY ORDERED as follows:

1. For In Camera Review of the Certificates of Merit submitted in this action by a mental health professional pursuant to C.C.P. §341.1(f)(2) and by plaintiff's attorney Rudy Nolen, submitted pursuant to §340.1(f)(1), and for a finding that there is reasonable and meritorious cause for the filing of the action against each defendant, pursuant to §340.1(h)

2. For In Camera Review of the Certificate of Corroborative Fact submitted with this Application, and based thereon, for Orders permitting the Complaint to be amended to substitute the true names of the defendants, and that the Certificates of Merit and of Corroborative Fact be kept under seal and confidential from the public and all parties, pursuant to §340.1(l)(m) and (n).

Date: 7/28/03

Judge of the Superior Court

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FILED
JUL 31 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

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EX PARTE APPLICATION FOR IN CAMERA FINDING OF REASONABLE AND MERITORIOUS CAUSE FOR FILING OF ACTION; FOR IN CAMERA REVIEW AND ORDER PERMITTING AMENDMENT OF COMPLAINT TO SUBSTITUTE THE TRUE NAMES OF DEFENDANTS FOR FICTITIOUS DESIGNATION; AND FOR ORDER TO SEAL AND KEEP CONFIDENTIAL ALL CERTIFICATES OF MERIT AND CERTIFICATES OF CORROBORATIVE FACT.

Plaintiff, NICOLE W. hereby applies to the Court ex parte for the following reviews and orders:

1. For In Camera Review of the Certificates of Merit submitted in this action by a mental health professional pursuant to C.C.P. §341.1(f)(2) and by plaintiff's attorney Rudy Nolen and William L. Brelsford, submitted pursuant to §340.1(f)(1), and for a finding that there is reasonable and meritorious cause for the filing of the action against each defendant, pursuant to §340.1(h)

2. For In Camera Review of the Certificate of Corroborative Fact submitted with this Application, and based thereon, for Orders permitting the Complaint to be amended to substitute the true names of the defendants, and that the Certificates of Merit and of Corroborative Fact be kept under seal and confidential from the public and all parties, *pursuant to §340.1(l)(m) and (n).*

Dated: July 24, 2003

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.,
Attorneys for Plaintiff

IT IS HEREBY ORDERED as follows:

1. For In Camera Review of the Certificates of Merit submitted in this action by a mental health professional pursuant to C.C.P. §341.1(f)(2) and by plaintiff's attorney Rudy Nolen, submitted pursuant to §340.1(f)(1), and for a finding that there is reasonable and *meritorious cause for the filing of the action against each defendant, pursuant to §340.1(h)*

2. For In Camera Review of the Certificate of Corroborative Fact submitted with this Application, and based thereon, for Orders permitting the Complaint to be amended to substitute the true names of the defendants, and that the Certificates of Merit and of Corroborative Fact be kept under seal and confidential from the public and all parties, pursuant to §340.1(l)(m) and (n).

Date: 2/28/03

Judge of the Superior Court

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FILED
JUL 24 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHARISSA W.'s EX PARTE APPLICATION FOR IN CAMERA REVIEW OF CERTIFICATES OF MERIT, CERTIFICATE OF CORROBORATIVE FACTS, AND FOR ISSUANCE OF FINDINGS AND ORDERS THEREON

I.

INTRODUCTION

This application is filed on behalf of Plaintiff CHARISSA W., who is an adult survivor of childhood sexual abuse perpetrated by Edward Villegas. Mr. Villegas, who is now deceased, was at all times mentioned in the Complaint filed concurrently herewith on behalf of CHARISSA W. and incorporated by reference herein, an agent of Defendants ROES 1 through 100 and DOES 110 through 120.

Plaintiff CHARISSA W., by way of this Application, and in compliance with Code of Civil Procedure § 3401., seeks an order from this Court to file her Amended Complaint inserting the true identities of those entities responsible for her sexual abuse.

II.

FACTUAL BACKGROUND

1. Defendants' Identities

ROE DEFENDANTS 1 through 9 are corporate entities and/or other business organizations responsible to Plaintiff for the sexual abuse Plaintiff suffered.

2. Defendants' Organizational Structure

In the past, certain Elders, Ministerial Servants, Pioneers, Male Publishers, agents, volunteers and other leaders and representatives of the ROE DEFENDANTS' organization, including Edward Villegas, have used their positions of authority within the ROE DEFENDANTS' organization to sexually abuse minors. The ROE DEFENDANTS were notified of the abuse of these minors by their elder, Edward Villegas, and others, but failed to take reasonable steps to ensure the safety of Plaintiff and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for victims of this sexual abuse.

The ROE DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY, which is a small group of men who operate out of various entities within the hierarchical structure, sits at the top of a chain of command that extends over each individual and Defendant entity in the organization including its worldwide operations. These individuals and entities act as agents, servants and alter egos of each other. Authority for actions by the organization or its members derive from the GOVERNING BODY.

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

Through its hierarchical structure, the ROE DEFENDANTS assume responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or

Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

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

Despite knowledge of a problem with sexual abuse of minors by leaders in the ROE DEFENDANTS' organization, the ROE DEFENDANTS acted with willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the ROE DEFENDANTS engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the ROE DEFENDANTS' organization who committed acts of sexual molestation against children. The ROE DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers, Male Publishers and other leaders in the organization. The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the ROE DEFENDANTS' organization. The ROE DEFENDANTS furthered this conspiracy of concealment by, among other things, failing to properly report complaints of sexual misconduct to law enforcement authorities, failing to remove molesting leaders or prevent their access to children. Molesting leaders were allowed to remain as leaders in good standing in the organization and were allowed continued frequent and unsupervised access to children in the organization. At all material times, the ROE DEFENDANTS prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers were not permitted to report suspected abuse to

outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual Abuse. Violation of this policy would lead to severe sanctions. The ROE DEFENDANTS also failed to provide Plaintiffs and their families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The ROE DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The ROE DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access and control over their victims.

Beginning in at least 1970, if not earlier, the ROE DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women and children in the ROE DEFENDANTS' organization.

3. Abuse of Charrisa W.

In approximately 1970, Plaintiff CHARISSA W. and her mother, Betty Hopkins, came under the instruction and care of the ROE DEFENDANTS' organization through their agent, Edward Villegas, and his wife, Marsha Villegas. The ROE DEFENDANTS used the daycare center run out of the Villegas home to attract new converts. Plaintiff CHARISSA W. was approximately 1 year old at the time. Betty Hopkins became one of those new converts and entrusted her daughter, Plaintiff CHARISSA W. to the ROE DEFENDANTS' care.

Beginning by at least 1972, the ROE DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the ROE DEFENDANTS organization and to sexually abuse them.

In about 1972, the ROE DEFENDANTS' agent, Edward Villegas began sexually molesting Plaintiff, CHARISSA W. by, among other things, fondling her genitals, digitally penetrating her vagina and forcing her to have oral sex. She was approximately three (3) or four (4) years old at the time. For the next twelve (12) to thirteen (13) years, the ROE DEFENDANTS' agent, Edward Villegas continued to use his leadership position as an

Elder to gain access to and sexually abuse Plaintiff, CHARISSA W., who was under the ROE DEFENDANTS' care. Plaintiff's position as a minor in the ROE DEFENDANTS' organization, as well Edward Villegas' position as a spiritual leader and authority figure in the ROE DEFENDANTS' organization allowed him to maintain control and influence over Plaintiff and others. The ROE DEFENDANTS enabled Edward Villegas to abuse Plaintiff and others by placing him in positions of authority, and then actively concealing his sexual abuse. The ROE DEFENDANTS, each of them, used their positions in the organization to aid and abet Edward Villegas and other leaders in the sexual abuse and exploitation of minors in the organization and in furtherance of the conspiracy to conceal the sexual molestation occurring within the ROE DEFENDANTS' organization.

For over two decades, the ROE DEFENDANTS knew or should have known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents under the care of the organization. Nevertheless, the ROE DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the ROE DEFENDANTS' local congregations. The ROE DEFENDANTS' agent then used his position of authority in the organization to sexually molest Plaintiff and others. The ROE DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the ROE DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiff and others. The ROE DEFENDANTS also aided, abetted and ratified the abuse.

When the ROE DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the ROE DEFENDANTS assumed the responsibility for dealing with the problem. They told families of victims that they should leave the matter to the ROE DEFENDANTS to handle. However, the ROE DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with

authority over children. They did not act to help Plaintiff or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The ROE DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

The sexual abuse suffered by Plaintiff is further corroborated by the sealed Certificate of Merit submitted by a licensed mental health practitioner, filed herewith.

III.

STATUTORY AUTHORITY

Code of Civil Procedure § 340.1 governs the procedures to be followed in bringing actions by an adult over 26 years of age against a religious institution for childhood sexual abuse. An amendment to CCP § 340.1 in 2002 created a one (1) year window to the statute of limitations to allow claims, which may have otherwise expired under the old statute, to be filed by these individuals until December 31, 2003. CCP § 340.1 ©).

Plaintiff makes three requests in this Ex Parte Application in accordance with CCP § 340.1, namely that:

1. Plaintiff requests an *in camera* review of certificates of merits filed by her attorney and a licensed mental health professional, and the issuance based on upon that review of a finding and order that there is reasonable and meritorious cause for the filing of this action, and that the certificates of merit be sealed and remain confidential;

2. Plaintiff requests an *in camera* review of her attorney's Certificate of Corroborative Fact, and issuance of an order based upon that certificate for permission to amend her Complaint to substitute the true names of the defendants for the fictitious designations of Defendants ROES 1 through 9; and

3. Plaintiff requests an order allowing her to appear through use of her first name and last initial.

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IV.

POINTS AND AUTHORITIES

A. CCP § 340.1 REQUIRES CERTIFICATES OF MERIT AND *IN CAMERA* REVIEW.

CCP § 340.1 requires, for each case brought by a plaintiff 26 years of age or older at the time the action is filed, seeking damages for childhood sexual abuse against a religious or other institution, that Certificates of Merit be executed by the attorney for the Plaintiff, and by a licensed mental health practitioner who is not a treating practitioner. CCP § 340.1 (h).

The Certificate of Merit of the attorney shall state that (1) the attorney has reviewed the facts of the case, (2) consulted with one mental health practitioner who is licensed to practice and practices in this State, and (3) who the attorney reasonably believes is knowledgeable of the relevant facts and issues, and (4) the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. CCP § 340.1 (h)(1).

The Certificate of Merit by the mental health practitioner shall declare that (1) the practitioner is licensed to practice and practices in this State as a mental health practitioner, (2) is not a party to the action, (3) is not treating and has not treated the Plaintiff, and (4) that the practitioner has interviewed the Plaintiff, and is knowledgeable in the relevant facts and issues, and (5) has concluded, on the basis of this knowledge, that is his or her professional opinion, there is a reasonable basis to believe that the Plaintiff has been subjected to childhood sexual abuse. CCP § 340.1 (h)(2).

Certificates of Merit have been executed and submitted with this Ex Parte Application by both the attorney for Plaintiff, and by a licensed mental health practitioner. All Certificates of Merit are submitted in sealed envelopes.

CCP § 340.1(j) mandates that the Court conduct an *in camera* review of the Certificates of Merit, and based solely on the Certificates of Merit, issue a finding that there is reasonable and meritorious cause for filing of the action against the defendants. At that time, the duty to serve the defendants with process shall attach.

In accordance with CCP § 340.1, Plaintiff requests an Order of this Court that the Certificates of Merit and the work product related information contained therein, be kept under seal and confidential.

B. PLAINTIFF'S SHOWING BY CERTIFICATE OF CORROBORATIVE FACT IS SUFFICIENT TO ALLOW AMENDMENT OF THE COMPLAINT.

CCP § 340.1(k) requires defendants be designated by fictitious identities until a showing of corroborative fact as to the charging allegations against each defendant has been made. At any time after the action is filed, Plaintiff may apply to the Court for permission to amend the Complaint to substitute the true name of defendant or defendants for the fictitious designation, provided that a Certificate of Corroborative Fact executed by the attorney for the Plaintiff is submitted. CCP § 340.1(l) The Court shall then review the application and Certificate of Corroborative Fact *in camera*, and based solely on the Certificate and any reasonable inferences to be drawn therefrom, "shall, if one or more facts corroborative of one or more of the charging allegations against the defendant has been shown, order the Complaint may be amended to substitute the names of the defendant or defendants. CCP § 340.1(m) [emphasis added].

In this matter, Plaintiff's charging allegations are corroborated by the fact that while Defendants' agent, Edward Villegas, was sexually abusing Plaintiff, as described above, he was abusing other children in Defendants' organization, which was brought to Defendants' attention. Defendants did nothing to reprimand Edward Villegas, thereby allowing him to continue sexually abusing Plaintiff and others, nor did Defendants warn congregation members of Villegas' conduct to protect those over whom Edward Villegas has authority. Further, Edward Villegas was criminally convicted for his numerous acts of sexual abuse in Napa County, Case Number CR17623.

CCP § 340.1 (n) requires that the Court "shall keep under seal and confidential from the public and all parties to the litigation other than the Plaintiff, any and all certificates of corroborative fact filed pursuant to subdivision (l)." Plaintiff requests an order to seal and keep confidential the Certificate of Corroborative Fact executed by her attorney, in addition

to the order permitting amendment of the Complaint.

C. PLAINTIFF MAY APPEAR USING HER FIRST NAME AND LAST INITIAL.

Plaintiff requests being identified only by use of her first name and last initial. Plaintiff's request is based upon the sensitive, embarrassing and psychologically damaging involvement with childhood sexual abuse, which Plaintiff does not wish to have disclosed to the public, her neighbors, or her business associates.

Normally, parties are required to pursue actions in their own name, absent other considerations. However, Article 1, § 1 of the California Constitution, ensures the right to privacy. Further, CCP § 128(a)(5) provides the Court with power to "control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." The Court is further empowered to "amend and control its process and orders so as to make them conform to law and justice." CCP § 128(a)(8). This broad grant of powers provides statutory authority to allow Plaintiff to proceed using her first name and last initial, to avoid the embarrassment and possible further psychological and emotional damage associated with public disclosure of the childhood sexual abuse. CCP § 128(s) does note that victims of sexual assault are entitled to special consideration in issues involving contempt. Such special consideration should also be given when Plaintiff are innocent victims of childhood sexual abuse seeking redress for wrongs committed by Defendants.

IV.

CONCLUSION

For all the reasons set forth herein, it is respectfully requested this Court grant all of Plaintiffs' request enumerated herein, and issue an Order consistent with the Rulings.

Dated: 7/24/03

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.,
Attorneys for Plaintiff

Rudy Nolen, Esq., SBN 59808
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Attorneys for Plaintiffs
NICOLE D.

FILED
JUL 24 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

DECLARATION OF WILLIAM BRELSFORD, ESQ., CONFIRMING CONTENTS OF SEALED ENVELOPE ATTACHED HERETO IN SUPPORT OF NICOLE D.'s EX PARTE APPLICATION

I, WILLIAM BRELSFORD, Esq., hereby state that the forgoing is true and correct:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. In compliance with CCP § 340.1, the documents identified below, contained in a sealed envelope attached to this declaration, are filed along with the Complaint and Ex Parte Application on behalf of NICOLE D.., incorporated by reference herein:

i. Attorney Certificate of Merit by Nicole D.'s Attorney;

ii. Licensed Mental Health Practitioner Certificate of Merit regarding Nicole D.;

iii. Attorney Certificate of Corroborative Fact regarding Nicole D.

3. The above mentioned documents are sealed and subject to a request pursuant to CCP § 340.1 that they remain sealed after an *in camera* review by the Court, only.

I declare under penalty of perjury and under all laws within the State of California that the forgoing is true and correct.

Dated: 7/24/03

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorneys for Plaintiff

Rudy Nolen, Esq., SBN 59808
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FILED
JUL 24 2003
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NICOLE D.'s EX PARTE APPLICATION FOR IN CAMERA REVIEW OF CERTIFICATES OF MERIT, CERTIFICATE OF CORROBORATIVE FACTS, AND FOR ISSUANCE OF FINDINGS AND ORDERS THEREON

I.

INTRODUCTION

This application is filed on behalf of Plaintiff NICOLE D., who is an adult survivor of childhood sexual abuse perpetrated by Edward Villegas. Mr. Villegas, who is now deceased, was at all times mentioned in the Complaint filed concurrently herewith on behalf of NICOLE D. and incorporated by reference herein, an agent of Defendants ROES 1 through 100 and DOES 110 through 120.

Plaintiff NICOLE D., by way of this Application, and in compliance with Code of Civil Procedure § 3401., seeks an order from this Court to file her Amended Complaint inserting the true identities of those entities responsible for her sexual abuse.

II.

FACTUAL BACKGROUND

1. Defendants' Identities

ROE DEFENDANTS 1 through 9 are corporate entities and/or other business organizations responsible to Plaintiff for the sexual abuse Plaintiff suffered.

2. Defendants' Organizational Structure

In the past, certain Elders, Ministerial Servants, Pioneers, Male Publishers, agents, volunteers and other leaders and representatives of the ROE DEFENDANTS' organization, including Edward Villegas, have used their positions of authority within the ROE DEFENDANTS' organization to sexually abuse minors. The ROE DEFENDANTS were notified of the abuse of these minors by their elder, Edward Villegas, and others, but failed to take reasonable steps to ensure the safety of Plaintiff and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for victims of this sexual abuse.

The ROE DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY, which is a small group of men who operate out of various entities within the hierarchical structure, sits at the top of a chain of command that extends over each individual and Defendant entity in the organization including its worldwide operations. These individuals and entities act as agents, servants and alter egos of each other. Authority for actions by the organization or its members derive from the GOVERNING BODY.

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

Through its hierarchical structure, the ROE DEFENDANTS assume responsibility for the development, protection and discipline of its membership, especially the children of members. All male members, whether Elders, Ministerial Servants, Pioneers and/or

Publishers, are appointed and empowered by the GOVERNING BODY to carry out this responsibility.

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

Despite knowledge of a problem with sexual abuse of minors by leaders in the ROE DEFENDANTS' organization, the ROE DEFENDANTS acted with willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the ROE DEFENDANTS engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the ROE DEFENDANTS' organization who committed acts of sexual molestation against children. The ROE DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers, Male Publishers and other leaders in the organization. The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the ROE DEFENDANTS' organization. The ROE DEFENDANTS furthered this conspiracy of concealment by, among other things, failing to properly report complaints of sexual misconduct to law enforcement authorities, failing to remove molesting leaders or prevent their access to children. Molesting leaders were allowed to remain as leaders in good standing in the organization and were allowed continued frequent and unsupervised access to children in the organization. At all material times, the ROE DEFENDANTS prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers were not permitted to report suspected abuse to

outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual Abuse. Violation of this policy would lead to severe sanctions. The ROE DEFENDANTS also failed to provide Plaintiffs and their families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The ROE DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The ROE DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access and control over their victims.

Beginning in at least 1970, if not earlier, the ROE DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women and children in the ROE DEFENDANTS' organization.

3. Abuse of Nicole D.

Beginning by at least 1972, the ROE DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the ROE DEFENDANTS organization and to sexually abuse them.

During this time period, the ROE DEFENDANTS' agent, Edward Villegas, was also using his position of authority as an Elder to sexually abuse other children under the ROE DEFENDANTS' care.

In approximately 1978, Edward Villegas used his position as an Elder and leader in the ROE DEFENDANTS' organization to gain access to and sexually abuse Plaintiff, NICOLE D., a child under the care of the ROE DEFENDANTS' organization. Plaintiff, NICOLE D. was approximately seven (7) years old when the abuse occurred. Using his delegated authority as a leader in the ROE DEFENDANTS' organization, Edward Villegas forced Plaintiff, NICOLE D. to have oral sex with him.

When Plaintiff, NICOLE D. told her parents about the abuse, her father immediately reported it to the Elders of Defendant, ROE 9 pursuant to instructions by the ROE DEFENDANTS. In response, the ROE DEFENDANTS privately reproved their agent for his

conduct, but took no other steps to hold him accountable or to otherwise notify members and the families of the children whom they had placed of under the authority of their agent, Edward Villegas. Therefore, Edward Villegas was able to continue to use his position of authority.

For over two decades, the ROE DEFENDANTS knew or should have known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents under the care of the organization. Nevertheless, the ROE DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the ROE DEFENDANTS' local congregations. The ROE DEFENDANTS' agent then used his position of authority in the organization to sexually molest Plaintiff and others. The ROE DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the ROE DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiff and others. The ROE DEFENDANTS also aided, abetted and ratified the abuse.

When the ROE DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the ROE DEFENDANTS assumed the responsibility for dealing with the problem. They told families of victims that they should leave the matter to the ROE DEFENDANTS to handle. However, the ROE DEFENDANTS did not report the abuse to law enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with authority over children. They did not act to help Plaintiff or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The ROE DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

The sexual abuse suffered by Plaintiff is further corroborated by the sealed

Certificate of Merit submitted by a licensed mental health practitioner, filed herewith.

III.

STATUTORY AUTHORITY

Code of Civil Procedure § 340.1 governs the procedures to be followed in bringing actions by an adult over 26 years of age against a religious institution for childhood sexual abuse. An amendment to CCP § 340.1 in 2002 created a one (1) year window to the statute of limitations to allow claims, which may have otherwise expired under the old statute, to be filed by these individuals until December 31, 2003. CCP § 340.1 ©).

Plaintiff makes three requests in this Ex Parte Application in accordance with CCP § 340.1, namely that:

> 1. Plaintiff requests an *in camera* review of certificates of merits filed by her attorney and a licensed mental health professional, and the issuance based on upon that review of a finding and order that there is reasonable and meritorious cause for the filing of this action, and that the certificates of merit be sealed and remain confidential;
>
> 2. Plaintiff requests an *in camera* review of her attorney's Certificate of Corroborative Fact, and issuance of an order based upon that certificate for permission to amend her Complaint to substitute the true names of the defendants for the fictitious designations of Defendants ROES 1 through 9; and
>
> 3. Plaintiff requests an order allowing her to appear through use of her first name and last initial.

IV.

POINTS AND AUTHORITIES

A. CCP § 340.1 REQUIRES CERTIFICATES OF MERIT AND *IN CAMERA* REVIEW.

CCP § 340.1 requires, for each case brought by a plaintiff 26 years of age or older at the time the action is filed, seeking damages for childhood sexual abuse against a religious or other institution, that Certificates of Merit be executed by the attorney for the Plaintiff, and by a licensed mental health practitioner who is not a treating practitioner. CCP § 340.1 (h).

The Certificate of Merit of the attorney shall state that (1) the attorney has reviewed

the facts of the case, (2) consulted with one mental health practitioner who is licensed to practice and practices in this State, and (3) who the attorney reasonably believes is knowledgeable of the relevant facts and issues, and (4) the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. CCP § 340.1 (h)(1).

The Certificate of Merit by the mental health practitioner shall declare that (1) the practitioner is licensed to practice and practices in this State as a mental health practitioner, (2) is not a party to the action, (3) is not treating and has not treated the Plaintiff, and (4) that the practitioner has interviewed the Plaintiff, and is knowledgeable in the relevant facts and issues, and (5) has concluded, on the basis of this knowledge, that is his or her professional opinion, there is a reasonable basis to believe that the Plaintiff has been subjected to childhood sexual abuse. CCP § 340.1 (h)(2).

Certificates of Merit have been executed and submitted with this Ex Parte Application by both the attorney for Plaintiff, and by a licensed mental health practitioner. All Certificates of Merit are submitted in sealed envelopes.

CCP § 340.1(j) mandates that the Court conduct an *in camera* review of the Certificates of Merit, and based solely on the Certificates of Merit, issue a finding that there is reasonable and meritorious cause for filing of the action against the defendants. At that time, the duty to serve the defendants with process shall attach.

In accordance with CCP § 340.1, Plaintiff requests an Order of this Court that the Certificates of Merit and the work product related information contained therein, be kept under seal and confidential.

B. PLAINTIFF'S SHOWING BY CERTIFICATE OF CORROBORATIVE FACT IS SUFFICIENT TO ALLOW AMENDMENT OF THE COMPLAINT.

CCP § 340.1(k) requires defendants be designated by fictitious identities until a showing of corroborative fact as to the charging allegations against each defendant has been made. At any time after the action is filed, Plaintiff may apply to the Court for permission to amend the Complaint to substitute the true name of defendant or defendants

for the fictitious designation, provided that a Certificate of Corroborative Fact executed by the attorney for the Plaintiff is submitted. CCP § 340.1(l) The Court shall then review the application and Certificate of Corroborative Fact *in camera*, and based solely on the Certificate and any reasonable inferences to be drawn therefrom, "shall, if one or more facts corroborative of one or more of the charging allegations against the defendant has been shown, order the Complaint may be amended to substitute the names of the defendant or defendants. CCP § 340.1(m) [emphasis added].

In this matter, Plaintiff's charging allegations are corroborated by the fact that while Defendants' agent, Edward Villegas, was sexually abusing Plaintiff, as described above, he was abusing other children in Defendants' organization, which was brought to Defendants' attention. Defendants did nothing to reprimand Edward Villegas, thereby allowing him to continue sexually abusing Plaintiff and others, nor did Defendants warn congregation members of Villegas' conduct to protect those over whom Edward Villegas has authority. Further, Edward Villegas was criminally convicted for his numerous acts of sexual abuse in Napa County, Case Number CR17623.

CCP § 340.1 (n) requires that the Court "shall keep under seal and confidential from the public and all parties to the litigation other than the Plaintiff, any and all certificates of corroborative fact filed pursuant to subdivision (l)." Plaintiff requests an order to seal and keep confidential the Certificate of Corroborative Fact executed by her attorney, in addition to the order permitting amendment of the Complaint.

C. PLAINTIFF MAY APPEAR USING HER FIRST NAME AND LAST INITIAL.

Plaintiff requests being identified only by use of her first name and last initial. Plaintiff's request is based upon the sensitive, embarrassing and psychologically damaging involvement with childhood sexual abuse, which Plaintiff does not wish to have disclosed to the public, her neighbors, or her business associates.

Normally, parties are required to pursue actions in their own name, absent other considerations. However, Article 1, § 1 of the California Constitution, ensures the right to privacy. Further, CCP § 128(a)(5) provides the Court with power to "control in furtherance

of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter pertaining thereto." The Court is further empowered to "amend and control its process and orders so as to make them conform to law and justice." CCP § 128(a)(8). This broad grant of powers provides statutory authority to allow Plaintiff to proceed using her first name and last initial, to avoid the embarrassment and possible further psychological and emotional damage associated with public disclosure of the childhood sexual abuse. CCP § 128(s) does note that victims of sexual assault are entitled to special consideration in issues involving contempt. Such special consideration should also be given when Plaintiff are innocent victims of childhood sexual abuse seeking redress for wrongs committed by Defendants.

IV.

CONCLUSION

For all the reasons set forth herein, it is respectfully requested this Court grant all of Plaintiffs' request enumerated herein, and issue an Order consistent with the Rulings.

Dated: 7/24/03

NOLEN SAUL BRELSFORD

Rudy Nolen, Esq.,
Attorneys for Plaintiff

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
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Attorneys for Plaintiffs
CHARISSA W.

FILED
JUL 24 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

DECLARATION OF WILLIAM BRELSFORD, ESQ., CONFIRMING CONTENTS OF SEALED ENVELOPE ATTACHED HERETO IN SUPPORT OF CHARISSA W.'s EX PARTE APPLICATION

I, WILLIAM BRELSFORD, Esq., hereby state that the forgoing is true and correct:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and can testify competently to all the matters set forth in this declaration.

2. In compliance with CCP § 340.1, the documents identified below, contained in a sealed envelope attached to this declaration, are filed along with the Complaint and Ex Parte Application on behalf of CHARISSA W., incorporated by reference herein:

i. Attorney Certificate of Merit by Charissa W.'s Attorney;

ii. Licensed Mental Health Practitioner Certificate of Merit regarding Charissa W.;

iii. Attorney Certificate of Corroborative Fact regarding Charissa W.

3. The above mentioned documents are sealed and subject to a request pursuant to CCP § 340.1 that they remain sealed after an *in camera* review by the Court, only.

I declare under penalty of perjury and under all laws within the State of California that the forgoing is true and correct.

Dated: 7/24/03

NOLEN SAUL BRELSFORD

William Brelsford, Esq.,
Attorneys for Plaintiff

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William Brelsford, Esq., SBN 202839
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
JUL 24 2003
Clerk of the Napa Superior Court
By: _____ Deputy

SUMMONS ISSUED

DELAY REDUCTION CASE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CASE MANAGEMENT CONFERENCE
DATE: 12-31-03
TIME: 8:30 AM
PLACE: Courtroom B, 2nd Floor
825 Brown St., Napa CA 94559

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

Jury Trial Demanded

Complaint for Damages:

1. Sexual Battery and Respondeat Superior
2. Common Law Negligence
3. Negligent Appointment, Retention, and Supervision
4. Gross Negligence - Wilful Misconduct
5. Breach of Fiduciary Duty
6. Negligence Per Se and Common Law Negligence: Failure to Report Suspected Child Abuse
7. Fraud, Fraudulent Concealment, and Conspiracy
8. Ratification
9. Alter Ego and Single Business Enterprise
10. Negligent Usurpation of Investigatory Function
11. Violation of Penal Code § 182
12. Violation of Penal Code § 32

PLAINTIFFS' ORIGINAL COMPLAINT

COMES NOW CHARISSA W. and NICOLE D., Plaintiffs in the above entitled cause, and files this, their Original Complaint, and allege as follows:

I.

PARTIES

1. Plaintiff CHARISSA W., born February 8, 1969, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Defendants' organization within the State of California.

2. Plaintiff NICOLE D., born November 9, 1971, is and at all mentioned herein, was a resident of Napa County, California. At all material times, Plaintiff was also a child entrusted to the Defendants' care within the State of California. As a child, Plaintiff was sexually abused by an elder appointed by the Defendants' organization within the State of California.

3. Plaintiffs allege on information and belief that at all relevant times, defendants ROES 1 through 100, inclusive are business or corporate entities incorporated in and/or doing business in California and DOES 110 through 120 inclusive, are individuals.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants ROES 1 through 100 and DOES 110 through 120, inclusive, are known and unknown to Plaintiffs who therefore sue such defendants by such fictitious names in compliance with Code of Civil Procedure § 340.1(m), and will amend the complaint to show the true names and capacities of each known ROE and DOE defendant pursuant to Court Order and to show the true names and capacities of each unknown ROE and DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a ROE and DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

5. Defendant designated herein as ROE 1 is a corporation organized and existing under the laws of the State of New York, and has conducted business within the State of California through its agents and alter egos. ROE 1 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 1 is known by Plaintiffs and their

attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 1.

6. Defendant designated herein as ROE 2 a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of California through its agents and alter egos. ROE 2 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 2 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 2.

7. Defendant designated herein as ROE 3 is a limited liability company organized and existing under the laws of the State of New York, and has conducted business within the State of California through its agents and alter egos. ROE 3 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 3 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 3.

8. Defendant designated herein as ROE 4 is a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos. ROE 4 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 4 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 4.

9. Defendant designated herein as ROE 5 is a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos. ROE 5 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 5 is known by Plaintiffs and their

attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 5.

10. Defendant designated herein as ROE 6 is a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos. ROE 6 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 6 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 6.

11. Defendant designated herein as ROE 7 is a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos. ROE 7 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 7 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 7.

12. Defendant designated herein as ROE 8 is a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos. ROE 8 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The identity of ROE 8 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 8.

13. Defendant designated herein as ROE 9 is a corporation organized and existing under the laws of the State of California, with its place location in Napa County, California. ROE 9 is, based upon best information and belief, a corporate religious entity that has engaged in conduct, or a lack thereof, thereby allowing children affiliated with its entity to be victims of sexual abuse. The

identity of ROE 9 is known by Plaintiffs and their attorneys, and an order will be sought in compliance with Code of Civil Procedure § 340.1(m) to plead the true identity of ROE 9.

14. The Defendant entities are collectively referred to herein as "ROE DEFENDANTS" and each is the agent and alter ego of each other and operates as a single business enterprise. Each of the ROE DEFENDANTS was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the unlawful activities alleged in this complaint.

II.

JURISDICTION AND VENUE

15. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

16. Venue is proper in Napa County, California because most of the acts or omissions hat give rise to Plaintiffs' claims occurred in Napa County, California and Defendant ROE 9 is a resident of Napa County.

III.

FACTS COMMON TO ALL CAUSES OF ACTION

17. In the past, certain Elders, Ministerial Servants, Pioneers, Male Publishers, agents, volunteers and other leaders and representatives of the ROE DEFENDANTS' organization, including Edward Villegas (now deceased), have used their positions of authority within the ROE DEFENDANTS' organization to sexually abuse minors, including Plaintiffs. The ROE DEFENDANTS were notified of the abuse of these minors by their elder, Edward Villegas, and others, but failed to take reasonable steps to ensure the safety of Plaintiffs and other minor children entrusted to their care and to prevent future acts of molestation. This suit seeks compensation for Plaintiffs who were victims of this sexual abuse.

18. All paragraphs of this Complaint are based on information and belief, except for those allegations, which pertain to the Plaintiffs and their counsel. Plaintiffs' information and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each

allegation in this Complaint either has, or is likely to have, evidentiary support upon further investigation and discovery.

19. The ROE DEFENDANTS' organization has a hierarchical structure in which the GOVERNING BODY, which is a small group of men who operate out of various entities within the hierarchical structure, sits at the top of a chain of command that extends over each individual and Defendant entity in the organization including its worldwide operations. These individuals and entities act as agents, servants and alter egos of each other. Authority for actions by the organization or its members derive from the GOVERNING BODY.

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

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

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

23. Despite knowledge of a problem with sexual abuse of minors by leaders in the ROE DEFENDANTS' organization, the ROE DEFENDANTS acted with willful indifference and/or reckless and/or intentional disregard for the interest and safety of the children entrusted to their care. Rather than implement measures to redress and prevent the sexual molestation of these children, the ROE DEFENDANTS engaged in a systematic pattern and practice of suppression of information to cover-up and hide incidents of child molestation from law enforcement and their membership in order to protect those within the ROE DEFENDANTS' organization who committed acts of sexual

molestation against children. The ROE DEFENDANTS have likewise engaged in the routine practice of maintaining secret archival files regarding sexual abuse by Elders, Ministerial Servants, Pioneers, Male Publishers and other leaders in the organization. The existence of these files and the contents thereof were not disclosed to or made available to law enforcement authorities or others in order for law enforcement to investigate the crimes of these leaders in the ROE DEFENDANTS' organization. The ROE DEFENDANTS furthered this conspiracy of concealment by, among other things, failing to properly report complaints of sexual misconduct to law enforcement authorities, failing to remove molesting leaders or prevent their access to children. Molesting leaders were allowed to remain as leaders in good standing in the organization and were allowed continued frequent and unsupervised access to children in the organization. At all material times, the ROE DEFENDANTS prohibited the victim and/or accuser from warning others or speaking about the matter to anyone under penalty of discipline. Victim/accusers were not permitted to report suspected abuse to outside authorities or to other Publishers within the organization, despite secular laws and duties regarding the reporting of sexual Abuse. Violation of this policy would lead to severe sanctions. The ROE DEFENDANTS also failed to provide Plaintiffs and their families with any notice or warning regarding the past misconduct of, and abuse by, Edward Villegas. The ROE DEFENDANTS represented to Plaintiffs, members and the public that Edward Villegas and other leaders were fit to lead, when in fact they were predator pedophiles. The ROE DEFENDANTS knew or had reason to know that Edward Villegas and other leader molesters would continue to sexually molest children, using their leadership positions to gain access and control over their victims.

24. Beginning in at least 1970, if not earlier, the ROE DEFENDANTS appointed Edward Villegas to the leadership position of Elder with authority over women and children in the ROE DEFENDANTS' organization.

25. In approximately 1970, Plaintiff CHARISSA W. and her mother, Betty Hopkins, came under the instruction and care of the ROE DEFENDANTS' organization through their agent, Edward Villegas, and his wife, Marsha Villegas. The ROE DEFENDANTS used the daycare center run out of the Villegas home to attract new converts. Plaintiff CHARISSA W. was approximately

1 year old at the time. Betty Hopkins became one of those new converts and entrusted her daughter, Plaintiff CHARISSA W. to the ROE DEFENDANTS' care.

26. In approximately 1971, Plaintiff Nicole D. and her family came under the care of the ROE DEFENDANTS' organization and entrusted Nicole D. to the leadership of the ROE DEFENDANTS' agent, Edward Villegas. Through his position of leadership with the ROE DEFENDANTS, Edward Villegas developed a relationship of trust and confidence with Plaintiff Nicole D. and her family, working with them at ROE DEFENDANT events and inviting them into his home.

27. Beginning by at least 1972, the ROE DEFENDANTS' agent, Edward Villegas, used his position as an Elder to gain access to children under the care of the ROE DEFENDANTS organization and to sexually abuse them.

28. In about 1972, the ROE DEFENDANTS' agent, Edward Villegas began sexually molesting Plaintiff, CHARISSA W. by, among other things, fondling her genitals, digitally penetrating her vagina and forcing her to have oral sex. She was approximately three (3) or four (4) years old at the time. For the next twelve (12) to thirteen (13) years, the ROE DEFENDANTS' agent, Edward Villegas continued to use his leadership position as an Elder to gain access to and sexually abuse Plaintiff, CHARISSA W., who was under the ROE DEFENDANTS' care. Plaintiff's position as a minor in the ROE DEFENDANTS' organization, as well Edward Villegas' position as a spiritual leader and authority figure in the ROE DEFENDANTS' organization allowed him to maintain control and influence over Plaintiff and others. The ROE DEFENDANTS enabled Edward Villegas to abuse Plaintiff and others by placing him in positions of authority, and then actively concealing his sexual abuse. The ROE DEFENDANTS, each of them, used their positions in the organization to aid and abet Edward Villegas and other leaders in the sexual abuse and exploitation of minors in the organization and in furtherance of the conspiracy to conceal the sexual molestation occurring within the ROE DEFENDANTS' organization.

29. During this time period, the ROE DEFENDANTS' agent, Edward Villegas, was also using his position of authority as an Elder to sexually abuse other children under the ROE DEFENDANTS' care.

30. In approximately 1978, Edward Villegas used his position as an Elder and leader in the ROE DEFENDANTS' organization to gain access to and sexually abuse Plaintiff, NICOLE D., a child under the care of the ROE DEFENDANTS' organization. Plaintiff, NICOLE D. was approximately seven (7) years old when the abuse occurred. Using his delegated authority as a leader in the ROE DEFENDANTS' organization, Edward Villegas forced Plaintiff, NICOLE D. to have oral sex with him.

31. When Plaintiff, NICOLE D. told her parents about the abuse, her father immediately reported it to the Elders of Defendant, ROE 9, pursuant to instructions by the ROE DEFENDANTS. In response, the ROE DEFENDANTS privately reproved their agent for his conduct, but took no other steps to hold him accountable or to otherwise notify members and the families of the children whom they had placed of under the authority of their agent, Edward Villegas. Therefore, Edward Villegas was able to continue to use his position of authority.

32. For over two decades, the ROE DEFENDANTS knew or should have known that their appointed agent, Edward Villegas was using his position of authority in the organization to gain access to and sexually molest and physically abuse adolescents under the care of the organization. Nevertheless, the ROE DEFENDANTS continued to appoint Edward Villegas to leadership positions in their local congregations, entrusting him with the welfare of numerous adolescents in the ROE DEFENDANTS' local congregations. The ROE DEFENDANTS' agent then used his position of authority in the organization to sexually molest Plaintiffs and others. The ROE DEFENDANTS failed to notify anyone that their agent, Edward Villegas was molesting or had sexually molested adolescents under the ROE DEFENDANTS' care. They further failed to take any steps to protect these young victims from his abuse. Instead, they knowingly concealed this information from Plaintiffs and others. The ROE DEFENDANTS also aided, abetted and ratified the abuse.

33. When the ROE DEFENDANTS received reports of their agent's acts of sexual abuse against children entrusted to their care, the ROE DEFENDANTS assumed the responsibility for dealing with the problem. They told families of victims that they should leave the matter to the ROE DEFENDANTS to handle. However, the ROE DEFENDANTS did not report the abuse to law

enforcement authorities nor did they warn any other members of the organization that they had appointed a dangerous pedophile to positions of leadership with authority over children. They did not act to help Plaintiffs or their families deal with the trauma of abuse and actively prevented them from obtaining help from trained professionals and other available sources. The ROE DEFENDANTS failed to take appropriate steps to hold their agent, Edward Villegas, accountable for his conduct or to assist him in addressing his propensities.

34. Edward Villegas used the authority of his position in the ROE DEFENDANTS' organization to gain access to and sexually abuse Plaintiffs and others. The ROE DEFENDANTS directly and vicariously caused foreseeable harm to Plaintiffs by, among other things:

a. aiding, abetting and ratifying the abuse of children by their appointed agents;

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

c. negligently failing to report such sexual abuse, including the abuse by Edward Villegas to law enforcement and governmental child welfare agencies and requiring that members not make such reports;

d. negligently failing to warn Plaintiffs, their families, and others of the risk of abuse by Edward Villegas after they knew or should have known of his propensities to use his positions of leadership to engage in acts of sexual abuse against children entrusted to the ROE DEFENDANTS' care;

e. negligently failing to train its Elders, Overseers, Ministerial Servants and other appointed leaders to identify, investigate, prevent and respond to or report child abuse;

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

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

h. negligently failing to provide child abuse victims and their families with any

assistance in coping with the trauma of abuse and preventing Plaintiffs and their families from reporting the abuse to outside authorities and obtaining outside help to deal with the trauma of abuse;

j. concealing from Plaintiffs and their families that the ROE DEFENDANTS had information that their agent, Edward Villegas was using his position of authority to abuse young children entrusted to their care by the ROE DEFENDANTS;

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

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

FIRST CAUSE OF ACTION
SEXUAL BATTERY AND *RESPONDEAT SUPERIOR*

35. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Plaintiffs allege that for a number of years, beginning in 1972, as an agent and alter ego of the ROE DEFENDANTS, Edward Villegas used his position of authority to gain access to Plaintiffs and to engage in un-permitted, harmful, and offensive sexual contact upon the bodies of Plaintiffs and each of them, as described herein, without each Plaintiff's consent, committing sexual abuse upon the persons of Plaintiffs in the State of California in violation of Code of Civil Procedure 340.1.

37. Plaintiffs further allege each of the ROE DEFENDANTS was in the chain of command and acted pursuant to the authority granted to them as agents and alter ego of the GOVERNING BODY and each other, utilized such leadership and authority to carry out and/or aid, abet and ratify the sexual abuse of Plaintiffs. In such capacity, the ROE DEFENDANTS are liable for the sexual abuse of Plaintiffs under the legal theory of *respondeat superior*.

38. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

39. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 38 of this Complaint as if fully set forth herein.

40. Plaintiffs allege that, at all times herein mentioned, ROE DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the ROE DEFENDANTS' organization. The ROE DEFENDANTS further knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Edward Villegas, but failed to act to protect them from said harm. The ROE DEFENDANTS breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

41. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

42. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Plaintiffs further allege that at all times herein mentioned, the ROE DEFENDANTS

knew or should have known of their agents, Edward Villegas', propensities to use his position as a leader in the local congregation to engage in and/or aid and abet acts of sexual abuse. The ROE DEFENDANTS failed to adequately investigate, evaluate, and otherwise research the background of their agent, Edward Villegas, prior to their hiring appointing him to leadership positions and entrusting children to his care.

44. Plaintiffs further allege that after Edward Villegas was retained by ROE DEFENDANTS acting on behalf of and under the supervision of the ROE DEFENDANTS, ROE DEFENDANTS failed to adequately investigate, evaluate and otherwise monitor the conduct of their agent, Edward Villegas, during his interactions with children entrusted by ROE DEFENDANTS to his care, thereby also failing to adequately supervise and discipline the conduct Edward Villegas.

45. Plaintiff's further allege that ROE DEFENDANTS failed to provide adequate warning to Plaintiffs and their families of their agent's dangerous propensities and unfitness to lead.

46. Plaintiffs further allege the ROE DEFENDANTS negligently investigated, appointed, retained and supervised Edward Villegas in the organization at a time when they knew or should have known of his propensities to use his appointed position to engage in acts of sexual abuse against Plaintiffs and other young children under the ROE DEFENDANTS' care.

47. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FOURTH CAUSE OF ACTION
GROSS NEGLIGENCE/WILFUL MISCONDUCT

48. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Plaintiffs allege the behavior of the ROE DEFENDANTS as described hereinabove

demonstrates a conscious indifference to the safety and welfare of Plaintiffs, in that ROE DEFENDANTS knew or should have known of the dangerous propensities of their agents, Edward Villegas, yet failed to act to protect the health, safety and welfare of children in the custody and care of ROE DEFENDANTS, thereby allowing Plaintiffs to be sexually abused, which could have been prevented but for ROE DEFENDANTS' wilful misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs, in violation of ROE DEFENDANTS' duty to protect the children entrusted to Edward Villegas' care and custody.

50. Plaintiffs further allege that ROE DEFENDANTS' actions, constituting wilful misconduct and gross negligence described hereinabove, caused significant mental, emotional, and physical injuries as a result of the acts of sexual abuse described hereinabove.

51. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

FIFTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

52. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Plaintiffs allege that by holding Edward Villegas out as a qualified Elder and leader in the ROE DEFENDANTS' organization, and by undertaking the religious instruction and spiritual and emotional counseling of Plaintiffs, the ROE DEFENDANTS, created a fiduciary relationship with Plaintiffs. The ROE DEFENDANTS placed themselves in a position of trust and confidence with Plaintiffs, and that such relationship imposed on the ROE DEFENDANTS a duty to act in Plaintiffs' best interests and to protect Plaintiffs' best interests.

54. Plaintiffs further allege that because of this special relationship, the ROE

DEFENDANTS, Plaintiffs and their families placed their trust and confidence in the ROE DEFENDANTS that they would not allow harm to Plaintiffs or fail to warn Plaintiffs of potential harm. Further, Plaintiffs and their families placed their trust and confidence in the ROE DEFENDANTS that they would protect Plaintiffs from harm.

55. The above conduct, either independently or in conjunction with each other, constitutes a breach of the fiduciary duty owed to Plaintiffs by ROE DEFENDANTS.

56. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SIXTH CAUSE OF ACTION
NEGLIGENCE *PER SE* and COMMON-LAW NEGLIGENCE:
FAILURE TO REPORT SUSPECTED CHILD ABUSE

57. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 56 of this Complaint as if fully set forth herein.

58. Plaintiffs allege that the ROE DEFENDANTS had a duty, under the California Child Abuse and Neglect Reporting Act, California Penal Code § 11164, *et. seq.,* (and predecessor provisions) and the common-laws, to report the abuse or suspected abuse of children.

59. Plaintiffs further allege that the ROE DEFENDANTS failed to report to law enforcement the abusive and illegal acts of their agent, Edward Villegas, both prior to and after the abuse inflicted on Plaintiffs. By failing to report the actions of Edward Villegas, the ROE DEFENDANTS violated California Child Abuse and Neglect Reporting Act, which is intended to safeguard and enhance the welfare of abused children. Plaintiffs were members of the class of persons that the California Child Abuse and Neglect Reporting Act was designed to protect and each was injured as a result of The ROE DEFENDANTS' violation of the statute. Such violation constitutes negligence *per se*.

60. Plaintiffs further allege that the ROE DEFENDANTS' failure to report constitutes common-law negligence. The ROE DEFENDANTS asserted their authority over both Plaintiffs and their abuser and agent, Edward Villegas, creating a special relationship of trust and confidence and power over Plaintiffs. In the context of this special relationship and the unequal relationship among the parties, the ROE DEFENDANTS assumed a duty to handle all reports of child abuse and in doing so caused Plaintiffs and their families from reporting the abuse to, or seeking help from, sources and authorities outside the ROE DEFENDANTS' organization. The ROE DEFENDANTS acted with conscious disregard for the safety and welfare of Plaintiffs and violated that duty to Plaintiffs' detriment.

61. As a legal result of the ROE DEFENDANTS' failure to report the illegal conduct of their agent, Edward Villegas, law enforcement, Plaintiff was deprived of the benefits provided by the State of California and other trained professionals that would have decreased further harm to the Plaintiffs and prevented further abuse. Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

SEVENTH CAUSE OF ACTION
FRAUD, FRAUDULENT CONCEALMENT AND CONSPIRACY

62. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. Plaintiffs allege that after receiving reports that their agent, Edward Villegas was using his position of authority in the organization to abuse adolescents, the ROE DEFENDANTS, willfully and intentionally kept information from Plaintiffs, other victims similarly situated and the community-at-large. The ROE DEFENDANTS intentionally misrepresented to Plaintiffs and their families that Edward Villegas was a leader in good standing with authority to instruct Plaintiff and

other children in spiritual, ethical and moral matters and that these agents were to be obeyed. The ROE DEFENDANTS further intentionally misrepresented that they would act in the best interests of Plaintiffs and other children entrusted to their care. The ROE DEFENDANTS failed to disclose that they knew of Edward Villegas' propensity to use his leadership positions to sexually abuse Plaintiffs and others and that they were doing nothing to protect the children under their care. Plaintiffs did not know of the falsity of the ROE DEFENDANTS' representations, were entitled to rely upon them and did in fact rely upon them causing each of them serious injury and harm.

64. Plaintiffs further allege that by holding out Edward Villegas as an Elder and leader, qualified to provide religious instruction and counsel, and by undertaking the religious instruction and spiritual and emotional counseling and training of plaintiff, and by accepting, through their agents Edward Villegas and other Elders, the control and responsibility of the Plaintiffs as a minor, the ROE DEFENDANTS and each of them entered into a fiduciary relationship with the minor plaintiff.

65. Plaintiffs further allege that as fiduciaries to Plaintiffs, the ROE DEFENDANTS, and each of them, had a duty to obtained and disclose information relating to sexual misconduct by their agent Edward Villegas. The ROE DEFENDANTS failed to disclose and later conspired to conceal such information from Plaintiffs.

66. The ROE DEFENDANTS, in concert with each other and with the intent to conceal and defraud, conspired whereby they would misrepresent, conceal or fail to disclose information relating to the sexual misconduct of their agent, Edward Villegas. By concealing such information, the ROE DEFENDANTS and each of them committed at least one act in furtherance of the conspiracy.

67. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss

of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

EIGHTH CAUSE OF ACTION
RATIFICATION

68. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 67 of this Complaint as if fully set forth herein.

69. Plaintiffs allege that upon learning that their agent, Edward Villegas had sexually abused children, the ROE DEFENDANTS failed to take appropriate steps to hold Edward Villegas accountable for their actions and continued to appoint or maintain Edward Villegas to leadership positions in the organization throughout the period of abuse. The ROE DEFENDANTS thereby ratified their agent, Edward Villegas's conduct in using his appointed position of authority to sexually abuse Plaintiffs and other children.

70. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

NINTH CAUSE OF ACTION
ALTER EGO AND SINGLE BUSINESS ENTERPRISE

71. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 70 of this Complaint as if fully set forth herein.

72. Plaintiffs allege that the ROE DEFENDANTS are organized and controlled and their affairs are so conducted that they are in fact mere instrumentalities and alter egos of each other and liable for each other's acts. Alternatively, the ROE DEFENDANTS were all engaged, at all times herein mentioned, in a single business enterprise and are liable for each other's acts.

73. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have

suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

TENTH CAUSE OF ACTION
NEGLIGENT USURPATION OF INVESTIGATORY FUNCTION

74. Plaintiffs incorporates herein by this reference and re-allege paragraphs 1 through 73 of this Complaint as if fully set forth herein.

75. Plaintiffs alleges that California Penal Code Section 11164 *et. seq.,* (and predecessor provisions) requires officials to perform specific responsibilities to carry out the policy of the statute described in the Act (and its predecessors). The ROE DEFENDANTS assumed these duties and responsibilities, but negligently failed to perform them.

76. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

ELEVENTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA PENAL CODE SECTION 182

77. Plaintiffs incorporate herein this reference and re-allege paragraphs 1 through 76 of this Complaint as if fully set forth herein.

78. Plaintiffs allege the ROE DEFENDANTS' acts described herein violate California Penal Code Section 182 in that the ROE DEFENDANTS conspired with one or more other person to commit acts injurious to the public health, to public morals, or to pervert or obstruct justice, or

the due administration of the laws.

79. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

TWELFTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA PENAL CODE SECTION 32

80. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 79 of this Complaint as if fully set forth herein.

81. Plaintiffs allege that the ROE DEFENDANTS' acts described herein violate California Penal Code Section 32 in that the ROE DEFENDANTS harbored, concealed and/or aided their agent, Edward Villegas, after their agent, Edward Villegas, had committed a felony, with the intent that their agent, Edward Villegas, might avoid or escape arrest, trial, conviction and/or punishment, and the ROE DEFENDANTS having knowledge that their agent, Edward Villegas had committed a felony.

82. As a legal result of Defendants' conduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from performing daily activities and obtaining the full enjoyment of life. Each Plaintiff has sustained loss of earnings and earning capacity. Each Plaintiff has incurred and will incur expenses for medical and psychological treatment, therapy, and counseling.

PRAYER

WHEREFORE, Plaintiffs demand judgment against the ROE DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;
2. For past and future medical expenses according to proof;
3. For past and future loss of earnings according to proof;
4. For prejudgment interest;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Dated: 7/24/03

NOLEN SAUL BRELSFORD

Rudy Nolen, ~~Esq.~~,
Attorneys for Plaintiffs.

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Rudy Nolen, Esq. SBN 59808
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Charissa W. and Nicole D.

FOR COURT USE ONLY

FILED

JUN 02 2005

Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
STREET ADDRESS: 825 Brown St.
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

Judicial Council Coordination Proceeding No. 4374

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: June 7, 2005 Time: 9:30 a.m. Dept.: B Div.: Room:

Address of court *(if different from the address above)*:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. [ ] This statement is submitted by party *(name)*:
   b. [X] This statement is submitted **jointly** by parties *(names)*: Plaintiffs in the consolidated action.

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*: July 24, 2003. Consolidated pursuant to order.
   b. [ ] The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not)*:
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) [ ] have had a default entered against them *(specify names)*:
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action)*:
   Sexual battery, common law negligence, neligent appointment, retention and supervision, gross negligence - wilful misconduct, and breach of fiduciary duty.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2005]

RECEIVED
MAY 23 2005
Court

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiffs are a group of individuals that were sexually abused as children, entrusted to the care of the Watchtower Defendants. Plaintiffs contend the Watchtower Organization had notice that the individual pedophiles in their organization were prone to sexually molest young children, such as Plaintiffs, but failed to take appropriate measures to protect Plaintiffs entrusted to their care. These lawsuits seek compensation for the injuries Plaintiffs have sustained.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☒ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* Plaintiffs of all consolidated cases.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
SEE ATTACHMENT

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 20-25 days
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☒ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply)*:
    (1) [X] Mediation
    (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    (4) [ ] Binding judicial arbitration
    (5) [ ] Binding private arbitration
    (6) [ ] Neutral case evaluation
    (7) [ ] Other *(specify)*:

e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. [X] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption)*:
Amount in controversy exceeds $50,000; numerous witnesses will testify; extensive expert testimony will be required.

11. **Settlement conference**

[ ] The party or parties are willing to participate in an early settlement conference *(specify when)*:

12. **Insurance**

a. [ ] Insurance carrier, if any, for party filing this statement *(name)*:

b. Reservation of rights: [ ] Yes [ ] No

c. [ ] Coverage issues will significantly affect resolution of this case *(explain)*:

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

[ ] Bankruptcy [ ] Other *(specify)*:

Status:

14. **Related cases, consolidation, and coordination**

a. [X] There are companion, underlying, or related cases.
    (1) Name of case:
    (2) Name of court:
    (3) Case number:
    (4) Status:

[X] Additional cases are described in Attachment 14a.

b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party)*: A motion to coordinate these cases has already been granted.

15. **Bifurcation**

[ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons)*:

16. **Other motions**

[X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues)*:
Extensive Motions to Compel discovery from Watchtower Defendants.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Watchtower Defendant Witnesses Depositions	08/05
	Percipient Witness Depositions	09/05
	Expert Discovery	Pursuant to CCP Section 2034

    c. ☒ The following discovery issues are anticipated *(specify):* Plaintiffs anticipate Watchtower Defendants will continue to assert *Serbian* and First Amendment as objections throughout discovery.

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 20, 2005

William L. Brelsford
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number)*: 6.c.

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

TRIAL SCHEDULE

June 2005:	
14-21	Financial Pacific Ins. v.Palmer Placer County Superior Court Case No. SCV 16237
24 - July 1	Cooper v. Encinitas USD San Diego County Superior Court Case No. GIC818735
July 2005:	
5 - 15	Reyes v. Bethel Comm. Church Fresno County Superior Court Case No. 03 CE 03210
August 2005:	
2 - 12	Bist v. Biomet Placer County Superior Court Case No. SCV 17571
22-31	Morrison v. Kenyon Sacramento County Superior Court Case No. 02 AS 04472
October 2005:	
18-28	Sanchez v. CHP Placer County Superior Court Case No. SCV 16302
November 2005:	
14 - 28	Cornejo v. Playpower Butte County Superior Court Case No. 133709
January 2006:	
9-23	Molina v. Wayne Engineering Fresno County Superior Court Case No. 03 CECG 03901
April 2006:	
25-May 9	Kotrous v. Goss-Jewett U.S. District Court, Third District Court of Appeal Case No. CIV S 02-1420 FCD JFM

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' motions are scheduled for 10/5/04.

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Monterey County Superior Court
3) Case Number: M68295
4) Status: Defendants' motions are scheduled for 9/17/04.

1) Name of Case: Danielle A. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Suprior Court
3) Case Number: 234140
4) Status: Defendants recently filed motions to strike, demurrer, and motion to quash.

1) Name of Case: Dennis S., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234168
4) Status: Complaint was recently served on all defendants.

1) Name of Case: Jocelyn A.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234320
4) Status: Defendant's motions are scheduled for 9/15/04.

1) Name of Case: Tabitha H.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-23-929
4) Status: Defendant's motions are scheduled for 8/31/04.

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Wimberely
2) Name of Court: Tehama County Superior Court
3) Case Number: 52598
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On May 20, 2005, I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On May 20, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 20, 2005, at Sacramento, California.

Susan Gilbert

FILED

FOR COURT USE ONLY

JUN - 6 2005

Clerk of the Napa Superior Court
By: Dora O'Doherty Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

TELEPHONE NO.: (916)564-9990

ATTORNEY FOR (Name): Charissa W. and Nicole D.

Insert name of court and name of judicial district and branch court, if any:
Napa County Superior Court`

Judicial Council Coordination Proc. No.: 4374

This is the lead case.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

CASE NUMBER: 26-22191

RECEIVED JUN 6 2005

REQUEST FOR DISMISSAL

- [ ] Personal Injury, Property Damage, or Wrongful Death
  - [ ] Motor Vehicle
  - [ ] Other
- [ ] Family Law
- [ ] Eminent Domain
- [x] Other *(specify)*: Sexual Abuse.

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK**: Please **dismiss** this action as follows:
   a. (1) [x] With prejudice (2) [ ] Without prejudice
   b. (1) [ ] Complaint (2) [ ] Petition
   (3) [ ] Cross-complaint filed by *(name)*: on *(date)*:
   (4) [ ] Cross-complaint filed by *(name)*: on *(date)*:
   (5) [ ] Entire action of all parties and all causes of action
   (6) [x] Other *(specify)*:* Entire action as to Defendant **CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES** only; parties to bear their own fees and costs.

Date: June 1, 2005

William L. Brelsford, Esq. SBN 202839
(TYPE OR PRINT NAME OF [x] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

NOLEN SAUL BRELSFORD
(SIGNATURE)
Attorney or party without attorney for: Plaintiffs

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

[x] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

2. **TO THE CLERK**: Consent to the above dismissal is hereby given.**
Date:

(TYPE OR PRINT NAME OF [ ] ATTORNEY [ ] PARTY WITHOUT ATTORNEY)

(SIGNATURE)
Attorney or party without attorney for:

** If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(i) or (j).

[ ] Plaintiff/Petitioner [ ] Defendant/Respondent
[ ] Cross-complainant

(To be completed by clerk)
3. [ ] Dismissal entered as requested on *(date)*:
4. [✓] Dismissal entered on *(date)*: 6/6/05 as to only *(name)*: Christian Congregation of Jehovah's Witnesses
5. [ ] Dismissal **not entered** as requested for the following reasons *(specify)*:

6. [ ] a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   [ ] a copy to conform [ ] means to return conformed copy

Date: Clerk, by Dora O'Doherty, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** W. Scott Snowden **Courtroom:** Department B **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** June 7, 2005 **Clerk:** G. Orta **Reporter:** Jennifer Antolin **Cite/Report #:**

Appearances:
Rudy Nolen, Attorney for Plaintiffs
Robert J. Schnack, Attorney for Defendants

This matter comes on this date for Case Management Conference.

The Court continues the matter as set forth below.

Continuance:
July 12, 2005 at 9:30 A.M. in Courtroom B for Case Management Conference. TE: 1 hour

-oOo-

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

FILED
JUN 13 2005
Clerk of the Napa Superior Court
By: Nora O'Roberts
Deputy

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

STIPULATED PROTECTIVE ORDER AND NONDISCLOSURE AGREEMENT

RECEIVED
JUN 13 2005
COURT - NAPA - CLERK

All named PLAINTIFFS in each of these coordinated cases (collectively hereinafter "plaintiffs") and defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCH TOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA ("Watch Tower PA"), CHRISTIAN CONGREGATION OF JEHOVAH'S WITNESSES, and the various congregations of Jehovah's Witnesses named as defendants in these coordinated cases (all such defendants are referred to collectively hereinafter as the "Church Defendants"), by and through their respective counsel of record, hereby stipulate to entry of the following Stipulated Protective Order And Nondisclosure Agreement ("Protective Order") for the production of confidential financial information requested by plaintiffs from Watch Tower PA in these coordinated cases.

NONDISCLOSURE AND CONFIDENTIALITY

WHEREAS, in order to resolve discovery disputes, plaintiffs have requested that Watch Tower PA produce certain documents and/or information that involve or contain confidential financial information, proprietary materials, and/or related information ("Protected Information") belonging to Watch Tower PA and/or the Church Defendants with respect to Watch Tower PA's pending motions in each of the coordinated cases to quash service of summons and complaint based on lack of personal jurisdiction in California; and

WHEREAS, Watch Tower PA has agreed to provide such Protected Information for inspection and review by plaintiffs' counsel of record with respect to and for the sole and exclusive purpose of plaintiffs' response(s) to said motions in these coordinated cases and for no other purposes;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. Watch Tower PA will produce the Protected Information in its possession and control to plaintiffs' attorneys pursuant to this Stipulated Protective Order.

2. All Protected Information shall be designated and marked "CONFIDENTIAL." Plaintiffs and their counsel of record each hereby agree that upon production of such Protected Information, they will instruct and ensure that all copies of such Protected Information shall be marked as "CONFIDENTIAL."

3. The Protected Information, including any and all documents and information contained therein, shall be maintained in confidence by plaintiffs' attorneys, shall be used for the sole and exclusive purpose of plaintiffs' response(s) to Watch Tower PA's pending motions in these coordinated cases to quash service of summons and complaint based on lack of personal jurisdiction in California, including any appeal therefrom, but for no other purposes, and shall not be disclosed to any person or entity for any other purpose unrelated to said motions without the prior written consent of Watch Tower PA or until further order of this Court. The Protected Information shall not be disclosed to plaintiffs or to any persons or entities other than:

(a) Plaintiffs' counsel of record in these coordinated cases and, to the extent reasonably necessary, said counsel's regularly employed staff;

(b) Any person whose sworn testimony is taken or to be taken in these coordinated cases with respect to the personal jurisdiction issue involving Watch Tower PA, except that such person may only be shown Protected Information during his or her testimony and in preparation therefore, and then only to the extent reasonably necessary for providing such testimony; and

(c) The Court, jury, court or deposition reporters and any persons employed by the Court or reporters whose duties require access to any information filed in connection with this action.

4. Should Protected Information be submitted to the Court, such submission shall be made under seal to preserve the confidential nature of the Protected Information and any documents and information contained therein, whether at trial, by or with a motion, other pleading or any submission, or on appeal, unless otherwise agreed to in advance and in writing by counsel for Watch Tower PA.

5. Nothing in this Protective Order shall be construed (a) to restrict the right of plaintiffs or Watch Tower PA to offer or use the Protected Information as evidence with respect to Watch Tower PA's motions in these coordinated cases to quash service of summons and complaint based on lack of personal jurisdiction in California, including any appeal therefrom, or (b) as a voluntary or involuntary waiver of any objection that might be raised at trial or otherwise to the admissibility of any such evidentiary material.

6. At the conclusion of these coordinated cases, plaintiffs' counsel of record and any other person or entity provided with Protected Information pursuant to paragraph 3 above each agree to return or destroy, within thirty (30) calendar days, all Protected Information received by plaintiffs' counsel of record pursuant to this Protective Order, provided, however, that plaintiffs' counsel of record may be entitled to retain memoranda, pleadings, or any work-product or privileged documentation derived from such Protected Information to the extent reasonably necessary to preserve a file. Said file shall not be disclosed to any person or entity other than those identified in paragraph 3 above.

7. Any person, other than the Court or its officers, to whom Protected Information

is disclosed or supplied pursuant to paragraph 3 shall be informed, prior to disclosure, of the nature and scope of this Protective Order, and of his or her obligation to keep the Protected Information in confidence, and shall sign a statement and certification agreeing to comply with the terms of this Protective Order.

8. Plaintiffs and the Church Defendants shall attempt to agree upon procedures to protect at any hearing or trial the confidentiality of Protected Information and shall, prior to such hearing or trial, submit such proposed procedures, including any disputes relating thereto, to the Court for its approval or modification.

9. This Order shall continue to be binding after the conclusion of these coordinated cases except that a party may seek the written permission of Watch Tower PA or further order of the Court with respect to dissolution or modification of this Protective Order. The Court shall retain jurisdiction to enforce or modify this Protective Order.

IT IS SO STIPULATED.

DATED: May 31, 2005

NOLEN SAUL BRELSFORD

By _____
Rudy Nolen
William L. Breslford
Attorneys for Plaintiffs

DATED: May ___, 2005

LOVE & NORRIS

By _____
Gregory S. Love
Attorneys for Plaintiffs

is disclosed or supplied pursuant to paragraph 3 shall be informed, prior to disclosure, of the nature and scope of this Protective Order, and of his or her obligation to keep the Protected Information in confidence, and shall sign a statement and certification agreeing to comply with the terms of this Protective Order.

8. Plaintiffs and the Church Defendants shall attempt to agree upon procedures to protect at any hearing or trial the confidentiality of Protected Information and shall, prior to such hearing or trial, submit such proposed procedures, including any disputes relating thereto, to the Court for its approval or modification.

9. This Order shall continue to be binding after the conclusion of these coordinated cases except that a party may seek the written permission of Watch Tower PA or further order of the Court with respect to dissolution or modification of this Protective Order. The Court shall retain jurisdiction to enforce or modify this Protective Order.

IT IS SO STIPULATED.

DATED: May 31, 2005

NOLEN SAUL BRELSFORD

By _____
Rudy Nolen
William L. Breslford
Attorneys for Plaintiffs

DATED: ~~May~~ June 1, 2005

LOVE & NORRIS

By _____
Gregory S. Love
Attorneys for Plaintiffs

DATED: May 19, 2005

FIBICH, HAMPTON, LEEBRON & GARTH LLP

By _____
Kenneth Fibich
Hartley Hampton
Attorneys for Plaintiffs

DATED: May 12, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

IT IS SO ORDERED.

DATED: ~~May~~ June 13, 2005

By _____
Honorable W. Scott Snowden
Superior Court Judge

5027443.1

NAPA SUPERIOR COURT
Certificate of Mailing

The Jehovah's Witness Cases **Case No. Judicial Council Coordination Proceeding No. 4374**

ROBERT J. SCHNACK, ESQ.
BULLIVANT, HOUSE, BAILEY
11335 GOLD EXPRESS DR. #105
GOLD RIVER, CA 95670-4491

Attorney for Church Defendants

*****CERTIFICATION*****

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa. My business address is either the Criminal Courthouse, which is located at 1111 3rd Street Napa, California, 94559, or at the Historic Courthouse which is located at 825 Brown Street, Napa, California, 94559. On the date indicated across from my signature below, following our ordinary business practices, I placed for collection and mailing at my business address, a copy of the foregoing document, in a sealed envelope, with postage fully prepaid, and addressed to the party or attorney to whom this notice was directed as stated above.

STEPHEN A. BOUCH, Court Executive Officer

6/14/05
DATE

Dora O'Doherty
Deputy Court Executive Officer

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Charissa W. and Nicole D.

FOR COURT USE ONLY

FILED

JUN 2 0 2005

Clerk of the Napa Superior Court
By: Dana O'Doherty Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
STREET ADDRESS: 825 Brown St.
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

Judicial Council Coordination
Proceeding No. 4374

This is the lead case.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: July 12, 2005 Time: 9:30 am Dept.: B Div.: Room:

Address of court *(if different from the address above)*:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. [X] This statement is submitted by party *(name)*: Plaintiffs in the consolidated action.
   b. [ ] This statement is submitted **jointly** by parties *(names)*:

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*: July 24, 2003. Consolidated pursuant to order.
   b. [ ] The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not)*:
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) [ ] have had a default entered against them *(specify names)*:
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action)*:
   Sexual battery, common law negligence, negligent appointment, retention and supervision, gross negligence - wilful misconduct, and breach of fiduciary duty.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2005]

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiffs are a group of individuals that were sexually abused as children, and entrusted to the care of the Watchtower Defendants. Plaintiffs contend the Watchtower Organization had notice that the individual pedophiles in their organization were prone to sexually molest young children, such as Plaintiffs, but failed to take appropriate measures to protect Plaintiffs entrusted to their care. These lawsuits seek compensation for the injuries Plaintiffs have sustained.

[ ] *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request [X] a jury trial [ ] a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* Plaintiffs of all consolidated cases.

6. **Trial date**
a. [ ] The trial has been set for *(date):*
b. [X] No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
SEE ATTACHMENT.

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. [X] days *(specify number):* 20-25 days.
b. [ ] hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial [X] by the attorney or party listed in the caption [ ] by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
[X] Additional representation is described in Attachment 8.

9. **Preference**
[ ] This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel [X] has [ ] has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. [ ] All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. [ ] The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [X] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [ ] Neutral case evaluation
    - (7) [ ] Other *(specify):*

e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. [X] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):*
Amount in controversy exceeds $50,000; numerous witnesses will testify; extensive expert testimony will be required.

11. **Settlement conference**

[ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: [ ] Yes [ ] No

c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

[ ] Bankruptcy [ ] Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. [X] There are companion, underlying, or related cases.
    - (1) Name of case:
    - (2) Name of court:
    - (3) Case number:
    - (4) Status:

[X] Additional cases are described in Attachment 14a.

b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* A motion to coordinate these cases had already been granted.

15. **Bifurcation**

[ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

[X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
Extensive Motions to Compel discovery from Watchtower Defendants; motions in limine.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Watchtower Defendant Witnesses Depositions	9/05
	Percipient Witness Depositions	10/05
	Expert Discovery	Pursuant to CCP Section 2034

    c. ☐ The following discovery issues are anticipated *(specify):* Plaintiffs anticipate Watchtower Defendants will continue to assert *Serbian* and First Amendment as objections throughout discovery.

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: June 15, 2005

William Brelsford
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 6.c.

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

TRIAL SCHEDULE

July 2005:

5 - 15 — Reyes v. Bethel Comm. Church
Fresno County Superior Court Case No. 03 CE 03210

August 2005:

2 - 12 — Bist v. Biomet
Placer County Superior Court Case No. SCV 17571

22-31 — Morrison v. Kenyon
Sacramento County Superior Court Case No. 02 AS 04472

October 2005:

18-28 — Sanchez v. CHP
Placer County Superior Court Case No. SCV 16302

November 2005:

14 - 28 — Cornejo v. Playpower
Butte County Superior Court Case No. 133709

January 2006:

9-23 — Molina v. Wayne Engineering
Fresno County Superior Court Case No. 03 CECG 03901

30 - Feb. 17 — Rahm v. Sai Baba
Orange County Superior Court Case No. 05CC 01931

April 2006:

25-May 9 — Kotrous v. Goss-Jewett
U.S. District Court, Third District Court of Appeal Case No. CIV S 02-1420 FCD JFM

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.)

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract – Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status:

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status:

1) Name of Case: Charissa W.,et al.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-22191
4) Status:

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status:

1) Name of Case: Tabatha H.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-23929
4) Status:

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On June 16, 2005, I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On June 15, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 16, 2005, at Sacramento, California.

Susan Gilbert

[redacted]

FILED
JUL 12 2005
Clerk of the Napa Superior Court
By: Sora O'Doherty Deputy

350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825
PHONE: (916) 564-9990 FAX: (916) 564-9991

July 12, 2005

Via Facsimile Only
Facsimile No.: (707) 259-8318

Napa County Superior Court
825 Brown Street
Napa, CA 94559

Attention: Sora O'Doherty

Re: ***Charissa W., et al. v. Watchtower, et al.*, Case No.: 26-22191**
Napa County Superior Court Case No. 26-22191

Dear Sora:

This will confirm our telephonic discussion on July 11, 2005, at which time it was agreed to postpone the Case Management Conference scheduled for July 12, 2005 at 9:30 a.m. until August 22, 2005.

Mr. Schnack and I have discussed a proposed hearing date for Watchtower Pennsylvania's Motion to Quash for an alleged lack of personal jurisdiction and have tentatively agreed upon August 22, 2005 as a hearing date. If that date is available for Judge Snowden's calendar, we would greatly appreciate scheduling the hearing for that morning. We also recommend postponing the July 12, 2005 Case Management Conference to August 22, 2005.

Mr. Schnack and I have agreed that Plaintiffs' Supplemental Opposition to Watchtower Pennsylvania's Motion to Quash will be filed on or before July 26, 2005 and Watchtower Pennsylvania's Supplemental Reply will be filed on or before August 12, 2005.

Napa County Superior Court
Attn: Sora O'Doherty
July 12, 2005
Page Two

We appreciate the Court's cooperation in setting these dates and postponing the July 12, 2005 Case Management Conference. If these proposals do not meet with the Court's approval, please contact our office at your earliest convenience and we will schedule a telephone conference with Mr. Schnack and the Court in order to address any remaining concerns.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

WB/sg

cc: Robert Schnack, Esq. (Via Facsimile)
Greg Love, Esq. (Via Facsimile)
Hartley Hampton, Esq. (Via Facsimile)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

FILED

JUL 1 ⅞ 2005

Clerk of the Napa Superior Court
By: Dora O. Doherty
Deputy

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: August 22, 2005 **TIME:** 9:30 am **ROOM:** Department C

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 7/12/2005

Stephen A. Bouch, Court Executive Officer

By: Dora O. Doherty
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Persona.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

TO: Rudy Nolen
Nolen Saul Brelsford
350 University Avenue Ste. 280
Sacramento, CA 95825

DATE: August 22, 2005 **TIME:** 9:30 am **ROOM:** Department C

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 7/12/2005

Stephen A. Bouch, Court Executive Officer

By: Lora O'Doherty
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Persona.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq.,
SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825
Telephone: (916) 564-9990
Facsimile: (916) 564-9991

Hartley Hampton, Esq.,
SBN 0227400
FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Gregory Love, Esq., SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

JUL 26 2005

Clerk of the Napa Superior Court
By: L M Hunter
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

FILED UNDER SEAL

PLAINTIFFS' SUPPLEMENTAL OPPOSITION AND SUPPORTING DECLARATION OF WILLIAM L. BRELSFORD IN RESPONSE TO WATCHTOWER PENNSYLVANIA'S MOTION TO QUASH SERVICE OF PROCESS

FILED UNDER SEAL

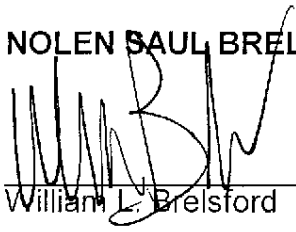
Date: August 22, 2005
Time: 9:30 a.m.
Dept. B

Trial Date: None

Plaintiffs hereby **FILED UNDER SEAL** the above-referenced Supplemental Opposition and supporting Declaration, as previously ordered by the Honorable W. Scott Snowden of this Court.

Dated: July 26, 2005

NOLEN SAUL BRELSFORD



William L. Brelsford

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Charissa W. and Nicole D.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
STREET ADDRESS: 825 Brown St.
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

FOR COURT USE ONLY

FILED

JUL 27 2005

Clerk of the Napa Superior Court
By: Lora O'Doherty Deputy

Judicial Council Coordination
Proceeding No. 4374

This is the lead case.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: August 22, 2005 Time: 9:30 am Dept.: B Div.: Room:

Address of court *(if different from the address above)*:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. [X] This statement is submitted by party *(name)*: Plaintiffs in the consolidated action.
   b. [ ] This statement is submitted **jointly** by parties *(names)*:

2. *Complaint* and **cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*: July 24, 2003. Consolidated pursuant to order.
   b. [ ] The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not)*:
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) [ ] have had a default entered against them *(specify names)*:
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action)*:
   Sexual battery, common law negligence, negligent appointment, retention and supervision, gross negligence - wilful misconduct, breach of fiduciary duty and intentional infliction of emotional distress.

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiffs are a group of individuals that were sexually abused as children, and entrusted to the care of the Watchtower Defendants. Plaintiffs contend the Watchtower Organization had notice that the individual pedophiles in their organization were prone to sexually molest young children, such as Plaintiffs, but failed to take appropriate measures to protect Plaintiffs entrusted to their care. These lawsuits seek compensation for the injuries Plaintiffs have sustained.

[ ] *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request [X] a jury trial [ ] a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* Plaintiffs of all consolidated cases.

6. **Trial date**
a. [ ] The trial has been set for *(date):*
b. [X] No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
SEE ATTACHMENT.

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. [X] days *(specify number):* 20-25 days.
b. [ ] hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial [X] by the attorney or party listed in the caption [ ] by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
[X] Additional representation is described in Attachment 8.

9. **Preference**
[ ] This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel [X] has [ ] has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. [ ] All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. [ ] The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
   (1) [X] Mediation
   (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
   (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
   (4) [ ] Binding judicial arbitration
   (5) [ ] Binding private arbitration
   (6) [ ] Neutral case evaluation
   (7) [ ] Other *(specify):*

e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. [X] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):*
Amount in controversy exceeds $50,000; numerous witnesses will testify; extensive expert testimony will be required.

11. **Settlement conference**

[ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: [ ] Yes [ ] No

c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

[ ] Bankruptcy [ ] Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. [X] There are companion, underlying, or related cases.
   (1) Name of case:
   (2) Name of court:
   (3) Case number:
   (4) Status:

[X] Additional cases are described in Attachment 14a.

b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* A motion to coordinate these cases had already been granted.

15. **Bifurcation**

[ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

[X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
Extensive Motions to Compel discovery from Watchtower Defendants; motions in limine.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. [ ] The party or parties have completed all discovery.
    b. [X] The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Watchtower Defendant Witnesses Depositions	10/05
	Percipient Witness Depositions	10/05
	Expert Discovery	Pursuant to CCP Section 2034

    c. [ ] The following discovery issues are anticipated *(specify):* Plaintiffs anticipate Watchtower Defendants will continue to assert *Serbian* and First Amendment as objections throughout discovery.

18. **Economic Litigation**
    a. [ ] This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. [ ] This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    [ ] The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. [ ] The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* [X] none [ ] attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: July 20, 2005

William Brelsford
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

[ ] Additional signatures are attached

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract -- Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 6.c.

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

TRIAL SCHEDULE

August 2005:

22-31 — Morrison v. Kenyon
Sacramento County Superior Court Case No. 02 AS 04472

October 2005:

18-28 — Sanchez v. CHP
Placer County Superior Court Case No. SCV 16302

November 2005:

14 - 28 — Cornejo v. Playpower
Butte County Superior Court Case No. 133709

January 2006:

9-23 — Molina v. Wayne Engineering
Fresno County Superior Court Case No. 03 CECG 03901

30 - Feb. 17 — Rahm v. Sai Baba
Orange County Superior Court Case No. 05CC 01931

April 2006:

25-May 9 — Kotrous v. Goss-Jewett
U.S. District Court, Third District Court of Appeal Case No. CIV S 02-1420 FCD JFM

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.)

(Add pages as required)

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.

CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' motions are scheduled for 10/5/04.

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Monterey County Superior Court
3) Case Number: M68295
4) Status: Defendants' motions are scheduled for 9/17/04.

1) Name of Case: Danielle A. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Suprior Court
3) Case Number: 234140
4) Status: Defendants recently filed motions to strike, demurrer, and motion to quash.

1) Name of Case: Dennis S., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234168
4) Status: Complaint was recently served on all defendants.

1) Name of Case: Jocelyn A.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234320
4) Status: Defendant's motions are scheduled for 9/15/04.

1) Name of Case: Tabitha H.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-23-929
4) Status: Defendant's motions are scheduled for 8/31/04.

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Wimberely
2) Name of Court: Tehama County Superior Court
3) Case Number: 52598
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On July 20, 2005, I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

__X__ **MAIL –**I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On July 19, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 20, 2005, at Sacramento, California.

Susan Gilbert

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

FILED

AUG 4 2005

Clerk of the Napa Superior Court

By: Sora O'Doherty Deputy

From: Robert J. Schnack **Date:** August 3, 2005

C/M #: 23491/00005 **Reference:** Charissa W. v. Watchtower

Number of pages being transmitted including the cover page: 1

		Fax No.	Telephone No.
To:	Sora Clerk of the Court	(707) 259-8318	(707) 299-1214
	William L. Brelsford, Jr. Nolen Saul Brelsford	(916) 564-9991	(916) 564-9990

Message/Document(s) faxed:

Please be advised that defendant CCJW has been dismissed from the Watchtower cases. Accordingly, defendant CCJW's motion for summary judgment presently set to be heard on August 16, 2005 at 8:30 a.m. should be taken off calendar. Thank you. – Bob Schnack

RJSchnack

Please call fax operator at (916) 852-9100 if all pages are not received.

ORIGINAL DOCUMENTS: Will follow by ☐ mail ☐ courier – OR - ☒ Will not follow unless requested.

CONFIDENTIALITY NOTE: The documents accompanying this facsimile transmission contain information belonging to Bullivant Houser Bailey which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for return of the original documents to us.

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5031110.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department C **Event:** Hearing: Exparte Application **PID # :**	**Case #** 26-22191 **Event Date:** August 16, 2005 **Clerk:** G. Orta **Reporter:** Diane Erickson **Cite/Report #:**

Appearances:
William L. Brelsford, Jr., Attorney for Plaintiffs
Bob Schnack, Attorney for Defendants

This matter comes on this date for Exparte Application on OST for Motion to Continue and Motion to Compel.

The Court hears arguments of counsel.

Pursuant to the request of counsel, the Court continues this matter as set forth below.

Continuance:
August 31, 2005 at 9:30 A.M. in Courtroom C for hearing on Motion to Compel, Motion to Quash and Case Management Conference. TE: 1 hour.

The Court orders the court date of August 22, 2005 shall be vacated.

The Court advises counsel they may appear via court call.

-oOo-

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

AUG 16 2005

Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **FILED UNDER SEAL** **WATCHTOWER PA'S SUPPLEMENTAL REPLY IN SUPPORT OF WATCH TOWER PA'S MOTION TO QUASH SERVICE** **FILED UNDER SEAL**
AND COORDINATED CASES	

Church Defendants hereby file the above-referenced brief **UNDER SEAL**, as previously ordered by this court and the Honorable W. Scott Snowden.

DATED: August 12, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants
Watchtower Bible and Tract Society of New York, Inc., et al.

RECEIVED
AUG 15 2004
Napa Superior Court

5030737.1

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

WATCHTOWER PA'S SUPPLEMENTAL REPLY IN SUPPORT OF WATCH TOWER PA'S MOTION TO QUASH SERVICE --- FILED UNDER SEAL

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

xxxx (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_xxx____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 12, 2005, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991 **Via Fed Ex**	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Defendant in pro per Donald Glew PO Box 424245 San Francisco, CA 94142
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	

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Attorneys for The Church Defendants

FILED
AUG 30 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' REPLY BRIEF AND CORRESPONDING MOTIONS TO STRIKE

DATE: August 31, 2005
TIME: 9:30 AM
DEPT.: C
TRIAL DATES: Not yet set

In plaintiffs' reply briefs in these so-called "Track I" cases, Tim W. v. Watchtower New York, et al., Tehama County Superior Court no. 52594, and Wimberly Gutierrez, et al. v. Watchtower NY, et al., Tehama County Superior Court no. 52598, [1] plaintiffs filed excerpts of deposition and court testimony given by Jehovah's Witnesses elders in Texas lawsuits. See the declarations filed in the two cases of Gregory Love filed on or about August 25, 2005, in

[1] Those two cases were earlier coordinated under Judicial Council rules with the designated "lead case" of Charissa W. v. Watchtower NY, et al. filed in this Court, and this Court is presently overseeing all of these coordinated cases. Thus, these objections and motions to strike are filed on the Charissa W. caption.

support of plaintiffs' reply brief regarding plaintiff's motion to compel discovery at ¶¶3, 4, 5, and 6.

The Church Defendants hereby object to the admission of those persons' testimony in these motion proceedings on the independent and alternative grounds that (1) depositions and court testimony given in Texas lawsuits in which co-defendants James Henderson and Alvin Heard and defendant North Congregation of Red Bluff, California were not parties should not be admitted or considered by this Court in this California proceeding; (2) plaintiffs have taken out of context the limited excerpts of testimony of the Texas elders in the Texas lawsuits, in that the testimony given in the Texas lawsuits shows that the primary purpose of a Judicial Committee is to spiritually assist the erring member; and (3) the previously submitted declarations or affidavits of co-defendants Henderson and Heard, North Congregation of Red Bluff, California elders Cummins and Shelburn, and Jehovah's Witnesses elder Gary Breaux of the Service Department set forth admissible evidence particularized to the specific issues raised in these California Track I cases concerning co-defendants Henderson and Heard, including that the purpose of a Judicial Committee is to spiritually assist the erring member. See also the 1992 Watchtower article and pages from the 2005 "Organized To Do Jehovah's Will" book, both of which are attached hereto as Exhibit A and further substantiate that the purpose of Judicial Committees is to spiritually assist the erring one, while disfellowshipping or other disciplinary measures short of disfellowshipping are indisputably not the primary purpose of a Judicial Committee.

Based on the foregoing objections, the Church Defendants move that the deposition and court testimony cited by plaintiffs be stricken from the record and not considered by the Court in these motion proceedings.

DATED: August 29, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

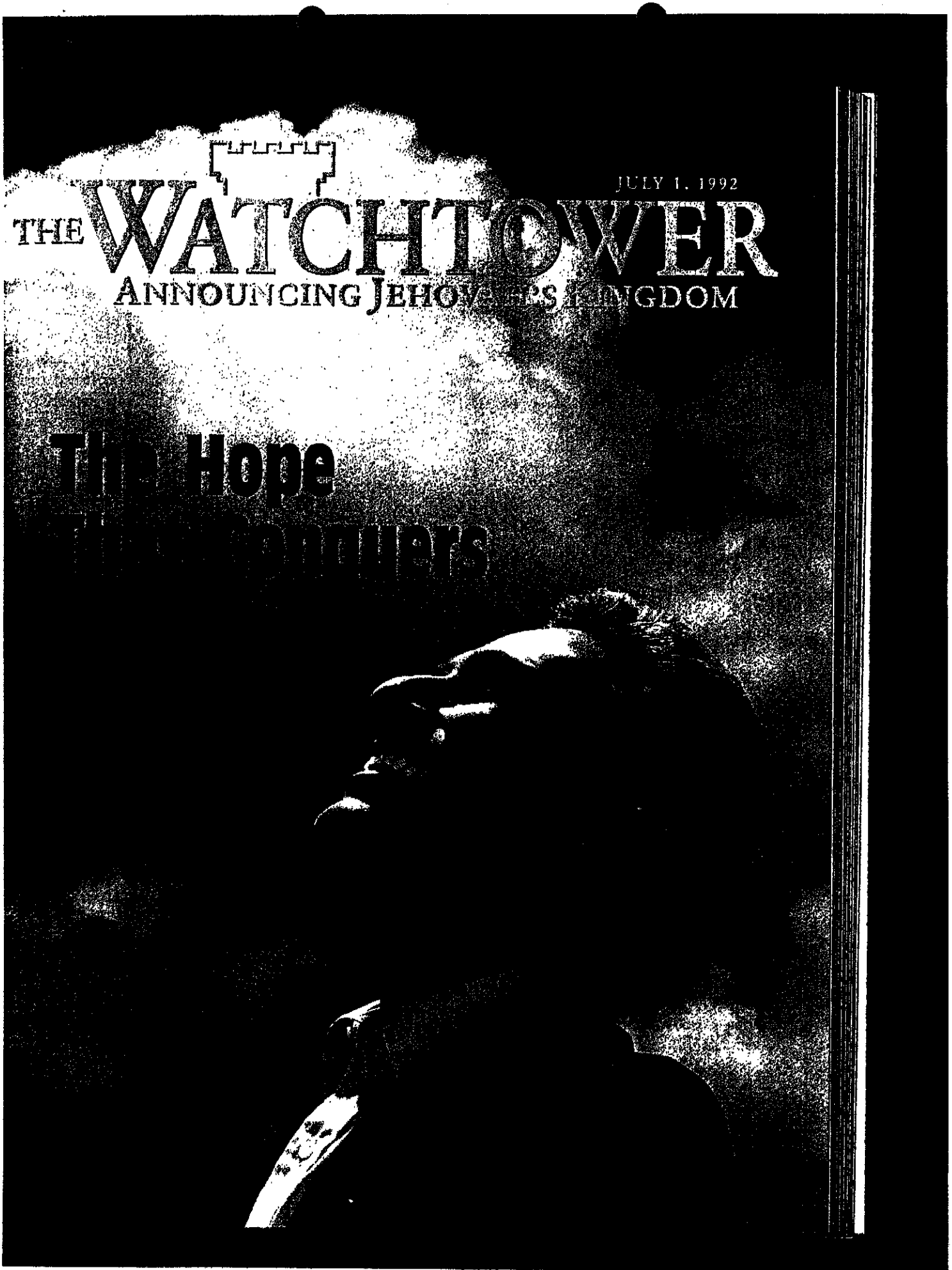


EXHIBIT A

THE WATCHTOWER®

ANNOUNCING JEHOVAH'S KINGDOM

July 1, 1992 | Average Printing Each Issue: 15,570,000 | Vol. 113, No. 13

THE PURPOSE OF *THE WATCHTOWER* is to exalt Jehovah God as Sovereign Lord of the universe. It keeps watch on world events as these fulfill Bible prophecy. It comforts all peoples with the good news that God's Kingdom will soon destroy those who oppress their fellowmen and that it will turn the earth into a paradise. It encourages faith in God's now-reigning King, Jesus Christ, whose shed blood opens the way for mankind to gain eternal life. *The Watchtower*, published by Jehovah's Witnesses continuously since 1879, is nonpolitical. It adheres to the Bible as its authority.

IN THIS ISSUE

3 Why So Much Despair?

4 Hope Conquers Despair!

8 Jehovah, the Impartial "Judge of All the Earth"

14 Elders, Judge With Righteousness

20 Kingdom Proclaimers Report

21 I Responded in Harvesttime

24 Gerasa—Where Jew and Greek Met

26 Busy in Dead Works or in Jehovah's Service?

30 They Came Despite Discomfort and Danger

31 Questions From Readers

32 The Time to Seek God

WATCHTOWER STUDIES FOR WEEKS OF

AUGUST 10: Jehovah, the Impartial "Judge of All the Earth." Page 8. *Songs to be used:* 97, 212.

AUGUST 17: Elders, Judge With Righteousness. Page 14. *Songs to be used:* 91, 35.

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ELDERS, JUDGE WITH RIGHTEOUSNESS

"When having a hearing between your brothers, you must judge with righteousness."—DEUTERONOMY 1:16.

AS SUPREME Judge, Jehovah has delegated judicial authority to his Son. (John 5:27) In turn, as Head of the Christian congregation, Christ uses the faithful and discreet slave class and its Governing Body to appoint elders, who at times have to act as judges. (Matthew 24:45-47; 1 Corinthians 5:12, 13; Titus 1:5, 9) As surrogate judges, these are under an obligation to follow closely the example of the heavenly Judges, Jehovah and Christ Jesus.

Christ—The Exemplary Judge

[2] Of Christ as Judge, it was written prophetically: "Upon him the spirit of Jehovah must settle down, the spirit of wisdom and of understanding, the spirit of counsel and of mightiness, the spirit of knowledge and of the fear of Jehovah; and there will be enjoyment by him in the fear of Jehovah. And he will not judge by any mere appearance to his eyes, nor reprove simply according to the thing heard by his ears. And with righteousness he must judge the lowly ones, and with uprightness he must give reproof in behalf of the meek ones of the earth." —Isaiah 11:2-4.

[3] Note in that prophecy the qualities that enable Christ to "judge the inhabited earth in righteousness." (Acts 17:31) He judges in accordance with Jehovah's spirit, divine wisdom, understanding, counsel, and knowledge. Notice, too, that he judges in the fear of Jehovah. Thus, "the judgment seat of the Christ" is, representatively, "the judgment seat of God." (2 Corinthians 5:10; Romans 14:10) He is careful to judge matters the way God judges them. (John 8:16) He does not judge simply by appearances or by mere hearsay. He judges with uprightness in behalf of the meek and the lowly ones. What a wonderful Judge! And what a wonderful example for imperfect humans who are called upon to act in a judicial capacity today!

Earthly Judges

[4] The Scriptures indicate that the relatively small number of anointed Christians, beginning with the 12 apostles, will be associate judges with Christ Jesus during the Millennium. (Luke 22:28-30; 1 Corinthians 6:2; Revelation 20:4) A remnant of anointed members of spiritual Israel on earth were themselves judged and restored in 1918-19. (Malachi 3:2-4) Concerning this restoration of spiritual Israel, it was proph-

1. In the matter of judgment, what delegation of authority has taken place, and what does this imply for human judges?
2, 3. (a) What Messianic prophecy reveals Christ's qualities as Judge? (b) What points are particularly worthy of note?

4. (a) What will be one of the functions of the 144,000 during the Millennial Reign of Christ? (b) What prophecy shows that some anointed Christians would be appointed as judges while still on earth?

esied: "I will bring back again judges for you as at the first, and counselors for you as at the start." (Isaiah 1:26) Thus, just as he had done "at the start" of fleshly Israel, Jehovah has given the restored remnant righteous judges and counselors.

5 To begin with, the 'wise men' who were "put in as judges" were all anointed older men, or elders. (1 Corinthians 6:4, 5) Faithful, respected anointed overseers are depicted in the book of Revelation as being held in Jesus' right hand, that is, under his control and direction. (Revelation 1:16, 20; 2:1) Since 1935 the anointed have received the loyal support of an ever-increasing "great crowd," whose hope is to survive "the great tribulation" and live forever on a paradise earth. (Revelation 7:9, 10, 14-17) As "the marriage of the Lamb" approaches, more and more of these are being appointed by the anointed Governing Body to serve as elders and judges in the upwards of 66,000 congregations of Jehovah's Witnesses throughout the earth.* (Revelation 19:7-9) By means of special schools, they are being trained to handle responsibility in the "new earth" society. (2 Peter 3:13) The Kingdom Ministry School, conducted at the end of 1991 in many countries, placed emphasis on the proper handling of judicial cases. Elders who serve as judges are duty bound to imitate Jehovah and Christ Jesus, whose judgments are true and righteous.—John 5:30; 8:16; Revelation 19:1, 2.

* For the position of elders from among the other sheep with regard to Christ's right hand, see the book *Revelation—Its Grand Climax At Hand!*, published by the Watchtower Bible and Tract Society of New York, Inc., page 136, footnote.

5. (a) Who were "put in as judges" after the restoration of spiritual Israel, and how are they depicted in the book of Revelation? (b) By whom are anointed overseers now being assisted in judicial work, and how are these being trained to become better judges?

Judges Who 'Conduct Themselves With Fear'

6 If Christ himself judges in the fear of Jehovah and with the help of His spirit, how much more should imperfect elders do so! When assigned to serve on a judicial committee, they need to 'conduct themselves with fear,' calling "upon the Father who judges impartially" to help them judge in righteousness. (1 Peter 1:17) They should remember that they are dealing with people's lives, their "souls," as those who "will render an account." (Hebrews 13:17) In view of this, surely they will also be accountable before Jehovah for any avoidable judicial mistakes they may make. In his commentary on Hebrews 13:17, J. H. A. Ebrard wrote: "It is the duty of the shepherd to *watch* over the souls committed to his care, and . . . he must render an *account* of them all, of those also who have been lost through his fault. This is a solemn word. Let every minister of the word consider, that he has *voluntarily* undertaken this awfully [formidably] responsible office."—Compare John 17:12; James 3:1.

7 Elders acting in a judicial capacity should remember that the real Judges of each case are Jehovah and Christ Jesus. Recall what the judges in Israel were told: "It is not for man that you judge but it is for Jehovah; and he is with you in the matter of judgment. And now let the dread of Jehovah come to be upon you. . . . This is how you should do that *you* may not incur guilt." (2 Chronicles 19:6-10) With reverential fear, the elders judging a case should do their utmost to be sure that Jehovah is really 'with them in the matter of

6. Why should elders who serve on judicial committees 'conduct themselves with fear'?
7. (a) What should modern-day judges remember, and what should be their aim? (b) What lessons should elders draw from Matthew 18: 18-20?

2005



judgment.' Their decision should accurately reflect the way Jehovah and Christ consider the matter. What they symbolically 'bind' (find guilty) or 'loose' (find innocent) on earth should be what has *already* been bound or loosed in heaven—as revealed by what is written in the inspired Word of God. If they pray to Jehovah in Jesus' name, Jesus will be "in their midst" to help them. (Matthew 18:18-20, footnote; *The Watchtower,* February 15, 1988, page 9) The atmosphere at a judicial hearing should show that Christ is truly in their midst.

Full-Time Shepherds

[8] Elders do not judge full-time. They *are* full-time shepherds. They are healers, not punishers. (James 5:13-16) The basic idea behind the Greek word for overseer (*e·pi'sko·pos*) is that of protective care. The *Theological Dictionary of the New Testament* states:

8. What is the elders' main responsibility toward the flock, as exemplified by Jehovah and Jesus Christ? (Isaiah 40:10, 11; John 10:11, 27-29)

Where advance shepherding is done, many judicial cases may be avoided

"Supplementing shepherd [at 1 Peter 2:25], the term [*e·pi'sko·pos*] suggests the pastoral work of watching over or guarding." Yes, their primary responsibility is watching over the sheep and guarding them, keeping them *inside* the flock.

[9] Speaking to the elders of the Ephesus congregation, the apostle Paul put the emphasis where it belongs: "Pay attention to yourselves and to all the flock, among which the holy spirit has appointed you *overseers,* to *shepherd* the congregation of God, which he purchased with the blood of his own Son." (Acts 20:28) Paul highlights shepherding, not punishing. Some elders might do well to ponder over the following question: 'Could we save the considerable amount of time needed to investigate and handle judicial cases if we devoted more time and effort to shepherding?'

[10] True, Paul warned against "oppressive wolves." But did he not reproach these for 'not treating the flock with tenderness'? (Acts 20:29) And while he implied that the faithful overseers should expel these "wolves," do his words not show that the elders should treat the other members of the flock "with tenderness"? When a sheep becomes spiritually weak and falls by the wayside, what does he or she need—beating or healing, punishing or shepherding? (James 5:14, 15) Therefore, elders should regularly schedule time for the shepherding work. This may bring the happy result of less time spent in time-consuming judicial cases involving Christians who have been overtaken

9, 10. (a) How did Paul emphasize the first duty of elders, so what question might well be posed? (b) What do Paul's words at Acts 20:29 imply, so how may elders try to reduce the number of judicial cases?

by sin. Certainly, the elders' first concern should be to provide a source of relief and refreshment, thus promoting peace, tranquillity, and security among Jehovah's people.—Isaiah 32:1, 2.

Serving as Beneficent Shepherds and Judges

[11] More intensive shepherding before a Christian takes a false step might well reduce the number of judicial cases among Jehovah's people. (Compare Galatians 6:1.) Nevertheless, because of human sin and imperfection, Christian overseers may from time to time have to deal with cases of wrongdoing. What principles should guide them? These have not changed since the time of Moses or that of the early Christians. Moses' words addressed to the judges in Israel are still valid: "When having a hearing between your brothers, you must judge with righteousness . . . You must not be partial in judgment." (Deuteronomy 1: 16, 17) Impartiality is a characteristic of "the wisdom from above," the wisdom that is so vital for elders serving on judicial committees. (James 3:17; Proverbs 24:23) Such wisdom will help them to discern the difference between weakness and wickedness.

[12] Elders "must judge with righteousness," in accordance with Jehovah's standards of right and wrong. (Psalm 19:9) Yet, while endeavoring to be righteous men, they should also try to be good men, in the sense of the distinction Paul makes at Romans 5: 7, 8. Commenting on these verses in its article on "Righteousness," the work *Insight on the Scriptures* states: "The use of the Greek term shows that the person noteworthy for, or distinguished by, goodness is one who is benevolent (disposed to do good or bring benefit to others) and beneficent (actively expressing such goodness). He is not merely concerned with doing what justice requires but goes beyond this, being motivated by wholesome consideration for others and the desire to benefit and help them." (Volume 2, page 809) Elders who are not only righteous but also good will treat wrongdoers with kind consideration. (Romans 2:4) They should want to show mercy and compassion. They should do what they can to help the wrongdoer to see the need to repent, even though he may at first seem not to respond to their efforts.

Proper Attitude at Hearings

[13] When a situation requires a judicial hearing, overseers should not forget that they are still shepherds, dealing with Jehovah's sheep, under "the fine shepherd." (John 10:11) The counsel Paul gave for regular help given to sheep who are in difficulty applies with equal force at judicial hearings. He wrote: "Brothers, even though a man takes some false step before he is aware of it, you who have spiritual qualifications try to readjust such a man in a spirit of mildness, as you each keep an eye on yourself, for fear you also may be tempted. Go on carrying the burdens of one another, and thus fulfill the law of the Christ."—Galatians 6:1, 2.*

[14] Rather than considering themselves to be superior judges meeting to administer punishment, elders serving on a judicial committee should view the hearing as

11. Why do elders who serve on judicial committees need impartiality and "the wisdom from above"?
12. In what sense do judges need to be not only righteous men but good men?

* See *The Watchtower*, September 15, 1989, page 19.

13. (a) When an elder acts as a judge, what does he not cease to be? (b) What counsel by Paul applies also at judicial hearings?
14. How should overseers view judicial hearings, and what should be their attitude toward a wrongdoer?



Even during a judicial hearing, elders should try to readjust a wrongdoer in a spirit of mildness

another aspect of their shepherding work. One of Jehovah's sheep is in trouble. What can they do to save him or her? Is it too late to help this sheep that has strayed from the flock? We would hope not. Elders should keep a positive view toward showing mercy where this would be proper. It is not that they should lower Jehovah's standards if a serious sin has been committed. But their being conscious of any mitigating circumstances will help them to extend mercy where possible. (Psalm 103:8-10; 130:3) Sad to say, some wrongdoers are so stubborn in their attitude that the elders are obliged to show firmness, though never harshness.—1 Corinthians 5:13.

The Purpose of Judicial Hearings

[15] When a serious problem arises between individuals, wise elders will first determine whether those involved have tried to settle the matter privately, in the spirit of Matthew 5:23, 24 or Matthew 18:15. If this has failed, perhaps counsel by one or two elders will suffice. Judicial action is necessary only if a gross sin has been committed that could lead to disfellowshipping. (Matthew 18:17; 1 Corinthians 5:11) There must be a sound Scriptural basis for forming a judicial committee. (See *The Watchtower,* September 15, 1989, page 18.) When one is formed, the best qualified elders should be selected for the particular case.

[16] What do elders try to achieve by means of judicial hearings? First, it is impossible to judge with righteousness unless the truth is known. As in Israel, serious matters must be 'searched thoroughly.' (Deuteronomy 13:14; 17:4) So one aim of a hearing is to find out the facts of the case. But this can and *should* be done with love. (1 Corinthians 13:4, 6, 7) Once the facts are known, the elders will do whatever is necessary to protect the congregation and maintain within it Jehovah's high standards and the free flow of his spirit. (1 Corinthians 5:7, 8) However, one of the purposes of a hearing is to save, if at all

15. When a serious problem arises between individuals, what should first be determined?

16. What do elders try to achieve by means of judicial hearings?

possible, an endangered sinner.—Compare Luke 15:8-10.

[17] An accused person should never be treated otherwise than as a sheep of God. He or she should be treated with tenderness. If a sin (or sins) has been committed, the purpose of the righteous judges will be to help the sinner to readjust, to understand the error of his way, to repent, and thus to be snatched from "the snare of the Devil." It will require "art of teaching," "instructing with mildness." (2 Timothy 2:24-26; 4:2) What if the sinner then recognizes that he has sinned, is truly stabbed to the heart, and asks Jehovah for forgiveness? (Compare Acts 2:37.) If the committee is convinced that he sincerely wants help, generally there would be no need to disfellowship him.—See *The Watchtower*, January 1, 1983, page 31, paragraph 1.

[18] On the other hand, when members of a judicial committee are confronted with a clear case of remorseless apostasy, willful rebellion against Jehovah's laws, or sheer wickedness, their duty is to protect the other members of the congregation by disfellowshipping the unrepentant offender. The judicial committee is not obliged to meet repeatedly with the wrongdoer or put words in his mouth, trying to force him to repent, if it is obvious he lacks godly sorrow.* In recent years disfellowshippings worldwide have been approximately 1 percent of publishers. That means that out of about a hundred sheep that remain in the fold, one is lost—at least temporarily. Considering the time and effort it takes to bring a person into the fold, is it not heartrending to know that tens of thousands are 'handed back to Satan' every year?—1 Corinthians 5:5.

[19] Elders starting out on a judicial case should remember that most cases of sin in the congregation involve weakness, not wickedness. They should never forget Jesus' illustration of the lost sheep, which he concluded with the words: "I tell you that thus there will be more joy in heaven over one sinner that repents than over ninety-nine righteous ones who have no need of repentance." (Luke 15:7) Truly, "Jehovah . . . does not desire any to be destroyed but desires all to attain to repentance." (2 Peter 3:9) With Jehovah's help, may judicial committees throughout the world do their utmost to cause joy in heaven by helping wrongdoers see the need to repent and start their feet back on the narrow road that leads to everlasting life.—Matthew 7:13, 14.

* See *The Watchtower*, September 1, 1981, page 26, paragraph 24.

17. (a) How should an accused person be treated during a hearing, and with what purpose? (b) What will this require on the part of the members of the judicial committee?

18. (a) When should a judicial committee show firmness in disfellowshipping a wrongdoer? (b) In view of what heartrending situation should elders exert themselves in behalf of straying sheep?

19. What should elders serving on a judicial committee never forget, so what will be their aim?

Review Questions

- ☐ Following the example of the Great Shepherd and the Fine Shepherd, what should be the main interest of the elders?
- ☐ In what way can elders endeavor to reduce the number of judicial cases?
- ☐ In what sense do judges need to be not only righteous but also good?
- ☐ How should a wrongdoer be treated during a hearing, and with what purpose?
- ☐ Why is disfellowshipping a last resort?

ORGANIZED TO DO JEHOVAH'S WILL

"To do your will,
O my God, I have delighted."
—Ps. 40:8.

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English (*od*-E)

Made in the United States of America

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providing appropriate counsel concerning such disorderly conduct. Elders will use reasonableness and discernment in determining whether a particular situation is sufficiently serious and disturbing to require a warning talk. This talk will not name the disorderly one. However, those who are aware of the situation described in the talk will take heed and limit their social contacts with such individuals.

The loving concern and firm stand of faithful members of the congregation could indeed move the disorderly one to shame and repentance. When it is clearly evident that the individual has abandoned his disorderly course, it would no longer be necessary to treat him as a marked individual.

HANDLING CASES OF SERIOUS WRONGDOING

After taking the steps outlined at Matthew 18:15, 16, some individual brothers or sisters may report to the elders cases of unresolved serious wrongdoing. (Matt. 18:17) On the other hand, individuals may also approach the elders either to confess their own sin or to report what they know regarding the wrongdoing of others. (Lev. 5:1; Jas. 5:16) Regardless of the manner in which the elders first hear reports of serious wrongdoing on the part of a baptized member of the congregation, an initial investigation will be made by two elders. If it is established that there is substance to the report and that evidence is available showing that a serious sin actually has been committed, the body of elders will assign a judicial committee of at least three elders to handle the matter. Regarding serious wrongdoing by one who is unbaptized, see pages 157-8.

While exercising watchful care of the flock, seeking to protect it from any elements that would be

spiritually damaging, the elders will also endeavor to use God's Word skillfully to reprove any who have erred and will try to restore them. (Jude 21-23) This is in harmony with instructions given to Timothy by the apostle Paul, who wrote: "I solemnly charge you before God and Christ Jesus, who is destined to judge the living and the dead, . . . reprove, reprimand, exhort, with all long-suffering and art of teaching." (2 Tim. 4:1, 2) Doing so may take much time and effort, but this is part of the hard work of the elders. The congregation appreciates their endeavors and gives them double honor.—1 Tim. 5:17.

In every situation where guilt is established, the primary endeavor of the overseers is to restore the wrongdoer if he is genuinely repentant as indicated, for example, by his producing "works that befit repentance." (Acts 26:20) If he is repentant and they are able to help him, their administering reproof either in private or before onlookers with knowledge of the case serves to discipline him and instill a wholesome fear in any such onlookers. (2 Sam. 12: 13; 1 Tim. 5:20) In all cases of judicial reproof, restrictions are imposed. Thus the wrongdoer may be helped to 'make straight paths for his feet' thereafter. (Heb. 12:13) In due course these restrictions are removed as the individual's spiritual recovery becomes manifest.

ANNOUNCEMENT OF REPROOF

If a judicial committee determines that an individual is repentant but that the matter is likely to become known in the congregation or in the community or if for other reasons the elders believe that the congregation needs to be advised, a simple announcement will be made during the Service Meeting. It should read: "[Name of person] has been re-

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On August 29, 2004 the following ordinary business practice., I served the foregoing document(s) described as:

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' REPLY BRIEF AND CORRESPONDING MOTIONS TO STRIKE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorney for Plaintiffs Rudy Nolen Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	**Co-Counsel for Plaintiff**: Greg Love Love & Norris 314 Main Street, Suite 300 Fort Worth, TX 76102
Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010	

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' between the hours of 9:00 a.m. and 5:00 p.m. on August 29, 2005and received verification of each complete transmission.

[xx] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 29, 2004, at Gold River, California.

By Claudia Pohlman

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department C **Event:** Plaintiff's Motion to Quash Plaintiff's Motion to Compel Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** August 31, 2005 **Clerk:** D. Coffelt **Reporter:** Michelle Corrigan **Cite/Report #:**

Appearances:
Gregory S. Love, Attorney for Plaintiff
Rudy Nolen, Attorney for Plaintiff'
William L. Brelsford, Jr., Attorney for Plaintiff
Robert J. Schnack, Attorney for Defendant

Related Case 26-23929 Tabitha H. vs. Watchtower Bible & Tract Society of N.Y

After hearing arguments of counsel the Court gives counsel for defendant until the end of business on September 01, 2005 to submit additional information by letter.

The matters having been submitted the Court will take the motions under submission as of September 02, 2005.

The Court pursuant to stipulation of counsel continues the case management conference as set forth below to allow the taking of depositions.

Continuance:
November 17, 2005 at 9:30 a.m. in Courtroom C for Further Case Management Conference

The Court further orders counsel for defendant's to complete the depositions of the plaintiffs and their family members prior to November 17, 2005. Counsel for plaintiff shall prepare an order.

-oOo-

FILED

SEP 2 9 2005

Clerk of the Napa Superior Court
By: Jean E. Pike
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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

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

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

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

1. Penitential Privilege

Evidence Code section 1032 provides:

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

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

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

2. Attorney-client privilege

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

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

Dated: 9/29/05

Raymond A. Guadagni, Judge

NAPA SUPERIOR COURT

Certificate of Mailing

Charissa W., et al vs Roes 1-100 et al. **(G)** **26-22191**

Robert J. Schnack — Attorney for Defendant
Bullivant Houser Bailey
11335 Gold Express Dr.
Ste. 1105
Gold River, CA 95670-4491

Rudy Nolen — Attorney for Plaintiff
Nolen Saul Brelsford
350 University Avenue
Ste. 280
Sacramento, CA 95825

**** *CERTIFICATION* ****

I hereby certify that I am not a party to this cause and that copies of the foregoing document were mailed (first class postage pre-paid) in sealed envelopes at Napa, California on this date and that this certificate is executed at Napa, California this date.

STEPHEN A. BOUCH, Court Executive Officer

DATE 9/29/2005

Deputy Court Executive Officer

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
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Attorneys for The Church Defendants

FILED
SEP 30 2005
Clerk of the Napa Superior Court
By: Sara O'Sheehy
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

Judicial Council Coordination Proceeding no. 4374

CHURCH DEFENDANTS' NOTICE OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN

DATE: October 12, 2005
TIME: 8:30 a.m.
DEPT: C

TRIAL DATE: Not yet set

RECEIVED
SEP 30 2005
COURT EXECUTIVE OFFICER

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on October 12, 2005 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Dept. C of the above entitled court, Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC will and hereby does move the Court for a protective order regarding plaintiffs' first amended notice of deposition for J.R. Brown.

This motion is based on this notice, the supporting memorandum of points and authorities, the supporting declarations of Robert J. Schnack and J.R. Brown, all papers and records on file in this action, and such other oral and documentary information and evidence as

may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel for the Church Defendants hereby certifies that he met and conferred by telephone with plaintiffs' attorney Hartley Hampton concerning this motion before filing it with the court.

DATED: September 29, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

5033032.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **September 29, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' NOTICE OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE OF J.R. BROWN

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs BY FAX & MAIL Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs BY FAX & MAIL Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**BY FAX & MAIL** Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on September 29, 2005 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **September 29, 2005**, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
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Attorneys for The Church Defendants

FILED
SEP 30 2005
Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

Judicial Council Coordination Proceeding no. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE NOTICE OF DEPOSITION RE J.R. BROWN

DATE: October 12, 2005
TIME: 8:30 a.m.
DEPT: C

TRIAL DATE: Not yet set

RECEIVED
SEP 30 2005
COURT EXECUTIVE OFFICER

I. STATEMENT OF FACTS

Plaintiffs in the two Track I cases of *Tim W.* and *Wimberley*[1] have noticed the deposition of J.R. Brown, Director of the Office of Public Information (hereafter "OPI") for defendant Watchtower Bible and Tract Society of New York, Inc. (hereafter "Watchtower NY"). This deposition was noticed based on a May 9, 2002 letter signed by J.R. Brown as Director of

[1] A number of cases were earlier ordered coordinated under Judicial Council rules, and the Napa County Superior Court is the court designated to oversee the coordinated cases. Thus, although the notice of deposition at issue is for the Track I cases only, this motion is filed on the caption for the *Charissa W.* case, which has been designated as the so-called "lead" case.

Watchtower NY's OPI, in response to a facsimile letter received from Betsan Powys of BBC (British Broadcasting Corporation) Panorama.

The May 9, 2002 letter signed by Mr. Brown that was sent to Betsan Powys of BBC Panorama addressed in general terms the way in which Jehovah's Witnesses handle child abuse matters. It was written for the purpose of responding to a television program the BBC was planning to air regarding that issue. While J.R. Brown signed the May 9, 2002 letter as the Director of the OPI for Watchtower NY,[2] his declaration filed herewith reveals that he does not have any unique, special, or superior personal knowledge regarding the topics and categories of information in the letter about which plaintiffs want to inquire. In addition, his declaration reveals that he does not have any personal knowledge regarding any of these coordinated cases.

At the same time that plaintiffs served the notice of deposition for J.R. Brown, plaintiffs also served a notice of deposition for the person most knowledgeable, or "PMK," regarding certain topics or categories of information addressed in the May 9, 2002 letter signed by J.R. Brown. With regard to that PMK deposition notice, Watchtower NY has designated Gary Breaux as the person most knowledgeable. Gary Breaux has knowledge of each of the topics or categories identified in the notice of PMK deposition regarding the May 9, 2002 letter and can competently and knowingly testify regarding each such topic. *See* declaration of Robert J. Schnack filed herewith.

Defense counsel for Watchtower NY has met and conferred with one of plaintiffs' attorneys prior to filing this motion for protective order, as required by California's Code of Civil Procedure. Defense counsel advised plaintiffs' counsel that J.R. Brown has no personal knowledge regarding these coordinated cases and that he has no unique or superior personal knowledge regarding the contents of the May 9, 2002 letter. In that same conversation, defense counsel advised plaintiffs' counsel that Gary Breaux has been designated by Watchtower NY as the person most knowledgeable regarding the topics identified about the May 9, 2002 letter in

---

[2] The May 9, 2002 letter was written on letterhead of Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA") because the letter was sent to the BBC in England. All letters from the OPI sent to locations outside of the United States are placed on Watch Tower PA letterhead.

the PMK deposition notice and that Watch Tower PA would produce Mr. Breaux for deposition on a mutually agreeable date in October or November 2005. Despite this information, plaintiffs have declined to withdraw the deposition notice for J.R. Brown's deposition.

It is important to note that defendant Watchtower NY is ***not*** attempting here to quash deposition testimony regarding the topics identified in the PMK deposition notice concerning the May 9, 2002 letter. Rather, defendant is seeking a protective order only regarding the deposition notice for J.R. Brown. While J.R. Brown signed the letter in his capacity as the Director of the OPI, he does not have any unique or superior personal knowledge of the subject matter contained therein. In addition, he does not have personal knowledge of any of these coordinated cases.

As noted, Watchtower NY is prepared to and will produce Gary Breaux for examination by deposition because he has been designated by Watchtower NY as the person most knowledgeable regarding the topics identified by plaintiffs in the May 9, 2002 letter. However, Watchtower NY seeks to protect having to produce J.R. Brown for a deposition regarding a matter of which he does not have unique or superior personal knowledge and regarding lawsuits of which he has no knowledge. To allow such a deposition to proceed would cause unwarranted annoyance, oppression, and undue burden or expense. *See* CCP §2023.010.

II. POINTS AND AUTHORITIES

Overview of discovery rules. California Code of Civil Procedure section 2017.010 sets forth the general discovery provisions in California. In general, "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP §2017.010. "The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of the discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence." CCP §2017.020.

A court shall restrict the use and frequency of a discovery method if it determines that

the "discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive." CCP §2019.030(a)(1). "Misuses of the discovery process include, but are not limited to ... employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." CCP §2023.010(c).

California Code of Civil Procedure section 2025.010, *et seq.*, governs the taking of oral depositions. Generally speaking, parties and non-parties can be deposed in California. However, "[b]efore, during or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order ...." CCP §2025.420(a). "The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense ...." CCP §2025.420(b). In this case, defendants are seeking a protective order regarding the noticed deposition of J.R. Brown, Director of the OPI for Watchtower NY.

Discussion. It has previously been held in the *Liberty Mutual Ins. Co.* case that before a high level executive can be deposed, less intrusive discovery methods must be employed. "We conclude it amounts to an abuse of discretion to withhold a protective order when a plaintiff seeks to depose a corporate president, or corporate officer at the apex of the corporate hierarchy, absent a reasonable indication of the officer's personal knowledge of the case and absent exhaustion of less intrusive discovery methods." *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282, 1287, 13 Cal.Rptr.2d 363, 365. "At the outset it would seem sensible to prevent a plaintiff from leap-frogging to the apex of the corporate hierarchy in the first instance, without the intermediate steps of seeking discovery from lower level employees more involved in everyday corporate operations. The head of a large national corporation will generally not have knowledge of a specific incident or case handled several levels down the corporate pyramid." *Id.*

Here, a letter was drafted in response to an inquiry from the British Broadcasting Corporation, or BBC, regarding a scheduled BBC television segment. J.R. Brown signed the

letter as the Director of the OPI. That May 9, 2002 letter did not relate to these coordinated cases -- indeed, none of these coordinated cases had even then been filed. Plaintiffs now want to depose J.R. Brown regarding certain subject matter contained in the letter despite having been advised that, although Mr. Brown signed the letter, he does not have any unique or superior personal knowledge about the topics in the letter or any personal knowledge concerning these coordinated cases.

At the same time plaintiffs served the J.R. Brown deposition notice, they also served a PMK deposition notice for the person most knowledgeable regarding certain topics or categories of information, including topics concerning the letter signed by J.R. Brown. The validity of the PMK deposition notice is not being challenged here, and Watchtower NY has already agreed to produce Gary Breaux for deposition as the designated PMK. Gary Breaux is the person most knowledgeable about the topics regarding the May 9, 2002 letter described in plaintiffs' PMK deposition notice, and he will testify in the PMK deposition.

"'[A]pex' depositions such as the one in this case, when conducted ***before*** less intrusive discovery methods are exhausted, raise a tremendous potential for discovery abuse and harassment." *Liberty Mutual*, 10 Cal.App.4th at 1287 (emphasis added). Because the issue was a case of first impression and because the California Discovery Act of 1986 had brought California into close alignment with the federal rules governing discovery, the *Liberty Mutual* court first analyzed federal cases that dealt with noticed depositions of high-level executives. After review and analysis of several cases, the *Liberty Mutual* court concluded:

> "Consistent with these federal decisions, we hold that when a plaintiff seeks to depose a corporate president or other official at the highest level of corporate management, and that official moves for a protective order to prohibit the deposition, ***the trial court should first determine whether the plaintiff has shown good cause that the official has unique or superior personal knowledge of discoverable information.*** If not, as will presumably often be the case in the instance of a large national or international corporation, ***the trial court should issue the protective order and first require the plaintiff to obtain the necessary discovery through less intrusive methods. These would include interrogatories directed to the high-level official to explore the state of his or her knowledge or involvement in plaintiff's case***; the deposition of lower level employees with appropriate knowledge and involvement in the subject matter of the litigation; ***and the organizational deposition of the***

> ***corporation itself, which will require the corporation to produce for deposition the most qualified officer or employee to testify on its behalf as to the specified matters to be raised at the deposition.*** (§ 2025, subd. (d)(6).) Should these avenues be exhausted, and the plaintiff make a colorable showing of good cause that the high-level official possesses necessary information to the case, the trial court may then lift the protective order and allow the deposition to proceed."

Id. at 1289 (emphasis added).

The *Liberty Mutual* case involved taking the deposition of the president of an insurance company. The president of the company had been copied on two letters he claimed not to have seen. Other than that, there was no showing the president had any involvement in the lawsuit against the company. As discussed in the above excerpt, the *Liberty Mutual* court permitted entry of a protective order.

In this case, J.R. Brown is a high-ranking official in the Office of Public Information. He is the Director of the Office of Public Information and oversees staff members in that office. As the person in charge of the OPI, he signed a letter regarding general issues involving sex abuse that are not distinctly related to these pending coordinated cases. He signed the letter in his capacity as the Director of the OPI, but he has no unique or superior personal knowledge regarding the matters addressed therein. In addition, he does not have personal knowledge regarding these coordinated actions filed against the Church Defendants.

Watchtower NY has already designated the person most knowledgeable about the topics identified in the notice of PMK deposition regarding the May 9, 2002 letter, and defense counsel has already advised plaintiffs' counsel that Gary Breaux will be produced on an agreed date for that PMK deposition.

Thus, under the reasoning and holding of *Liberty Mutual* and the underlying federal cases, this motion for protective order should be granted. Then, if plaintiffs do not obtain the information they apparently are seeking in Mr. Breaux's deposition, plaintiffs can still serve special interrogatories regarding the extent of J.R. Brown's knowledge. (In addition, J.R. Brown has filed a declaration in conjunction with this motion stating he does *not* have such unique or superior personal knowledge.) Therefore, if, after the deposition of designated PMK

Gary Breaux is completed, and if, after special interrogatories inquiring about the knowledge of J.R. Brown are completed, plaintiffs can still present a colorable basis for taking Mr. Brown's deposition, the court could thereafter consider lifting the protective order.

The federal cases relied on by the *Liberty Mutual* court include several cases in which plaintiffs tried first to take the depositions of high ranking officials of large companies who did not have either unique or superior personal knowledge of relevant facts or any knowledge of the of the case(s) at issue. For example, "[i]n *Salter v. Upjohn Co.* (5th Cir. 1979) 593 F.2d 649, the plaintiff's decedent was fatally injured from ingestion of a prescription drug manufactured by Upjohn. Plaintiff attempted to depose Upjohn's president, but the trial court granted a protective order. The Fifth Circuit affirmed, on the basis of Upjohn's 'reasonable assertion[] that [the president] ... did not have any direct knowledge of the facts.' (*Id.* at p. 651.)" *Liberty Mutual* at 1288.

The *Liberty Mutual* court also relied on *Baine v. General Motors Corp*, where the plaintiff tried to depose the vice-president of General Motors in relation to a fatal injury sustained by plaintiff's decedent. The court stated:

> "[I]n *Baine v. General Motors Corp.* (M.D.Ala. 1991) 141 F.R.D. 332, the plaintiff attempted to depose a vice-president of General Motors. Plaintiff's decedent was fatally injured by a faulty seat restraint system, and the vice-president had written a memorandum describing his observations of the system's performance in prototype. The federal district court issued a protective order against the deposition, finding that the deposition would be unduly burdensome to a high-level official in the absence of any showing plaintiff could not obtain the necessary information from other, less intrusive avenues of discovery. The trial court required plaintiff to first depose lower level engineering analysts and others with knowledge of the restraint system, and to serve interrogatories on the vice- president to explore whether he had superior knowledge of the system."

Liberty Mutual at 1289.

Again, given J.R. Brown's lack of unique or superior personal knowledge regarding the topics in the May 9, 2002 letter and his lack of personal knowledge regarding these coordinated cases, Watchtower NY respectfully requests that a protective order be issued regarding the notice of deposition for J.R. Brown, at least until after Gary Breaux's PMK deposition is taken

and some other less obtrusive discovery methods are employed.

Finally, Code of Civil Procedure section 2017.010 provides that discovery is permissible if it is relevant to the subject matter of the litigation, is admissible into evidence, or is reasonably calculated to lead to the discovery of admissible evidence. *See* CCP §2017.010. However, J.R. Brown does not have any personal knowledge regarding the facts underlying these California coordinated cases. Therefore, his deposition testimony in that regard would not be even remotely, much less reasonably, calculated to lead to the discovery of admissible evidence.

If plaintiff were allowed to proceed with Mr. Brown's deposition, it would promote abuse of the discovery process and harassment of the Church Defendants, particularly given that a PMK has been identified and will be made available for deposition with regard to the identified topics on which plaintiff is seeking to obtain discovery.

III. CONCLUSION

For each of the foregoing reasons, Watchtower NY seeks a protective order from this court, ordering that J.R. Brown not be required to sit for deposition. Watchtower NY will produce Gary Breaux for a PMK deposition and, thereafter, plaintiffs can serve written interrogatories to establish the extent of J.R. Brown's personal knowledge on the PMK topics concerning the May 9, 2002 letter. However, to start with the deposition of J.R. Brown, who has provided a sworn declaration stating that he does not have any unique, special, or superior knowledge of the identified topics in the May 9, 2002 letter and also has no knowledge of these coordinated lawsuits, is burdensome, unreasonable, and not reasonably calculated to lead to the discovery of admissible evidence in these coordinated cases.

DATED: September 29, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

5033040.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **September 29, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE OF J.R. BROWN

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs BY FAX & MAIL Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs BY FAX & MAIL Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**BY FAX & MAIL** Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on September 29, 2005 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **September 29, 2005**, at Gold River, California.

By _____
Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
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Attorneys for The Church Defendants

FILED

SEP 3 0 2005

Clerk of the Napa Superior Court
By: Lora O. Sheets
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

Judicial Council Coordination Proceeding no. 4374

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN

DATE: October 12, 2005
TIME: 8:30 a.m.
DEPT: C

TRIAL DATE: Not yet set

RECEIVED

SEP 3 0 2005

COURT EXECUTIVE OFFICER

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in these coordinated actions. I am legally competent in all respects and make the following statements from personal knowledge, or on information and belief where so stated.

2. On September 15, 2005 I received plaintiffs' notice of deposition for the deposition of J.R. Brown. I am advised that Mr. Brown is the Director of the Office of Public Information for Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY").

Plaintiffs' counsel have since issued a first amended deposition notice for a later date for the noticed deposition of J.R. Brown. A true and correct copy of the first amended deposition notice for J.R. Brown is attached hereto as Exhibit A.

3. On September 15, 2005, I also received a notice of deposition for the person most knowledgeable, or "PMK," regarding certain topics or categories of subjects contained in a May 9, 2002 letter addressed to Betsan Powys of BBC Panorama. The letter reveals that J.R. Brown signed the letter in his capacity as Director of the Office of Public Information ("OPI"). Plaintiffs' counsel have since issued a first amended PMK deposition notice for a later date for this noticed deposition. A true and correct copy of that first amended PMK deposition notice, with the May 9, 2002 letter attached as Exhibit 1 to the PMK deposition notice, is attached hereto as Exhibit B.

4. On September 20, 2005, I spoke by telephone with one of plaintiffs' attorneys, Hartley Hampton, regarding the above-referenced deposition notices. I advised him that while J.R. Brown had signed the May 9, 2002 letter as the Director of the OPI, I had been advised that Mr. Brown does not have any unique or superior personal knowledge regarding the contents of the letter. In addition, I told plaintiffs' attorney that I had been advised that Mr. Brown does not have any personal knowledge regarding the California coordinated cases. I also told plaintiffs' attorney that Watchtower NY had designated Gary Breaux as the person most knowledgeable about the topics identified in the original PMK deposition notice regarding the May 9, 2002 letter and that Gary Breaux would sit for the PMK deposition on a mutually agreeable date in October or November 2005. Given that Mr. Brown has no unique or superior personal knowledge regarding the May 9, 2002 letter and signed only as the Director of the OPI, I asked that plaintiffs withdraw the deposition notice regarding J.R. Brown. Plaintiffs have declined to withdraw the notice for J.R. Brown's deposition. Therefore, Watchtower NY had no option but to file the instant motion for protective order.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except where stated on information and belief, in which case I am informed and believe the information to be true and correct.

Executed this 29th day of September, 2005 at Gold River, California.

By _____
Robert J. Schnack

5033042.1

*****

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 25, 2005

TIME: 1:00 p.m.

PLACE: New York Marriott at the Brooklyn Bridge
333 Adams Street, Brooklyn, New York

WITNESS: J.R. BROWN

EXHIBIT A

At the date, time and place specified above, the parties represented by Attorney Hartley Hampton of Fibich, Hampton & Leebron, LLP, will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of New York who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date: September 20, 2005

NOLEN SAUL BRELSFORD

William Brelsford
Attorney for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On September 20, 2005, I caused the within **FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

__ **FACSIMILE** – On September 20, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

Co Counsel for Plaintiffs

Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Tommy Fibich, Esq.
Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 20, 2005, at Sacramento, California.

Susan Gilbert

Rudy Nolen, Esq., SBN 59808
Jonathan Saul, Esq., SBN 189271
William L. Brelsford, Esq., SBN 202839
NOLEN SAUL BRELSFORD
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Greg Love, Esq., SBN 12592020
LOVE & NORRIS
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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 25, 2005

TIME: 9:00 a.m.

PLACE: New York Marriott at the Brooklyn Bridge
333 Adams Street, Brooklyn, New York

WITNESS: Person Most Knowledgeable

EXHIBIT B

At the date, time and place specified above, the parties represented by Attorney Hartley Hampton of Fibich, Hampton & Leebron, LLP, will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of New York who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

NOTICE IS FURTHER GIVEN that the matters on which examination is requested are as follows:

(1) Person most knowledgeable regarding information contained in May 9, 2002, letter from J.R. Brown, director for the office of public information, Watch Tower Bible and Tract Society of Pennsylvania, to Ms. Betsan Powys with the BBC Panorama, attached as Exhibit 1 to this notice;

(2) Person most knowledgeable regarding the "records" referred to in the 11th paragraph of the May 9, 2002 letter that J.R. Brown wrote to Ms. Betsan Powys (attached as Exhibit 1 to this notice).

(3) Person most knowledgeable regarding the process by which the "records", referred to in the 11th paragraph o f the May 9, 2002 letter that J.R. Brown wrote to Ms. Betsan Powys and attached as Exhibit 1 to this notice, are maintained, updated and accessed.

(4) Person most knowledgeable regarding the Jehovah's Witness organization's efforts to utilize the "records", referred to in the 11th paragraph of the May 9, 2002 letter that J.R. Brown wrote to Ms. Betsan Powrys and attached as Exhibit 1 to this notice, to "protect the flock from harm," as that phrase is used in the 11th paragraph of such letter.

(5) Person most knowledgeable regarding the position of elder within the Jehovah's Witness organization including, but not limited to, the appointment and removal of elders, the duties, responsibilities and authority of elders, and the relationship between elders and members of their congregation.

(6) Person most knowledgeable regarding the position of ministerial servant within the Jehovah's Witness organization including, but not limited to, the appointment and removal of ministerial servants, the duties, responsibilities and authority of ministerial servants, and the relationship between ministerial servants and members of their congregation.

(7) Person most knowledgeable regarding the role, responsibility and duties of judicial committees within the Jehovah's Witness organization including the process by which judicial committees are comprised and their proceedings are conducted.

(8) Person most knowledgeable regarding any and all policies that the Jehovah's Witness organization had for handling accusations and proof of child sexual abuse from 1970 to the present.

(9) Person most knowledgeable regarding any and all policies that the Jehovah's Witness organization had for warning congregations and their members when a known child molester joined the congregation from 1970 to the present.

NOTICE IS FURTHER GIVEN that the Person Most Knowledgeable shall bring and produce at the deposition the following:

1. Any and all drafts of the May 9, 2002 letter that J.R. Brown wrote to Ms. Betsan Powys, attached as Exhibit 1 to this notice;

2. Any other correspondence between J.R. Brown and Ms. Betsan Powrys other than J.R. Brown's May 9, 2002 letter, which is attached hereto as Exhibit 1;

3. A blank or redacted copy of any form(s) used in connection with the "records" referred to in the May 9, 2002 letter that J.R. Brown wrote to Ms. Betsan Powrys and attached hereto as Exhibit 1;

4. A blank or redacted copy of any form(s) used in connection with allegations or proof of child sexual abuse;

5. A blank or redacted copy of the form used when an elder is appointed;

6. A blank or redacted copy of the form used when an elder is removed;

7. A blank or redacted copy of the form used when a ministerial servant is appointed;

8. A blank or redacted copy of the form used when a ministerial servant is removed;

9. Any and all documents that pertain in any way to any policies that the Jehovah's Witness organization had for handling accusations and proof of child sexual abuse from 1970 to the present; and,

10. Any and all documents that pertain in any way to any policies that the Jehovah's Witness organization had for warning congregations and their members when a known child molester joined the congregation from 1970 to the present.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

///

Date: September 20, 2005

NOLEN SAUL BRELSFORD

William Brelsford
Attorney for Plaintiffs

EXHIBIT 1

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

Original via fax

May 9, 2002

Betsan Powys
BBC Panorama

Dear Ms. Powys:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

J. R. Brown
Director
Office of Public Information

JRB:at

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On September 20, 2005, I caused the within **FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

__ **FACSIMILE** – On September 20, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

Co Counsel for Plaintiffs

Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Tommy Fibich, Esq.
Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 20, 2005, at Sacramento, California.

Susan Gilbert

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **September 29, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE OF J.R. BROWN

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs BY FAX & MAIL Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs BY FAX & MAIL Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**BY FAX & MAIL** Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on September 29, 2005 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **September 29, 2005**, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
SEP 30 2005
Clerk of the Napa Superior Court
By: Lora O'Connor Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

Judicial Council Coordination Proceeding no. 4374

DECLARATION OF J.R. BROWN IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN

DATE:
TIME:
DEPT: C

TRIAL DATE: Not yet set

RECEIVED
SEP 30 2005
COURT EXECUTIVE OFFICER

I, J.R. Brown, declare as follows:

1. I am the Director of the Office of Public Information for Watchtower Bible and Tract Society of New York, Inc. I am legally competent in all respects and make the following statements from personal knowledge, or on information and belief where so stated.

2. On information and belief, in or about April or May 2002, the Office of Public Information was made aware of a facsimile inquiry from Betsan Powys of the British Broadcasting Corporation ("BBC") regarding a television segment the BBC planned to air that would address Jehovah's Witnesses and how they handle child abuse matters. The letter did not

inquire about the coordinated California lawsuits. A responsive letter, which did not contain information regarding the coordinated California lawsuits, was prepared to Betsan Powys of BBC Panorama sometime prior to May 9, 2002. As the Director of the Office of Public Information, I was asked to sign the letter, which I did. However, I have no unique or superior personal knowledge regarding the subject matter of how Jehovah's Witnesses generally handle child abuse matters addressed in the letter that I signed, nor did I perform any personal research in regard to Betsan Powys and the BBC's inquiry. My only function was to sign the letter, as the Director of the Office of Public Information.

3. I am now aware that there are coordinated lawsuits pending in California and that plaintiffs have issued a notice requesting my deposition. I have no personal knowledge regarding the coordinated California lawsuits or of the facts alleged in the complaint. I was not involved in the handling, supervision, or management of the coordinated California lawsuits, and have had no involvement whatsoever.

4. If called to testify in deposition, I would not be able to testify regarding any unique or superior personal knowledge related to the contents of the May 9, 2002 letter describing how Jehovah's Witnesses generally handle child abuse matters. Neither would I be able to testify regarding the coordinated California lawsuits, of which I have no personal knowledge.

I declare under penalty of perjury under the laws of the State of New York and California that the foregoing is true and correct, except where it states upon information and belief, where I am informed and believe the information is true and correct.

Executed this 26 day of September, 2005 at BROOKLYN, New York

By _____
J.R. Brown

5033045.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **September 29, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF J.R. BROWN IN SUPPORT OF MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE OF J.R. BROWN

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs BY FAX & MAIL Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs BY FAX & MAIL Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	**BY FAX & MAIL** Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on September 29, 2005 and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **September 29, 2005**, at Gold River, California.

By _____
Claudia Pohlman

FILED
OCT 5 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO QUASH SERVICE OF SUMMONS

Defendant Watch Tower Bible And Tract Society Of Pennsylvania's Motion To Quash Service of Summons came on for hearing on August 31, 2005. The court, having read and considered the papers and heard oral argument, took the matter under submission and now rules as follows:

Watch Tower Bible And Tract Society Of Pennsylvania (Watch Tower PA) moves to quash service of the summons and complaint upon it, asserting that California does not have personal jurisdiction over it. Personal jurisdiction over a defendant may be either general or specific. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 445) A nonresident defendant will be subject to general jurisdiction where the defendant's contacts with the forum are substantial, continuous and systematic, so as to approximate a "physical presence" within the state. (*Id.* At 445-46.) Where general jurisdiction has been established, a plaintiff's

cause of action need not be directly related to the defendant's contacts in the state, but may encompass any allegedly unlawful conduct within the state. (*Ibid.*) "Such a defendant's contacts with the forum are so wide-ranging that they take the place of physical presence in the forum as a basis for jurisdiction." (*Id.* at p. 446.) If, on the other hand, the nonresident defendant does not have substantial and systematic contacts with the forum state, the defendant may nevertheless be subject to specific jurisdiction if: (1) the defendant has purposefully availed itself of the forum's benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of defendant's contacts with the forum; and (3) the exercise of jurisdiction would not violate notions of fair play and substantial justice. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269; *Vons, supra*, 14 Cal.4th at pp. 446, 447.)

Plaintiffs do not put forth a vigorous argument for finding that Watch Tower PA should be subject to specific jurisdiction. Indeed, this court finds no basis for imposing jurisdiction in this manner. There is simply no evidence to support a finding that moving defendant purposefully availed itself of California's benefits with respect to the matters in controversy, nor that the subject matter of this action is related to or arises out of Watch Tower PA's contacts with California. Accordingly, if Watch Tower PA is to be held to answer in this action, it will be pursuant to this court's exercise of general jurisdiction over the defendant.

Watch Tower PA asserts that it does not have the substantial, continuous and systematic contacts with California that are required to assert general jurisdiction over it. In support of its motion, it has presented evidence showing that it has been incorporated in Pennsylvania since 1884, with its principal offices in New York. It has no office, mailing address, or telephone number in California, none of its employees, officers or directors reside in California, it has no office here, has not held meetings here, does not pay taxes here, and has never maintained a bank account here. Watch Tower PA further asserts that its activities relating to donations, its loans to California congregations, its fund for the procurement of insurance coverage for California congregations, and its ownership of real property in California do not approximate a physical presence in California, and do not, therefore, form a basis for exercising general personal jurisdiction over it. Plaintiffs assert that these activities are sufficiently substantial, continuous and systematic to justify the exercise of general jurisdiction. As explained more fully below, this

court's review of the evidence and the applicable legal authority satisfies it that defendant's contacts with the state are sufficient to justify the assertion of general personal jurisdiction over it.

The materially undisputed evidence establishes that Watch Tower PA engages in the following activities within the State of California:[1]

Kingdom Hall Fund – This fund provides loans to congregations of Jehovah's Witnesses in California for the construction and remodeling of Kingdom Halls. Since the mid-1980's the Fund has made a substantial number of loans, many of which remain outstanding. The Fund loans are secured through promissory notes or mortgages secured by California property. The Fund charges interest on each loan.[2]

Kingdom Hall Assistance Arrangement (KHAA) – KHAA is an insurance and risk management program administered by Watch Tower PA. KHAA collects funds from California congregations and purchases insurance policies to protect its congregations. Congregations are billed for their "contributions" to KHAA, and are instructed to submit claims to Watch Tower PA for loss coverage. Although Watch Tower PA characterizes "donations" to the program as voluntary, and asserts that coverage is not guaranteed in return, the documentation provided shows that all California congregations are covered by the program, and all are issued invoices and directed to make payments on those invoices.

Acquisition and sale of real property – Watch Tower PA solicits donations of all types, and receives significant donations from Jehovah's Witnesses in California. The average annual amount donated for the years 1972 to 1988 was significant. Among those donations are gifts of

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[1] On June 13, 2005 the parties entered into a Stipulated Protective Order and Nondisclosure Agreement, which provides that information designated as "Confidential" shall be protected from disclosure, and shall be filed with the court under seal. So as to preserve the confidentiality of this information, the court's discussion of this evidence is intentionally vague. The parties are advised that the court's decision does rest, in part, upon the specific information submitted as "confidential." Subsequent footnotes will indicate the nature of the information relied on but not specifically addressed.

[2] The court has omitted reference to the specific number of loans made and the number that remain outstanding, as well as the specific interest rate charged. These factors have contributed to the court's decision.

real property. Title to some of these properties has remained in Watch Tower PA's name, other properties have been sold, with the proceeds deposited in Watch Tower PA's general fund.[3]

Taken individually, each of these activities are sufficient to assert personal jurisdiction over Watch Tower PA. For example, its 30 year history of acquisition and sale of real property in California is a significant factor to support a finding of continuous, substantial and systematic contacts with California. As contrasted with *Thompson v. Anderson* (2003) 113 Cal.App.3d 258 upon which defendant relies, the facts here are not limited to ownership of a single interest in a vacation time share, which the court in *Thompson* found to be an inadequate basis for establishing general jurisdiction ("Ownership of property in California 'alone would not support the State's jurisdiction.'" *Id.* at p. 271.) Rather, the evidence shows that defendant has acquired, sold and retained interest in numerous properties over the past 3 decades.

Similarly, the loans Watch Tower PA makes to its congregations through the Kingdom Hall Fund, from which it derives significant benefit, and the risk management program it administers to its congregations in California support a finding that defendant's activities are sufficiently wide ranging to take the place of a physical presence in the state. Again, the cases relied upon by defendant are readily distinguishable from the facts present here. In *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica* (9th Cir. 1980) 614 F.2d 1247, the court declined to exercise personal jurisdiction over a foreign corporation for claims arising out of contracts for the sale and purchase of grain, where California was neither the source nor the destination of the grain. There, the primary contacts with California involved the execution of the sale and purchase agreements with a California resident for grain transactions occurring entirely outside of California, and use of mail and telephone for arranging the agreements. By contrast, here, Watch Tower PA has made numerous loans to California congregations for the purchase and repair of Kingdom Halls in California, which loans have been secured by mortgages and deeds of trust on the property in California. Watch Tower PA has also collected substantial amounts in California for what can only be characterized as insurance premiums, regardless of how they are labeled by defendant.

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[3] The court has omitted reference to the specific types of donations solicited and to the specific amount of donations collected annually. These factors have contributed to the court's decision.

The cases of *Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.* (9th Cir. 2000) 223 F.3d 1082 and *Gates Learjet Corp. v. Jensen* (9th Cir. 1984) 743 F.2d 1325 relied on by defendant are also distinguishable from the present case because, as the court noted in both cases, the contacts at issue could only be characterized as doing business "with" the forum state, rather that "in" it. Thus, in *Gates,* a foreign company's negotiation for an international distributorship that took place in part in Arizona and the purchase of spare parts from plaintiff in Arizona did not constitute doing business in Arizona and did not, therefore, equate with a physical presence in that state. And in *Bancroft,* the fact that the non-resident defendant held licensing agreements with two California television networks was not sufficient to establish general jurisdiction. In contrast, the defendant's activities in California directly involve California property and California residents, and can only be characterized as engaging in substantial business within California.

Whether considered individually or in the aggregate, Watch Tower PA's contacts with California are substantial, continuous and systematic, and are "so wide-ranging that they take the place of physical presence in the forum state as a basis for jurisdiction." (*Vons, supra* 14 Cal.4th at pp. 445-446.) For this reason, Watch Tower PA's motion to quash service of summons for lack of personal jurisdiction must be DENIED. Watch Tower PA shall file an answer within 30 days.

Dated: 10/5/05

Raymond A. Guadagni, Judge

NAPA SUPERIOR COURT

Certificate of Mailing

Charissa W., et al vs Roes 1-100 et al. **(G)** **26-22191**

Robert J. Schnack — Attorney for Defendant
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Rudy Nolen — Attorney for Plaintiff
Nolen Saul Brelsford
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Sacramento, CA 95825

**** *CERTIFICATION* ****

I hereby certify that I am not a party to this cause and that copies of the foregoing document were mailed (first class postage pre-paid) in sealed envelopes at Napa, California on this date and that this certificate is executed at Napa, California this date.

STEPHEN A. BOUCH, Court Executive Officer

10/5/05
DATE

Sara O. Roberts
Deputy Court Executive Officer

Bullivant | Houser | Bailey PC
Attorneys at Law

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October 7, 2005

FILED
OCT 11 2005
Clerk of the Napa Superior Court
By: Sora O'Doherty
Deputy

Sora
Napa County Superior Court
825 Brown Street
Napa, CA 94559

Re: *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
Napa County Superior Court Case No.: 26-22191

And Coordinated Cases

Dear Sora:

This will confirm that we have continued the Church Defendants' Motion for Protective Order regarding the Deposition Notice of for J.R. Brown from October 12, 2005 to October 21, 2005 at 8:30 a.m. in Department C. Opposing counsel has agreed to the continuance and the new hearing date.

Thank you.

Very truly yours,

Claudia

Claudia Pohlman
Secretary to Robert J. Schnack

RJS:cp1
cc: All counsel
5033761.1

[redacted]

350 UNIVERSITY AVE., SUITE 280
SACRAMENTO, CALIFORNIA 95825

PHONE: (916) 564-9990 FAX: (916) 564-9991

FILED

OCT 11 2005

Clerk of the Napa Superior Court
By: Sora O'Doherty
Deputy

October 11, 2005

Via Facsimile Only
Facscimile No.: (707) 259-8318

Napa County Superior Court
825 Brown Street
Napa, CA 94559

Attention: Sora O'Doherty

Re: ***Charissa W., et al. v. Watchtower, et al.*, Case No.: 26-22191**
Napa County Superior Court Case No. 26-22191

Dear Sora:

This will confirm that the Motion for Protective Order regarding the Deposition of J.R. Brown has been ***continued from October 12, 2005 to October 21, 2005 at 8:30 a.m. in Department C.***

If you should have any questions or comments, please feel free to contact this office.

Very truly yours,

NOLEN SAUL BRELSFORD

William L. Brelsford

cc: All Counsel

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 12 2005

Clerk of the Napa Superior Court
By: Dora O'Doherty
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED CASES.

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PLAINTIFFS' OPPOSITION TO CHURCH DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN

Date: October 21, 2005
Time: 8:30 a.m.
Dept. C

Trial Date: None

RECEIVED
OCT 11 2005
Napa Superior Court

Defendants urge this Court to quash the deposition notice of J.R. Brown for two reasons: (1) they contend that he has no "unique, special or superior personal knowledge" concerning a May 9, 2002 letter that he signed (see **Exhibit 1** attached to the Declaration of William Brelsford) and (2) they argue that his would be an "apex" deposition so that Plaintiffs must first exhaust less obtrusive discovery methods before deposing him.

The letter in question pertains to matters that are obviously germane to Plaintiffs' lawsuit. It describes actual records of known child molesters kept by the Jehovah's Witness organization and the use of those records "to protect the flock from harm," and to "screen out possible child abusers from appointment to responsible positions within the congregation." (See **Exhibit 1** at ¶ 11.) This evidence is so important that Plaintiffs should be permitted broad latitude in discovering the details.

Defendants rely upon *Liberty Mutual Ins. Co. v. Superior Court*, (1992) 10 Cal.App.4th 1282, 1287, the first California case to deal with so-called "apex depositions." The case involved a worker's compensation claimant who wanted to depose the chief executive officer of the compensation carrier. The CEO's only connection to the subject matter of the lawsuit was that he was copied, by title only, on irate letters from plaintiff's counsel. *Id.* at 1286. It was established by the declaration of his assistant that those letters were re-routed and he never saw them. *Id.*

Defendants' reliance on *Liberty Mutual* is misguided for three reasons.

First, the Court in *Liberty Mutual* limited its holding to attempts "to depose a corporate president or other official at the highest level of corporate management" *Id.* at 1289. JR Brown does not qualify. His declaration says that he is "Director of the Office of Public Information," but contains nothing to suggest that he sits at or near the apex of the Jehovah's Witnesses organizational chart. See *Donald v. Truck Insurance Exchange*, 2004 WL 605303 (Cal. App. 2 Dist.), *not officially published.*

Second, even assuming the validity of *Liberty Mutual's* restrictions on deposing "a corporate president or other official at the highest level of corporate management (*Id.* at 1289), it was not shown that Brosky and Boylan fit that description." Presumably, Brown

is accustomed to being the "voice" of the Jehovah's Witnesses and it would not be an annoying, embarrassing, oppressive or burdensome for him to give testimony in this case. (*See* CCP 2025.420(b).) On the other hand, it would be burdensome and expensive for the parties to make two trips to California if the person Defendants produce in lieu of Brown does not truly know more than Brown does.

Further, the Court, in *Liberty Mutual,* added a qualification to its holding that applies to this Motion:

> Lower level officials, with some probable connection to a plaintiff's case, are not permitted to avoid deposition by filing conclusory affidavits of ignorance.

Id. at 1290.

Brown's declaration is that type of affidavit: he simply states that he lacks personal knowledge.

Third, there is good cause to permit Brown's deposition. BBC-TV, a major international broadcasting company, was preparing to broadcast an expose' on child sexual abuse within the Jehovah's Witnesses organization, a matter that would presumably be quite sensitive to the Watchtower Defendants. Brown signed the organization's response and conveyed its answers to certain questions. (See **Exhibit 1** at ¶ 3.)

The fact that Brown signed a letter of such significance, in his capacity as director of the Office of Public Information, is an operative fact that, standing alone, justifies his deposition. The suggestion that such an important letter was prepared by others and simply handed to him for signature is, on its face, disingenuous under the obvious circumstances of the letter.

This is not an instance of a plaintiff who seeks to depose a chief executive officer or company president about something that occurred "several levels down the corporate pyramid." Brown actually signed the letter in question.

Defendants have notified Plaintiffs' counsel that they will produce Gary Breaux as the person most knowledgeable about, among other things, the letter that Mr. Brown

signed. However, Mr. Breaux's name appears nowhere in the letter. Nor do the declarations of Mr. Brown and Defendants' counsel shed any light on why his knowledge is superior to that of the individual who actually signed the letter.

CONCLUSION

Based on all of the reasons set forth hereinabove, Plaintiffs respectfully request that Defendants' Motion for Protection should be denied for the following reasons:

1. Defendants have made no showing that Brown occupies the type of position at the apex of the Defendants' organization that would entitle him to a protective order;
2. Brown's declaration is the type of "conclusory affidavit" of a "lower level official" that the Court in *Liberty Mutual* expressly excluded from its holding; and
3. Brown does have sufficient personal involvement in the subject matter of the lawsuits in question to justify his deposition.

Dated: October 7, 2005

NOLEN SAUL BRELSFORD

William L. Brelsford
Attorney for Plaintiffs

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 7, 2005, I caused the within **PLAINTIFFS' OPPOSITION TO CHURCH DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On October 7, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

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In Pro Per
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Umatilla, OR 97882

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2005, at Sacramento, California.

Susan Gilbert

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Jonathan Saul, Esq., SBN 189271
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CHARISSA W. and NICOLE D.

FILED

OCT 1 2 2005

Clerk of the Napa Superior Court
By: Nora O'Doherty
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED CASES.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF PLAINTIFFS' OPPOSITION TO CHURCH DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN** Date: October 21, 2005 Time: 8:30 a.m. Dept. C Trial Date: None

I, William Brelsford, Esq., hereby declare:

1. I am an attorney at law duly licensed to practice law before all the Courts of the State of California.

2. Attached hereto as Exhibit 1 is a true and correct copy of a May 9, 2002 letter executed by J.R. Brown.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 7, 2005

William Brelsford

EXHIBIT 1

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

Original via fax

May 9, 2002

Betsan Powys
BBC Panorama

Dear Ms. Powys:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Very truly yours,

J. R. Brown
Director
Office of Public Information

JRB:at

CASE NAME: Charissa W., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Napa County Superior Court
CASE NO.: 26-22191

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 7, 2005, I caused the within **DECLARATION OF WILLIAM BRELSFORD IN SUPPORT OF PLAINTIFFS' OPPOSITION TO CHURCH DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION NOTICE FOR J.R. BROWN,** the original of which was produced on recycled paper, to be served as follows:

X **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On October 7, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

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///

///

Attorney for Watchtower Defendants
Robert J. Schnack
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Facsimile No. (916) 852-5777

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Five Houston Center
Houston, TX 77010

In Pro Per
Alvin Heard
Two Rivers Correctional Institute
82911 Beach Access Road
Umatilla, OR 97882

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 7, 2005, at Sacramento, California.

Susan Gilbert

Robert J. Schnack, SBN 191987
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Sacramento, California 95670-4491
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Attorneys for The Church Defendants

FILED
OCT 18 2005
Clerk of the Napa Superior Court
By: Sara O'Donnell Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

Judicial Council Coordination Proceeding no. 4374

REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE NOTICE OF DEPOSITION RE J.R. BROWN

DATE: October 21, 2005
TIME: 8:30 a.m.
DEPT: C

TRIAL DATE: Not yet set

I. INTRODUCTION

While this motion and the deposition notice upon which it is based are filed in this Charissa W. and Nicole D. case, it is important to understand that plaintiffs' counsel seeks to take the deposition of J.R. Brown and the "person most knowledgeable" about certain identified topics in the letter signed by J.R. Brown for purposes of all of the coordinated cases filed against defendant, including the two so-called "Track I" cases of *Wimberley* and *Tim W.*

///

Plaintiffs oppose defendant's motion for a protective order regarding the deposition of J.R. Brown but provide the court with no legitimate reason for their opposition. First, plaintiffs completely ignore the fact that defendant Watchtower NY is ***not*** attempting here to quash all deposition testimony regarding the topics identified in the PMK deposition notice concerning the May 9, 2002 letter at issue. Rather, defendant is seeking a protective order ***only*** regarding the deposition notice for J.R. Brown. While J.R. Brown signed the letter in his capacity as the Director of the Office of Public Information (OPI), his sworn declaration reveals that he does ***not*** have any unique or superior personal knowledge of the subject matter contained therein. In addition, he does not have personal knowledge of any of these coordinated cases.

Moreover, plaintiffs have ***completely ignored*** defendant's request that the deposition of J.R. Brown be deferred until the PMK deposition is taken. As already briefed by defendant, if after taking the PMK deposition plaintiffs believe they have not obtained the information they desire, they can determine from written interrogatories whether J.R. Brown has sufficient knowledge about the letter and if so, the court could then consider allowing the deposition of Mr. Brown to take place.

Plaintiffs incorrectly state that they should be allowed to take the deposition of J.R. Brown because plaintiffs' counsel would be required to make extra trips to California (even though one of plaintiffs' three offices of attorneys are located in Sacramento, California). This deposition, as is clear from the deposition notice, was scheduled for Brooklyn, New York. There are other depositions that will later be taken in Brooklyn, New York as well, because defendant Watchtower NY maintains its offices there, so if the court should later determine, after the PMK deposition and after the interrogatories regarding J.R. Brown's personal knowledge somehow dictated that his deposition were necessary, Mr. Brown's deposition could be set in conjunction with those later Watchtower NY depositions, thereby ***not*** causing any extra travel expense or prejudice to plaintiffs or defendants. Plaintiffs' argument is this regard is thus a sham argument and, indeed, disingenuous.

In addition, plaintiffs provide absolutely no factual support, such as sworn declarations or affidavits, in support of their opposition to defendant's motion for a protective order. In other

words, no factual evidence is submitted to support plaintiffs' opposition papers or to demonstrate why plaintiffs contend J.R. Brown has superior knowledge regarding the identified topics of the letter, and which knowledge J.R. Brown has sworn in his declaration *not* to have. Plaintiffs also have not submitted any factual evidence to show why the PMK deposition is not sufficient for their needs or purposes, at least at this first stage of depositions.

Also, the only case law relied upon by plaintiffs is an officially unpublished opinion, which plaintiffs' learned and experienced counsel clearly understand they cannot even cite, much less rely on, under to Rule 977 of the California Rules of Court. Finally, the fact remains that J.R. Brown is the Director of the Office of Public Information and, therefore, this is an "apex" deposition that should initially be prohibited under the circumstances presented here.

II. LEGAL AUTHORITY

California case law is clear -- "'apex' depositions such as the one in this case, when conducted ***before*** less intrusive discovery methods are exhausted, raise a tremendous potential for discovery abuse and harassment." *Liberty Mutual*, 10 Cal.App.4th at 1287 (emphasis added). Plaintiffs argue that J.R. Brown, essentially, is not a high enough ranking official to be accorded "apex" status. In doing so, they are seeking "broad latitude" because they state in conclusory fashion that this evidence is "important." Such conclusory statements are not reason enough to ignore the relevant legal authority on the issue. "[W]hen a plaintiff seeks to depose a corporate president or ***other official at the highest level of corporate management***, and that official moves for a protective order to prohibit the deposition, the trial court should first determine whether the plaintiff has shown good cause that the official has unique or superior personal knowledge of discoverable information. *Liberty Mutual* at 1289 (emphasis added). Here, J.R. Brown is the Director of the OPI. He is ***the*** highest official within OPI and would certainly fall within the category of "other official at the highest level" of OPI.

Plaintiffs' counsel also boldly flouts the California rules and ethics governing court procedures by citing in their opposition brief the unpublished case of *Donald v. Truck Insurance Exchange*. To make matters worse, plaintiffs' counsel even admit in their opposition brief that the case is not officially published(!). In other words, plaintiffs have purposely cited and are

relying on an unpublished opinion which, as experienced attorneys, plaintiffs' counsel know is absolutely inappropriate and contrary to the California Rules of Court ("CRC"), Rule 977(a). CRC Rule 977(a) states, "Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published ***must not*** be cited or relied on by a court or a party in any other action." *CRC* Rule 977(a) (emphasis added). This case cited and relied on by plaintiffs' counsel does not fall within any of the exceptions listed in subsection (b). Thus, plaintiffs cannot rely on, and the Court cannot consider the *Donald* case. As result of this breach of applicable court rules and ethics by plaintiffs' counsel, the Church Defendants request that the Court publicly admonish plaintiffs' counsel and strike plaintiffs' brief in its entirety as a sanction.

Plaintiffs further argue in their brief that it would not be annoying, embarrassing, oppressive or burdensome for J.R. Brown to give testimony because, they allege in a conclusory statement, he is "accustomed to being the 'voice' of Jehovah's Witnesses." This is again a sham argument that lacks the support of any legal authority – indeed, a similar argument could be made to justify the deposition of any high level corporate officer, notwithstanding the holding of *Liberty Mutual* already discussed. In any event, requiring J.R. Brown to sit for a deposition concerning cases about which he has no personal knowledge and about a letter for which another person has been identified with superior knowledge is, almost by definition, annoying, embarrassing, oppressive and burdensome. And while plaintiffs make the argument that it would be expensive for them to make a special trip to California (even though it is a New York deposition and other depositions will be conducted there in these Track I cases), plaintiffs ignore the burden and expense on this defendant for having Director Brown and defendant's attorney sit through an unnecessary and unwarranted deposition. Thus, given the lack of any evidence submitted by plaintiffs and the declaration of J.R. Brown that has not been countered in any way, there simply is no other basis put forth by plaintiffs except to embarrass, harass, and create additional burdens for defendant.

Plaintiffs also argue that J.R. Brown signed the letter answering certain of BBC's questions. In fact, the letter itself states no specific questions were answered. The letter

provided to the BBC was general in nature. Plaintiffs argue that the mere fact that J.R. Brown signed the letter justifies his deposition. Defendant disagrees, and the *Liberty Mutual* court would most certainly also disagree. J.R. Brown signed the letter in his capacity as Director of OPI. He has already stated under oath that he does not have any superior or unique personal knowledge concerning the topics on which plaintiffs will inquire. Again, defendant has identified Gary Breaux as the person most knowledgeable or PMK about the topics identified by plaintiffs concerning that letter, and plaintiffs can obtain the information they apparently are seeking by less intrusive methods than deposing the Director of the OPI.

> "[I]n the instance of a large national or international corporation, ***the trial court should issue the protective order and first require the plaintiff to obtain the necessary discovery through less intrusive methods***. These would include interrogatories directed to the high-level official to explore the state of his or her knowledge or involvement in plaintiff's case; the deposition of lower level employees with appropriate knowledge and involvement in the subject matter of the litigation; and the organizational deposition of the corporation itself, which will require the corporation to produce for deposition the most qualified officer or employee to testify on its behalf as to the specified matters to be raised at the deposition. (§ 2025, subd. (d)(6).) Should these avenues be exhausted, and the plaintiff make a colorable showing of good cause that the high-level official possesses necessary information to the case, the trial court ***may then lift the protective order*** and allow the deposition to proceed."

Liberty Mutual at 1289 (emphasis added).

The Court should issue the protective order defendant is seeking here. Plaintiffs can and will take the deposition of PMK Gary Breaux (now set for November 15, 2005). If, after Mr. Breaux's deposition, plaintiffs do not believe they have been able to obtain the information they apparently think they should have, they can propound interrogatories to determine what, if any, knowledge J.R. Brown might have regarding the identified topics concerning the letter. At that time, if plaintiffs can make a colorable showing to the Court regarding information possessed by J.R. Brown, the Court could then lift the protective order, allowing Mr. Brown's deposition.

III. CONCLUSION

Plaintiffs have given no valid reason for opposing defendant's motion for a protective order. The Court should grant defendant's motion and issue a protective order regarding the

deposition notice of J.R. Brown. If, at a later time plaintiffs can make a colorable showing regarding the propriety of taking J.R. Brown's deposition, the court could lift the order.

DATED: October 17, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for the Church Defendants

5033981.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

REPLY TO OPPOSITION TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING THE DEPOSITION OF J.R. BROWN

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

_____ **(BY MAIL)** I caused such envelope(s) **NOTED ABOVE** with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the United States Postal Service, and that practice is that said material is deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

____ **(BY PERSONAL SERVICE)** I caused such envelope(s) **NOTED ABOVE** to be hand-delivered by an authorized attorney messenger service, this date to the offices of the addressee(s).

__X__ **(BY FEDERAL EXPRESS)** I caused such envelope(s) to be delivered in a sealed Federal Express package, delivery fees for which are billed to this firm's account, to a Federal Express office for next-morning delivery. I am readily familiar with the business practices of my employer for the collection and processing of correspondence for mailing with Federal Express delivery service.

___ **(BY FACSIMILE)** I personally transmitted the aforementioned document, via facsimile machine, to each of the above listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____, and received verification thereafter of each complete transmission.

____ **BY EMAIL – ESERVICE** I caused to be served upon each party via (1) their above email address; (2) through Lexis-Nexis Serve and File, or (3) through the court's electronic court filing system.

[X] **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. Executed on October 17, 2005, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Hartley Hampton Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

Robert J. Schnack, SBN 191987
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Gold River, CA 95670-4491
Telephone: (916) 852-9100
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E-Mail: bob.schnack@bullivant.com

FILED

OCT 19 2005

Clerk of the Napa Superior Court
By: Sara O'Doherty
Deputy

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS** **Date of Hearing: October 19, 2005** **Time: 1:30 pm** **Dept: TBA**
AND COORDINATED CASES	

Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, California, Inc. (collectively "Church Defendants") hereby specially appear in the two so-called "Track I" coordinated cases of *Tim W. v. Watchtower New York, et al*, and *Julianne Wimberley Gutierrez, et al v. Watchtower New York, et al.*, to apply pursuant to California Rules of Court, Rule 313(d) to the Court *ex parte* for an Order Shortening Time to hear the Church Defendants' Motion to Stay Execution of Order to Produce Documents in the two "Track I" cases and to stay the production of documents until the motion can be heard. Counsel for the Church Defendants has advised plaintiffs' counsel in writing that this *ex parte* request will be made to this Court. Counsel for the Church Defendants requests permission to have the Motion to Stay Execution of Order to Produce Documents heard

on a shortened time.

Good cause exists to grant this *ex parte* application since there is insufficient time to have this motion heard on regular time prior to the October 19, 2005 production date. Good cause likewise exists for the requested relief.

Pursuant to California Code of Civil Procedure 128(a)(3), the Court can control the proceeding before it, which would include hearing the Church Defendants' Motion to Stay Execution of Order to Produce Documents on a shortened basis. Additionally, the Church Defendants will be unfairly and unduly prejudiced if the Motion to Stay Execution of Order to Produce Documents is not heard on a shortened basis, in that they will be forced to waive their right to take a writ if the documents are produced prior to the time a writ would be filed and ruled upon. If the stay is not granted, a writ would be moot since the documents the Watchtower Defendants consider to be privileged would already have been produced. In addition, the Church Defendants would be unduly prejudiced if they were forced to produce the document prior to this Court having the opportunity to rule on the Church Defendants' motion.

This application will be based upon the contents of this application, the declaration of Robert J. Schnack, and the Motion to Stay Execution of Court Orders filed in the above-entitled action. This *ex parte* application is set to be heard on October 19, 2005 at 1:30 p.m. in the Napa County Superior Court. Watchtower has served written notice on all parties of this hearing.

DATED: October 18, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

5034147.1

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

5034147.1

****
*** MULTI TX/RX REPORT ***
****

TX/RX NO	1305	
PGS.	38	
TX/RX INCOMPLETE	(2)	5649991#
	(4)	18173352912#
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TRANSACTION OK	(1)	*#2267#23491#00005#7897557#
	(3)	15302728463#
ERROR INFORMATION	-----	

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From: Robert J. Schnack **Date:** October 18, 2005

C/M #: 23491/00005 **Reference:** Charissa W. v. Watchtower

Number of pages being transmitted including the cover page: 37

		Fax No.	Telephone No.
To:	William E. Bernard	(916) 789-7557	(916) 789-2266
	William L. Brelsford, Jr. Nolen Saul Brelsford	(916) 564-9991	(916) 564-9990
	Craig Diamond Diamond, Baker, Phillips & Walters LLP	(530) 272-8463	(530) 272-9977
	Gregory S. Love Love & Norris	(817) 335-2912	(817) 335-2800
	Kenneth T. Fibich Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 751-0025

Message/Document(s) faxed:

Please call fax operator at (916) 852-9100 if all pages are not received.

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Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
OCT 19 2005
Clerk of the Napa Superior Court
By: [signature]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **NOTICE OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: 10-21-05 TIME: 8:30 AM DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on 10/21, 2005 at 8:30a.m., or as soon thereafter as counsel may be heard, in Dept. C of the above entitled court, Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES OF RED BLUFF, CALIFORNIA will and hereby do move the Court in the Track I coordinated cases for a stay of production of the documents ordered by the court's September 29, 2005 ruling on plaintiffs' motion to compel production of documents.

This motion is based on this notice, the supporting memorandum of points and

authorities, the supporting declarationsof Robert J. Schnack, all papers and records on file in this action, and such other oral and documentary information and evidence as may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel for the Church Defendants hereby certifies that he met and conferred with plaintiffs' attorney William Brelsford concerning this motion before filing it with the court.

DATED: October 18, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for the Church Defendants

5034059.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

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[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

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Attorneys for The Church Defendants

FILED
OCT 19 2005
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

DATE: 10-21-05
TIME: 8:30 AM
DEPT.: C
TRIAL DATES: Not yet set

INTRODUCTION

Defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and North Congregation of Jehovah's Witnesses, Red Bluff, California ("North Congregation") bring this motion in the two Track I coordinated cases to stay the production of documents ordered in the court's September 28, 2005 ruling on Plaintiffs' Motion to Compel Production of Documents in order to preserve Watchtower NY and North Congregation's appellate rights. Under California law, defendants have 60 days in which to file a writ on the issue. If Watchtower NY and North Congregation were forced to produce the documents within 20 days

as ordered, their appellate rights would be rendered moot, because once the documents are produced, the clergy - penitent privilege is irrelevant, given that plaintiffs will have the documents that defendants contend are privileged.

STATEMENT OF FACTS

These two "Track I" coordinated cases arise from the alleged sexual abuse of plaintiffs. In the prosecution of their cases, plaintiffs have requested several documents that Watchtower NY and North Congregation contend fall within the clergy - penitent privilege, as previously briefed to this Court, and defendants have continually asserted that privilege. In the course and scope of discovery of these cases, plaintiffs served Watchtower NY and North Congregation with written discovery, including requests for production of documents. Defendants objected to certain of the documents requested on the basis, among others, of the clergy - penitent privilege. After the parties engaged in meet and confer efforts, plaintiffs filed a motion to compel discovery, including for the production of the documents Watchtower NY and North Congregation continue to contend fall within the clergy - penitent privilege. The court took the matter under submission and, on September 29, 2005, issued a written ruling holding that the documents do not fall within that privilege. The court then ordered that the documents previously withheld on the basis of penitent privilege be produced to plaintiffs within 20 days.

Defendants continue to contend that the documents requested and ordered produced are privileged documents under the clergy - penitent privilege. Therefore, defendants will timely file a writ with the Court of Appeal on the issue. This is one of those rare occasions where a discovery order should be reviewed because lack of review at this stage of the proceedings would result in both prejudice and irreversible error to Watchtower NY and North Congregation if the matter were to be appealed only after a judgment is entered. Therefore, in an effort to preserve their rights and in an effort not to be unduly prejudiced, Watchtower NY and North Congregation are now seeking an order from this Court staying the production of the documents until after Watchtower NY and North Congregation have filed a writ and had it heard. Again, once the documents at issue are produced, there would be no way to undo the harm of having privileged documents produced to the opposing parties, which would render the writ useless,

even if Watchtower NY and North Congregation should prevail on the writ.

Counsel for defendants has met and conferred with plaintiffs' counsel on this issue, as is evidenced by the Declaration of Robert J. Schnack filed herewith. Plaintiffs have refused to agree to stay the ordered production of the documents. Therefore, defendants seek the Court's intervention and protection to stay the production of the documents until Watch Tower's writ rights can be addressed.

POINTS AND AUTHORITIES

California's Evidence Code establishes the clergy-penitent privilege. Evidence Code section 1032 states:

> "As used in this article, 'penitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret." Evid. Code § 1032. "Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the ... clergy-penitent ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential." Evid. Code §917(a) (emphasis added).

Watchtower NY and North Congregation have maintained since they were served with written discovery from plaintiffs, including a request for production of documents, that certain documents are privileged pursuant to Evidence Code sections 1030, et seq., including under section 1032. Despite the Court's September 29, 2005 ruling, Watchtower NY and North Congregation respectfully continue to contend that certain of the documents requested, and now ordered to be produced, fall within the clergy - penitent privilege and are protected from disclosure. Given the contention that the documents are privileged, defendants are in the process of preparing to timely file and pursue a writ on this issue.

Pursuant to the applicable authority, Watchtower NY and North Congregation have 60 days from entry of the order in which to file a writ. "A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the

jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy." CCP §1068. Writ proceedings are not the favored method for reviewing discovery orders because typically the delay caused by such review results in greater harm than in the enforcement of an improper discovery order. *Sav-On Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 5, 123 Cal.Rptr. 283, 538 P.2d 739; *Catanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1163, 54 Cal.Rptr.2d 280; *see also West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 415, 15 Cal.Rptr. 119, 364 P.2d 295. However, writ review is appropriate on a motion to produce documents when the documents are subject to a claim of privilege.

> "Writ review of discovery rulings is generally limited to 'situations where (1) the issues presented are of first impression and of general importance to the trial courts and to the profession [citation], (2) the order denying discovery prevents a party from having a fair opportunity to litigate his or her case [citation], or (3) the ruling compelling discovery would violate a privilege [citations].' (Johnson v. Superior Court (2000) 80 Cal.App.4th 1050, 1061, 95 Cal.Rptr.2d 864.) Writ review is appropriate here because the trial court's order compelling the production of 172 documents violates a privilege allegedly held by OXY. 'Interlocutory review by writ is the only adequate remedy where a court orders production of documents which may be subject to a privilege, 'since once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure.' [Citations.] "

OXY Resources California LLC v. Superior Court (2004) 115 Cal.App.4th 874, 886-87, 9 Cal.Rptr.3d 621,632-33 (emphasis added).

Here, if defendants are forced to produce the documents requested prior to having the opportunity to exercise their right to pursue a writ, they will suffer undue and unfair harm and prejudice . If defendants prevail on the writ, but have previously had to produce the documents within the court-ordered 20 days, defendants will have effectively been forced to waive the privilege.

Watchtower NY and North Congregation have 60 days in which to file a writ for review of the court's order compelling production of the documents. "As a general rule, a writ petition should be filed within the 60-day period that is applicable to appeals. (*Reynolds v. Superior Court* (1883) 64 Cal. 372, 373, 28 P. 121; *Popelka, Allard, McCowan & Jones v. Superior*

Court (1980) 107 Cal.App.3d 496, 499, 165 Cal.Rptr. 748.) 'An appellate court may consider a petition for an extraordinary writ at any time [citation], but has discretion to deny a petition filed after the 60-day period applicable to appeals, and should do so absent "extraordinary circumstances" justifying the delay.' (*Popelka, Allard, McCowan & Jones v. Superior Court, supra*, 107 Cal.App.3d at p. 499, 165 Cal.Rptr. 748, italics in original.)" *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701, 114 Cal.Rptr.2d 541, 545. If defendants are forced to produce the documents prior to the 60-day time frame in which they have to file a writ, defendants will effectively be barred from any appellate review of this issue in these Track I cases. Therefore, defendants seek a stay on the production of documents ordered by the court in its September 29, 2005 ruling, at least until the time in which to file a writ has lapsed.

CONCLUSION

For all of the foregoing reasons, defendants seek a stay on the production of documents ordered by the court in its September 29, 2005 ruling. Defendants respectfully request that production of the documents they contend are protected by the clergy - penitent privilege be stayed until the 60-day time in which to file a writ lapses or, if a writ is filed, until the writ can be heard and ruled on. Defendants submit that there would be no prejudice to plaintiffs, particularly compared to the undue prejudice that defendants would suffer if they were forced to disclose documents that might ultimately be held by the Court of Appeal to be privileged.

DATED: October 18, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

5034054.1

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[___] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

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Attorneys for The Church Defendants

FILED
OCT 19 2005
Clerk of the Napa Superior Court
By: [signature]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: 10-21-05 TIME: 8:30 AM DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in these coordinated actions. I am legally competent in all respects and make the following statements from personal knowledge, or on information and belief where so stated.

2. In the course and scope of discovery in the Track I coordinated cases, a request for production of documents was served on my clients by plaintiff's counsel, including requests

for documents that defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and North Congregation of Jehovah's Witnesses of Red Bluff, California consider to be privileged pursuant to the penitent clergy-privilege and Evidence Code §§1030, et seq..

2. Watchtower NY and the North Congregation served written responses to plaintiffs' requests for production of documents, including objections that certain of the documents are privileged under the clergy-penitent privilege and Evidence Code §§1030.

3. On July 29, 2005, plaintiffs filed a motion to compel production of those documents, which was opposed by Watchtower and the North Congregation.

4. On August 31, 2005, the court heard oral argument on the motion to compel and took the matter under submission. A written ruling was filed on September 28, 2005, granting plaintiffs' motion and ordering that the documents be produced in 20 days.

5. After first receiving a copy of the court's written ruling on October 3, 2005, I contacted plaintiffs' counsel William Brelsford in an attempt to obtain plaintiffs' agreement to stay the production of the documents until Watchtower NY and North Congregation could determine whether to file a writ seeking appellate review of that ruling. No such agreement was forthcoming, and Watchtower NY and North Congregation have been forced to file this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except where stated on information and belief, in which case I am informed and believe the information to be true and correct.

Executed this 18th day of October, 2005 at Gold River, California.

By _____
Robert J. Schnack

5034056.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

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[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

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E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
OCT 19 2005
Clerk of the Napa Superior Court
By: Dora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **DECLARATION OF MARIO F. MORENO**
AND COORDINATED CASES	

I, Mario F. Moreno, declare as follows:

1. I am an attorney and associate general counsel for the Legal Department of Watchtower Bible and Tract Society of New York, Inc. ("Watchtower Legal Department") and in that capacity, from time to time I act and have acted as legal counsel for Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and various congregations of Jehovah's Witnesses, including defendant North Congregation of Jehovah's Witnesses, Red Bluff, California ("North Congregation"). I am legally competent in all respects and make the following statements based on my own personal knowledge.

2. In the coordinated case of *Tim W. v. Watchtower Bible and Tract Society of New York, Inc., et al*, the privilege logs attached hereto as Exhibits A and B were earlier served on plaintiff's counsel. With respect to the letters "from Watchtower NY Legal Department to North

RECEIVED
OCT 19 2005
Napa Superior Court

Congregation elders" identified in the privilege logs as being dated July 11, 1995, November 3, 1995, November 20, 1995, and June 6, 1996, I authored and signed each of those letters in my capacity as an attorney and legal counselor for the North Congregation and Watchtower NY and as associate general counsel for Watchtower Legal Department. Those letters each concerned pre-litigation claims asserted by a California attorney against the North Congregation and others. Both the attorney – client privilege and the attorney work product privilege protect those letters from discovery.

3. The undated handwritten notes prepared by elders in the North Congregation and referenced in the privilege logs concern legal direction provided by me and other attorneys in the Watchtower Legal Department to North Congregation elders during the same time frame as the letters referenced above. The attorney – client privilege and the attorney work product privilege both also protect those notes from discovery.

4. Based on the foregoing, among other reasons, the documents identified in the privilege logs are not subject to discovery in the *Tim W.* case or any other coordinated cases.

I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct upon my knowledge, information and belief.

Executed on October 14, 2005, at Patterson, New York.

Mario F. Moreno

5033995.1

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
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E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TEHAMA

TIM W., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 52594 JCCP No. 4374 **DEFENDANT NORTH CONGREGATION'S PRIVILEGE LOG**
AND COORDINATED CASES	

Defendant North Congregation of Jehovah's Witnesses, Red Bluff, CA., Inc. ("North Congregation"), provides the following privilege log:

Request no. 3: Minister – Communicant or Clergy – Penitent Privilege and Evidence Code §§ 1030, et seq.

1. **January 21, 1981, letter from elders in Upper Lake Congregation to North Congregation elders**
2. **November 23, 1988, S-53b form from Service Department elders to all congregation elders in Red Bluff, CA;**
3. **December 1, 1994, S-77 Form prepared by North Congregation Judicial Committee elders to Service Department elders**
4. **December 1, 1994, S-79b Form prepared by North Congregation Judicial Committee elders to Service Department elders**
5. **Letter dated December 1, 199[4], from North Congregation Judicial Committee elders to Service Department elders**
6. **December 3, 1994, letter from North Congregation elders to Service Department elders**

EXHIBIT A

7. October 2, 1998, letter from North Congregation elders to East Congregation, Cottonwood, California elders
8. October 16, 1988, letter from circuit overseer to Service Department elders
9. December 31, 2002, letter from James Henderson to North Congregation elders

Request no. 3: Attorney – Client Privilege

1. July 11, 1995, letter from Watchtower NY Legal Department to North Congregation elders
2. Undated, handwritten notes containing legal direction provided by Watchtower NY Legal Department to North Congregation elders
3. November 20, 1995, letter from Watchtower NY Legal Department to North Congregation elders
4. June 6, 1996, letter from Watchtower NY Legal Department to North Congregation elders

DATED: August 24, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

5024642.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On August 24, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT NORTH CONGREGATION'S PRIVILEGE LOG

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorney for Plaintiffs – VIA FAX and MAIL William Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	**In Pro Per – VIA MAIL** James L. Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' between the hours of 9:00 a.m. and 5:00 p.m. on August 24, 2005 and received verification of each complete transmission.

[XX] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 24, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF TEHAMA

TIM W., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 52594 JCCP No. 4374 **DEFENDANT WATCHTOWER NEW YORK'S PRIVILEGE LOG**

Defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") provides the following privilege log:

Request no. 27(d): Minister – communicant or clergy – penitent privilege and Evidence Code §§ 1030, et seq.

1. **October 16, 1988, letter from circuit overseer to Service Department elders.**
2. **November 23, 1988, S-53b form from Service Department elders to all Congregation elders in Red Bluff, CA**
3. **December 3, 1994, letter from North Congregation elders to Service Department elders**

Request no. 27(l): Minister – communicant or clergy – penitent privilege and Evidence Code §§ 1030, et seq.

1. **December 1, 1994, S-77 Form from North Congregation Judicial Committee elders to Service Department elders.**
2. **December 1, 1994, S-79b Form from North Congregation Judicial**

EXHIBIT B

Committee elders to Service Department elders.

3. **Letter dated December 1, 199[4], from North Congregation Judicial Committee elders to Service Department elders.**
4. **Letter dated December 26, 1994, from district overseer to Service Department elders**

Attorney – client privilege:

1. **July 11, 1995, letter from Watchtower NY Legal Department to North Congregation elders.**
2. **November 3, 1995, letter from Watchtower NY Legal Department to East Congregation, Ukiah, California, elders**
3. **Undated, handwritten notes containing legal direction provided by Watchtower NY Legal Department to North Congregation elders**
4. **November 20, 1995, letter from Watchtower NY Legal Department to North Congregation elders.**
5. **June 6, 1996, letter from Watchtower NY Legal Department to North Congregation elders.**

DATED: August 24, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

5024862.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On August 24, 2005, the following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANT WATCHTOWER NEW YORK'S PRIVILEGE LOG

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorney for Plaintiffs – VIA FAX and MAIL	**In Pro Per – VIA MAIL**
William Brelsford Nolen Saul Brelsford 350 University Ave., Suite 280 Sacramento, CA 95825	James L. Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

___ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to the office(s) of the addressee(s).

XXX (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' between the hours of 9:00 a.m. and 5:00 p.m. on August 24, 2005 and received verification of each complete transmission.

[XX] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 24, 2005, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **October 18, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF MARIO F. MORENO

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each

complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By Claudia Pohlman

MODIFY: Court Event [C 26-22191] - 10-19-05 at 1:30 pm for Hearing: Exparte Application in Department C

File ID	26-22191
Caption	Charissa W., et al vs Roes 1-100 et al. (G)
PID Number	
Sched Date *	10-19-2005
Type *	Hearing: Exparte Application [212430]
Motion/OSC Detail	
Additional Info	
Sched Time *	1:30 pm
Sched Room *	Department C [21C]
Judge/Official *	Raymond A. Guadagni [J21130]
Estim Duration/Hours	0.05
Est. Days	
Hearing Information	Court Call [211110]
Interpreter Flag	
Interpreter	
Interpreter Status	
Result	Application Granted [218110]
Continuance Date	
Court Clerk	D. Harry [CLRK61]
Court Reporter	Sallie Estudillo [1CR25]
Defendant or Minor	
Memo	R. Nolen, Atty for Pintf, via Court Call; R. Schnack, Atty for Def. The Court GRANTS the application and continues the case to 10-21-05, 8:30 a.m. in Dept. C for Motion to Stay Execution.

Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-4491
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-Mail: bob.schnack@bullivant.com

Attorneys for Church Defendants
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. et al.

FILED

OCT 1 9 2005

Clerk of the Napa Superior Court
By: Vera O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF EX PARTE APPLICATION TO HAVE MOTION TO STAY PRODUCTION OF DOCUMENTS WITHIN 20 DAYS HEARD ON SHORTENED BASIS

Date of Hearing: October 19, 2005
Time: 1:30 pm
Dept: TBA

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in this action. I am legally competent in all respects and make the following statements from personal knowledge.

2. Attached hereto as **Exhibit A** is a copy of a proposed Motion to Stay Execution of Order to Produce Documents in the two so-called "Track I" coordinated cases of *Tim W. v.*

Watchtower New York, et al, and *Julianne Wimberley Gutierrez, et al v. Watchtower New York, et al*, which I intend to serve and file herein. (The "Track I" cases and certain other cases were earlier ordered coordinated under Judicial Council rules and assigned to this Court as the court overseeing coordination. The Napa County Superior Court case of *Charissa W.* captioned above was designated as the "lead" case. Thus, all motions in these coordinated cases are presently being heard by the Napa County Superior Court.)

3. The delay in hearing this matter after the normal time required for service of the above-described papers would cause a substantial hardship to the parties named above for the following reasons: These coordinated cases each involve alleged sex abuse of minors, and plaintiffs are seeking money damages from various local congregations and national church entities. In previous discovery motions filed against defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, California, Inc. (collectively "Church Defendants") in the two Track I cases, plaintiffs sought to compel discovery of documents that, among other things, the Church Defendants considered, and still consider, privileged under the clergy -penitent privilege and California Evidence Code sections 1030, *et seq*. The Court filed an Order on September 29, 2005 in which it ruled that the documents were not privileged and ordered that they be produced within 20 days of the order. That Order was first received by me on October 3, 2005 during a deposition at the offices of plaintiffs' counsel. However, the Church Defendants, in continuing to contend the documents are privileged under the clergy-penitent privilege, intend to file a writ to have the matter reviewed at the appellate court level. If, in the process of filing the writ and having it ruled upon, the Church Defendants were forced to produce the documents requested, their writ would in effect, be moot and meaningless. Therefore, these Church Defendants are seeking a stay of the execution of the order to produce the documents within the 20 days ordered by the Court until the Court can hear and rule upon the Motion to Stay Execution of Order to Produce Documents.

4. Prior to filing this *ex parte* application, I engaged in the "meet and confer" process with plaintiffs' counsel, advising of the Church Defendants' intention to file a writ and

seeking an agreement between the parties to stay production of the documents. Plaintiffs' counsel would not agree to any such stay.

5. On October 15, 2005, I notified plaintiffs' counsel Brelsford via email that the Church Defendants would file with the Court this *ex parte* application for an order shortening time to continue motion hearing date. I followed that up with faxed written notification to plaintiffs' counsel on the same day, October 15, 2005. Attached hereto as **Exhibit B** are true copies of my October 15, 2005 notifications.

6. No party will be prejudiced by granting this *ex parte* application.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 18th day of October ___, 2005 at Gold River, California.

ROBERT J. SCHNACK

5034159.1

EXHIBIT A

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **NOTICE OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: TIME: DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on _____, 2005 at ____ a.m., or as soon thereafter as counsel may be heard, in Dept. C of the above entitled court, Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC AND NORTH CONGREGATION OF JEHOVAH'S WITNESSES OF RED BLUFF, CALIFORNIA will and hereby do move the Court in the Track I coordinated cases for a stay of production of the documents ordered by the court's September 29, 2005 ruling on plaintiffs' motion to compel production of documents.

This motion is based on this notice, the supporting memorandum of points and

authorities, the supporting declarationsof Robert J. Schnack, all papers and records on file in this action, and such other oral and documentary information and evidence as may be properly considered by the Court.

CERTIFICATE OF CONFERENCE

Defense counsel for the Church Defendants hereby certifies that he met and conferred with plaintiffs' attorney William Brelsford concerning this motion before filing it with the court.

DATED: October 18, 2005

BULLIVANT HOUSER BAILEY PC

By RJSchnack
Robert J. Schnack

Attorneys for the Church Defendants

5034059.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

EX PARTE APPLICATION FOR ORDER SHORTENING TIME TO HEAR MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
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Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (lead case) JCCP No. 4374 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** **DATE:** **TIME:** **DEPT.: C** **TRIAL DATES: Not yet set**
AND COORDINATED CASES	

INTRODUCTION

Defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and North Congregation of Jehovah's Witnesses, Red Bluff, California ("North Congregation") bring this motion in the two Track I coordinated cases to stay the production of documents ordered in the court's September 28, 2005 ruling on Plaintiffs' Motion to Compel Production of Documents in order to preserve Watchtower NY and North Congregation's appellate rights. Under California law, defendants have 60 days in which to file a writ on the issue. If Watchtower NY and North Congregation were forced to produce the documents within 20 days

as ordered, their appellate rights would be rendered moot, because once the documents are produced, the clergy - penitent privilege is irrelevant, given that plaintiffs will have the documents that defendants contend are privileged.

STATEMENT OF FACTS

These two "Track I" coordinated cases arise from the alleged sexual abuse of plaintiffs. In the prosecution of their cases, plaintiffs have requested several documents that Watchtower NY and North Congregation contend fall within the clergy - penitent privilege, as previously briefed to this Court, and defendants have continually asserted that privilege. In the course and scope of discovery of these cases, plaintiffs served Watchtower NY and North Congregation with written discovery, including requests for production of documents. Defendants objected to certain of the documents requested on the basis, among others, of the clergy - penitent privilege. After the parties engaged in meet and confer efforts, plaintiffs filed a motion to compel discovery, including for the production of the documents Watchtower NY and North Congregation continue to contend fall within the clergy - penitent privilege. The court took the matter under submission and, on September 29, 2005, issued a written ruling holding that the documents do not fall within that privilege. The court then ordered that the documents previously withheld on the basis of penitent privilege be produced to plaintiffs within 20 days.

Defendants continue to contend that the documents requested and ordered produced are privileged documents under the clergy - penitent privilege. Therefore, defendants will timely file a writ with the Court of Appeal on the issue. This is one of those rare occasions where a discovery order should be reviewed because lack of review at this stage of the proceedings would result in both prejudice and irreversible error to Watchtower NY and North Congregation if the matter were to be appealed only after a judgment is entered. Therefore, in an effort to preserve their rights and in an effort not to be unduly prejudiced, Watchtower NY and North Congregation are now seeking an order from this Court staying the production of the documents until after Watchtower NY and North Congregation have filed a writ and had it heard. Again, once the documents at issue are produced, there would be no way to undo the harm of having privileged documents produced to the opposing parties, which would render the writ useless,

even if Watchtower NY and North Congregation should prevail on the writ.

Counsel for defendants has met and conferred with plaintiffs' counsel on this issue, as is evidenced by the Declaration of Robert J. Schnack filed herewith. Plaintiffs have refused to agree to stay the ordered production of the documents. Therefore, defendants seek the Court's intervention and protection to stay the production of the documents until Watch Tower's writ rights can be addressed.

POINTS AND AUTHORITIES

California's Evidence Code establishes the clergy-penitent privilege. Evidence Code section 1032 states:

> "As used in this article, 'penitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a member of the clergy who, in the course of the discipline or practice of the clergy member's church, denomination, or organization, is authorized or accustomed to hear those communications and, under the discipline or tenets of his or her church, denomination, or organization, has a duty to keep those communications secret." Evid. Code § 1032. "Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the ... clergy-penitent ... relationship, the communication is presumed to have been made in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential." Evid. Code §917(a) (emphasis added).

Watchtower NY and North Congregation have maintained since they were served with written discovery from plaintiffs, including a request for production of documents, that certain documents are privileged pursuant to Evidence Code sections 1030, et seq., including under section 1032. Despite the Court's September 29, 2005 ruling, Watchtower NY and North Congregation respectfully continue to contend that certain of the documents requested, and now ordered to be produced, fall within the clergy - penitent privilege and are protected from disclosure. Given the contention that the documents are privileged, defendants are in the process of preparing to timely file and pursue a writ on this issue.

Pursuant to the applicable authority, Watchtower NY and North Congregation have 60 days from entry of the order in which to file a writ. "A writ of review may be granted by any court when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the

jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy." CCP §1068. Writ proceedings are not the favored method for reviewing discovery orders because typically the delay caused by such review results in greater harm than in the enforcement of an improper discovery order. *Sav-On Drugs, Inc. v. Superior Court* (1975) 15 Cal.3d 1, 5, 123 Cal.Rptr. 283, 538 P.2d 739; *Catanese v. Superior Court* (1996) 46 Cal.App.4th 1159, 1163, 54 Cal.Rptr.2d 280; *see also West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 415, 15 Cal.Rptr. 119, 364 P.2d 295. However, writ review is appropriate on a motion to produce documents when the documents are subject to a claim of privilege.

> "Writ review of discovery rulings is generally limited to 'situations where (1) the issues presented are of first impression and of general importance to the trial courts and to the profession [citation], (2) the order denying discovery prevents a party from having a fair opportunity to litigate his or her case [citation], or (3) the ruling compelling discovery would violate a privilege [citations].' (Johnson v. Superior Court (2000) 80 Cal.App.4th 1050, 1061, 95 Cal.Rptr.2d 864.) Writ review is appropriate here because the trial court's order compelling the production of 172 documents violates a privilege allegedly held by OXY. 'Interlocutory review by writ is the only adequate remedy where a court orders production of documents which may be subject to a privilege, 'since once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure.' [Citations.] "

OXY Resources California LLC v. Superior Court (2004) 115 Cal.App.4th 874, 886-87, 9 Cal.Rptr.3d 621,632-33 (emphasis added).

Here, if defendants are forced to produce the documents requested prior to having the opportunity to exercise their right to pursue a writ, they will suffer undue and unfair harm and prejudice . If defendants prevail on the writ, but have previously had to produce the documents within the court-ordered 20 days, defendants will have effectively been forced to waive the privilege.

Watchtower NY and North Congregation have 60 days in which to file a writ for review of the court's order compelling production of the documents. "As a general rule, a writ petition should be filed within the 60-day period that is applicable to appeals. (*Reynolds v. Superior Court* (1883) 64 Cal. 372, 373, 28 P. 121; *Popelka, Allard, McCowan & Jones v. Superior*

Court (1980) 107 Cal.App.3d 496, 499, 165 Cal.Rptr. 748.) 'An appellate court may consider a petition for an extraordinary writ at any time [citation], but has discretion to deny a petition filed after the 60-day period applicable to appeals, and should do so absent "extraordinary circumstances" justifying the delay.' (*Popelka, Allard, McCowan & Jones v. Superior Court*, *supra*, 107 Cal.App.3d at p. 499, 165 Cal.Rptr. 748, italics in original.)" *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 701, 114 Cal.Rptr.2d 541, 545. If defendants are forced to produce the documents prior to the 60-day time frame in which they have to file a writ, defendants will effectively be barred from any appellate review of this issue in these Track I cases. Therefore, defendants seek a stay on the production of documents ordered by the court in its September 29, 2005 ruling, at least until the time in which to file a writ has lapsed.

CONCLUSION

For all of the foregoing reasons, defendants seek a stay on the production of documents ordered by the court in its September 29, 2005 ruling. Defendants respectfully request that production of the documents they contend are protected by the clergy - penitent privilege be stayed until the 60-day time in which to file a writ lapses or, if a writ is filed, until the writ can be heard and ruled on. Defendants submit that there would be no prejudice to plaintiffs, particularly compared to the undue prejudice that defendants would suffer if they were forced to disclose documents that might ultimately be held by the Court of Appeal to be privileged.

DATED: October 18, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

5034054.1

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CHURCH DEFENDANTS' MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: TIME: DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California and Oregon, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in these coordinated actions. I am legally competent in all respects and make the following statements from personal knowledge, or on information and belief where so stated.

2. In the course and scope of discovery in the Track I coordinated cases, a request for production of documents was served on my clients by plaintiff's counsel, including requests

for documents that defendants Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and North Congregation of Jehovah's Witnesses of Red Bluff, California consider to be privileged pursuant to the penitent clergy-privilege and Evidence Code §§1030, et seq..

2. Watchtower NY and the North Congregation served written responses to plaintiffs' requests for production of documents, including objections that certain of the documents are privileged under the clergy-penitent privilege and Evidence Code §§1030.

3. On July 29, 2005, plaintiffs filed a motion to compel production of those documents, which was opposed by Watchtower and the North Congregation.

4. On August 31, 2005, the court heard oral argument on the motion to compel and took the matter under submission. A written ruling was filed on September 28, 2005, granting plaintiffs' motion and ordering that the documents be produced in 20 days.

5. After first receiving a copy of the court's written ruling on October 3, 2005, I contacted plaintiffs' counsel William Brelsford in an attempt to obtain plaintiffs' agreement to stay the production of the documents until Watchtower NY and North Congregation could determine whether to file a writ seeking appellate review of that ruling. No such agreement was forthcoming, and Watchtower NY and North Congregation have been forced to file this motion.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, except where stated on information and belief, in which case I am informed and believe the information to be true and correct.

Executed this 18th day of October, 2005 at Gold River, California.

By _____
Robert J. Schnack

5034056.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **[PROPOSED] ORDER GRANTING MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: TIME: DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

Defendant Watchtower Bible and Tract Society of New York, Inc. and North Congregation's motion to stay execution of order to produce documents pending a writ came regularly for hearing before the Court. Now, therefore, the Court having considered the briefing submitted by the parties and argument of counsel, and the Court being otherwise fully advised,

IT IS HEREBY ORDERED that the production of documents in the Track I cases claimed by defendants to be privileged under the clergy-penitent privilege and which were ordered produced by this Court's September 29, 2005 order is stayed until such time that a writ can be filed and ruled upon by the Court of Appeal.

DATED: October ___, 2005

Judge of the Superior Court

By _____
Honorable Raymond A. Guadagni

5034060.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

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Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
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Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

EXHIBIT B

Schnack, Bob

From: Schnack, Bob
Sent: Saturday, October 15, 2005 11:34 AM
To: 'Nolen, Rudy'; 'Brelsford, William L. Jr.'
Cc: 'Hampton, Hartley'; 'Love, Gregory S.'
Subject: Track I cases -- Wimberley and Tim W. v. Watchtower NY, et al

Rudy and Bill: Watch Tower PA has decided not to seek a writ on the adverse personal jurisdiction ruling, but will reserve the issue for appeal through an affirmative defense in its answer. Watchtower NY and the North Congregation have decided to pursue a writ on the clergy - penitent or minister - communicant privilege issue. Therefore, we will appear at ex parte on Wednesday, 10/19/2005 at 1:30 pm for a motion to stay execution of the court's order on the documents ordered produced that are subject to that privilege. The department has not been assigned but will be either Dept. B or Dept. C. When I check in one half hour ahead of time, the clerk will direct us to whichever department will be handling the matter. Thanks.

Bob Schnack
Bullivant Houser Bailey PC
916.858.2263 (Sacramento)
mailto:bob.schnack@bullivant.com

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	1287
CONNECTION TEL	2263#23491#4#5649991#
CONNECTION ID	Nolen Saul Brels
ST. TIME	10/15 12:02
USAGE T	00'22
PGS. SENT	1
RESULT	OK

Bullivant | Houser | Bailey PC
Attorneys at Law

FAX

From: Robert J. Schnack **Date:** October 15, 2005

C/M #: 23491/00005 **Reference:** Track I cases of *Wimberley v. Watchtower NY* and *Tim W v. Watchtower NY*

Number of pages being transmitted including the cover page: one

	Fax No.	Telephone No.
To: Rudy Nolen/William Brelsford	916-564-9991	916-564-9990

Message/Document(s) faxed:

Rudy and Bill: To follow up on my email sent this morning, I write to advise that Watch Tower Pennsylvania has decided not to seek a writ on the adverse personal jurisdiction ruling, but will reserve the issue for appeal through an affirmative defense in its answer. Watchtower New York and the North Congregation have decided to pursue a writ to seek appellate review in the two Track I cases on the court's ruling on the clergy - penitent or minister - communicant privilege issue. Therefore, I will appear at ex parte in Napa on Wednesday, 10/19/2005 at 1:30 pm with respect to a motion to stay execution of the court's order on the documents ordered produced that are subject to that privilege. The department in the Napa court has not been assigned but will be either Dept. B or Dept. C. When I check in one half hour ahead of time with the clerk's office, the clerk will direct us to whichever department will be handling the matter. Thanks. – Bob Schnack

Please call fax operator at (916) 852-9100 if all pages are not received.

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From:	Robert J. Schnack	**Date:**	October 15, 2005
C/M #:	23491/00005	**Reference:**	Track I cases of *Wimberley v. Watchtower NY* and *Tim W v. Watchtower NY*

Number of pages being transmitted including the cover page: one

	Fax No.	Telephone No.
To: Rudy Nolen/William Brelsford	916-564-9991	916-564-9990

Message/Document(s) faxed:

Rudy and Bill: To follow up on my email sent this morning, I write to advise that Watch Tower Pennsylvania has decided not to seek a writ on the adverse personal jurisdiction ruling, but will reserve the issue for appeal through an affirmative defense in its answer. Watchtower New York and the North Congregation have decided to pursue a writ to seek appellate review in the two Track I cases on the court's ruling on the clergy - penitent or minister - communicant privilege issue. Therefore, I will appear at ex parte in Napa on Wednesday, 10/19/2005 at 1:30 pm with respect to a motion to stay execution of the court's order on the documents ordered produced that are subject to that privilege. The department in the Napa court has not been assigned but will be either Dept. B or Dept. C. When I check in one half hour ahead of time with the clerk's office, the clerk will direct us to whichever department will be handling the matter. Thanks. – Bob Schnack RJSchnack

Please call fax operator at (916) 852-9100 if all pages are not received.

ORIGINAL DOCUMENTS: Will follow by ☐ mail ☐ courier – OR - ☒ Will not follow unless requested.

CONFIDENTIALITY NOTE: The documents accompanying this facsimile transmission contain information belonging to Bullivant Houser Bailey which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone to arrange for return of the original documents to us.

As this facsimile may fade, you are advised to make photocopies for files to ensure a permanent record.

FAX OPERATOR: Return originals to: cap Ext: 2288

4104358.1

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF EX PARTE APPLICATION TO HAVE MOTION TO STAY PRODUCTION OF DOCUMENTS WITHIN 20 DAYS HEARD ON SHORTENED BASIS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__x_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557
Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

5034159.1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department C **Event:** Motion for Protective Order/Motion to Stay Execution of Order to Produce Documents **PID # :**	**Case #** 26-22191 **Event Date:** October 21, 2005 **Clerk:** D. Harry **Reporter:** Jennifer Antolin **Cite/Report #:**

Appearances:
R. Nolen, Attorney for Plaintiff
R. Schnack, Attorney for Defendant

Hearing:
This matter comes before the Court on the Church Defendant's Motion for Protective Order and Motion to Stay Execution of Order to Produce Documents Pending Writ.

The Court hears arguments of Counsel.

As to the Motion for Protective Order, the Court adopts the tentative ruling, makes it the order of the Court, and directs that it be included in the minutes as follows:

RULING: The defendants' motion for protective order is DENIED. Defendants have not established that the deposition notice for J.R. Brown is an impermissible "apex" deposition, as described in *Liberty Mutual Ins. Co. v. Superior Court* (1992) 10 Cal.App.4th 1282. J.R. Brown has not been shown to be a management figure at the very top of defendants' organization, with no knowledge of the issues in this lawsuit. Rather, he is the head of a division (Director of the Office of Public Information) who signed a detailed letter concerning issues directly relevant to this action. Plaintiffs shall be permitted to depose Mr. Brown as requested.

The Court grants the Motion to Stay Execution of Order to Produce Documents Pending Writ and orders proceedings shall be stayed until a writ is filed with, and ruled upon by Court of Appeal.

Mr. Schnack shall prepare and submit an Order After Hearing.

-o0o-

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

OCT 2 4 2005

Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 ~~[PROPOSED]~~ RHG **ORDER GRANTING MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT** DATE: 10-21-05 TIME: 8:30 AM DEPT: C TRIAL DATE: Not yet set
AND COORDINATED CASES	

Defendant Watchtower Bible and Tract Society of New York, Inc. and North Congregation's motion to stay execution of order to produce documents pending a writ came regularly for hearing before the Court. Now, therefore, the Court having considered the briefing submitted by the parties and argument of counsel, and the Court being otherwise fully advised,

IT IS HEREBY ORDERED that the production of documents in the Track I cases claimed by defendants to be privileged under the clergy-penitent privilege and which were ordered produced by this Court's September 29, 2005 order is stayed until such time that a writ can be filed and ruled upon by the Court of Appeal.

DATED: October 24, 2005

Judge of the Superior Court

By _____
Honorable Raymond A. Guidagni

5034060.1

*****

PROOF OF SERVICE

Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

[PROPOSED] ORDER GRANTING MOTION TO STAY EXECUTION OF ORDER TO PRODUCE DOCUMENTS PENDING WRIT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **October 18, 2005**, at Gold River, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
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Attorneys for Plaintiffs Tommy Fibich, Esq. Fibich, Hampton & Leebron 1401 McKinney, Suite 1800 Five Houston Cener Houston, TX 77010	In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
William L. Brelsford, Esq. SBN 202839
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

TELEPHONE NO.: (916)564-9990 FAX NO. (Optional): (916)564-9991
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): Charissa W. and Nicole D.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa
STREET ADDRESS: 825 Brown St.
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

FOR COURT USE ONLY

FILED

OCT 3 1 2005

Clerk of the Napa Superior Court
By: Lora O'Roberts Deputy

Judicial Council Coordination Proceeding No. 4374

This is the lead case.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: November 17, 2005 Time: 9:30 am Dept.: C Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [X] This statement is submitted by party *(name):* Plaintiffs in the consolidated action.
   b. [ ] This statement is submitted **jointly** by parties *(names):*

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):* July 24, 2003. Consolidated pursuant to order.
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Sexual battery, common law negligence, negligent appointment, retention and supervision, gross negligence - wilful misconduct, breach of fiduciary duty and intentional infliction of emotional distress.

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OCT 3 1 2005
Napa Superior Court

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
Plaintiffs are a group of individuals that were sexually abused as children, and were entrusted to the care of the Watchtower Defendants. Plaintiffs contend the Watchtower Organization had notice that the individual pedophiles in their organization were prone to sexually molest young children, such as Plaintiffs, but failed to take appropriate measures to protect Plaintiffs entrusted to their care. These lawsuits seek compensation for the injuries Plaintiffs have sustained.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☒ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* Plaintiffs of all consolidated cases.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
SEE ATTACHMENT.

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
a. ☒ days *(specify number):* 20-25 days.
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☒ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

10. d. The party or parties are willing to participate in *(check all that apply):*
    - (1) [X] Mediation
    - (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
    - (3) [ ] *Nonbinding judicial arbitration under Code of Civil Procedure section* 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
    - (4) [ ] Binding judicial arbitration
    - (5) [ ] Binding private arbitration
    - (6) [ ] Neutral case evaluation
    - (7) [ ] Other *(specify):*

e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. [X] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):*
Amount in controversy exceeds $50,000; numerous witnesses will testify; extensive expert testimony will be required.

11. **Settlement conference**

[ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

a. [ ] Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: [ ] Yes [ ] No

c. [ ] Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

[ ] Bankruptcy [ ] Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. [X] There are companion, underlying, or related cases.
    - (1) Name of case:
    - (2) Name of court:
    - (3) Case number:
    - (4) Status:

[X] Additional cases are described in Attachment 14a.

b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* A motion to coordinate these cases had already been granted.

15. **Bifurcation**

[ ] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

[X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
Extensive Motions to Compel discovery from Watchtower Defendants; motions in limine.

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.	CASE NUMBER:
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.	26-22191

17. **Discovery**
    a. [ ] The party or parties have completed all discovery.
    b. [X] The following discovery will be completed by the date specified *(describe all anticipated discovery):*

Party	Description	Date
Plaintiffs	Watchtower Defendant Witnesses Depositions	11/05
	Percipient Witness Depositions	11/05
	Expert Discovery	Pursuant to CCP Section 2034

    c. [ ] The following discovery issues are anticipated *(specify):* Plaintiffs anticipate Watchtower Defendants will continue to assert *Serbian,* the First Amendment and Penitant Privilege as objections throughout discovery.

18. **Economic Litigation**
    a. [ ] *This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in* Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. [ ] This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):*

19. **Other issues**
    [ ] The party or parties request that the following additional matters be considered or determined at the case management conference *(specify):*

20. **Meet and confer**
    a. [ ] *The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of* Court *(if not, explain):*

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify):*

21. **Case management orders**
    Previous case management orders in this case are *(check one):* [X] none [ ] attached as Attachment 21.

22. Total number of pages attached *(if any):* 3

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: October 27, 2005

William Brelsford
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

[ ] Additional signatures are attached

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 6.c.
(This Attachment may be used with any Judicial Council form.)

TRIAL SCHEDULE

November 2005:

3-17	Mangham v. Adrian Plumas County Superior Court Case No. 23008
14 - 28	Cornejo v. Playpower Butte County Superior Court Case No. 133709

December 2005:

6 - 29	Bist v. Biomet Placer County Superior Court Case No. SCV17571

January 2006:

30 - Feb. 17	Rahm v. Sai Baba Orange County Superior Court Case No. 05CC 01931

March 2006:

7 - 24	Carlson v. Mooney Shasta County Superior Court Case No. 154043

April 2006:

17 - May 5	Brown v. Dameron Hospital San Joaquin County Superior Court Case No. CV024649

July 2006:

25 - August 10	Kotrous v. Goss-Jewett US District Court, Third District Court of Appeals Case No. CVI S 02-1420 FCD JFM

February 2007:

6 - March 6	Soriano v. Ahn District Court Clark County, Nevada Case No. A475529

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 8

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

Counsel Admitted Pro Hac Vice

Greg Love, Esq.
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76104
Phone: (817) 335-2800
Fax: (817) 335-2912

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

SHORT TITLE: Charissa W. and Nicole D. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191

ATTACHMENT *(Number):* 14a

(This Attachment may be used with any Judicial Council form.) *(Add pages as required)*

1) Name of Case: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Yolo County Superior Court
3) Case Number: CV03-1439
4) Status: Defendants' motions are scheduled for 10/5/04.

1) Name of Case: Ken L. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Placer County Superior Court
3) Case Number: CVSCV16600
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Lisa H. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Monterey County Superior Court
3) Case Number: M68295
4) Status: Defendants' motions are scheduled for 9/17/04.

1) Name of Case: Danielle A. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Suprior Court
3) Case Number: 234140
4) Status: Defendants recently filed motions to strike, demurrer, and motion to quash.

1) Name of Case: Dennis S., et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234168
4) Status: Complaint was recently served on all defendants.

1) Name of Case: Jocelyn A.
2) Name of Court: Sonoma County Superior Court
3) Case Number: 234320
4) Status: Defendant's motions are scheduled for 9/15/04.

1) Name of Case: Tabitha H.
2) Name of Court: Napa County Superior Court
3) Case Number: 26-23-929
4) Status: Defendant's motions are scheduled for 8/31/04.

1) Name of Case: Javier C.
2) Name of Court: Placer County Superior Court
3) Case Number: SCV 16723
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

1) Name of Case: Wimberely
2) Name of Court: Tehama County Superior Court
3) Case Number: 52598
4) Status: All motions have been stayed pending outcome of plaintiff's petition for coordination.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On October 25, 2005, I caused the within **CASE MANAGEMENT STATEMENT,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL –**I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On October 25, 2005 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

In Pro Per
James Henderson
25 Gilmore Road, #17
Red Bluff, CA 96080

Attorneys for Defendant Carlos Vasquez
William E. Bernard
1624 Santa Clara Drive, Suite 210
Roseville, CA 95661
Facsimile No. (916) 789-7557

Attorneys for Defendant Harriman
Craig Diamond
DIAMOND, BAKER, PHILLIPS & WALTERS LLP
P.O. Box 1147
Cedar Ridge, CA 95924
FacsimileNo. (530) 272-8463

Co Counsel for Plaintiffs
Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

In Pro Per
Alvin Heard
Two Rivers Correctional Institute
82911 Beach Access Road
Umatilla, OR 97882

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 25, 2005, at Sacramento, California.

Susan Gilbert

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive
Suite 105
Gold River, CA 95670
TELEPHONE NO.: 916-852-9100 FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

FILED

NOV 9 2005

Clerk of the Napa Superior Court
By: Dora O'Doherty Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
STREET ADDRESS: 825 Brown Street
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.

DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.

CASE MANAGEMENT STATEMENT

(Check one): [X] UNLIMITED CASE (Amount demanded exceeds $25,000) [ ] LIMITED CASE (Amount demanded is $25,000 or less)

CASE NUMBER: 26-22191 (and coordinated cases)

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: November 17, 2005 Time: 9:30 A.M. Dept.: C Div.: Room:

Address of court *(if different from the address above):*

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one):*
   a. [ ] This statement is submitted by party *(name):*
   b. [X] This statement is submitted **jointly** by parties *(names):* The Church Defendants (i.e., the entity defendants), including special appearance by Watch Tower Pennsylvania.

RECEIVED
NOV 9 2005
COURT EXECUTIVE OFFICER

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date):*
   b. [ ] The cross-complaint, if any, was filed on *(date):*

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. [ ] All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. [ ] The following parties named in the complaint or cross-complaint
      (1) [ ] have not been served *(specify names and explain why not):*
      (2) [ ] have been served but have not appeared and have not been dismissed *(specify names):*
      (3) [ ] have had a default entered against them *(specify names):*
   c. [ ] The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served):*

4. **Description of case**
   a. Type of case in [X] complaint [ ] cross-complaint *(describe, including causes of action):*
   Claims alleged concerning sex abuse of minors.

Form Adopted for Mandatory Use
Judicial Council of California
CM-110 [Rev. January 1, 2005]

CASE MANAGEMENT STATEMENT

RECEIVED
NOV - 9 2005
Napa Superior Court

Legal Solutions Plus

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*
The adult plaintiffs allege claims relating to sex abuse that allegedly occurred when they were minors. Plaintiffs allege various legal theories under which they contend the Church Defendants are vicariously liable for the alleged abuse. The Church Defendants deny plaintiffs' claims, and Watch Tower Pennsylvania also has challenged personal jurisdiction. Depositions and discovery are proceeding in the two "Track I" cases.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☐ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):* The Church Defendants have not decided whether to request a jury trial.

6. **Trial date**
a. ☐ The trial has been set for *(date):*
b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* The coordinated cases are assigned to Napa County Superior Court for case management purposes.
c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):* Too early to estimate
a. ☐ days *(specify number):*
b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:
a. Attorney:
b. Firm:
c. Address:
d. Telephone number:
e. Fax number:
f. E-mail address:
g. Party represented:
☐ Additional representation is described in Attachment 8.

9. **Preference**
☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
c. ☐ The case has gone to an ADR process *(indicate status):*

10. d. The party or parties are willing to participate in *(check all that apply):*
   (1) [ ] Mediation
   (2) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
   (3) [ ] Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
   (4) [ ] Binding judicial arbitration
   (5) [ ] Binding private arbitration
   (6) [X] Neutral case evaluation
   (7) [ ] Other *(specify):*

e. [ ] This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. [ ] Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. [ ] This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):*

11. **Settlement conference**

[ ] The party or parties are willing to participate in an early settlement conference *(specify when):*

12. **Insurance**

a. [X] Insurance carrier, if any, for party filing this statement *(name):* Multiple.

b. Reservation of rights: [ ] Yes [ ] No

c. [ ] Coverage issues will significantly affect resolution of this case *(explain):* The Church Defendants expect that some, if not all, of the insurers will either deny coverage or issue reservations of rights.

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

[ ] Bankruptcy [ ] Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. [X] There are companion, underlying, or related cases. Per prior coordination order
   (1) Name of case:
   (2) Name of court:
   (3) Case number:
   (4) Status:

   [ ] Additional cases are described in Attachment 14a.

b. [X] A motion to [ ] consolidate [X] coordinate will be filed by *(name party):* Was filed by plaintiffs and granted.

15. **Bifurcation**

[X] The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):* The Church Defendants will consider a motion to bifurcate liability from damages in the Track I cases.

16. **Other motions**

[X] The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):* Motions for summary judgment and/or summary adjudication in the Track I cases.

PLAINTIFF/PETITIONER: CHARISSA W. and NICOLE D.	CASE NUMBER:
DEFENDANT/RESPONDENT: WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.	26-22191

17. **Discovery**
    a. ☐ The party or parties have completed all discovery.
    b. ☒ The following discovery will be completed by the date specified *(describe all anticipated discovery)*:

Party	Description	Date
Church Defendants	Plaintiffs' Depositions	January 2006
Church Defendants	Plaintiffs' Witnesses	April 2006
Church Defendants	Expert Witnesses	Per Code

    c. ☒ The following discovery issues are anticipated *(specify)*: The Church Defendants continue to expect that plaintiffs will seek broad discovery from them concerning church or ecclesiastical hierarchy, church practices and policies, and other topics or issues protected from discovery by the federal and California constitution and otherwise.

18. **Economic Litigation**
    a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
    b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

19. **Other issues**
    ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

20. **Meet and confer**
    a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain)*:

    b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify)*:

21. **Case management orders**
    Previous case management orders in this case are *(check one)*: ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any)*: _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: November 8, 2005

Robert J. Schnack
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

_____
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On **November 8, 2005**, the following ordinary business practice, I served the foregoing document(s) described as:

CASE MANAGEMENT CONFERENCE STATEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **November 8, 2005**, at Gold River, California.

By Claudia Pohlman

Claudia Pohlman

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department C **Event:** *Conference: Case Management* **PID # :**	**Case #** 26-22191 **Event Date:** November 17, 2005 **Clerk:** D. Harry **Reporter:** Benita Duncan **Cite/Report #:**

Appearances:
R. Nolan, Attorney for Plaintiffs
B. Schnack, Attorney for Defendants

Hearing:
This matter comes before the Court for Case Management Conference.

Court and Counsel hold a colloquy in chambers, off the record.

On the record, the parties state they have agreed upon discovery issues and to attempt to mediate the coordinated cases, or explore other means of resolution.

The Court orders this matter continued to March 30, 2006, at 9:30 a.m. in Dept. C for further Case Management Conference. The parties may bring the matter back on calendar sooner if a settlement is reached.

-o0o-

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Gold River, California 95670-6310
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
NOV 2 3 2005
Clerk of the Napa Superior Court
By: Nora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

STIPULATED ORDER EXTENDING TIME FOR FILING OF WRIT SEEKING APPELLATE REVIEW OF COURT ORDER DATED SEPTEMBER 29, 2005

Plaintiffs and Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., through their counsel of record, hereby stipulate that the time in which said Defendants have to file a writ seeking appellate review of the "Ruling On Submitted Motion To Compel Production Of Documents" issued by the Honorable Raymond A. Guadagni of the Napa County Superior Court on or about September 29, 2005, shall be extended up to and including April 28, 2006.

///

///

///

///

Received
NOV 22 2005
Napa Superior Court

IT IS SO STIPULATED:

DATED: November 22, 2005

NOLEN SAUL BRELSFORD

By _____
Rudy Nolen
William Brelsford
Attorneys for Plaintiffs

DATED: November 22, 2005

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

Based on the foregoing stipulation, and otherwise finding good cause therefore,

IT IS HEREBY ORDERED that the time for Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc. to file a writ seeking appellate review of the above-referenced Order of this Court is extended up to and including April 28, 2006.

DATED: November 22, 2005

_____
RAYMOND A. GUADAGNI,
JUDGE OF THE SUPERIOR COURT

4202995.1

*****

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 858-2263
E-mail: bob.schnack@bullivant.com

Received
JAN 30 2006
Napa Superior Court

FILED
JAN 30 2006
Clerk of the Napa Superior Court
By: M. Fields
Deputy

January 30, 2006

Via Facsimile

Honorable Raymond A. Guadagni
Napa County Superior Court
825 Brown St.
Napa, CA 94559

Re: *Charissa W., et al. v. Watchtower Bible and Tract Society, et al.*
Napa County Superior Court Case No. 26-22191

and Coordinated Cases under JCCP No. 4374

Dear Judge Guadagni:

A case management conference is currently set for March 30, 2006 at 9:30 a.m. in these coordinated actions. However, the parties would like to advance the CMC to occur sometime on or before Friday, February 10th, if it would be convenient for the court to do so. There are some issues that the parties would like to discuss with the court, and it would be preferable, in my view, to schedule perhaps 15 minutes to discuss those issues with the court in chambers.

Thank you in advance for your consideration of this request.

Very truly yours,

Robert J. Schnack

Robert J. Schnack

RJS:ll
cc: (via facsimile)
Craig Diamond
Rudy Nolen

4206942.1

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al.
Case Number: 26-22191

(G) ☒ Amended Notice (If checked)

TO: Rudy Nolen
Nolen Saul Brelsford
350 University Avenue Ste. 280
Sacramento, CA 95825

DATE: February 10, 2006 **TIME:** 8:30 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Case Management Conference set in compliance with Rule of Court 212(b)(1). Case Management Conference Statement must be filed 15 days prior to Conference, *Judicial Council Form CM-110.*

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 1/31/2006

Stephen A. Bouch, Court Executive Officer
By: M. Fields
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Personna.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 [X] Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: February 10, 2006 **TIME:** 8:30 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Conference: Case Management has been scheduled in the Napa Superior Court at the time, date and location listed above.

Case Management Conference set in compliance with Rule of Court 212(b)(1). Case Management Conference Statement must be filed 15 days prior to Conference, Judicial Council Form CM-110.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 1/31/2006

Stephen A. Bouch, Court Executive Officer
By: M. Fields
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Personna.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** February 10, 2006 **Clerk:** D. Coffelt **Reporter:** Sallie Estudillo, #9060 **Cite/Report #:**

Appearances:
Robert J. Schnack, Attorney for Defendants, Watchtower Bible, Tract Society of New York Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc.

This matter comes before the Court at this time for Case Management Conference.

After colloquy with counsel the Court continues the matter as set forth below.

Continuance:
June 16, 2006 at 8:30 a.m. in Courtroom A for Conference: Case Management

-oOo-

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
FEB 2 1 2006
Clerk of the Napa Superior Court
By: M. Fields
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

DATE: **June 16, 2006**
TIME: **8:30 a.m.**
DEPT. **a**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that the court has scheduled a further Case Management Conference on June 16, 2006 at 8:30 a.m. in Department A, the Honorable Raymond Guadagni presiding.

Please take further notice that the court does not require a Case Management Conference Statement.

DATED: February 10, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for The Church Defendants

RECEIVED
FEB 1 4 2006
Napa Superior Court

4207825.1

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On February 10, 2006, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF FURTHER CASE MANAGEMENT CONFERENCE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen NOLEN SAUL BRELSFORD 350 University Ave., Suite 280 Sacramento, CA 95825 Fax: 916-564-9991	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 **Fax: 530-272-8463**
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 10, 2006, at Gold River, California.

By _____
Claudia Pohlman

FILED
MAR - 8 2006
Clerk of the Napa Superior Court
By: M. Peters
Deputy

Rudy Nolen, Esq., SBN 59808
William L. Brelsford, Esq., SBN 202839
NOLEN & BRELSFORD
1501 - 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
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Fort Worth, TX 76102-7423
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF CHANGE OF FIRM NAME, ADDRESS AND TELEPHONE / FACSIMILE NUMBERS**

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that effective immediately, the firm of NOLEN SAUL BRELSFORD has been changed to **NOLEN & BRELSFORD.** The address of the firm is **1501 - 28th Street, Sacramento, California 95816.** The telephone number is (916) 733-0600 and the facsimile number is (916) 733-0601.

DATED: March 6, 2006

NOLEN & BRELSFORD

William L. Brelsford
Attorneys for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On March 6, 2006, I caused the within **NOTICE OF CHANGE OF FIRM NAME, ADDRESS AND TELEPHONE / FACSIMILE NUMBERS,** the original of which was produced on recycled paper, to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On March 2, 2006 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601. I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

In Pro Per
James Henderson
25 Gilmore Road, #17
Red Bluff, CA 96080

Attorneys for Defendant Carlos Vasquez
William E. Bernard
1624 Santa Clara Drive, Suite 210
Roseville, CA 95661
Facsimile No. (916) 789-7557

Attorneys for Defendant Harriman
Craig Diamond
DIAMOND, BAKER, PHILLIPS & WALTERS LLP
P.O. Box 1147
Cedar Ridge, CA 95924
FacsimileNo. (530) 272-8463

Co Counsel for Plaintiffs
Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

In Pro Per
Alvin Heard
State ID # 14002521
Two Rivers Correctional Institute
82911 Beach Access Road
Umatilla, OR 97882

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 6, 2006, at Sacramento, California.

Susan Gilbert

Susan Gilbert

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Gold River, California 95670-6310
Telephone: (916) 852-9100
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Attorneys for The Church Defendants

FILED
MAY - 1 2006
Clerk of the Napa Superior Court
By: M. Hess
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

FURTHER STIPULATED ORDER EXTENDING TIME FOR FILING OF WRIT SEEKING APPELLATE REVIEW OF COURT ORDER DATED SEPTEMBER 29, 2005

Plaintiffs and Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., through their counsel of record, hereby stipulate that the time in which said Defendants have to file a writ seeking appellate review of the "Ruling On Submitted Motion To Compel Production Of Documents" issued by the Honorable Raymond A. Guadagni of the Napa County Superior Court on or about September 29, 2005, shall now be extended from April 28, 2006, up to and including June 30, 2006.

///

///

RECEIVED
APR 27 2006
Napa Superior Court

///

IT IS SO STIPULATED:

DATED: April 20, 2006

NOLEN & ASSOCIATES

By _____
Rudy Nolen
Attorneys for Plaintiffs

DATED: April 21, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

Based on the foregoing stipulation, and otherwise finding good cause therefore,

IT IS HEREBY ORDERED that the time for Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc. to file a writ seeking appellate review of the above-referenced Order of this Court is extended up to and including June 30, 2006.

DATED: ~~April~~ May 1, 2006

_____
RAYMOND A. GUADAGNI,
JUDGE OF THE SUPERIOR COURT

4213169.1

*****

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Gold River, California 95670-6310
Telephone: (916) 852-9100
Facsimile: (916) 852-5777
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
MAY 0 8 2006
Clerk of the Napa Superior Court
By: [signature]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **NOTICE OF ENTRY OF ORDER**
AND COORDINATED CASES	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that the Court has entered its Order dated May 1, 2006, granting the parties Further Stipulated Order Extending Time for Filing of Writ Seeking Appellate Review of Court Order Dated September 29, 2005. A true and correct copy of the Order is attached hereto.

DATED: May 4, 2006

BULLIVANT HOUSER BAILEY PC

By [signature]
Robert J. Schnack
Attorneys for Church Defendants

RECEIVED
MAY - 5 2006
Napa Superior Court

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
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Facsimile: (916) 852-5777
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

ENDORSED

MAY - 1 2006

Clerk of the Napa Superior Court
By: M.M. FIELDS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **FURTHER STIPULATED ORDER EXTENDING TIME FOR FILING OF WRIT SEEKING APPELLATE REVIEW OF COURT ORDER DATED SEPTEMBER 29, 2005**
AND COORDINATED CASES	

Plaintiffs and Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc., through their counsel of record, hereby stipulate that the time in which said Defendants have to file a writ seeking appellate review of the "Ruling On Submitted Motion To Compel Production Of Documents" issued by the Honorable Raymond A. Guadagni of the Napa County Superior Court on or about September 29, 2005, shall now be extended from April 28, 2006, up to and including June 30, 2006.

///

///

///

IT IS SO STIPULATED:

DATED: April 20, 2006

NOLEN & ASSOCIATES

By _____
Rudy Nolen
Attorneys for Plaintiffs

DATED: April 21, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants

Based on the foregoing stipulation, and otherwise finding good cause therefore,

IT IS HEREBY ORDERED that the time for Defendants Watchtower Bible and Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc. to file a writ seeking appellate review of the above-referenced Order of this Court is extended up to and including June 30, 2006.

MAY - 1 2006

DATED: ~~April~~ , 2006

RAYMOND A. GUADAGNI
RAYMOND A. GUADAGNI,
JUDGE OF THE SUPERIOR COURT

4213169.1

*****

PROOF OF SERVICE

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 11335 Gold Express Drive, Suite 105, Gold River, California 95670. I am over the age of eighteen (18) and not a party to this within cause.

On May 4, 2006, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers

the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 4, 2006, at Gold River, California.

By _____
Claudia Pohlman

NOLEN & ASSOCIATES
ATTORNEYS

1301 20TH STREET
SACRAMENTO, CA 95816

PHONE: 916-733-0600
FAX: 916-733-0601

FILED
MAY 16 2006
Clerk of the Napa Superior Court
By: E. Garcia Deputy

May 11, 2006

Honorable Raymond A. Guadagni
Napa County Superior Court
Department A - Court Clerk
825 Brown Street
Napa, CA 94559

VIA FACSIMILE

Re: Charissa W., et al. v. Watchtower Bible and Tract Society, et al.
Napa County Superior Court Case No. 26-22191

And Coordinated Cases under JCCP No. 4374

Dear Madame Clerk:

All attorneys representing plaintiff's in the coordination proceeding presided over by Judge Guadagni wish to request the presently scheduled CMC on June 16, 2006 be moved forward to an earlier date. If that is possible, could you advise all counsel of available dates and in turn we will work to arrange our calendars to accommodate the court. At this CMC we would like to discuss assignment of a trial date or dates.

Thank you for your corporation.

Very truly yours,

NOLEN & ASSOCIATES

Rudy Nolen

RN/cw
cc: Bob Schnack
Greg Love
Hartley Hampton

Rescheduled to 5/24 8:30 am Approved via phone by RHN 5/15 EG

Received
MAY 12 2006
Napa Superior Court

RHUDOLPH NOLEN, JR.
E-MAIL: RNOLEN@NOLENLAW.NET
MEMBER, AMERICAN BOARD OF TRIAL ADVOCATES

STEPHEN W. OWENS
E-MAIL: SOWENS@NOLENLAW.NET

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Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiff
CHARISSA W. AND NICOLE D.

FILED

MAY 24 2006

Clerk of the Napa Superior Court
By: J. Lewis
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 **NOTICE OF MOTION TO SET A TRIAL DATE** **Date:** JUNE 23, 2006 **Time:** 9:00 AM **Dept:** A **Judge: Raymond A. Guadagni** **Trial Date: None Set**

PLEASE TAKE NOTICE that on JUNE 23, 2006, 2006, at 9:00 A.m, or as soon thereafter as this matter may be heard in Department A before the Honorable Raymond A. Gudadagni of the above-entitled court, located at ~~1111~~ 825 BROWN Third Street, Napa, California

94559-3001, plaintiffs Charissa W. and Nicole D. will, and hereby does move the Court to set a trial date in the above-captioned matter.

Date: May 23, 2006

Respectfully submitted,
NOLEN & ASSOCIATES

RUDY NOLEN
Attorneys for Plaintiffs

Rudy Nolen, Esq., SBN 59808
Stephen W. Owens, SBN 84859
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Fort Worth, TX 76102-7423
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Facsimile: (817) 335-2912

Attorneys for Plaintiff
CHARISSA W. AND NICOLE D.

FILED

MAY 24 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 **MOTION TO SET A TRIAL DATE** **Date:** JUNE 23, 2006 **Time:** 9:00 AM **Dept:** A **Judge: Raymond A. Guadagni** **Trial Date: None Set**

I. BACKGROUND

On August 31, 2004, the Honorable Thomas E. Warriner, Judge of the Yolo County Superior Court, heard these Plaintiffs' Petition for Coordination of the above entitled

coordinated actions. On September 3, 2004, Judge Warriner granted Plaintiffs' motion and designated Napa as the site for the coordination proceedings. Attached as Exhibit A is the Order Granting Petition for Coordination.

The Court's finding was based upon Plaintiffs' petition which was made pursuant to California Code of Civil Procedure Section 404.1. That Section states:

> "Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice. . . ."

The Section states that the Judge is to take into account the following seven factors:

- The common question of fact or law is predominating and significant to the litigation;
- The convenience of parties, witnesses and counsel;
- The relative development of the actions and the work product of counsel;
- The efficient utilization of judicial facilities and manpower;
- The calendar of the courts;
- The disadvantages of duplicative and inconsistent rulings, orders or judgments;
- The likelihood of settlement of the actions without further litigation should coordination be denied.

The Chairman of the Judicial Council designated the Presiding Judge of the Napa Superior Court to assign this matter to a Judge to sit as Coordination Trial Judge "to hear and determine the coordinated actions listed . . . , at the site or sites he or she finds appropriate." Attached as Exhibit B is a copy of the Order assigning these matters to the Napa Presiding Judge.

Initially, the Honorable Scott Snowden was assigned to these matters, and, upon Judge Snowden's retirement, the Honorable Raymond A. Guadagni assumed his responsibilities. As the designated Coordination Judge, this Court "may exercise all the powers over each coordinated action that are available to a Judge of the Court in which

that action is pending." California Rule of Court 1540(b). By the instant motion, Plaintiffs seek to have these matters assigned trial dates and settlement conference dates.

II. TRIAL DATES

Plaintiffs request that these matters be set for trial. These matters have been pending for a considerable period of time and significant discovery has been conducted. The assignment of trial dates will aid in bringing these matters to a conclusion.

A. Settlement Negotiations

On May 8, 2006, the parties engaged in informal settlement discussions in New York City but the discussions were unsuccessful. Discussions were confined to the Ward and West/Pence matters.

B. Place and Date of Trial

The decision by Yolo County Superior Court Judge Thomas P. Warriner that the Napa County Superior Court should be designated as the site for the coordination proceedings was a decision which Judge Warriner felt to be appropriate. Plaintiffs still contend that Napa County is the appropriate Superior Court for these coordinated actions. Napa is accessible to the attorneys and litigants in these actions. In addition, the size of the court makes it more conducive to the calendaring of these matters and assignment of judges and courtrooms. If this Court is inclined to transfer the trial of these actions to another county, Plaintiffs would request that assignment be to a county which has sufficient judicial resources to accommodate an efficient and timely trial which will last anywhere from ten to fifteen days each. As stated above, Plaintiffs feel that Napa is the logical and appropriate choice. Other possible selections might include Sacramento, Sonoma or Bay Area Counties such as Marin or Alameda. At the time of the hearing on this matter, Plaintiffs will have obtained information regarding the judicial workloads and trial availability of the various counties suggested.

C. Trials to be Assigned and Potential Trial Dates

At the present time, Plaintiffs are not seeking an order that these various matters be set for a single trial nor are they seeking the impaneling of separate juries which would

hear more than one matter, but only determine a single matter. The gravamen of Defendants' opposition to Plaintiffs' motion to coordinate was the argument that there are separate facts which are applicable to each of these cases of sexual abuse and separate facts applicable to the damages sustained by the various Plaintiffs. Without conceding Defendants' argument, Plaintiffs presently seek to have the trials set separately.

At the present time, the case which is most appropriate for assignment of a trial date is *West/Pence*. Each of the three Plaintiffs had their depositions completed by defense counsel. A key witness's deposition has also been completed. The perpetrator, Timothy Silva, cannot be located and may be dead. Arrangements are under way to schedule a few remaining depositions which Plaintiffs expect will be completed in July or August. Therefore, Plaintiffs request this case be set for trial in late 2006 or early 2007.

The remaining two cases are similarly ready for trial assignment, but it is requested these cases be scheduled after trial of *West/Pence*. It is suggested that *Ward* be considered for a trial date in April 2007 and *Wimberley* in June 2007.

III. CONCLUSION

Based upon the powers vested in the Coordination Trial Judge by the California Code of Civil Procedure and California Rules of Court, it is requested that a trial date be assigned for the matter of *West/Pence*.

Respectfully submitted,

NOLEN & ASSOCIATES

RUDY NOLEN
Attorneys for Plaintiffs

EXHIBIT A

FILED
YOLO COUNTY
SUPERIOR COURT

SEP 08 2004

Kathleen Berger

By _____ Deputy

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF YOLO

The Jehovah's Witness Cases	Judicial Council Coordination Proceeding Number 4374
	ORDER GRANTING PETITION FOR COORDINATION

On August 31, 2004, the court heard the plaintiffs' petition for coordination of The Jehovah's Witness Cases, Judicial Council Coordination No. 4374. Rudy Nolen and William Brelsford, Attorneys at Law, appeared for the plaintiffs. William Bernard, Attorney at Law, appeared for individual defendant Carlos Vasquez; Crystal Calloway, Attorney at Law, appeared for individual defendant Timothy Silva; Craig Diamond, Attorney at Law, appeared for individual defendant A.W. Harriman; and Robert Schnack, Attorney at Law, appeared for Watchtower Bible and Tract Society of New York, Inc.

Good cause appearing that the coordination of the included actions is appropriate under the standards specified in Code of Civil Procedure Section 404.1, it is ordered that the petition of the plaintiffs for the coordination of the following actions is granted:

Charissa W. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 26-22191 (Napa County)

Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 26-23929 (Napa County)

Danielle A. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234140 (Sonoma County)

ORDER

Jocelyn A. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234320 (Sonoma County)

Dennis S. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 234168 (Sonoma County)

Wimberly et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52598 (Tehama County)

Tim W. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52594 (Tehama County)

West et al. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number 52594 (Yolo County)

Javier C. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number SCV16723 (Placer County)

Ken L. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number SCV16600 (Placer County)

Lisa H. v. Watchtower Bible and Tract Society of New York, Inc. et al. Case Number M68295 (Monterey County)

The Napa Superior Court is designated as the site for the coordination proceedings. The parties have stipulated that the lead case is *Charissa W. et al. v. Watchtower Bible and Tract Society of New York, Inc. et al.* Case Number 26-22191. Further, the Court of Appeal, the First Appellate District, is designated the reviewing court having appellate jurisdiction and the court in which any petition for a writ relating to any subsequent order in this proceeding shall be filed.

Dated: 9/3/04

The Honorable Thomas E. Warriner
Judge of the Superior Court
Coordination Motion Judge

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF YOLO
725 COURT STREET, #103
601 COURT STREET
WOODLAND, CA 95695

CASE TITLE: THE JEHOVAH'S WITNESS CASES

CASE NO: Judicial Council Coordination Proceeding #4374

I, the undersigned, certify under penalty of perjury that I am a Deputy Clerk of the above-entitled Court and not a party to the within-entitled action; that on 9/8/04, I served true and correct copies of the foregoing/attached by depositing the same, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Post Office at Woodland, California addressed as follows:

NOLEN, SAUL, BRELSFORD
350 UNIVERSITY AVE. #280
SACRAMENTO, CA. 95825

FIBICH, HAMPTON, LEEBRON & GARTH
FIVE HOUSTON CENTER
1401 MCKINNEY #1800
HOUSTON, TX 77010

LOVE & NORRIS
314 MAIN STREET #300
FORT WORTH, TX 76102-7423

BULLIVANT, HOUSE, BAILEY
11335 GOLD EXPRESS DR. #105
GOLD RIVER, CA. 95670-4491

DONALD GLEW
P.O. BOX 424245
SAN FRANCISCO, CA. 94142

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P.O. BOX 1147
CEDAR RIDGE, CA. 95924

WILLIAM BERNARD
1624 SANTA CLARA DR. #210
ROSEVILLE, CA. 95661

MICHAEL JANSEN
1301 COLLEGE STREET
WOODLAND, CA. 95695

THE THOMPSON LAW OFFICE
580 CALLE PRINCIPAL 1ST FLOOR
MONTEREY, CA. 93940

ALVIN HEARD
703 DELTA STREET
KLAMATH FALLS, OR 97661

JAMES HENDERSON
265 GILMORE RD. #17
RED BLUFF, CA. 96080

SUPERIOR COURT
COUNTY OF MONTEREY
P.O. BOX 751
MONTEREY, CA. 93940
(M68295)

SUPERIOR COURT
COUNTY OF PLACER
101 MAPLE STREET
AUBURN, CA. 95603
(SVC16600, SVC16723)

SUPERIOR COURT
COUNTY OF SONOMA
600 ADMINISTRATIVE DR. RM 107-J
SANTA ROSA, CA. 95403
(SCV234 320, 234 168, 234 140)

SUPERIOR COURT
COUNTY OF TEHAMA
P.O. BOX 310
RED BLUFF, CA. 96080
(52594)

SUPERIOR COURT
COUNTY OF NAPA
825 BROWN ST.
NAPA, CA. 94559
(26-22191, 26-23929)

SUPERIOR COURT
COUNTY OF YOLO
725 COURT ST. #103
WOODLAND, CA. 95695
(CV03-1439)

CHAIR, JUDICIAL
COUNCIL OF CALIF.
AOC
ATTN: APPELLATE &
TRIAL COURT JUDICIAL
SERVICES
(CIVIL COORDINATION)
455 GOLDEN GATE AVE.
SAN FRANCISCO, CA.
94102-3688

At the time of said mailing there was regular communication by United States Mail between the said place of mailing and the places addressed.

Dated: 9/8/04

JAMES B. PERRY, CLERK

By: _____
CATHLEEN L. BERGER, Deputy

EXHIBIT B

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Coordination Proceeding Special Title (Rule 1550(b))	)	
THE JEHOVAH'S WITNESS CASES	)	JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

ORDER ASSIGNING COORDINATION TRIAL JUDGE

THE PRESIDING JUDGE of the Superior Court of California, County of Napa, is hereby authorized to assign this matter to a judge of the court pursuant to Code of Civil Procedure section 404.3 and rule 1540 of the California Rules of Court to sit as coordination trial judge to hear and determine the coordinated actions listed below, at the site or sites he or she finds appropriate. Immediately upon assignment, the coordination trial judge may exercise all the powers over each coordinated action of a judge of the court in which that action is pending.

COORDINATED ACTIONS

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Napa	26-22191	Charissa W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Napa	26-23929	Tabitha H. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Monterey	M 68295	Lisa H. v. Watchtower Bible and Tract Society of New York, Inc.

COURT	NUMBER	SHORT TITLE
Superior Court of California County of Placer	SCV 16600	Ken L. v. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Placer	SCV 16723	Javier C. Watchtower Bible and Tract Society of New York, Inc.
Superior Court of California County of Sonoma	234 320	Jocelyn A. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Sonoma	SCV 234 168	Dennis S. v. Roes 1 through 100
Superior Court of California County of Sonoma	SCV 234 140	Danielle A. v. Roes 1 through 100
Superior Court of California County of Tehama	52598	Wimberley v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Tehama	52594	Tim W. v. Watchtower Bible And Tract Society of New York, Inc.
Superior Court of California County of Yolo	CV-03 1439	West v. Watchtower Bible and Tract Society of New York, Inc.

Pursuant to rule 1540, the clerk of each court in which a coordinated action is pending is directed to file this order in the coordinated action.

Pursuant to rules 1501(q) and 1540, every paper filed in a coordinated action shall be accompanied by proof of submission of a copy thereof to the coordination trial judge at the following address:

Presiding Judge of the Superior Court
of California, County of Napa
825 Brown Street
Napa, CA 94559

Pursuant to rule 1511, a copy of every paper required to be transmitted to the Chair of the Judicial Council shall be sent to the following address:

Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Petitioner is directed to serve a copy of this order on (1) all parties to the included coordinated actions, and (2) the clerk of each court for filing in each included action.

Dated: September 23, 2004

Acting Chief Justice of California
and Chair of the Judicial Council

CHAIR, JUDICIAL COUNCIL OF CALIFORNIA

PROOF OF SERVICE BY MAIL

JUDICIAL COUNCIL COORDINATION NUMBER: **4374**	CASE NUMBER:

1. I am over the age of 18 and not a party to this legal action.

2. I am employed in the City and County of San Francisco and my business address is

455 Golden Gate Avenue
San Francisco, CA 94102-3688

3. On September 23, 2004, *I* served a copy of the following documents:

	ORDER ASSIGNING COORDINATION MOTION JUDGE
X	ORDER ASSIGNING COORDINATION TRIAL JUDGE
	ORDER ASSIGNING COORDINATION MOTION JUDGE AND SETTING DATE FOR HEARING
	AMENDED ORDER ASSIGNING COORDINATION MOTION JUDGE
	AMENDED ORDER ASSIGNING COORDINATION TRIAL JUDGE
	OTHER

on the interested parties listed on the attached mailing list by placing a true copy enclosed in a sealed envelope with postage fully prepaid in the outgoing mailbox in my office, in accordance with ordinary business practices for deposit with the United States Postal Service in San Francisco, California. I am readily familiar with my office's business practice for collection of and processing of correspondence for mailing, and under that practice the above document is being deposited with the United States Postal Service this date in San Francisco, California, in the ordinary course of business.

4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 23, 2004

Carlotta Tillman

MAILING LIST

JUDICIAL COUNCIL COORDINATION PROCEEDING NO. 4374

Mr. Rudy Nolen
Mr. Jonathan Saul
Mr. William L. Brelsford
NOLEN SAUL BRELSFORD
350 University Avenue, Suite 280
Sacramento, CA 95825

Mr. Kenneth Fibich
Mr. Artley Hampton
FIBICH, HAMPTON, LEEBRON & GARTH, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Mr. Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** May 24, 2006 **Clerk:** D. Coffelt **Reporter:** Cynthia Lomeli, #6474 **Cite/Report #:**

Appearances:
Rudy Nolen, Attorney for Plaintiffs, Charissa W. and Nicole D.
Robert J. Schnack, Attorney for Defendants, Watchtower Bible, Tract Society of New York Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc.

This matter comes before the Court at this time for Case Management Conference.

After colloquy with counsel the Court continues the matter as set forth below.

Further, the Court set the following briefing schedule for Plaintiff's Motion to Set Trial Date filed today and set for June 23, 2006, as Napa County is the site for the coordination proceedings.

A response to the motion shall be filed by June 7, 2006 and any reply by June 14, 2006.

Continuance:
June 23, 2006 at 9:00 a.m. in Courtroom A for Conference: Case Management
Time estimate 3 hours

Robert J. Schnack, Attorney for Defendants shall send notice.

-oOo-

ORIGINAL

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

MAY 31 2006

Clerk of the Napa Superior Court
By: J. Oliver Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

NOTICE RE MOTION TO SET TRIAL DATES AND FURTHER CASE MANAGEMENT CONFERENCE

Hearing Date: June 23, 2006
Time: 9:00 am
Dept: Judge Raymond A. Guadagni

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that on May 24, 2006, plaintiffs filed a motion to set trial dates. All responses or opposition briefs shall be filed with the Court by 5:00 PM on June 7, 2006, and plaintiffs' reply, if any, shall be filed with the Court by 5:00 PM on June 14, 2006. The hearing on said motion is scheduled for June 23, 2006 at 9:00 AM before the Honorable Raymond A. Guadagni. A further case management conference will be conducted immediately after and/or in conjunction with the motion hearing.

///

///

RECEIVED
MAY 30 2006
Napa Superior Court

DATED: May 25, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

4215642.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE: MOTION TO SET TRIAL DATES AND FURTHER CASE MANAGEMENT CONFERENCE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

xx____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on May 25, 2006, at ~~Gold River~~ Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	**Attorneys for defendant Harriman** Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Defendant In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	**Defendant in pro per** Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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                    ******************************
                    ***   MULTI TX/RX REPORT   ***
                    ******************************

TX/RX NO                3031
PGS.                      5
TX/RX INCOMPLETE        (3)   918173352915#
TRANSACTION OK          (1)   *#2279#23491#00005#917137510030#
                        (2)   915419222011#
                        (4)   97330601#
ERROR INFORMATION       -----
```

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From:	Robert J. Schnack	**Date:**	May 25, 2006
C/M #:	23491/00005	**Reference:**	Charissa W. v. Watchtower et al (Consolidated Cases)

Number of pages being transmitted including the cover page: 5

		Fax No.	Telephone No.
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	Hartley Hampton Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 751-0025
	Alvin Heard Two Rivers Correctional Institution	(541) 922-2011	(541) 922-2001
	Gregory S. Love Love & Norris	(817) 335-2912	(817) 335-2800
	Rudy Nolen Nolen & Associates	(916) 733-0601	(916) 733-0600

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	(6)	97330601#
TRANSACTION OK	(1)	*#2279#23491#00005#97897557#
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ERROR INFORMATION	-----	

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From: Robert J. Schnack **Date:** May 25, 2006

C/M #: 23491/00005 **Reference:** Charissa W. v. Watchtower et al (Consolidated Cases)

Number of pages being transmitted including the cover page: 5

		Fax No.	Telephone No.
To:	William E. Bernard	(916) 789-7557	(916) 789-2266
	Craig Diamond Diamond, Baker, Phillips & Walters LLP	(530) 272-8463	(530) 272-9977
	Hartley Hampton Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 751-0025
	Alvin Heard Two Rivers Correctional Institution	(541) 922-2011	(541) 922-2001
	Gregory S. Love Love & Norris	(817) 335-2912	(817) 335-2800
	Rudy Nolen Nolen & Associates	(916) 733-0601	(916) 733-0600

Please call fax operator at (916) 930-2501 if all pages are not received.

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Attorneys for The Church Defendants

FILED
JUN 07 2006
Clerk of the Napa Superior Court
By: M Jan
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

CHURCH DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO SET TRIAL DATES

Date of Hearing: June 23, 2006
Time: 9:00 am
Dept: The Hon. Raymond Guadagni

The Church Defendants respectfully submit this response to plaintiffs' motion to set trial dates.

I. INTRODUCTION

Plaintiffs' motion to set trial dates is flawed in a few respects. First, contrary to the apparent position taken in plaintiffs' motion, the Court should *not* abandon the current "track approach" or "track system" that plaintiffs' counsel so strenuously had advocated be adopted in these coordinated cases. Indeed, as the chronology set forth in the next section (and the concurrently filed declaration of defense counsel) details, at plaintiff's urging Judge Snowden formally adopted a "track approach" to managing these cases. With plaintiffs' counsel's express

consent, two of the coordinated cases were ultimately designated as "Track I" cases. Those two "Track I" coordinated cases -- the Tehama County cases of *Tim W. v. Watchtower Bible and Tract Society of New York, et al.*, and *Julianne Wimberley Gutierrez, et al v. Watchtower Bible and Tract Society of New York, et al.* -- were the only cases that were to move forward with full discovery and depositions.

Discovery and depositions in the Track I cases have moved forward, and the Church Defendants do *not* object to trial dates being set *in Tehama County* for the two Track I cases, *provided* such trial dates allow for (i) the completion of depositions and discovery both sides will request, (ii) any IME's required by the defense, (iii) adequate time for summary judgment and summary adjudication motions to be filed and heard by the Court, (iv) adequate time for expert discovery, etc.

Second, the Court should *not* abandon the track approach and thereby allow all of the remaining coordinated cases to proceed with full discovery and depositions. The so-called "non-Track I" cases were originally filed in a number of different counties. Thus, different congregations and different local elders, as well as different local percipient or fact witnesses, will be involved in depositions in each non-Track I case. (Each non-Track I case also involves different congregations, local elders, and local percipient witnesses than the two Track I cases.) Each case has its own particular facts that will govern discovery and depositions, including the alleged facts and circumstances relating to each plaintiff's alleged abuse and the facts that each plaintiff will claim supports the liability claimed against the local congregation defendant in each case and against Watchtower New York. There simply are not any facts that predominate in the coordinated cases to suggest that discovery can somehow be streamlined by allowing full discovery in all cases to proceed now.

Significantly, allowing full discovery and depositions to proceed in all of the non-Track I cases alongside the Track I cases would only serve to greatly slow the process of these coordinated cases overall, thereby resulting in extensive delays in getting even the Track I cases ready for trial. Thus, the Court would be acting prematurely in setting *any* trial dates in the non-Track I cases, much less allowing those cases to proceed with full discovery and depositions.

Third, the Church Defendants object to having *any* of the coordinated cases tried in a venue other than the county in which each case was originally filed. Thus, for example, the two Track I cases should be tried in Tehama County; the *Ken L.* case should be tried in Placer County; the *Charissa W., et al* case and the *Tabitha H.* case should each be tried in Napa County; the *Daniel West, et al* case should be tried in Yolo County, etc.

II. DISCUSSION

Chronology regarding the Court's adoption of the "track approach" and the selection of "Track I" cases. Initially, the Church Defendants believe it is imperative that this Court (The Honorable Raymond Guadagni) have a full understanding of the history of these cases. (Due to Judge Snowden's retirement from the bench last August, this Court did not become involved in these cases until late August 2005.) Therefore, we provide as concise an overview as possible of events leading up to the adoption by Judge Snowden of the "track approach," supported by the declaration of defense counsel Robert J. Schnack.

These cases were ordered coordinated after plaintiffs filed a petition for coordination, and the Napa County Superior Court was designated as the court to oversee the cases. Judge Snowden thus became the Judge initially charged with oversight of these cases. At that time, there were 11 cases.

One of plaintiffs' Texas attorneys, Gregory Love, first advocated to Judge Snowden in an October 18, 2004 hearing that a "track approach" should be adopted to manage these coordinated cases. (That hearing was held to address case management issues, including the extent of coordination and related issues. At the hearing, Judge Snowden ordered all discovery stayed.) At a subsequent hearing on December 9, 2004, Judge Snowden informed counsel that a "track approach" or "track system" would be adopted by the Court, and Judge Snowden further ordered that all discovery and other proceedings in the coordinated cases be further stayed until a January 7, 2005 hearing. Judge Snowden advised all counsel that at the January 7th hearing, he expected the parties would each select two cases to be so-called "Track I" cases because there were then 10 remaining coordinated cases.

///

At the January 7, 2005 hearing, plaintiffs' counsel selected the Napa County case of *Charissa W.* and the Tehama County case of *Tim W.* as their Track I cases. On behalf of the Church Defendants, defense counsel selected the Sonoma County cases of *Jocelyn A.* and *Dennis S.* as Track I cases. Plaintiffs' counsel then immediately advised Judge Snowden that they expected to dismiss those two Sonoma County cases once they received signed authorizations from all of the named plaintiffs in those cases. The court then directed counsel for the Church Defendants to designate a further Track I selection, and the Sonoma County case of *Danielle A.* was designated as a Track I case, in the event that one of the other Sonoma County cases was going to be dismissed by plaintiffs. After further discussions with the Court that day, Judge Snowden set a further hearing for the morning of January 28, 2005, by which time plaintiffs' counsel were to either have those three Sonoma County cases dismissed or have directed the plaintiffs in those cases to personally appear at the January 28th hearing to discuss with the Court whether they would indeed pursue their cases. Judge Snowden also advised all counsel that that if the three Sonoma County cases were dismissed, he would consider whether it made sense to have only *two* Track I cases instead of four, *i.e.*, having plaintiffs and the Church Defendants each select only one Track I case. (The new hearing date was later changed to February 4, 2006.)

Also at the January 7th hearing, Judge Snowden lifted the stay with respect to the further discovery requested by plaintiffs from defendant Watch Tower Pennsylvania with regard to the personal jurisdiction issue. (Recall that Watch Tower Pennsylvania had filed motions to quash service in each of the cases, challenging whether Watch Tower Pennsylvania was subject to personal jurisdiction in California.) The Court gave plaintiffs' counsel leave to then file a motion to compel discovery from Watch Tower Pennsylvania based on certain objections raised by Watch Tower Pennsylvania in its written discovery responses and at the August 2004 deposition of Watch Tower Pennsylvania's "PMK" on personal jurisdiction issues. The Court also discussed with counsel the procedures that would best facilitate resolution of the Church Defendants' pending demurrers and motions to strike certain allegations from each of the complaints in the various coordinated cases.

At the next hearing on February 4th, plaintiffs' counsel advised the Court that they would file dismissals early the following week as to six of the seven plaintiffs in two of cases that had been filed in Sonoma County. Thus the *Jocelyn A.* case was later dismissed in its entirety, and the *Dennis S.* case was dismissed as to all named plaintiffs expect plaintiff Fred F. With respect to plaintiff Fred F., as well as with respect to the only named plaintiff in the *Danielle A.* case, which also is a Sonoma County case, plaintiffs' counsel advised the court that they would file motions to withdraw as counsel for Fred F. and Danielle A. (Those motions were later filed by plaintiffs' counsel, and the Court granted the motion.)

Then, still at the February 4th hearing, and because only seven coordinated cases would remain, Judge Snowden ordered, with the consent of plaintiffs' counsel and the Church Defendants' counsel, that there should be only two "Track I" cases, one selected by plaintiffs and one selected by the Church Defendants. Plaintiffs selected the *Tim W.* case from Tehama County, and the Church Defendants selected the *Julianne Wimberley Gutierrez, et al* case, also from Tehama County. At the same hearing, Judge Snowden set a schedule for certain discovery, for hearing the Church Defendants' demurrers and pleading motions and for plaintiffs' discovery motions concerning Watch Tower Pennsylvania, etc. A hearing date was set for August 22, 2005. However, because of Judge Snowden's retirement from the bench in August, Judge Gaudagni began his oversight of these coordinated cases at that August 22nd hearing.

Plaintiffs apparently will contend that because "only six" coordinated cases remain, the "track approach" has no value in managing these cases. The Court should not be misled by plaintiffs' argument because, as noted, there were just *seven* coordinated cases remaining when the track approach was implemented and the two Track I cases were selected by the parties. (The cases now number six, because plaintiffs' counsel recently dismissed with prejudice the *Javier C.* case because plaintiff Javier C. died in February 2005.) The fact that six, rather than seven, cases remain does not warrant or justify abandonment of the track approach earlier proposed by plaintiffs' counsel and adopted by the Court.

///

Overview of discovery and depositions in the Track I cases and setting of trial dates. In the two Track I cases selected by the parties (*Tim W.* and *Wimberley*), there has been extensive written discovery exchanged, and the Court has already ruled on a discovery motion related to the written discovery. Numerous depositions have also been taken, as follows. Depositions of the three Track I plaintiffs were taken in Sacramento (Tim W. and Julianne Wimberley Gutierrez) and in Westlake Village in Ventura County (Joshua Wimberley). Depositions of the two individual defendants, James Henderson and Alvin Heard (who are both *in pro per* defendants), were taken in Redding and in eastern Oregon, respectively. The ex-wife of defendant Alvin Heard (Hazel Heard Faulkner) was deposed in Chico. The mother and stepfather of the *Wimberley* plaintiffs (Carol Badger and James Badger) were deposed in Westlake Village. Depositions of two of the *Wimberley* plaintiffs' alleged "notice" witnesses (Dellean Heard and JoAnn Heard Loffler) were taken in Daytona Beach, Florida. And two representatives of defendant Watchtower New York were deposed in Brooklyn, New York. Thus, substantial progress had been made to date in discovery and depositions and, as this Court is aware, both sides made good faith efforts over the last six months to get the cases ready for recent resolution discussions that proved unsuccessful.

Going forward, both sides have indicated they will send out additional written discovery and notice additional depositions. Plaintiffs' counsel will request depositions of elders who were in the defendant Red Bluff congregation during the relevant time periods and of various "persons most knowledgeable" in defendant Watchtower New York and the defendant congregation, as well as other persons. The Church Defendants will take further depositions of family members of the Track I plaintiffs, other alleged "notice" witnesses to be identified by plaintiffs, and perhaps other persons. The Church Defendants anticipate a possible IME of one or more of the Track I plaintiffs. There will be expert discovery and expert depositions. The Church Defendants also anticipate filing motions for summary adjudication in both Track I cases, as well as possible motions for summary judgment in the *Wimberley* case.

Given the discovery and depositions outlined above and the current Code of Civil Procedure rules creating the long lead time for summary judgment and summary adjudication

motions, the Church Defendants propose that the Court set a trial date for the two Track I cases in the April - May 2007 time frame.

The venue for trials should be in the county in which each case originated. The Track I cases both arose out of alleged abuse that occurred in Tehama County, and plaintiffs filed the two lawsuits there. The convenience of witnesses, particularly the many non-party witnesses, heavily favors conducting the trials in Tehama County.

The plaintiffs lived in the Red Bluff area with their families when the alleged abuse occurred. The Red Bluff congregation is a party defendant in each Track I case, and current and former elders from that congregation will undoubtedly be called as witnesses at the trials of these two cases. Defendant *in pro per* James Henderson lives in Red Bluff and will undoubtedly be called to testify at trial in the *Tim W.* case. Defendant Henderson appears to be of limited financial means, so a trial outside of Tehama County would very likely cause undue financial and other hardship for him. Therapists seen by plaintiff Tim W. and plaintiff Julianne Wimberley Gutierrez still live and practice in the Red Bluff/Redding areas. Hazel Heard Faulkner lives and works in the Chico area. Thus, the convenience of the witnesses, including many non-party witnesses, weighs heavily in favor of having the trials of the Track I cases held in Tehama County.

Plaintiffs have *not* submitted any evidence to this Court that an impartial trial cannot be held in Tehama County (or in any county in which any of the coordinated cases were originally filed). Indeed, plaintiffs do not make *any* arguments to this Court that the ends of justice require a trial in some location other than the county in which each case originated, that the convenience of witnesses would be promoted by holding trials in some venue other than the county of origin, or that Tehama County is not the proper court in which these Track I cases should be tried. Plaintiffs' counsel do not appear to appreciate that the logistics of a trial held outside the county of origin will cause undue financial and other hardship for all local non-party witnesses. The Track I cases should be tried in Tehama County, and the other cases should later be tried in the counties in which they each were filed.

///

The *Daniel West, et al* case should not be the first case tried. Plaintiffs disingenuously suggest that the Yolo County case of *Daniel West, et al* (hereafter *West/Pence*") is "the most appropriate" of the coordinated cases for assignment of a trial date. Although the three plaintiffs and an alleged "notice" witness have been deposed, no other depositions have been taken. (The parties agreed late last year to proceed with the plaintiffs' depositions in the *West/Pence* case to try and facilitate resolution discussions. The deposition of the alleged "notice" witness was taken in Portland, Oregon only because counsel were already scheduled to be in Oregon for the Alvin Heard deposition, and the alleged "notice" witness now resides in the Portland area.)

Significantly, however, no other depositions have been taken, unlike in the two Track I cases discussed above. In addition, plaintiffs have not even requested documents from the Church Defendants relating to the alleged abuser, Timothy Silva, nor have plaintiffs yet pursued other discovery like they already have in the Track I cases. Although Timothy Silva has allegedly disappeared, the Church Defendants have reason to believe he may be located, and Mr. Silva will certainly be deposed if located. Also, Mr. Silva's family members with whom he lived for a time in Woodland have not yet been deposed, and numerous other local percipient or fact witnesses have not been deposed, including a number of elders plaintiffs now wish to depose.

For all of these reasons, the *West/Pence* case is not "as far along" as the Track I cases, and the Track I cases selected by the parties should be the first cases scheduled for trials. Plaintiffs' suggestion that *West/Pence* be the first case set for trial should be denied.

III. CONCLUSION

For each of the independent reasons discussed above, the Court should (i) continue with the track approach (that plaintiffs' counsel urged be adopted) to managing these cases, (ii) allow the two Track I cases earlier selected by the parties to proceed with further discovery and depositions so that they are ready for trials by the April – May 2007 time frame, (iii) order that the trials of the Track I cases be held in Tehama County, their county of origin, (iv) not allow the non-Track I cases to proceed with full discovery and depositions, because that will only slow the progress of the Track I cases toward trial, and (v) order that trials of the non-Track I

cases also be conducted in their counties of origin.

DATED: June 7, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, ET AL

4216171.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' RESPONSE TO MOTION TO SET TRIAL DATES AND FURTHER CASE MANAGEMENT CONFERENCE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

_xxx___ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on June 7, 2006, at Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814 Fax: 916-443-2124
Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	Defendant in pro per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for The Church Defendants

FILED
JUN 07 2006
Clerk of the Napa Superior Court
By: Mtan
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF CHURCH DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO SET TRIAL DATES

Date of Hearing: June 23, 2006
Time: 9:00 am
Dept: The Hon. Raymond Guadagnie

I, ROBERT J. SCHNACK, do declare as follows:

1. I am a shareholder of the law firm of Bullivant Houser Bailey, PC, 1415 L Street, Suite 1000, Sacramento, California 95814. I am licensed to practice law in California and Oregon. I am one of the attorneys of record for the Church Defendants in these coordinated actions. I make the following statements upon personal knowledge.

2. These cases were ordered coordinated after plaintiffs filed a petition for coordination, and the Napa County Superior Court was designated as the court to oversee the coordinated cases. Judge Snowden thus became the Judge initially charged with oversight of these cases.

3. One of plaintiffs' Texas attorneys, Gregory Love, first advocated to Judge Snowden in an October 18, 2004 hearing that a "track approach" should be adopted to manage these coordinated cases. (That hearing was held to address case management issues, including the extent of coordination. At the hearing, Judge Snowden ordered all discovery stayed.) At a subsequent hearing on December 9, 2004, Judge Snowden informed counsel that a track approach or track system would be adopted, and Judge Snowden further ordered that all discovery and other proceedings in the coordinated cases be stayed until a January 7, 2005 hearing. Judge Snowden advised counsel that at the January 7th hearing, he expected the parties would each select two cases to be so-called "Track I" cases, because there were then 10 remaining coordinated cases.

4. At the January 7, 2005 hearing, plaintiffs' counsel selected the Napa County case of *Charissa W.* and the Tehama County case of *Tim W.* as their Track I cases. On behalf of the Church Defendants, I selected the Sonoma County cases of *Jocelyn A.* and *Dennis S.* as Track I cases. Plaintiffs' counsel then immediately advised Judge Snowden that they expected to dismiss those two Sonoma County cases once they received signed authorizations from all of the named plaintiffs. The court then directed me, counsel for the Church Defendants, to designate a further Track I selection, and the Sonoma County case of *Danielle A.* was designated as a Track I case, in the event that one of the other Sonoma County cases was going to be dismissed by plaintiffs. After further discussions with the Court that day, Judge Snowden set a further hearing for the morning of January 28, 2005, by which time plaintiffs' counsel were to either have those three Sonoma County cases dismissed or have directed the plaintiffs in those cases to personally appear at the January 28th hearing to discuss with the Court whether they would indeed pursue their cases. Judge Snowden also advised all counsel that that if the three Sonoma County cases were dismissed, he would consider whether it made sense to have only *two* Track I cases instead of four, *i.e.*, having plaintiffs and the Church Defendants each select only one Track I case. (The new hearing date was later changed to February 4, 2006.)

5. At the January 7th hearing, Judge Snowden also lifted the stay with respect to the further discovery requested by plaintiffs from Watch Tower Pennsylvania with regard to the

personal jurisdiction issue. (Recall that Watch Tower Pennsylvania had filed motions to quash service in each of the cases, challenging whether Watch Tower Pennsylvania was subject to personal jurisdiction in California.) The Court gave plaintiffs' counsel leave to then file a motion to compel discovery from Watch Tower Pennsylvania based on certain objections raised by Watch Tower Pennsylvania in its written discovery responses and at the August 2004 deposition of Watch Tower Pennsylvania's "PMK" on personal jurisdiction issues. The Court also discussed with counsel the procedures that would best facilitate resolution of the Church Defendants' pending demurrers and motions to strike certain allegations from each of the complaints in the various coordinated cases.

6. At the next hearing on February 4th, plaintiffs' counsel advised the Court that they would file dismissals early the following week as to six of the seven plaintiffs in two of cases that had been filed in Sonoma County. Thus the *Jocelyn A.* case was later dismissed in its entirety, and the *Dennis S.* case was dismissed as to all named plaintiffs expect plaintiff Fred F. With respect to plaintiff Fred F., as well as with respect to the only named plaintiff in the *Danielle A.* case, which also is a Sonoma County case, plaintiffs' counsel advised the court that they would file motions to withdraw as counsel for Fred F. and Danielle A. (Those motions were later filed by plaintiffs' counsel and granted by the Court.)

7. Then, still at the February 4th hearing, and because only seven coordinated cases would remain, Judge Snowden ordered, with the parties' consent, that there should be only two "Track I" cases, one selected by plaintiffs and one selected by the Church Defendants. Plaintiffs selected the *Tim W.* case from Tehama County, and the Church Defendants selected the *Julianne Wimberley Gutierrez, et al* case, also from Tehama County. At the same hearing, Judge Snowden set a schedule for certain discovery, for hearing the Church Defendants' demurrers and pleading motions and for plaintiffs' discovery motions concerning Watch Tower Pennsylvania, etc. A hearing date was set for August 22, 2005. However, because of Judge Snowden's retirement from the bench in August, Judge Gaudagni began his oversight of these coordinated cases at that August 22nd hearing.

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8. Plaintiffs apparently will contend that because "only six" coordinated cases remain, the "track approach" has no value in managing these cases. However, as noted above , there were just *seven* coordinated cases remaining when the track approach was implemented by Judge Snowden and the two Track I cases were selected by the parties. (The cases now number six, because plaintiffs' counsel recently dismissed the *Javier C.* case because plaintiff Javier C. died in February 2005.) The fact that six, rather than seven, cases remain does not warrant or justify abandonment of the track approach earlier proposed by plaintiffs' counsel and adopted by the Court.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on June 7, 2006, in Sacramento, California.

By _____
Robert J. Schnack

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF CHURCH DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO SET TRIAL DATES

in the following manner, by placing a true copy(ics) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

__xxxx (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on June 7, 2006, at Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for defendant Harriman Craig Diamond Diamond, Baker, Phillips & Walters LLP PO Box 1147 Cedar Ridge, CA 95924 Fax: 530-272-8463
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
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Attorneys for Defendant Carlos Vasquez William E. Bernard 1624 Santa Clara Dr., #210 Roseville, CA 95661 Fax: 916-789-7557	Defendant in pro per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882 (mail)

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Attorneys for Plaintiffs

FILED
JUN 19 2006
Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 *Judicial Council Coordination* Proceeding No. 4374 **REPLY TO DEFENDANTS RESPONSE TO PLAINTIFFS MOTION TO SET TRIAL DATES** Date: June 23, 2006 Time: 9:00 a.m. Dept.: A Trial Date: None

Plaintiffs take this opportunity to briefly reply to Defendants Response to Plaintiffs Motion to Set Trial Dates.

I

REQUEST TO SET TRIAL DATES

As set forth in Plaintiffs' Motion, as the designated Coordination Judge, this Court

RECEIVED
JUN 16 2006
NAPA SUPERIOR COURT

has the power to set trial dates and also has the power to make any other appropriate orders concerning these matters as the Court sees fit. California Rule of Court 1540 (b). Defendants' Response consists of eight (8) pages arguing that an earlier agreed upon "Track" approach should be followed. Defendants, without citing any legal authority, then request that this Court order that the Track 1 cases proceed with discovery and then be sent back to Tehama County for trial. The Defendants further request that the non-Track 1 cases not be allowed to proceed with discovery and request that non-Track 1 cases also be sent to their original counties. Defendants cite no legal authority which would support their request. This Court should proceed as requested by Plaintiffs in their Motion to Set Trial Dates and should set the matters for trial before this Court.

II

PRIOR ORDERS

Defendants Response references prior "orders" by Judge Snowden at a February 4, 2005 hearing (See Declaration of Robert L. Schnack at paragraph 7.) However, Plaintiffs' counsel are unable to find any formal orders which were made by any Judges regarding case management of these cases. After conferring with the Napa Superior Court Clerks, Plaintiffs' are aware that there is a Minute Order discussing the Court's execution of an Order after the February 4, 2005 Case Management Conference. It is believed that this is referencing a Joint Status Report which was faxed between counsel for Plaintiffs' and counsel for Defendants'. However, Plaintiffs' are unable to locate any final draft of this document and are unaware that any such document was ever filed. Plaintiffs' files do not contain any orders which have been made by any prior Courts concerning the case management of this matter.

Even assuming there had been prior discussions or agreements concerning discovery and trials of the various cases, there is nothing to prevent this Court from changing any earlier agreed upon methods of bringing these matters to trial. As set forth in Plaintiffs' Motion, the *West/Pence* case is most appropriate for assignment of a trial

date. The *Ward and Wimberley* cases would be most appropriately set after the *West/Pence* matter.

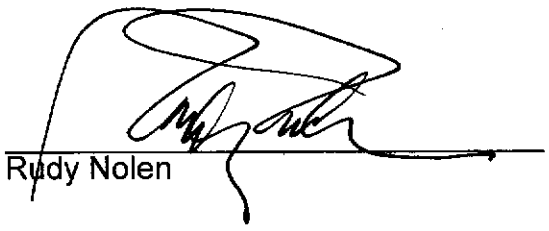
III

VENUE OF TRIALS

This Court has the power to set these matters for trial in whichever County is deemed appropriate by this Court. Attached is the Declaration of Cynthia Austin-Walters regarding the various counties trial setting schedules. It is hoped that this information can be supplemented prior to the hearing on this matter. As can be seen, short of hiring a Judge and renting a courtroom facility, it is unlikely that a date certain can be obtained for the trial of these matters if they are assigned back to their original counties. This is precisely why this Court has been appointed as the Coordination Court for this series of cases from numerous counties. The most efficient utilization of judicial facilities and manpower can best be met if these matters are assigned to trial in Napa County before this Court.

Respectfully submitted,

NOLAN & ASSOCIATES



Rudy Nolen

Rudy Nolen, Esq., SBN 59808
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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF CYNTHIA AUSTIN-WALTERS IN SUPPORT OF PLAINTIFFS REPLY** Date: June 23, 2006 Time: 9:00 a.m. Dept.: A Trial Date: None

I, Cynthia Austin-Walters, hereby declare:

I am employed by the law firm of Nolen & Associates. I was instructed to contact the County Clerk's of the below listed counties and request information as to a) trial dates, b) courtroom availability, c) possibility of a 12-15 day trial in that specific county.

1. On June 9, 2006 I contacted the following court clerks requesting this information. I received the following responses:

2. Tehama County Clerk - Renee (530) 527-3484 - Matter first goes to a Case Management Conference. She suggested that all the attorneys coordinate and obtain available dates so that we have several dates to submit for trial. Trial has to be scheduled within 90 days of the setting date. She cannot guarantee a courtroom. Did suggest perhaps hiring a Judge (Tehama had a six-week trial in which a Judge from JAMS was hired and the trial was held on Wednesday, Thursday and Friday in their Juvenile Justice Center).

3. Placer County Clerk - (530) 889-6530 - The Watchtower cases she has have all been dismissed. Submit request for trial dates on any Monday after the lst week in July. Do not schedule trial for September 4 or October 9 weeks as those Mondays are holidays. Likelihood of being sent out is uncertain.

4. Sacramento County Clerk - (916) 874-5446 - Setting trials in September, likelihood of going out unknown until trial date gets closer. Did not seem to feel that a 12-15 day trial was a problem.

5. Sonoma County Clerk - (707) 565-1100 - Could not get through to clerk.

6. Yolo County Clerk - (530) 406-6704 - Could not get through to clerk.

7. Napa County Clerk - (707) 299-1130 - Left message for Margie Fair - no return call as of today's date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 14, 2006

Cynthia Austin-Walters

CASE NAME: West, et al. v. Watchtower Bible Tract and Society of New York, Inc., et al.
COURT: Yolo County Superior Court
CASE NO.: 031439

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On June 15, 2006, I caused the within **REPLY TO DEFENDANTS RESPONSE TO PLAINTIFFS MOTION TO SET TRIAL DATES**, the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** –I am readily familiar with the Nolen & Associates practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).

XX **FACSIMILE** – On June 14, 2006, at 17:55 p.m. by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Fax: (916) 852-5777

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on June 15, 2006, at Sacramento, California.

Cindy Walters

Bullivant | Houser | Bailey PC
Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
Direct Dial: (916) 930-2563
E-mail: bob.schnack@bullivant.com

FILED
JUN 21 2006
Clerk of the Napa Superior Court
By: Deputy

June 21, 2006

Via Facsimile and U.S. Mail

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Sacramento, CA 95814

Re: *Charissa W. et al v. Watchtower Bible and Track Society, et al*
Napa County Superior Court Case No. 26-22191
and Coordinated Cases under JCCP No. 4374

Dear Counsel:

This letter is to confirm that the Motion to Set Trial previously scheduled for June 23, 2006 has been reset to July 26, 2006, to be heard at 9:30 a.m. in Department A.

Very truly yours,

Robert J. Schnack

RJS:js

cc: Clerk of the Court (Attention: Sora O'Doherty)
Alvin Heard
James Henderson

4218339.1

Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From: Robert J. Schnack **Date:** June 21, 2006

C/M #: 23491/00005 **Reference:** Charissa W. v. Watchtower

Number of pages being transmitted including the cover page: ____

		Fax No.	Telephone No.
To:	Rudy Nolen Nolen & Associates	(916) 733-0601	(916) 733-0600
	Hartley Hampton Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 751-0025
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Attorneys for The Church Defendants

FILED
JUL 18 2006
Clerk of the Napa Superior Court
By: [illegible]
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 Judicial Council Coordination Proceeding no. 4374 **NOTICE OF STAY UNDER C.C.P. § 916(A) OF ORDER BY NAPA COUNTY SUPERIOR COURT DATED SEPTEMBER 29, 2005** Trial Date: Not yet set
AND COORDINATED CASES	

TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 17, 2006, defendants WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC and NORTH CONGREGATION OF JEHOVAH'S WITNESSES OF RED BLUFF, CALIFORNIA filed its Petition for Review with the California Supreme Court regarding the trial court's Ruling on Submitted Motion to Compel Documents, dated September 29, 2005 (endorsed cover page attached as Exhibit A). Pursuant to this filing, the trial court's order compelling production of documents is automatically stayed pending the California Supreme Court's ruling on defendants' petition. (Code Civ. Proc § 916(a).)

RECEIVED
JUL 17 2006
Napa Superior Court

///

///

DATED: July 17, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Tiffany L. King
Attorneys for the Church Defendants

4220442.1

*****

EXHIBIT A

COPY

SUPREME COURT
FILED
JUL 17 2006
Frederick K. Ohlrich Clerk
Deputy

No. _____

SUPREME COURT OF CALIFORNIA

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CALIFORNIA,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA
Respondent.

TIM W., JULIANNE WIMBERLEY GUTIERREZ AND JOSHUA WIMBERLEY
Real Parties In Interest

Judicial Council Coordination Proceeding No. 4374
Coordinated With Napa County Superior Court Case No. 26-22191 (Lead Case)
Court of Appeal of the State of California First Appellate District, Division Three, No. A114329

PETITION FOR REVIEW

From the Order of the Napa Superior Court Granting Real Parties in Interest's Motion to Compel Production of Documents (September 29, 2005)
The Honorable Raymond A. Guadagni, Judge

Robert J. Schnack, SBN 191987
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PROOF OF SERVICE

Napa County Superior Court Case No.: 26-22191 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF STAY UNDER C.C.P. § 916(A)OF ORDER BY NAPA COUNTY *SUPERIOR COURT DATED SEPTEMBER 29, 2005*

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

_____ **(BY MAIL)** *I caused such envelope(s)* ***NOTED ABOVE*** *with First Class postage thereon fully prepaid to* be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the United States Postal Service, and that practice is that said material is deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

_____ **(BY PERSONAL SERVICE)** I caused such envelope(s) **NOTED ABOVE** to be hand-delivered by an authorized attorney messenger service, this date to the offices of the addressee(s).

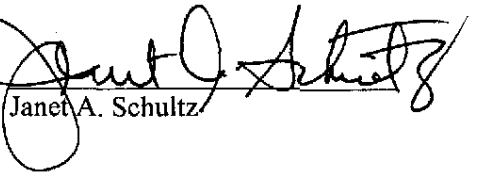
__xx__ **(BY FEDERAL EXPRESS)** I caused such envelope(s) to be delivered in a sealed Federal Express package, delivery fees for which are billed to this firm's account, to a Federal Express office for next-morning delivery. I am readily familiar with the business practices of my employer for the collection and processing of correspondence for mailing with Federal Express delivery service.

_____ **(BY FACSIMILE)** I personally transmitted the aforementioned document, via facsimile machine, to each of the above listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____, and received verification thereafter of each complete transmission. A copy of that report, which was properly issued by the transmitting machine, is attached hereto.

_____ **BY EMAIL – ESERVICE** I caused to be served upon each party via (1) their above email address; (2) *through Lexis-Nexis Serve and File, or (3) through the court's electronic court filing system.*

[xx] **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. Executed on July 17, 2006, at Sacramento, California.

By 
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 **Houston, TX 77010** Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
In Pro Per James Henderson 25 Gilmore Rd., #17 Red Bluff, CA 96080	Defendant in pro per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

6/28/06

No. _____

Court of Appeal
of the
State of California
First Appellate District, Division _____

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK and NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CALIFORNIA,
Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA
Respondent.

TIM W., JULIANNE WIMBERLEY GUTIERREZ AND JOSHUA WIMBERLEY
Real Parties In Interest

Judicial Council Coordination Proceeding No. 4374
Coordinated With Napa County Superior Court Case No. 26-22191 (Lead Case)

PETITION FOR WRIT OF MANDATE; VERIFICATION OF ROBERT J. SCHNACK AND MEMORANDUM OF POINTS AND AUTHORITIES

From the Order of the Napa Superior Court Granting Real Parties in Interest's Motion to Compel Production of Documents (September 29, 2005)
The Honorable Raymond A. Guadagni, Judge

Robert J. Schnack, SBN 191987
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PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER APPROPRIATE RELIEF

AUTHENTICITY OF EXHIBITS

1. All exhibits accompanying this petition are true copies of original documents on file with respondent court, except for the following: Exhibit E, which are true copies of the privilege logs furnished by the Church Defendants to plaintiffs. Exhibit J, which is a true copy of the original reporter's transcript of the hearing on August 31, 2005 on plaintiffs' Motion to Compel. Exhibit L which are true copies of the non-binding case law cited in the Memorandum of Points and Authorities, filed concurrently herewith. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively from page 1 through page 458 and page references in this petition are to the consecutive pagination.

BENEFICIAL INTEREST OF PETITIONERS; CAPACITIES OF RESPONDENT AND REAL PARTIES IN INTEREST

2. Petitioners Watchtower Bible & Tract Society of New York, Inc. and North Congregation of Jehovah's Witnesses, Red Bluff, California, Inc. (collectively "Church Defendants") are defendants in two actions now pending in Tehama County Superior Court and entitled *Tim W. v. Watchtower New York, et al.*, Case No. 52594, and *Wimberley-Gutierrez v. Watchtower New York, et al.*, Case No. 52598, which are collectively referred to herein as "Track I Cases." The Track I Cases were earlier coordinated with other cases in Judicial Council Coordination Proceeding No. 4374, including the so-called lead case pending in respondent Napa County Superior Court entitled *Charissa W. v. Watchtower New York, et al.*, Case No.

26-22191. (Exh. K, pp. 407-08.) Plaintiffs in the Track I Cases are named herein as the real parties in interest.

CHRONOLOGY OF PERTINENT EVENTS

3. These Track I Cases arise from the alleged sexual abuse by co-defendant James Henderson in *Tim W.* that occurred more than 10 years ago and co-defendant Alvin Heard in *Wimberley* that occurred more than 24 years ago.

4. On July 24, 2003, Plaintiffs filed separate civil complaints against the Church Defendants asserting claims arising from allegations that the Church Defendants failed to report and/or disclose their knowledge of child abuse allegedly committed by James Henderson and Alvin Heard. (Exh. A, p. 5.)

5. On January 13, 2005, Plaintiffs propounded document requests to the Church Defendants seeking, *inter alia*, documents and information related to confidential spiritual communications that penitents Henderson and Heard had separately with clergy within a Jehovah's Witness congregation. (Exh. A, p. 5.)

6. On April 5, 2005, the Church Defendants objected to certain of Plaintiffs' document requests on the grounds that the responsive documents are protected from disclosure by the penitent-clergy privilege and the attorney-client privilege. (Exh. A, p. 5.)

7. On July 29, 2005, Plaintiffs filed a motion to compel responses to their requests for production of documents, arguing that the documents sought are not protected by either the penitent-clergy or attorney-client privileges. (Exh. A, pp. 1-246.)

8. On August 19, 2005, the Church Defendants filed their opposition to the motion to compel, asserting the requested documents

were protected from disclosure based on privilege and constitutional grounds. (Exh. B, pp. 247-300.)

9. The documents at issue in the underlying motion to compel relate to spiritual communications between pentinent James Henderson and ordained elders of the Jehovah's Witnesses, and spiritual communications between penitent Alvin heard and ordained elders of the Jehovah's Witnesses. (*See*, Exh. E, pp. 331-40.)

10 On September 29, 2005, the trial court granted, in part, Plaintiffs' motion to compel and ordered the Church Defendants to produce all documents for which they previously asserted the penitent-clergy privilege. The trial court also ordered the Church Defendants to produce a privilege log with respect to all documents for which they asserted the attorney-client privilege, reserving Plaintiffs' right to challenge the log. (Exh. F.)

11 On October 24, 2005, the trial court granted the Church Defendant's motion to stay execution of order to produce documents until such time that a writ can be filed and ruled upon by the Court of Appeal. (Exh. G.)

12. On November 22, 2005, the trial court entered its stipulated order extending the time for the filing of the instant writ to April 28, 2006. (Exh. H.) On May 1, 2006, the trial court entered a further stipulated order extending the time for the filing of the instant writ up to and including June 30, 2006. (Exh. I.)

BASIS FOR RELIEF

13. The issue presented in this writ petition is whether the trial court erred in granting the motion to compel. In granting the motion, the trial court abused its discretion because disclosure of the

requested documents is prohibited by (1) the penitent-clergy privilege, (2) the First Amendment of the United States Constitution, and (3) the free exercise clause in both the federal and the California constitution.

ABSENCE OF OTHER REMEDIES

14. Interlocutory review is the only adequate remedy for the trial court's order compelling the Church Defendants to produce potentially privileged documents since "once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure." (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

PRAYER

Petitioners/Church Defendants pray that this Court:

1. Issue an alternative writ directing respondent superior court set aside and vacate its order of September 29, 2005, granting Plaintiffs' motion to compel, or show cause why it should not be ordered to do so, and upon return of the alternative writ, issue a peremptory writ of mandate and/or probation or such other extraordinary relief as is warranted, directing respondent superior court to set aside and vacate its order of September 29, 2005, granting

Plaintiffs' motion to compel, and to enter a new and different order denying the motion;

2. Award Petitioners/Church Defendants their costs pursuant to Rule 56.4 of the California Rules of Court; and

3. Grant such other relief as may be just and proper.

Dated: 06-28-06

Respectfully submitted,

BULLIVANT HOUSER BAILEY PC

By: RJSchnack

Robert J. Schnack

Attorneys for the Church Defendants

VERIFICATION

I, Robert J. Schnack, declare as follows:

1. I am one of the attorneys for the petitioners herein. I have read the foregoing Petition For Writ Of Mandate/Prohibition Or Other Extraordinary Relief and know its contents. The facts alleged in the petition are within my own knowledge and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than petitioners, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on June 28, 2006, at Sacramento, California.

RJ Schnack

Robert J. Schnack

MEMORANDUM OF POINTS & AUTHORITIES

I. WRIT OF MANDATE IS NECESSARY

A. The issue is whether confidential spiritual communications by a penitent to a "judicial committee" of ordained Jehovah's Witness elders are protected by the penitent-clergy privilege.

1. Overview of penitent-clergy privilege

A penitent has a privilege to refuse to disclose, and to prevent another from disclosing, a penitential communication. (Evid. Code § 1033.) Similarly, a member of the clergy has an independent privilege to refuse to disclose a penitential communication if he or she claims the privilege. (Evid. Code § 1034.) A penitent is defined simply as "a person who has made a penitential communication to a clergyman." (Evid. Code § 1031.) A "penitential communication" is defined as a communication made (1) in confidence, (2) in the presence of no third persons so far as the penitent is aware, (3) to a member of the clergy who, incident to the tenets of his or her religious denomination, is authorized or accustomed to hear such communications and (4) has a duty to keep such communications secret. (Evid. Code § 1032.)

There is no requirement that the communication "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." (*Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518.) Rather, the privilege applies to any communication that fits the statutory description. (*See* Cal. Law Revision Com. com., West's Ann. Cal.Evid. Code (2006) foll. §§1032.) (statute extends protection of privilege beyond just "confessions".)

2. Overview of clergy for the Jehovah's Witnesses

Congregations of Jehovah's Witnesses are not led by a priest or pastor but instead by appointed lay clergy called elders. Congregations of Jehovah's Witnesses are provided spiritual oversight on a local level by a small group of elders recognized as ordained ministers and ordained elders. (*See* Exh B, pp. 285-86, 292, 297.) Elders are not automatically appointed to serve in a congregation. Rather, they must first meet strict Scriptural qualifications as outlined in the Bible and must also be recommended and approved by current congregation elders, an elder serving as circuit overseer, and the Service Department at the U.S. Branch Office Jehovah's. (*See* Exh. B, pp. 285-86.) Once an individual is approved and appointed to serve as a congregation elder, a letter from the Branch Office is read to the congregation and the individual is officially vested with ministerial authority and is ordained as an elder. (*See* Breaux Affidavit ¶ 6.) All elders of the Red Bluff congregation are and were at all times relevant to these cases ordained ministers and spiritual leaders of those congregations. (*See* Exh. B, p. 287.)

The congregation elders are responsible for the spiritual development and spiritual teaching of the members of the congregation, as well as for pastoral care. (*See* Exh. B, pp. 273-74, 286, 292, 297.) Elders frequently provide spiritual counsel and advice to members of the congregation concerning highly confidential personal and spiritual matters. (*See* Exh. B, p. 287.) According to the religious beliefs and practices of Jehovah's Witnesses, congregation

elders are expected to keep confessions and other spiritual communications confidential. (*See* Exh. B, pp. 274, 280-81, 287-88, 293-94, 298-99.)

From time to time, congregation elders, including those in Red Bluff, communicated with elders serving in the Branch Office's Service Department, as well as with elders serving as circuit overseers and district overseers, in order to receive spiritual guidance and advice as to how to apply the religious doctrine and procedures of Jehovah's Witnesses to issues concerning the congregation and its members. (*See* Exh. B, p. 287.) All such spiritual communications between congregation elders and the Branch Office Service Department, circuit overseer or district overseer must be kept strictly confidential under the religious tenets and teachings of Jehovah's Witnesses. (*See* Exh. B, p. 287.)

Congregation elders are also responsible for conducting "judicial investigations" where a member of the congregation is accused of a serious wrongdoing or sin. (*See* Exh. B, pp. 274-87.) The goal of a judicial investigation, which is conducted by two elders, is to ensure that the congregation remains spiritually and morally clean, and the elders endeavor to provide spiritual counseling and assistance to those who may have erred, with the hope of helping them to regain their spirituality and relationship with God. (*See* Exh. B, pp. 274, 287.) At times after a judicial investigation, a "judicial committee" consisting of three or more elders will be formed and will determine whether a person accused of sin should be ecclesiastically disciplined, based on Jehovah's Witnesses' understanding of the Bible. (*See* Exh. B, pp. 275, 287.) The "judicial committee" consists

of three or more elders because Jehovah's Witnesses believe that men are imperfect and, therefore, three elders can provide more full and complete spiritual counseling and guidance based on a broader range of experience and knowledge than can a single elder alone. (*See* Exh. B, p. 275.) Pursuant to the beliefs, tenets and teachings of Jehovah's Witnesses, all spiritual communications taking place during a "judicial investigation" and during a "judicial committee" are extremely private and strictly confidential. (*See* Exh B., pp. 275, 288.)

Where a serious sin is involved, the "judicial committee", in line with teachings of the Bible, may recommend religious discipline, called reproof (which can be private or public) or disfellowshipping. (*See* Exh. B, pp. 274-75.) When a member is subject to public reproof or disfellowshipping, an announcement is made during a congregation meeting simply to the effect that "[name] has been reproved" or "[name] is no longer one of Jehovah's Witnesses." (*See Id.*) If a member suffers disfellowshipping, the "judicial committee" forwards a document to the Service Department in New York with only the name of the disfellowshipped person, the date of disfellowshipping, and a brief description of the Scriptural reason for disfellowshipping. However, the information on the card does not reveal the contents of the penitent's communications to the "judicial committee." (*See Id.*)

The confidentiality of spiritual communications between members of the congregation and elders is a foundational element of the religious beliefs and teachings of Jehovah's Witnesses. (*See* Exh. B, pp. 274, 281, 287-88, 292-94, 297-99.) Jehovah's Witnesses recognize the Bible's admonition to confess one's sins to God and

believe that there is a great benefit from speaking to congregation elders regarding such confidential spiritual matters. (*See* Exh. B, pp. 287-88.) As such, Jehovah's Witnesses encourage those who need spiritual assistance to approach the congregation elders and convey to them whatever information may be necessary to provide such spiritual assistance. (*See* Exh. B, pp. 288, 292, 297.)

Because open and free communication between congregation members and elders is required to provide spiritual guidance under the religious beliefs and practices of Jehovah's Witnesses, emphasis is placed on privacy and strict confidentiality. (*See* Exh B, pp.75, 281, 288, 293-94, 298-99 .) The confidentiality requirements with respect to such church communications are explained in official church literature and publications. (*See* Exh B., pp. 288, 293-94, 298-99) Congregants expect that all spiritual communications with congregation elders will remain strictly confidential. (*See* Exh B., pp. 288, 293-94, 298-99.) Further, revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation. (*See* Exh. B, pp. 286, 293, 298.) Moreover, if an elder was compelled to disclose confidential information, his credibility and effectiveness as an elder, as well as the credibility and effectiveness of other elders in the congregation, would be adversely affected and compromised, since congregants would not trust and rely that personal problems and information they disclose would not be revealed and used against them in a court action. (*See* Exh. B, p. 288.) In fact, defendant James Henderson has specifically stated that he would not have sought

church guidance had he believed that his communications with elders were not confidential. (*See* Exh. B, p. 276.)

Jehovah's Witnesses do not believe that the confidentiality of spiritual communications they may have with congregation elders is limited to confessions. (*See* Exh. B, p. 288.) Such confidentiality extends to all communication of a spiritual nature in a variety of life situations including those that take place in the course of "judicial investigations" and "judicial committee" meetings. (*See* Exh. B, pp. 275, 281, 288.) Additionally, based upon Scripture and church tradition, such confidentiality requirements also extend to congregation files, notes, papers, reports, minutes or other documents prepared in conjunction with, or as a result of, confidential church communications. (*See* Exh. B, pp. 274, 294, 299.)

3. Issues presented for review

This petition presents three issues, which are fundamental, not only to the underlying case, but also potentially to numerous other cases pending throughout the state and based on similar claims. First, did the trial court err when it granted Plaintiffs' motion to compel based on its ruling that the investigatory purpose of the judicial committee negated the penitent-clergy privilege? Second, did the trial court err in ruling that the judicial committee was under no duty to keep communications confidential, and therefore, the privilege is inapplicable? Finally, does the trial court's order compelling disclosure of confidential church documents violate the establishment clause of the First Amendment to the federal constitution, the free exercise clauses of the federal or California constitutions, or both?

B. Writ of mandate is essential and necessary.

1. A writ of mandate is the only adequate remedy available.

A writ of mandate must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. (Code Civ. Proc. § 1086.) Generally, writ review of discovery rulings is allowed when (1) the issues presented are of first impression and of general importance, (2) an order denying discovery denies a fair opportunity to a party to litigate its case, or (3) an order compelling discovery would violate a privilege. (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 886-87, quoting *Johnson v. Superior Court* (2000) 80 Cal.App.4th 1050, 1061.) "Interlocutory review by writ is the only adequate remedy where a court orders production of documents which may be subject to a privilege, 'since once privileged matter has been disclosed there is no way to undo the harm which consists in the very disclosure[1].'" (*Korea Data Systems Co. v. Superior Court* (1997) 51 Cal.App.4th 1513, 1516.)

The trial court's order compels the production of documents that the Church Defendants have asserted are protected from disclosure by the penitent-clergy privilege. Thus, a writ of mandate is appropriate and necessary, and interlocutory review is the only adequate remedy.

---

[1] [citations omitted.]

2. The issue will not go away.

Counsel for plaintiffs have filed a number of lawsuits in multiple venues against the various congregations of Jehovah's Witnesses and other religious entities that support their work. If the court compels the disclosure of confidential, privileged, and sensitive materials in these Track I Cases, the impact potentially will be felt not only in this proceeding but in other venues as well. As with other Jehovah's Witnesses congregations, the Church Defendants desire to keep confidential and privileged the materials regarding internal ecclesiastical affairs.

II. THE PENITENT-CLERGY PRIVILEGE BARS COMPELLED DISCLOSURE OF DOCUMENTS RELATED TO SPIRITUAL COMMUNICATIONS BETWEEN PENITENTS AND JUDICIAL COMMITTEE

Under California law, three requirements must be met for the penitent-clergy privilege to apply to a communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his/her religious discipline or practice is authorized or accustomed to hear such communications; and, (3) such clergy must have a duty under the tenets or discipline of his/her church to keep such communications secret. (Evid. Code § 1032; *see People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63.) Communications between penitent and clergy are presumed to have been made in confidence. (Evid. Code § 917.) Thus, Plaintiffs bear the burden of establishing that the subject communications were not intended to remain confidential.

In the instant case, it is undisputed that the judicial committee elders to whom Heard and Henderson confided qualify as "member[s] of clergy" as defined in section 1030 of the Evidence Code. Thus, the questions remaining are (1) whether penitents Heard and Henderson intended their communications to be made in confidence, and (2) whether the elders were required by the religious doctrine of Jehovah's Witness to keep said communications secret. For the reasons set forth below, the Church Defendants urge the Court to answer both questions affirmatively.

A. Penitents Heard and Henderson intended their spiritual communications to the judicial committee to be confidential

By definition, a penitential communication must be "made in confidence, in the presence of no third person so far as the penitent was aware." (Evid. Code § 1032.) The privilege has been held not to apply in instances where the communication was not made with a reasonable expectation of privacy, the communication was made for a secular purpose, the receiver of the communication was acting in a secular capacity, or religious tenets did not require the clergy member to keep the subject communications secret. (*People v. Edwards* (1988) 203 Cal.App.3d 1358, 1362-63 (defendant sought advice on how to avoid secular consequences of her criminal conduct rather than spiritual counseling); *People v. Johnson* (1969) 270 Cal.App.2d 204, 207-08 (communication was not made in confidence nor in the course of the required relationship and no evidence was presented that minister was authorized or accustomed to hear such communications or that he had a duty to keep such communications secret); *United States v. Webb* (9th Cir. 1980) 615 F.2d 828 (communication made in

presence of officer in addition to prison chaplain was not confidential); *United States v. Luther* (9th Cir. 1973) 481 F.2d 429, 432 (privilege did not apply to data in church financial records sought by Internal Revenue Service and which did not contain any communications from congregants seeking spiritual guidance of counseling); *People v. Thompson* (1982) 133 Cal.App.3d 419, 425-27 (minister was acting in secular capacity when hired by company as ethics officer to improve sales and there was no expectation of confidentiality in the communication).)

None of those circumstances is present here. Rather, as demonstrated by declarations from clergy as well as their own, penitents Henderson and Heard each intended that their spiritual communications to the judicial committee elders remain confidential, which communications the elders were duty-bound to respect in accordance with the religious tenets and beliefs of Jehovah's Witnesses. Henderson's and Heard's purpose in making their separate communications and in participating in the "judicial committee" proceedings in the first place was to seek spiritual guidance and counseling – again, in accordance with the religious beliefs and tenets of Jehovah's Witnesses. (*See*, Exh. B, pp. 276, 281.)

1. <u>That the judicial committee is comprised of three or more elders should not vitiate the privilege.</u>

A disclosure does not waive a privilege if the disclosure itself is privileged. (Evid. Code § 912(c).) It is undisputed that each of the elders who form a judicial committee qualifies as a "member of clergy" under section 1032 of the Evidence Code. Thus, there is no question that the privilege would apply had penitents Heard and

Henderson made their spiritual communications to each of these elders individually and on separate occasions. To hold that the privilege is voided simply because an otherwise protected penitential communication is made to multiple authorized clergy members in a single setting – particularly where, as here, it was done in accordance with the religious beliefs and tenets of one's religion – is to choose form over substance and thereby vitiate the purpose underlying the privilege.

As explained above, where a member of the congregation is accused of serious wrongdoing or sin, the tenets of Jehovah's Witnesses authorize two elders to conduct an investigation. The goal of the investigation and any subsequent judicial committee comprised of three or more elders is to ensure that the congregation remains spiritually and morally clean and to allow the elders to provide spiritual guidance and counseling to the accused member. Any spiritual communications made during the investigation or during the judicial committee proceedings are extremely private and kept in the strictest confidence by the participating elders. It is with these assurances and expectations of confidentiality and spiritual guidance that penitents such as Heard and Henderson willingly participate in an investigation and with a judicial committee.

No reported case interpreting California law has addressed whether the presence of more than one *clergy* member during a confidential, spiritual communication by a penitent destroys the penitent-clergy privilege. Likewise, no court has addressed whether a spiritual communication by a penitent to a "judicial committee" formed under the tenets and discipline of the Jehovah's Witnesses

qualifies as a protected penitential communication under California law. Absent such authority, it is practical to look at decisions from other jurisdictions who have interpreted similar, or even stricter, penitential communication statutes. For instance, interpreting a similar yet narrower state statute,[2] the Washington Supreme Court held that a communication made in the presence of a third person destroys the privilege *unless* that third person is necessary for the communication or is another clergy member. (*State v. Martin* (1999) 975 P.2d 1020, 1028.) Likewise, the Third Circuit has held that the presence of third persons who are "essential to and in furtherance of the communication" does not void the penitent-clergy privilege under Rule 501 of the Federal Rules of Evidence. (*In re Grand Jury* (3d Cir. 1990) 918 F.2d 374, 384.)

Another Washington case, *Jane Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints, supra* (hereafter "*Jane Doe*"), is analogous to the facts and issues presented in these Track I Cases. At issue in *Jane Doe* was the disclosure of church documents relating to the Mormon Church's disciplinary action concerning a church member's alleged sexual abuse of his two daughters. Under church doctrine, when a church member is accused of a serious transgression, a "stake disciplinary council" must intervene and help the church member repent and re-establish a

[2] Under Washington law, the penitent-clergy privilege protects communications which are (1) made to a clergy member, (2) as a confession in the course of discipline enjoined by the church, and (3) confidential. (RCWA 5.60.060(3); *Jane Doe v. Corporation of the President of the Church of Jesus Christ of Latter-Day Saints* (Wash. 2004) 90 P.3d 1147, 1150.)

covenant with God. (*Id.* at 1149-50.) The accused member confesses his sin to the disciplinary council which is comprised entirely of ordained presidents, bishops, and other ordained church members. The disciplinary council then determines the appropriate discipline to be administered, which can vary from probation to disfellowshipping to excommunication. (*Id.* at 1150.) When the discipline results in disfellowshipping or excommunication, church procedures require that a summary of the disciplinary proceedings be prepared and sent to the church's headquarters in Utah. (*Id.* at 1150.) The court held that the summary of the disciplinary proceeding was protected from disclosure by the clergy-penitent privilege based on its findings that (1) the disciplinary councils are ecclesiastical in nature, and (2) each participant on the council is ordained as clergy. Furthermore, because the presence of all participants in the disciplinary council was necessary for the communication to occur, the presence of a third party during the communication did not vitiate the privilege. (*Id.* at 1152-53.)

Similar to the Mormon Church in *Jane Doe*, the religious doctrine of Jehovah's Witnesses mandates that two elders investigate allegations of serious wrongdoing or sin and that, if formed, a judicial committee of three or more elders determine, whether an accused member is repentant and subject to ecclesiastical discipline. That judicial committees consist of three or more elders is based upon the beliefs of Jehovah's Witnesses that men are imperfect and that three elders can provide more full and complete spiritual counseling and guidance based on their collective experience and knowledge than can a single elder alone. Therefore, under the Jehovah's Witness doctrine,

the presence of multiple clergy members is essential to and in furtherance of the penitent's communication.

The decision in *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417 (hereafter "*Roman Catholic Archbishop*"), upon which Plaintiffs rely, is distinguishable and unavailing. In that case, the court ruled that the penitent-clergy privilege was inapplicable to protect communications by a Catholic priest in the presence of a "vicar for clergy" and a bishop because the Catholic tenets or doctrine do not require that such persons be present during those communications. In contrast, the Jehovah's Witnesses religion mandates the presence of three or more elders when the communication regards allegations of serious wrongdoing or sin, which includes child sexual abuse. When analyzing the penitent-clergy privilege, such doctrinal differences among religions should be respected rather than ignored.[3]

Second, *Roman Catholic Archbishop* is equally inapplicable because it concerned testimony and evidence to be presented to a grand jury in a criminal proceeding. Disclosure was required in that instance, the court held, "because the government had a compelling interest in prosecuting child molesters." In contrast, these Track I Cases are *civil* actions and not criminal prosecutions of child molesters. Indeed, in its investigation of child abuse allegations

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[3] Other jurisdictions have recognized the need to respect doctrinal differences among religions when analyzing the privilege. (*See, e.g.*, *Jane Doe, supra*, 90 P.3d at 1152, citing *State v. MacKinnon* (Mont. 1998) 957 P.2d 23, 28, and *Scott v. Hammock* (Utah 1994) 870 P.2d 947, 956.)

against Henderson, the State (through the local police and the district attorney's office) respected the elders' religious duty to not reveal information that they had learned via confidential communications made during the course of the judicial committee's internal proceedings with regard to those allegations. If, in its criminal investigation of Henderson, the State did not believe it necessary to compel the same confidential communications at issue here, it is difficult to argue that the State now has some higher compelling interest in the instant civil actions for money damages.

2. The trial court erred in finding that the judicial committee's purpose voided the privilege.

The trial court erred when it ruled that the privilege did not apply to the requested documents based on its finding that the "[j]udicial [c]ommittee's purpose is to investigate sins for which disfellowship is a potential penalty." (Exh. F, p. 342.) First, there is no requirement under California law that the communication be initiated by the penitent or that it "have as its purpose the confession of a 'flawed act' to 'receive religious consolation and guidance in return' in order to be privileged." (*Doe 2 v. Superior Court* (2005) 132 Cal.App.4th 1504, 1518.) Rather, the privilege applies to any communication that fits the statutory description. (Cal. Law Revision Com. Com., West's Ann. Cal. Evid. Code (2006) §1032. (Statute extends protection of privilege beyond just "confessions".) Second, even if, *arguendo*, investigation and discipline were one of the reasons for forming a judicial committee, the most important purpose of a judicial committee is to provide spiritual counseling and assistance to those who may have erred and to help them regain their spirituality

and relationship with Jehovah God. (*See*, Exh. B, pp. 274, 287.). The investigatory function of the judicial committee does not detract from or lessen its role of providing spiritual counseling and guidance.

B. The tenets and discipline of the Jehovah's Witnesses require the judicial committee elders to keep the communications of penitents Heard and Henderson secret.

Congregational elders are required by the tenets of their faith to keep confessions and other spiritual communications confidential. (Exh. B, pp. 286-288, 293-94, 298-99.) Similarly, Jehovah's Witnesses doctrine requires that all intra-faith communications between congregational elders and elders serving in the Branch Office's Service Department, as well as with elders serving as circuit and district overseers, be kept in the strictest confidence. As well, communications taking place during a "judicial investigation" and during "judicial committee" meetings are considered to be extremely private and strictly confidential. The confidentiality requirements of such church communications are explained in church literature and publications. Revealing confidential spiritual communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

In support of its order compelling discovery, the trial court also held that the penitent-clergy privilege did not apply because the evidence established that the judicial committee "was under no duty to keep the communications private" and that it "was required to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters." (Exhibit F, p. 342.). The evidence relied upon by the trial court consists of two

letters not relevant in time and which were sent by defendant Watchtower New York to all bodies of elders throughout the United States. Those "body of elders letters" were dated March 14, 1997 and July 20, 1998, respectively, and provided direction to the elders regarding the communication of certain information to the U.S. Branch Office of Jehovah's Witnesses relating to those accused of committing child abuse. (See Exh. A, pp. 209-15.) However, the alleged abuse committed by defendant Heard ended in 1981, more than 15 years before the first body of elders letter referenced above was issued. Similarly, defendant Henderson was disfellowshipped from the Red Bluff congregation in 1994, more than two years before the first body of elders letter referenced above was issued. Thus, the trial court's reliance on these two non-relevant documents is misplaced.

Even if, a*rguendo*, the two body of elders letters are found to be relevant in time, the elders' compliance with the instructions contained therein does not automatically result in a breach of their duty to keep penitential communications – whether made to an individual elder or a judicial committee – secret and confidential. The body of elders letters instruct elders to report the following information: (1) whether the member accused of child abuse has been disfellowshipped, reproved, counseled, or otherwise addressed; (2) if the accused member has moved to another congregation, the identity of the congregation to which he or she has moved; and (3) whether said congregation has been advised of the accused member's past child abuse conduct and, if so, the date of said advisement. Nothing in the two body of elder letters instructs or advises elders to reveal

either the contents of confidential penitential communications or the explicit details of the accusations. Therefore, nothing in the two letters prevents the judicial committee elders from complying with the reporting instructions *and* maintaining the confidentiality of the communications made during the judicial investigation and/or judicial committee proceedings.

III. THE TRIAL COURT'S ORDER VIOLATES THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The establishment clause in the First Amendment to the federal constitution provides that, "Congress shall make no law respecting an establishment of religion …." Among other things, the U.S. Supreme Court has held that this clause prohibits the government's excessive entanglement with religion. (*See Lemon v. Kurtzman* (1971) 403 U.S. 602, 621-24.) Under the established clause, every religion is guaranteed the same rights and protections. These protections apply equally to state judiciary proceedings. The U.S. Supreme Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof has been made wholly applicable to the states by the Fourteenth Amendment … in a series of cases, the court has repeatedly reaffirmed the doctrine…." (*Abington School District v. Schemp* (1963) 374 U.S. 203, 216.) This extension of the First Amendment to the states applies to judicial as well as legislative action. (*NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, 463.) "The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all of its creatures." (*West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624,

637.) "Judicial action is to be regarded as action of the state for the purposes of the Fourteenth Amendment [and] is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy." (*Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.)

By denying the right conferred in the rule of privilege on the basis of a distinction between an elder or a judicial committee of Jehovah's Witnesses and ministers of other religions, or on the bases of the differences between Jehovah's Witnesses' pastoral procedures and those of other religions, the trial court has essentially established "acceptable" religious practices in violation of the federal and state constitutional prohibitions of excessive governmental entanglement with religion. As explained above, the tenets and religious beliefs of Jehovah's Witnesses doctrine establish the requirement that three or more elders receive and investigate penitent communications regarding allegations of serious transgression or sin. (Exh. B, pp. 274, 287.) This religious practice is rooted in religious doctrine of Jehovah's Witnesses and based upon the belief that men are imperfect and that the collective knowledge and experience of multiple elders will provide more full and complete spiritual counseling and guidance than that of a single elder alone. The multiple elders requirement is no less fundamental or sacred to the Jehovah's Witnesses faith and religious practice than the relationship between a penitent and a single clergy member found in other religions. As such, the trial court's refusal to apply the penitent-clergy privilege to the religious practices and procedures of the Jehovah's Witnesses is an unconstitutional, and thus impermissible, entanglement with religion.

IV. THE TRIAL COURT'S ORDER VIOLATES THE FREE EXERCISE CLAUSE UNDER THE FEDERAL AND CALIFORNIA CONSTITUTIONS

Additionally, the trial court's refusal to apply the rule of privilege to the religious practices and doctrines of Jehovah's Witnesses for confessions clearly inhibits the free exercise of religion of the Church Defendants in violation of the free exercise clauses of the state and federal constitutions. In essence, the trial court refuses to fully extend confessional protection to Jehovah's Witnesses because they require that multiple elders be present rather than just one. Only a neutral law of general applicability may burden the right to free exercise of religion. (*Employment Division Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872, 879-80.)

A law is not neutral towards religion if its "object ... is to infringe upon or restrict practices because of their religious motivation." (*Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 531.) A law is not generally applicable if it "in a selective manner impose[s] burdens only on conduct motivated by religious belief." (*Id.* at 543.) A "law substantially burdens a religious belief if it 'conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs.'" (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562 (quoting *Thomas v. Rev. Bd., Ind. Empl. Sec. Div.* (1981) 450 U.S. 707, 717-18).) "A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly

tailored to advance that interest." (*Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah, supra.*) California courts apply the strict scrutiny standard when deciding matters under the free exercise clause of the California Constitution. (*Catholic Charities of Sacramento, Inc. v. Superior Court, supra.*)

The trial court has burdened the purely religious conduct of the Church Defendants by ruling that Jehovah's Witnesses cannot enjoy the same benefit from open and free spiritual communications with their ministers as do members of other churches, simply because of their religious beliefs. Here, the government has no compelling interest for granting the penitent-clergy privilege to religions that require a penitent confess to one minister but denying the rule of privilege to religions that require that a penitent confess to more than one minister. Because there is no compelling state interest for the court's non-neutral judicial interpretation of the rule of privilege, the court's order cannot withstand strict scrutiny. Therefore, the court's order violates the constitutional right of free exercise of the Church Defendants and of Jehovah's Witnesses and must be rejected.

V. TRIAL COURT SHOULD HAVE CONDUCTED AN *IN CAMERA* INSPECTION

An *in camera* review by the trial court may be appropriate to resolve a dispute as to whether requested documents, which contain privileged information, are discoverable. (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20.) Before issuing its order to compel, the trial court did not review *in camera* the documents which the Church Defendants have asserted are privileged. Rather, it held that the penitent-clergy privilege was inapplicable based on its

presumptive conclusions that the judicial committee's sole purpose was investigatory and that the judicial committee elders were not required to keep confidential the communications made during the judicial committee's investigation and/or proceeding. (Exh. F, 341-43; Exh. J. p. 365-71.) Given the importance of the penitent-clergy privilege and the irreparable harm which would result from compelled disclosure of potentially privileged documents, an *in camera* inspection of the documents in question is proper and the minimum safeguard which should be applied. Accordingly, should this Court decide not to reverse the trial court's order, then Church Defendants alternatively request that the matter be remanded and the trial court ordered to inspect the requested documents *in camera* before determining whether or not the privilege should apply.

VI. CONCLUSION

For the foregoing reasons, petitioners/Church Defendants respectfully request that the Court grant a writ of mandate as prayed and issue a decision determining the applicability of the penitent-clergy privilege to Henderson's and Heard's separate confidential communications made to a judicial committee formed in accordance with the tenets and doctrine of the Jehovah's Witnesses faith.

Dated: June 28, 2006

Respectfully submitted,

BULLIVANT HOUSER BAILEY PC



Robert J. Schnack
Attorneys for Petitioners/Church Defendants

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FILED
Court of Appeal First Appellate District
JUL 06 2006
Diane Herbert, Clerk
By _____ Deputy Clerk

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK ET AL.,

Petitioners,

v.

THE SUPERIOR COURT OF NAPA COUNTY,

Respondents;

TIM W., ET AL.,

Real Parties in Interest.

A114329

(Judicial Council Coordination Proceeding No. 4374; Coordinated with Napa County Super. Ct. No. 26-21191)

BY THE COURT:*

The petition for a writ of mandate is denied.

Dated: JUL - 6 2006

McGUINESS, P.J.

* McGuiness, P.J., Parrilli, J., and Siggins, J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Motion **PID # :**	**Case #** 26-22191 **Event Date:** July 26, 2006 **Clerk:** K. Tonascia **Reporter:** Sallie Estudillo, #9060 **Cite/Report #:**

Appearances:
Hartley Hampton and Rudy Nolen, Counsels representing Plaintiff
Robert J. Schnack, Counsel for Defendants Watch Tower
Demond Philson (via court call), Counsel specially appearing on behalf of Defendant Shawn Appling

After discussion between Court and Counsel, the Court makes the following orders:

1) this case is no longer a coordinated case;
2) this uncoordinated case shall be returned to the county of record; Sonoma County.

-o0o-

ORIGINAL

Robert J. Schnack, SBN 191987
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1415 L Street, Suite 1000
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Telephone: 916.930.2500
Facsimile: 916.930.2501
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Attorneys for The Church Defendants

FILED

AUG 04 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

NOTICE OF CHANGE OF ADDRESS OF DEFENDANT JAMES HENDERSON

TO ALL PARTIES AND THEIR COUNSEL:

Please take notice that defendant in pro per, James Henderson, has advised the undersigned that, effective immediately, his new address is:

James Henderson
35 Gilmore Road, #10
Red Bluff, CA. 96080

Telephone: 530/527-4209

///

///

///

RECEIVED
JUL 31 2006
Napa Superior Court

DATED: July 28, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

4221762.1

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PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF CHANGE OF ADDRESS OF DEFENDANT JAMES HENDERSON

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on July 28, 2006, at Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiffs Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Shawn Appling Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814 pling
Defendant In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882
Plaintiff In Pro Per: Orphee D. Adkins 1936 Northwood Dr., Unit 4 Vacaville, CA 95687	

Robert J. Schnack, SBN 191987
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Attorneys for The Church Defendants

FILED
AUG 14 2006
Clerk of the Napa Superior Court
By: S. Garcia
Deputy

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

~~[PROPOSED]~~ ORDER RE MOTION TO SET TRIAL DATES AND FURTHER CASE MANAGEMENT CONFERENCE

Hearing: July 26, 2006
Time: 8:30 am
Dept.: A

Before:
The Honorable Raymond A. Guadagni

Plaintiffs' motion to set trial dates in all remaining coordinated actions came regularly for hearing on July 26, 2006 at 9:30 AM before the Honorable Raymond A. Guadagni in Dept. A. Plaintiffs' counsel Rudy Nolen and Hartley Hampton appeared in person; Church Defendants' counsel Robert Schnack appeared in person; and defendant Shawn Appling's counsel Demond Philson appeared via telephone. The Court reviewed and considered the written submissions of the parties and a transcript of a prior hearing in these coordinated actions and heard and considered arguments of counsel. Now, therefore, and being otherwise fully advised,

///

Received
AUG 03 2006
Napa Superior Court

AUG - 3 2006
Napa Superior Court

IT IS HEREBY ORDERED as follows:

1. The Court finds that in the coordinated action of Danielle A. v. Watchtower Bible and Tract Society of New York, Inc., et al, Sonoma County Superior Court Case No. S CV 234140, the plaintiff is now *in pro per*, and the Church Defendants have been dismissed such that the only remaining defendant is individual defendant Shawn Appling. Therefore, the Danielle A. action is hereby severed from the other coordinated actions and ordered returned to the Sonoma County Superior Court for all further proceedings.

2. This Court will continue to utilize the so-called track approach to managing the remaining coordinated actions. However, this order is without prejudice if sufficient progress toward resolution of all cases is not demonstrated.

3. The two coordinated "Track I" actions -- Tim W. v. Watchtower Bible and Tract Society of New York, Inc., et al, Tehama County Superior Court Case No. 52594, and Julianne Wimberley Gutierrez, et al v. Watchtower Bible and Tract Society of New York, Inc., et al, Tehama County Superior Court Case No. 52598 -- are ordered to be tried in Tehama County, one in April 2007 and one in May of 2007. This Court will contact the Presiding Judge of the Tehama County Superior Court in this regard and will report to the parties at the further CMC (set below for August 24, 2006). However, if trials in Tehama County are not possible, this Court will then consider other options for trials of the two Track I actions, including holding trials in other counties with sufficient judicial resources to try the two Track I cases in the general time frame noted. No trial dates or trial venues will be set or decided upon at this time in the coordinated non-Track I actions.

4. Counsel for plaintiffs and Church Defendants are ordered to confer and develop proposed discovery and dispositive motion deadlines for the Track I actions and proposed discovery deadlines for the non-Track I actions.

5. A further case management conference ("CMC") is set for August 24, 2006 at 8:30 AM in Department A of this Court. Appearance by telephone is permitted. On or before August 18, 2006, counsel for plaintiffs and Church Defendants shall jointly submit to this Court their proposed discovery and dispositive motion deadlines for the Track I actions and their proposed

discovery plan and deadlines for the non-Track I actions.

DATED: 14, 2006

By _____
Raymond A. Guadagni
Superior Court Judge

4221526.1*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

[PROPOSED] ORDER RE: MOTION TO SET TRIAL DATES AND FURTHER CASE MANAGEMENT CONFERENCE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on August 2, 2006, at Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiffs Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 **Houston, TX 77010** Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Shawn Appling Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
Defendant In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882
Plaintiff In Pro Per Orphee D. Adkins 1936 Northwood Dr., Unit 4 Vacaville, CA 95687	

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

AUG 23 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **PLAINTIFFS' PROPOSED DISCOVERY PLANS FOR TRACT I AND NON-TRACT I CASES**

BY FAX

Defense counsel emailed Plaintiffs with a proposed discovery plan which was unacceptable. Plaintiffs responded with a counter-proposal to which there was no reaction by Defendants. In essence no meet and confer process occurred.

Plaintiffs, therefore, submit the following proposal which is designed to complete discovery and trial by July 2007. It is our desire on behalf of each of our clients to expedite litigation that has dragged on far too long. We are willing and able to work as

hard as necessary to accomplish the proposed discovery plan. Accordingly, we urge the Court to adopt a plan that accomplishes this objective. The defense firm representing the Watchtower Defendants is a large multi-office law firm easily capable of accommodating the discovery plan proposed by Plaintiffs.

Completion of Tract One Cases for Trial

1. Discovery completed to date:

Depositions of:

Tim Ward -- Plaintiff
Julie Wimberley -- Plaintiff
Josh Wimberley -- Plaintiff
Carol Badger -- Mother of Julie and Josh
James Badger -- Elder
Jim Henderson -- Perpetrator
Alvin Heard -- Perpetrator
Hazel Faulkner -- Ex-wife of Heard
LeRoy Reid -- Elder
Bill Mullins -- Elder
Ronald Pitts -- Elder

2. Discovery presently scheduled:

Depositions of:

Craig Hellberg and Nathan Dotta; September 18 and 19 of 2006

3. Watchtower witnesses applicable to all cases completed to date:

Depositions of:

Gary Breaux
J.R. Brown
Alexander Reinmueller
Jim Witney

4. Depositions of Watchtower witnesses applicable to all cases to be arranged:

Watchtower PMK Witness; September, 2006 in New York

///

5. Written Discovery

Plaintiffs do not anticipate additional written discovery other than limited pre-trial interrogatories. Similarly, we do not expect further written discovery from defendants.

In light of the above, all deposition discovery should be completed by the end of October provided we can obtain cooperation from counsel for defendants.

6. Motion for Summary Judgment/Summary Adjudication

Deadline for filing summary judgment/summary adjudication motion November 1, 2006.

7. Expert Discovery

Plaintiffs are agreeable to early disclosure of experts. We expect the number of expert witnesses to be fewer than 10 for both sides. We would like to propose this discovery be completed before the end of the year 2006

8. Trial Dates

Plaintiffs expect these cases to be tried in 10 days in April and May 2007.

Completion of Non Tract One Cases for Trial

1. Discovery completed to date:

Depositions of:
Shane Pence -- Plaintiff
Daniel West -- Plaintiff
Amber West -- Plaintiff

2. Discovery presently scheduled:

Depositions of:

Gary Hays and Paul Photenhauer; October 3, 2006
Art Almanza and Eddie Johnson; October 4, 2006
Ken L., Tabitha H., and Charissa W.; October, 2006

No Depositions of perpetrators - two are dead and one is missing or dead.

///

Plaintiffs are not anticipating depositions of elders in these cases other than the four noted above

3. Written Discovery

Plaintiffs do not anticipate serving Watchtower Defendants with discovery in these cases.

Written Discovery by Watchtower served no later than September 1, 2006 with Plaintiffs answers and objections by October 2006.

4. Motion for Summary Judgment/Summary Adjudication

Plaintiffs oppose these motions, if they are to be made,must be filed no later than February 1, 2007.

5. Expert Discovery

Like the Tract One cases, Plaintiffs propose early disclosure in January or February 2007.

6. Trial Dates

Plaintiffs propose trial dates in June and July 2007.

Date: August 23, 2006

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On August 23, 2006, I caused the within **Plaintiffs' Proposed Discovery Plans for Tract I and Non-Tract I Cases** to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Co Counsel for Plaintiffs
Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
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In Pro Per
James Henderson
35 Gilmore Road, #10
Red Bluff, CA 96080

Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 23, 2006, at Sacramento, California.

Praveen Singh

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Conference: Case Management **PID # :**	**Case #** 26-22191 **Event Date:** August 24, 2006 **Clerk:** J. Gleeson **Reporter:** Sue Straub, #7608 **Cite/Report #:**

Appearances:
Rudy Nolen, Attorney for Plaintiff
Robert Schnack, Attorney for Defendant
Renee Kennedy, Court Secretary for Tehama County Superior Court appearing via telephone

Track I cases
Ms. Kennedy is on the line to assist with the coordination of scheduling the Jury trials for the two Track I cases that shall be held in Tehama County as follows:

Tim W vs Watchtower Bible and Tract Society of New York, et al
April 3, 2007 at 9:00am before the Honorable Richard Scheuler at the Juvenile Justice Center.

Julianne Wimberley Gutierrez, et al. vs Watchtower Bible and Tract Society of New York, et al.
May 15, 2007 at 9:00am before the Honorable Richard Scheuler at the Juvenile Justice Center.

Pursuant to stipulation with regard to discovery, the Court makes the following orders:

- Non-expert Discovery and Motion for Summary Judgment deadlines shall be December 1, 2006. The Court can extend those deadlines for good cause.
- Expert Discovery shall be made per Civil Code of Procedures 2034.210 with expert depositions to be taken in March of 2007.

The Court declines to set a mandatory settlement conference at this time to which counsel will sign a written stipulation. However, there is the possibility of a Pre-Trial Conference approximately one month prior to trial.

The Track I cases shall remain in Napa County for any preliminary motions prior to the trial being heard in Tehama County.

Non-Track I cases

Court and counsel discuss proposed discovery plans.

Court orders counsel to meet and confer with regard to the discovery schedule.

After counsel have colloquy with regard to the discovery schedule, they stipulate to the following:

- Written discovery shall be provided no later than September 15, 2006.
- Objections and responses are due no later than October 20, 2006.
- Any court hearings with regard to discovery shall be held no later than December 15, 2006.
- Depositions of Plaintiff shall be done by November or early December at the latest.
- The family depositions shall then be completed within forty-five (45) days of Plaintiff's; and no later than February of 2007.
- Any expert depositions shall be done no later than March of 2007.
- The deadline for filing a summary judgment shall be August 1, 2007.

The Court continues this matter to July 12, 2007 at 8:30am in Courtroom A for further Case Management Conference as the Court intends to set the trial in October of 2007.

-oOo-

FILED

AUG 2 8 2006

Clerk of the Napa Superior Court

By: M. Fields

Deputy

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Sonoma County Courts
600 Administration Dr.
Room 107-J
Santa Rosa, CA 95403

26-22191 EE132701719

2. Article Number
(Transfer from service label)

[redacted]

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) SYLVIA MATHIAS

C. Date of Delivery 8-23-6

D. Is delivery address different from item 1? ☐ Yes
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☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Express mail Receipt from Sonoma County Courts in receipt of their file.

-M. Fields
8/28/06

Robert J. Schnack, SBN 191987
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Attorneys for The Church Defendants

FILED
SEP - 6 2006
Clerk of the Napa Superior Court
By: M. Heas
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

A further judicial case management conference ("CMC") in all remaining coordinated actions came regularly for hearing on August 24, 2006 at 9:30 AM before the Honorable Raymond A. Guadagni in Dept. A. Plaintiffs' counsel Rudy Nolen and the Church Defendants' counsel Robert Schnack each appeared in person. Renee Kennedy of the Tehama County Superior Court also participated by telephone in the portions of the CMC regarding setting of trial dates in the Track I cases. The Court discussed and considered the written submissions of the parties with respect to proposed discovery plans and heard and considered related arguments of counsel. Now, therefore, being fully advised, and pursuant to agreement of the above-referenced counsel for plaintiffs and the Church Defendants,

SEP - 5 2006

IT IS HEREBY ORDERED as follows:

Track I Cases -- Tehama County cases of *Tim W.* and *Wimberley Gutierrez, et al*

1. Trial Dates: The two Track I cases are hereby set for trial as follows: *Tim W.* is set for April 3, 2007; and *Wimberley Gutierrez, et al* is set for trial May 15, 2007, with each case scheduled for a 10-day jury trial. The parties shall consider those trial dates to be firm. Each case will be tried at the courtroom at the Juvenile Justice Center located at 1790 Walnut Street in Red Bluff, CA. The Tehama County Superior Court will send a notice of assignment of the trial judge who will preside over the trials of the Track I cases within approximately 30 days from the date of this CMC.

2. Non-Expert Discovery and Motion for Summary Judgment deadlines: The deadline for completion of all non-expert discovery and for the filing of summary judgment and summary adjudication motions in the Track I cases shall be December 1, 2006. The court can extend those deadlines for good cause shown.

3. Expert Discovery: Expert disclosures will be made per Code of Civil Procedure sections 2034.210, *et seq.*, with expert depositions to be taken in March 2007.

4. Coordination: The Napa County Superior Court will continue to hear and rule on all discovery and summary judgment or summary adjudication motions filed by the parties in the Track I coordinated cases.

Non-Track I cases -- Napa County cases of *Charissa W., et al* and *Tabitha H.*; Placer County case of *Ken L.*; and Yolo County case of *Daniel West, et al*

1. Initial written discovery (form and special interrogatories, requests for production of documents, requests for admissions) shall be propounded by September 15, 2006;

2. Objections and responses to written discovery shall be due by October 20, 2006;

3. Court hearings on any discovery motions concerning the above referenced written discovery shall be held by December 15, 2006;

4. Depositions of parties: Plaintiffs' depositions are to be scheduled for late November/early December 2006, and depositions of any plaintiff's family members are to be scheduled starting no more than about 45 days after the plaintiffs' depositions; local

congregation elders and PMK's of the entity defendants are to be completed by February 28, 2007 (but can proceed during written discovery, subject to activity in the Track I cases taking precedence over non-Track I cases due to pending trial dates in the Track I cases);

5. Depositions of non-party percipient or fact witnesses shall be completed by June 29, 2007;

6. Deadline for filing summary judgment/summary adjudication motions shall be August 1, 2007;

7. A judicial case management conference is set for July 12, 2007 in Department A in the Napa County Superior Court, at which time the Court intends to set trial dates for October and November 2007 in the non-Track I cases, following procedures similar to that followed in the Track I cases; and

8. Expert discovery shall be governed by CCP sections 2034.210, *et seq.*

9. Coordination: The Napa County Superior Court will continue to hear and rule on all discovery and summary judgment or summary adjudication motions filed by the parties in the non-Track I coordinated cases.

DATED: September 6, 2006

By _____
Raymond A. Guadagni
Superior Court Judge

4224712.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 1, 2006, at Sacramento, California.

By _____
Claudia Pohlman

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

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In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882
Plaintiff In Pro Per Orphee D. Adkins 1936 Northwood Dr., Unit 4 Vacaville, CA 95687	

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

NOTICE OF MOTION AND MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS.

(DISCOVERY MOTION 1)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

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At the time and place indicated, Plaintiffs move the Court for an order compelling the Watchtower Defendants to produce the four Woodland Elders whose depositions were previously noticed.

Plaintiffs further move the Court for a Protective Order that the Watchtower Defendants not be allowed to direct that the deponents not answer Plaintiffs' questions based upon the penitential communication privilege.

This motion is made on the grounds that the penitential communication privilege does not apply to communications between the alleged abusers and the Judicial Committee. In addition, the privilege does not apply because the Judicial Committee was under no duty to keep the communications private. The motion is based upon this Notice and Motion, the attached Memorandum of Points and Authorities, the Declaration of Rudy Nolen, the Declaration of Greg Love, and the records and files in this action.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS.

(DISCOVERY MOTION 1)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

///

///

INTRODUCTION

Plaintiffs are moving to compel the Watchtower Defendants to produce for deposition the Elders of the Woodland Jehovah's Witnesses congregation. Those individuals are Paul Photenhauer, Gary Hayes, Eddie Johnson, Art Almanza. The depositions were scheduled for October 3, and October 4, 2006. (Copies of the Notices of Taking Deposition are attached as **Exhibit 1.**)

The Watchtower Defendants have informed Plaintiffs that they "will object at those depositions under the clergy-penitent privilege as to any inquiries concerning judicial investigations and judicial committees, including those involving the former co-defendant Timothy Silva". Mr. Silva was the sexual abuse perpetrator in the West-Pence cases. (A copy of the E-mail setting forth Defendants' position is attached as **Exhibit 2.**)

After further discussions with counsel for the Watchtower Defendants, it was agreed that Plaintiffs would be making this Motion to Compel those depositions in order to have this Court rule on Defendants' objection prior to the depositions. As will be seen below, the taking of those depositions without the Court's prior ruling on the objection will make the deposition testimony incomplete and will only force Plaintiffs to make a Motion to Compel at the conclusion of the depositions. This would be burdensome and costly.

LEGAL AUTHORITY

California Code of Civil Procedure § 2025.450(a) provides that a party may move for an order "compelling the deponent's attendance and testimony...".

In addition, California Code of Civil Procedure § 2025.420(a) provides that any party may move for a protective order and that the "court, for good cause shown, may make any order that justice requires to protect any party... from unwarranted annoyance, ... or undue burden and expense."

This Court, in its September 29, 2005 Ruling on Plaintiffs' Motion to Compel Production of Documents held that the penitential communication privilege "does not apply to communications between the alleged abusers and the Judicial Committee." In addition,

"the privilege does not apply because the Judicial Committee was under no duty to keep the communications private." (A copy of the Ruling is attached as **Exhibit 3**.)

APPLICABILITY OF SEPTEMBER 29, 2005 RULING TO DEPOSITION TESTIMONY

The Defendants are taking the position that the September 29, 2005 ruling has no precedential effect in the non-Track I cases such as the West-Pence matter. In point of fact, the Watchtower Defendants have taken the position that they can continue to make the penitential communication privilege and direct that a witness not answer a question in the Track I cases also. On August 16, 2006 the depositions of Billy Jack Mullins, Sr., Ronald Pitts, and Leroy Martin Reid, Jr. were taken in the Track I case of Tim W. in Redding. At those depositions, counsel for the Watchtower Defendants directed that the deponents not answer questions which in any way dealt with the Judicial Committees. In Mr. Mullins' deposition this instruction even went to the extent of directing that the deponent not even answer the question on whether he served on a Judicial Committee based upon the clergy-penitent privilege. (See the Declaration of Greg Love filed in support of this motion and the attached excerpts of the deposition transcripts from the Redding depositions.).

As can be seen from the numerous directions to the deponents not to answer, the continual assertion of the penitent communication privilege is preventing Plaintiffs from obtaining proper and vital testimony. A review of the transcript excerpts readily shows that Plaintiffs are being prevented from obtaining necessary information regarding the sexual abuse of the various perpetrators. These facts go to the very heart of the controversy regarding the Watchtower Defendants' knowledge of the sexual abuse which was occurring.

It is obvious that the Watchtower Defendants intend to continually assert the penitential communication privilege as to deposition testimony in all cases. Plaintiffs believe that the position being taken by the Watchtower Defendants is in disregard to

the Court's prior ruling and is contrary to the letter and spirit of the coordination of these actions. One of the criteria that was considered when these matters were coordinated was "the disadvantages of duplicative and inconsistent rulings, orders, judgements...." (Code of Civil Procedure § 404.1). This Court has correctly ruled that the penitential communication privilege "does not apply to communications between the alleged abusers and the Judicial Committee" with regard to the production of documents. Both the California Court of Appeal and the California Supreme Court have denied the Watchtower Defendants' writ of that ruling. Plaintiffs are requesting that this Court consistently rule that the same reasoning applies to deposition testimony.

CONCLUSION

Pursuant to this Court's September 29, 2005 ruling and the California Code of Civil Procedure, it is requested that this Court order the Watchtower Defendants to produce the Woodland Elders for deposition and allow Plaintiffs to seek testimony unlimited by the assertion of the penitential communication privilege.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

MOTION # 1

Memorandum of Points and Authorities in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 1

Copies of the Notices of Taking Deposition

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Stephen W. Owens, SBN 84859
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Telephone: (817) 335-2800
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF TAKING DEPOSITION**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 3, 2006

TIME: 1:00 p.m.

PLACE: Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, CA 95814

WITNESS: PAUL PHOTENHAUER

At the date, time and place specified above, the parties represented by Rudy Nolen will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of California who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date: August __, 2006

NOLEN & ASSOCIATES

_____

Rudy Nolen
Attorney for Plaintiffs

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF TAKING DEPOSITION**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 3, 2006

TIME: 9:00 a.m.

PLACE: Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, CA 95814

WITNESS: GARY HAYES

At the date, time and place specified above, the parties represented by Rudy Nolen will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of California who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date: August __, 2006

NOLEN & ASSOCIATES

_____

Rudy Nolen
Attorney for Plaintiffs

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF TAKING DEPOSITION**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 4, 2006

TIME: 1:00 p.m.

PLACE: Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, CA 95814

WITNESS: EDDIE JOHNSON

At the date, time and place specified above, the parties represented by Rudy Nolen will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of California who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date: August __, 2006

NOLEN & ASSOCIATES

_____

Rudy Nolen
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF TAKING DEPOSITION**

TO ALL PARTIES HEREIN, AND TO THEIR ATTORNEYS OF RECORD:

DATE: October 4, 2006

TIME: 9:00 a.m.

PLACE: Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, CA 95814

WITNESS: ART ALMANZA

At the date, time and place specified above, the parties represented by Rudy Nolen will take the deposition of the above named witness before a certified shorthand reporter or before any notary public authorized to administer oaths in the State of California who is present at the specified time and date. In addition, the parties intend to record the deposition by videotape as well as stenographically.

The deposition will continue day to day, excepting Saturdays, Sundays and holidays, until completed.

Date: August __, 2006

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

MOTION # 1

Memorandum of Points and Authorities in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 2

Copy of E-mail setting forth Defendants' Position

Steve Owens

From: Hartley Hampton [hhampton@FHL-Law.com]
Sent: Friday, September 08, 2006 2:08 PM
To: gslove@airmail.net; Steve Owens
Subject: FW: m/compel

-----Original Message-----
From: Schnack, Bob [mailto:Bob.Schnack@bullivant.com]
Sent: Friday, September 08, 2006 3:50 PM
To: Hartley Hampton
Subject: RE: m/compel

Yes, do include it -- I guess I just assumed that would be a part of it.

From: Hartley Hampton [mailto:hhampton@FHL-Law.com]
Sent: Friday, September 08, 2006 1:43 PM
To: Schnack, Bob
Subject: m/compel

we would like to include this issue in the motion to compel also. any problem? can this constitute meeting and conferring?

-----Original Message-----
From: Schnack, Bob [mailto:Bob.Schnack@bullivant.com]
Sent: Friday, August 25, 2006 5:06 PM
To: Nolen, Rudy
Cc: Hampton, Hartley; Love, Gregory S.
Subject: West/Pence case

Rudy -- This follows up on and confirms our phone call this afternoon. As we discussed, after first clearing the dates with me and my clients, plaintiffs in West/Pence noticed the depositions of four Woodland elders for October 3 and 4, 2006. I advised you today in our phone call that the Church Defendants will object at those depositions under the clergy - penitent privilege as to any inquiries concerning judicial investigations and judicial committees, including those involving the former co-defendant Timothy Silva. I understand from your comments that plaintiffs consider the trial court ruling in the Track I cases and the subsequent denials of the writs or petitions to the Court of Appeal and the California Supreme Court to have determined the issue. [FYI, my clients are still deciding whether to pursue a petition to the U.S. Supreme Court.] However, the defense view is that, among other reasons, the trial court ruling in the Track I cases has no precedential effect in the West/Pence case and also is not "law of the case" for the West/Pence case. Thus, I suggest we discuss further whether you still desire to take the elders' depositions as scheduled on October 3 and 4, given that scenario. Thanks.

Bob Schnack
Bullivant Houser Bailey PC
916.930.2563 (Sacramento)

MOTION # 1

Memorandum of Points and Authorities in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 3

Copy of the September 29, 2005 Ruling

ENDORSED

SEP 29 2005

Clerk of the Napa Superior Court
By: Jean E. Pell
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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

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

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

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

1. Penitential Privilege

Evidence Code section 1032 provides:

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

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

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

2. Attorney-client privilege

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

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

Dated: 09/29/2005

/s/ Raymond A. Guadagni
Raymond A. Guadagni, Judge

NAPA SUPERIOR COURT

Certificate of Mailing

Charissa W., et al vs Roes 1-100 et al. **(G)** **26-22191**

Robert J. Schnack — Attorney for Defendant
Bullivant Houser Bailey
11335 Gold Express Dr.
Ste. 1105
Gold River, CA 95670-4491

Rudy Nolen — Attorney for Plaintiff
Nolen Saul Brelsford
350 University Avenue
Ste. 280
Sacramento, CA 95825

**** *CERTIFICATION* ****

I hereby certify that I am not a party to this cause and that copies of the foregoing document were mailed (first class postage pre-paid) in sealed envelopes at Napa, California on this date and that this certificate is executed at Napa, California this date.

STEPHEN A. BOUCH, Court Executive Officer

09/29/2005
DATE

J. PIHL
Deputy Court Executive Officer

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF GREG LOVE IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS.** **(DISCOVERY MOTION 1)** Date: October 10, 2006 Time: 8:30 a.m. Dept: A Judge: Hon. Raymond A. Guadagni

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I, GREG LOVE, declare:

I am an attorney at law duly licensed to practice before all the courts of the State of Texas. I am co-counsel for Plaintiffs in these Coordinated Action and have been admitted in California *pro hac vice*.

On August 16, 2006 I traveled to Redding, California to conduct the depositions of three elders from the Red Bluff North Congregation of the Jehovah's Witnesses.

Attached as **Exhibit 4** are true and correct copies of excerpts from the deposition of Billy Jack Mullins, Sr.

Attached as **Exhibit 5** are true and correct copies of excerpts from the deposition of LeRoy Martin Reid Jr.

Attached as **Exhibit 6** are true and correct copies of excerpts from the deposition of Ronald Pitts.

MULLINS DEPOSITION

In Mr. Mullins' deposition, he was asked questions concerning James Henderson, the perpetrator in the Tim Ward case. On Page 33 at Line 1 he was instructed not to answer the question on whether he even served on that judicial committee based upon the clergy-penitent privilege. At Page 33 Line 17, I attempted to ask Mr. Mullins whether he would have followed instructions which had been provided to him by the legal department or the circuit overseer. At Page 34 Line 23 he was instructed not to answer that question on the basis of the clergy-penitent privilege "with respect to judicial committees." At Page 37 I asked whether Mr. Henderson "was a child sexual abuser while in the North Congregation...?" Again Mr. Mullins was instructed not to answer on the basis of the clergy-penitent privilege. On Page 39 I attempted to ask a number of different questions dealing with the judicial committee involving my client. Mr. Mullins was instructed not to answer. On Page 48 I attempted to ask questions on whether any elders had any information that Mr. Henderson had prior sexual abuse allegations against him in Yuba City. Again, this line of questioning was stopped by the attorney for the Watchtower defendants.

REID DEPOSITION

In Mr. Reid's deposition, at Page 121 Line 12, I asked him about his knowledge of whether children were sexually abused in the Red Bluff North Congregation. He was instructed not to answer that question. At Page 122 Line 25, I attempted to see if Mr. Reid had any such knowledge totally outside his position as an elder in the church such as through the newspaper. Again, he was instructed not to answer. At Page 123 I represented to Mr. Reid that my client, Tim Ward, would waive his privilege and I attempted to determine if Mr. Reid knew that James Henderson had molested Tim Ward. Again, Mr. Reid was instructed not to answer. When I attempted to find out when Mr. Reid knew about the beginning of the investigation of Mr. Henderson, he was instructed not to answer (Page 142 Line 1-7). At Page 147 Line 21 I attempted to determine if there had been two different committees which had been formed relating to Jim Henderson. Mr. Reid was instructed not to answer. At Page 174 I was able to get the information that Mr. Reid had gone to my client in connection with the judicial committee investigation. There was an objection made and an instruction that Mr. Reid not answer but he had already answered the question. When I informed him that I would waive any privilege on behalf of my client, Mr. Reid was still instructed not to answer. This is directly contrary to Evidence Code § 912 which provides that the privilege is waived if my client "has consented to disclosure made by anyone." The attorney for the Watchtower defendants was instructing his client not to answer, contrary to the California Evidence Code.

PITTS DEPOSITION

In Mr. Pitts' deposition, at Page 39 Line 9, I attempted to ask Mr. Pitts questions concerning an individual who had told us that he was a prior victim of James Henderson and that he contacted the Red Bluff Congregation to warn them that Mr. Henderson was a sexual abuser. Per instructions from Watchtower's counsel, Mr. Pitts refused to answer any questions concerning his knowledge of that individual. At Pages 42 through 44, a whole series of questions were asked regarding the information which the judicial committee had concerning the sexual abuse of Mr. Henderson. These questions went to

the notice which the Red Bluff Congregation had concerning the sexual abuse of Mr. Henderson. The entire line of questioning was stopped by defense counsel. At Page 44 Line 4 through Page 45 Line 23, all questions concerning the actual nature of the abuse which had been learned by the judicial committee was prevented. Again, these lines of questioning go to the notice possessed by the Red Bluff Congregation concerning the sexual abuse of James Henderson.

I declare under penalty of perjury that the foregoing is true and correct pursuant to the laws of California. Executed this 14 day of September, 2006

Greg Love
Co-Counsel for Plaintiffs

MOTION # 1

Declaration of Greg Love in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 4

Excerpts from the deposition of Billy Jack Mullins, Sr.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TEHAMA

---o0o---

TIM W.,

Plaintiff,

vs. CASE NO. 52594

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC., JAMES HENDERSON, and DOES 1 through 20, inclusive,

Coordinated with CASE NO. 26-22191

Defendants.

/

---o0o---

WEDNESDAY, AUGUST 16, 2006

1:32 p.m.

VIDEOTAPED DEPOSITION OF BILLY JACK MULLINS, SR.

KINSIE ROWEN, C.S.R. License No. 10225

INDEX OF EXAMINATION

PAGE

THE WITNESS: Yes.

MR. LOVE: Q Mr. Mullins, when an issue of child sexual abuse or serious wrongdoing in the form of pornei'a is brought to the attention of the elders, is it -- would the elders be required to follow the procedures outlined in the flock book?

A. Yes.

Q. Mr. Mullins, you served on the judicial committee that related to Jim Henderson, did you not?

MR. SCHNACK: I'm going to object on clergy penitent privilege issues and instruct him not to answer.

MR. LOVE: Q Are you refusing to answer that question?

A. Yes.

Q. Mr. Mullins, in fulfilling your responsibilities as an elder in the Red Bluff North congregation on the judicial committee of James Henderson, isn't it true that you followed the instructions outlined in this flock book?

MR. SCHNACK: Same objection and same instructions.

MR. LOVE: Q You refusing to answer that question?

A. Yes.

Q. In addition to that you would have followed the instructions provided to you in any supplementary letters or other instructions given by the legal department or the circuit overseer; correct?

MR. SCHNACK: Same objection and same instructions.

We can cut this short because I'm, as you know and as we discussed in advance, not going to let him answer any questions relating to the clergy

penitent privilege issue with respect to judicial committees.

MR. LOVE: Q And you refuse to answer that question as well?

A. Yes.

Q. Okay. Wouldn't you agree, Mr. Mullins, that child sexual abuse is harmful to a child?

A. Yes.

Q. In fact, the Watchtower Society has published articles about that very thing; correct?

A. Yes.

Q. In both the "Awake" magazine and "The Watchtower" magazine; correct?

A. As I believe, yes.

Q. It can devastate a child, can't it?

A. Yes.

Q. Would you agree with me, Mr. Mullins, that you have as an elder the responsibility and duty to protect the children in the congregation?

A. Yes.

Q. I asked Mr. Lyons -- strike that.

I asked Mr. Reid about if an allegation of child sexual abuse came up what the elders would do in response. And he listed a number of things for me,

James Henderson had been a confessed child sexual abuser in Yuba City?

A. No.

Q. Mr. Mullins, you were an elder in the Red Bluff North congregation beginning in 1991; right?

A. Yes.

Q. Ultimately James Henderson molested a bunch of kids, some of whom were in the North congregation; correct?

A. Yes.

MR. SCHNACK: I'm going to object. It involves clergy penitent privilege and information he obtained through the judicial committee process. Instruct him not to answer.

MR. LOVE: Q You saw it on the news, didn't you?

MR. SCHNACK: I'm going to object as argumentative in tone. Instruct him not to answer.

MR. LOVE: Q Mr. Mullins, you're aware of the fact through whether it be newspaper or the

television that James Henderson was convicted of child sexual abuse; correct?

A. Yes, after we dealt with him it was.

Q. And the two boys that he was convicted of molesting were both boys from the North congregation; correct?

A. Correct. But you was asking about Yuba City.

Q. I understand.

James Henderson was a child sexual abuser

while in the North congregation; correct?

MR. SCHNACK: I'm going to object, clergy penitent privilege issues. Instruct him not to answer.

MR. LOVE: Q Are you refusing to answer that question?

A. I refuse to answer, yes.

Q. You learned even outside of a judicial committee context that James Henderson had sexually abused children while he was an elder in the North congregation, didn't you?

A. We learned about it, yes.

Q. Everyone in the congregation learned about it, didn't they?

A. Yes.

Q. If in fact there would have been a judicial

committee involving James Henderson and child sexual abuse allegations in Yuba City in 19, say, 76, isn't that information that you would have wanted to have as a congregation elder over the North congregation in 1991?

A. Yes. But it wasn't policy back before that that -- for that information.

Q. I'm not asking you about the policy.

A. Well, I would have liked to have had it.

Q. You had the duty and responsibility to protect the children in the North congregation; right?

MR. SCHNACK: I'm going to object. It's been asked and answered.

MR. LOVE: Q Isn't that right??
MR. SCHNACK: I'm going to instruct him not to answer. That's been asked and answered.
MR. LOVE: Q You would have liked to have had that information to discharge your duties and responsibilities of protecting the children, wouldn't you?
MR. SCHNACK: I'm going to object. Again, that's been asked and answered. Instruct him --
MR. LOVE: That question has not been asked and answered.
MR. SCHNACK: Yes, it was. It was just about

two minutes ago. I'm going to instruct him not to answer. You're plowing old ground here.
MR. LOVE: Q Are you refusing to answer my question?
A. Yes.
Q. Mr. Mullins, I'm going to ask you a number of different questions about what was said in the course of the judicial committee involving Tim Ward and Nathan Dotta and what the elders discussed amongst themselves in that judicial committee.
MR. SCHNACK: And I will instruct him not to answer based on clergy penitent privilege. And again, we agree that any reasonable follow-up questions are involved in that.
MR. LOVE: Q And you would refuse to answer any of those questions based upon your counsel's instruction?

MOTION # 1

Declaration of Greg Love in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 5

Excerpts from the deposition of LeRoy Martin Reid, Jr.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TEHAMA

---oOo---

TIM W.,

Plaintiff,

vs.

CASE NO. 52594

Coordinated with
CASE NO. 26-22191

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC., JAMES HENDERSON, and DOES 1 through 20, inclusive,

Defendants.

/

---oOo---

WEDNESDAY, AUGUST 16, 2006

9:10 a.m.

VIDEOTAPED DEPOSITION OF LEROY MARTIN REID, JR.

KINSIE ROWEN, C.S.R. License No. 10225

1 INDEX OF EXAMINATION

2 PAGE

A. Yes, I would.
Q. And from whom would you have wanted that information?
A. From anyone.
Q. Which would include the Yuba City elders?
A. Yes.
Q. Would have included the Upper Lake elders if they knew?
A. If they knew, yes.
Q. You would have wanted that from the circuit overseer if he knew?
A. Yes.
Q. You would have wanted that from the branch office if they knew?

A. Yes.
Q. Because I'm sure it bothers you that children were molested in the Red Bluff North congregation under your watch?
MR. SCHNACK: I'm going to object to the question. You're getting into judicial matters here with the congregation. It involves the clergy penitent privilege.
MR. LOVE: Instruction?
MR. SCHNACK: Correct.
Instruct you not to answer.
MR. LOVE: Q Mr. Reid, you know some children were sexually abused in the Red Bluff North congregation; right?
MR. SCHNACK: I'm going to object, Greg, to

this whole line of questioning based on the clergy penitent privilege. It gets into his knowledge of issues.

MR. LOVE: Mr. Reid --

11:56 MR. SCHNACK: The question's also being argumentative.

MR. LOVE: Q I assume you're not going to answer that last question; right?

A. Yes.

11:56 Q. Mr. Reid, isn't it true that even outside

your role as an elder, because it was in the newspaper, because there was a public talk, and because he was removed as presiding overseer, you're familiar with the fact that James Henderson sexually

11:56 molested children in Red Bluff, are you not?

MR. SCHNACK: Same objection, same instruction.

MR. LOVE: Q Are you refusing to answer my question?

11:56 MR. SCHNACK: He can testify if he read something in the newspaper.

THE WITNESS: Yes, I read something in the newspaper.

MR. LOVE: Q You learned from at least the

11:56 newspaper that --

A. And television, we saw it on the television.

Q. -- that James Henderson, the former presiding overseer of the Red Bluff congregation, was a child molester; correct?

11:56 20 A. Yes.
21 Q. And that he molested some children in the Red
22 Bluff congregation; correct?
23 A. Well, it didn't specifically say that in the
24 newspaper.
11:56 25 Q. But you know that?

1 MR. SCHNACK: Same objection based on clergy
2 penitent privilege issues.
3 MR. LOVE: Q Refusing to answer my question?
4 A. Yes.
11:57 5 Q. I'll represent to you that my client was a
6 member of the Red Bluff North congregation and has
7 waived his privileges to the extent this is a
8 privileged matter. Isn't it true that you knew that
9 James Henderson molested Tim Ward?
11:57 10 MR. SCHNACK: Same objection. The clergy
11 penitent privilege isn't held by just Mr. Ward.
12 MR. LOVE: Q You're refusing to answer my
13 question; right?
14 A. Yes.
11:57 15 MR. SCHNACK: I have to instruct him not to
16 answer, Greg, you know that.
17 MR. LOVE: Are you instructing him?
18 MR. SCHNACK: I already have.
19 MR. LOVE: Q Are you refusing to answer my
11:57 20 question based upon instruction?
21 A. Yes.
22 Q. Thank you, Mr. Reid.
23 Mr. Reid, are you familiar with the fact that

things taking place related to James Henderson, do you?

A. Nope, don't know anything about it.

Q. Mr. Reid, I'm going to ask you some questions now that I suspect you will receive instruction, but I want to ask them, and I don't want you to answer them and I want you to give Mr. Schnack the opportunity to object and instruct you; all right?

I want to know what were the first things that brought to the Red Bluff North congregation's attention in 1994 that triggered James Henderson's removal and judicial committee?

MR. SCHNACK: Can you restate that.

MR. LOVE: Q I want to know what allegations or who made the first statement that gave rise to the beginning of an investigation and judicial committee in connection with James Henderson in 1994?

MR. SCHNACK: You're getting into the clergy penitent privilege. I'm going to instruct him not to answer.

MR. LOVE: Q Are you going to refuse not to answer that question?

A. Yes.

Q. Do you recall being approached by the Dotta family regarding allegations of child sexual abuse that James Henderson had abused Nathan Dotta?

A. So that's my question? I can answer that? Yes.

Q. Do you recall what they told you?

correct?

A. Well, I wouldn't have done anything different than what I did, but I would have taken other steps prior to thereto.

Q. And if James Henderson was placed in a position where he could be appointed as a ministerial servant or elder, you would have done things to stop that, wouldn't you have?

A. Yes.

Q. Because those people are looked upon as positions of trust in the congregation; right?

A. You have mentioned that repeatedly.

Q. And it's true, isn't it?

A. Yes.

Q. Did the circuit -- strike that.

Isn't it true that there were two different committees formed relating to Jim Henderson, one that resulted in a public reproof and one that ultimately resulted in a disfellowshipping?

MR. SCHNACK: Same objection, same

instruction not to answer.

MR. LOVE: Q And you're going to refuse to answer that question; correct?

A. Yes.

Q. During the second judicial committee that was re-formed, either the re-formation of the first one or the creation of the second one, isn't it true that brother Paul Pierre, the circuit overseer, and brother Don Amy, the district overseer, became involved at

that point?

MR. SCHNACK: Same objections. It concerns judicial committees, therefore the clergy penitent privilege applies. I'm going to instruct him not to answer.

MR. LOVE: Q And you're refusing to answer that question --

A. Yes.

Q. -- based on counsel's instruction?

A. Yes.

Q. Do you know Paul Pierre?

A. Yes.

Q. Where's Paul Pierre now?

A. Have no idea.

Q. Because they rotate those circuit overseers --

A. Yes.

Q. -- every few years; right?

A. Yes. It's a long time ago.

Q. Can you remember the names of circuit overseers that preceded Paul Pierre?

A. I remember some.

Q. Just give me their names.

A. Preceded. I can think of some since then. You'll have to give me a minute.

Q. Why don't we come back to that.

A. Okay.

Q. Do you recall the North congregation writing a letter to the East Cottonwood congregation where

MR. SCHNACK: I'm going to object. It requires speculation. He said he's not familiar with Henderson's prior testimony. He doesn't know what Yuba City did or didn't do. It's an improper question.

THE WITNESS: Yeah, I couldn't answer that. Because I don't have the facts.

MR. LOVE: Q Are you one of the elders that went to talk to Tim Ward in connection with the judicial committee investigation?

A. Yes.

MR. SCHNACK: Same objection. I'm going to instruct him not to answer.

THE WITNESS: Okay.

MR. LOVE: Now, in that situation I would waive it on Tim's behalf, but are you asserting it nonetheless?

MR. SCHNACK: On behalf of the congregation, on behalf of Mr. Reid himself.

MR. LOVE: Q Are you familiar with a man named Clint Willingham?

A. Yes.

Q. He was an elder in the Red Bluff North congregation during that time?

A. No.

Q. Was he ever an elder in the Red Bluff North

MOTION # 1

Declaration of Greg Love in Support of Motion to Compel Deposition and/or Motion for a Protective Order Regarding the Woodland Elders.

Exhibit 6

Excerpts from the deposition of Ronald Pitts

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF TEHAMA

---o0o---

TIM W.,

Plaintiff,

vs.

CASE NO. 52594

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC., JAMES HENDERSON, and DOES 1 through 20, inclusive,

Coordinated with CASE NO. 26-22191

Defendants.

/

---o0o---

WEDNESDAY, AUGUST 16, 2006

3:26 p.m.

VIDEOTAPED DEPOSITION OF RONALD PITTS

KINSIE ROWEN, C.S.R. License No. 10225

INDEX OF EXAMINATION

PAGE

contact the Society's legal department immediately?
A. Yes.
Q. So at least as of 1989 wouldn't you agree that it was policy within the congregations that if there's an allegation of sexual abuse you contacted the Society's legal department immediately?
A. Yes.
Q. And that would be true if there was simply an allegation like we talked about regardless of where it came from; correct?
A. Yes.
Q. And the legal department is within the branch

office; correct?
A. Yes.
Q. As far as you know?
A. What's that?
Q. As far as you know?
A. Yes.
Q. Have you ever heard the name Craig Hellberg?
A. Yes, I think I have.
Q. Have you heard the name Craig Hellberg in any context other than serving on a judicial committee?
A. No.
Q. Okay. So if I asked you questions about Craig Hellberg or how you came to understand his name, would it be fair for me to assume that would be information that you would refuse to answer?
A. Yes.
MR. LOVE: And that would be your

instruction, right, Bob?

MR. SCHNACK: That's correct.

MR. LOVE: Q Craig Hellberg has indicated to me that he was a victim of James Henderson's while employed with the Sac Bee and that he contacted the Red Bluff congregation to talk to an elder and warn them that James Henderson was a sexual abuser. Do you recall receiving any kind of phone call like that?

A. No.

Q. If a phone call like that was made that would be -- you'd expect that to be taken seriously, wouldn't you?

A. Yes.

Q. I mean that is -- that's an allegation, even though it's not coming from a person within the organization, it's still significant and needs to be handled seriously; correct?

A. Yes.

Q. And some of the things should happen that we've already talked about; correct?

A. Yes.

Q. Prior to 1994 again, you don't recall anything relating to protecting the congregation from James Henderson having taken place; correct?

MR. SCHNACK: I'm going to object. It mischaracterizes the evidence. You're putting alleged facts in here that assumes that there was some notice to the congregation. I think that mischaracterizes the evidence as well.

MR. LOVE: Q You need me to repeat the question? Are you familiar with any effort that was made by the Red Bluff North body of elders to try to warn the congregation regarding James Henderson being

a sexual abuser before 1994?

MR. SCHNACK: Same objections. Again, Greg, the objection is that you're suggesting they should have warned when they didn't have any knowledge of it.

MR. LOVE: I suspect --

MR. SCHNACK: But that's what the question suggests and it's improper.

MR. LOVE: I suspect his answer will be no because we didn't know. But my question to you is --

MR. SCHNACK: You're asking yes-and-no questions so you're not going to get that type of response and I think the question is objectionable but go ahead.

MR. LOVE: Q Are you familiar with any efforts made by the body of elders prior to 1994 to warn the congregation that James Henderson was a sexual molester?

MR. SCHNACK: Same objections. Go ahead and respond.

THE WITNESS: No, we didn't know, so there was no way we would be able to warn others about it.

MR. LOVE: Q And because of that nothing was done; correct?

A. Yes.

Q. I want to ask you a number of questions about

the initiation of the judicial process at Red Bluff North congregation involving James Henderson as a sexual abuser. And I want to ask you a number of questions about the discussions within the committee, the confessions that were made by James Henderson, the information gained by the committee from victims of the sexual abuse, and ultimately what the judicial committee decided and what it reported to the branch office.

I assume if I asked you any of those questions you'd receive instruction and follow the instructions not to answer those questions?

MR. SCHNACK: That's correct. I would instruct him based on the clergy penitent privilege and would instruct him not to respond.

MR. LOVE: Q And you wouldn't respond; right?

A. Yes, that's correct.

Q. And I would ask you questions about contact the elders would have made to the legal department and any recommendations, suggestions, or instructions received from the legal department as well, and I suspect that you would refuse to answer those questions?

MR. SCHNACK: Again, the attorney-client

privilege would apply to that series of questions as

well as the clergy penitent privilege, and I will instruct him not to answer on both grounds.

MR. LOVE: Q And you would refuse to answer those questions; correct?

A. Yes.

Q. And Mr. Pitts, I would ask you questions regarding the involvement of the district overseer and the circuit overseer in that re-formation of the judicial committee in connection with James Henderson, and I assume you would refuse to answer those questions based on your counsel's instruction as well?

MR. SCHNACK: He can respond as to general policies and practices of the traveling overseers with respect to judicial committees, but with respect to James Henderson's judicial committees I will instruct him not to answer based on the clergy penitent privilege.

MR. LOVE: Q And because I do want to know specific participation these people had, being Don Amy and Mr. Pierre, you would refuse to answer those questions; correct?

A. Yes.

Q. I want to ask you questions with respect to efforts the body of elders at Red Bluff may have made

to contact prior congregations to learn what they knew about James Henderson and allegations of sexual abuse and their judicial committee in Yuba City. Am I fair in expecting that you would refuse to answer those questions based on your counsel's advice?

MR. SCHNACK: That's already been asked, we've already objected, and I gave him an instruction not to answer on that.

THE WITNESS: Yes.

MR. LOVE: Q Did you know Mary Ward?

A. Yes.

Q. Do you know Mary Ward came to the Red Bluff congregation with two small boys?

A. Yes.

Q. Actually, one of her boys Tim was a teenager; right?

A. I think so, yes.

Q. And she came with no husband, didn't she?

A. Yes.

Q. Her husband had left her; correct?

A. I don't know the full story on that, I'm sorry.

Q. Are you familiar with the fact that Tim started looking to James Henderson as a father figure?

A. Yes.

Q. James Henderson and Tim Ward were doing one-on-one book study, are you aware of that?

A. Yes.

Q. Are you aware of the fact that James Henderson and Tim Ward would do their book studies and then James Henderson would engage him in masturbation?

MR. SCHNACK: I'm going to object. It involves the clergy penitent privilege to the extent he gained any information through the judicial

committees.

MR. LOVE: Q Will you refuse to answer that question, or is there any way in which you received that information outside of your role as an elder in the judicial committee?

A. I'll refuse to answer that.

Q. So I'm assuming then everything you learned about the actual nature of the abuse you learned in the context of judicial committee proceedings?

MR. SCHNACK: Again, I'm going to instruct him not to answer based on the same privileges.

MR. LOVE: Q You refuse to answer that question, too?

A. Yes.

Q. Did you have any dealings with Tim Ward after the allegations came about?

A. Not that I can remember.

Q. Do you know if any of the elders at Red Bluff North had any interaction with Tim Ward after the allegations of abuse came up?

MR. SCHNACK: Again, anything you learned in the judicial committee process I'm going to instruct you not to answer based on clergy penitent privilege. Outside of that context you can respond.

THE WITNESS: I remember a couple of the elders, yes.

MR. LOVE: Q Which ones?

A. Bodie Lyons and Leroy Reid Junior.

Q. And who?

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

DECLARATION OF RUDY NOLEN IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS.

(DISCOVERY MOTION 1)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

///

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I, RUDY NOLEN, declare:

I am an attorney at law duly licensed to practice before all the Courts in the State of California. I am one of the Plaintiffs attorneys in these matters which are coordinated in the Superior Court for the County of Napa.

Attached as Exhibit 1 to the Memorandum of Points and Authorities are true and correct copies of the four Notices of Taking Deposition which we served on the Watchtower Defendants.

Attached as Exhibit 2 to the Memorandum of Points and Authorities is a true and correct copy of the E-mail which I received from the attorney for the Watchtower Defendants which set forth their position regarding the Woodland Elders' depositions.

Attached as Exhibit 3 to the Memorandum of Points and Authorities is a true and correct copy of this Court's September 29, 2005 Ruling on Plaintiffs' Motion to Compel Production of Documents.

I, and Co-Counsel for Plaintiffs, had numerous discussions with the counsel for the Watchtower Defendants concerning the assertion of the penitential communication privilege objection at the upcoming Woodland Elders' depositions. We were unable to agree upon the assertion of that privilege. If Plaintiffs are forced to conduct these depositions, and Defendants are allowed to make the objections, it will be necessary for Plaintiffs to file a Motion to Compel Further Deposition Testimony. This will involve unnecessary expense and will be a burden to the Plaintiffs in their preparation of this matter for trial. For those reasons, Plaintiffs have proceeded with this Motion to Compel And/Or Motion for a Protective Order Regarding the Woodland Elders.

I declare under penalty of perjury that the foregoing is true and correct executed this 14th day of September at Sacramento, California.

Rudy Nolen
Attorney for Plaintiffs

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Stephen W. Owens, SBN 84859
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PROOFS OF SERVICE ON NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS, DECLARATION OF GREG LOVE, DECLARATION OF RUDY NOLEN, AND PROPOSED ORDER.

(DISCOVERY MOTION 1)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION #1) NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF RUDY NOLEN – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS** to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By *causing a true copy and/or original thereof to be* personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Copy mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION #1) DECLARATION OF GREG LOVE – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS** to be served as follows:

___ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On_____ at_____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
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1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Copy mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION #1) PROPOSED ORDER – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS** to be served as follows:

____ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
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Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

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Co-Counsel for Plaintiffs
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Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens

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FILED
SEP 15 2006
Clerk of the Napa Superior Court
By: J. Ellison
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **NOTICE OF MOTION AND MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS.** **(DISCOVERY MOTION 2)** Date: October 10, 2006 Time: 8:30 a.m. Dept: A Judge: Hon. Raymond A. Guadagni

At the time and place indicated, Plaintiffs move the Court for an order compelling the Watchtower defendants to produce a Person(s) Most Knowledgeable consistent with

the PMK Notice of Taking Deposition which is attached to the supporting Memorandum of Points and Authorities.

This motion is made on the grounds that the documents and testimony are relevant to the subject matter of the action, that defendants' objection based upon the penitential communication privilege is not applicable to this deposition testimony and that defendants have refused to produce a person to so testify. The motion is based upon this Notice and Motion, the attached Memorandum of Points and Authorities and Declaration, and the records and files in this action.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS.

(DISCOVERY MOTION 2)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

///

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INTRODUCTION

Plaintiffs are moving to compel the Watchtower Defendants to produce documentation and deposition testimony consistent with the PMK Notice of Taking Deposition; said deposition is currently set for October 18-19, 2006. (A copy of the Notice of Taking Deposition is attached as **Exhibit 1.**) In the notice, Plaintiffs are seeking testimony in connection with thirteen areas of inquiry. The Watchtower Defendants have objected and refuse to allow testimony and produce documentation in connection with the upcoming PMK deposition. Plaintiffs are making this Motion to Compel in order to have the Court rule on Defendants' objection prior to the taking of the deposition.

LEGAL AUTHORITY

California Code of Civil Procedure § 2025.450(a) provides that a party may move for an order "compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice."

In addition, California Code of Civil Procedure § 2025.480(a) provides that a "party seeking discovery may move the court for an order compelling" an answer to a question or the production of a document which is under a deponent's control and is not answered or produced at the deposition.

OBJECTION – CLERGY/PENITENT PRIVILEGE

Watchtower Defendants have objected to six of Plaintiffs' areas of inquiry based on the penitential communication privilege as contained in Evidence Code section 1032. The requests to which the Watchtower Defendants have objected include the following areas of inquiry:

7. The appointment or deletion as a servant, elder, ministerial servant or pioneer of:
    a. Alvin Heard
    b. James Heard (Alvin Heard's brother)
    c. Howard Heard (Alvin Heard's uncle)
    d. James Henderson

e. Tim Silva
f. Ed Villegas
g. A. V. Harriman

8. Any reports or allegations of sexual misconduct involving:
a. Alvin Heard
b. James Henderson
c. Tim Silva
d. Ed Villegas
e. A. V. Harriman

9. Any communication to or from any congregation concerning:
a. Alvin Heard
b. James Henderson
c. Tim Silva
d. Ed Villegas
e. A. V. Harriman

10. Any discipline administered by any congregation to:
a. Alvin Heard
b. James Henderson
c. Tim Silva
d. Ed Villegas
e. A. V. Harriman

12. Any reports to the Watchtower Society made by any congregation pursuant to the March 14, 1997 and/or July 20, 1998 Letters to All Bodies of Elders concerning:
a. Alvin Heard
b. James Henderson
c. Tim Silva
d. Ed Villegas
e. A. V. Harriman

13. Any documents pertaining to any requests for reinstatement, and the consideration of such requests, made by:
a. Alvin Heard
b. James Henderson
c. Tim Silva
d. Ed Villegas
e. A. V. Harriman

On September 29, 2005, this Court issued its Ruling on Submitted Motion to Compel Production of Documents after considering substantial briefing and oral argument from the parties. (A copy of the September 29, 2005 ruling is attached hereto as **Exhibit 2**). In its ruling, the Court found that the penitential communication privilege contained in Evidence Code section 1032 "does not apply to communications between the alleged

abusers and the Judicial Committee"; the Watchtower Defendants' assertion of a clergy privilege was overruled. This Court has already faced the issue now before it as to documents; Plaintiffs now seek a consistent ruling as to depositions.

Because the above requests are consistent with the type of information sought in the motion that gave rise to the Court's September 29th ruling, it is Plaintiffs' position that the ruling should be applied to all discovery; the Watchtower Defendants disagree. Plaintiffs request that the Court issue an order overruling the Watchtower Defendants' use of the penitential communication privilege as to items 7, 8, 9, 10, 12 and 13.

OBJECTION – NOT RELATED IN TIME (RELEVANCE)

Again, this is a matter about which the Court has already ruled. In its September 29, 2005, ruling, the Court considered the same objections by the Watchtower Defendants and determined that "the objections are not well taken" and that the discovery requests were not overbroad and are relevant. The requests for testimony and documentation are essentially the same as the requests before the Court giving rise to its September 29th ruling.

In California, the appropriate scope of what information is discoverable/relevant is whether the information might lead to the discovery of admissible evidence. California Code of Civil Procedure § 2017.010 provides for the scope of discovery in California. It states that "any party may obtain discovery regarding any matter, not privilege, that is relevant to the subject matter involved in the pending action... if the matter either is itself admissable evidence or appears reasonably calculated to lead to the discovery of admissable evidence." Plaintiffs' requests for testimony and documentation are clearly calculated to obtain information that is admissible or may lead to the discovery of admissible information.

Additionally, part of the materials reviewed by the Court in making its September 29th determination were letters from March 17, 1997 and July 20, 1998, which gave instructions for retrospective information gathering. (The letters are attached hereto as

Exhibits 3 and **4**.) Although these letters post-date Alvin Heard's molestation of Plaintiffs Josh Wimberley and Julie Gutierrez (1976 through 1981), and James Henderson's molestation of Plaintiff Ward (1993 through 1994) both letters and the instructions contained therein are very relevant as to the Watchtower Defendants' handling of sexual abuse matters and the gathering of information that reached back for decades.

In response to Plaintiffs' PMK Deposition Notice with duces tecum, the Watchtower Defendants have objected to two areas of inquiry and particular document requests that "post-date August 1981", claiming that said discovery is not calculated to lead to the discovery of admissible evidence. The specific requests are as follows:

12. Any reports to the Watchtower Society made by any congregation pursuant to the March 14, 1997 and/or July 20, 1998 Letters to All Bodies of Elders concerning:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A. V. Harriman

13. Any documents pertaining to any requests for reinstatement, and the consideration of such requests, made by:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A. V. Harriman

To arrive at the position that Plaintiffs' discovery is overbroad, the Watchtower Defendants assert that the relevant time periods for which testimony and documentation should be produced involve **only** those time periods in which the Track 1 Plaintiffs were being sexually abused by the Track 1 perpetrators. For example, Alvin Heard sexually abused several children over a 30+ year period of time. Between 1976 and 1981, Heard molested Plaintiffs Wimberley and Gutierrez. Heard was subject to a judicial committee and was reproved. Heard then went on to sexually molest other children in the Jehovah's Witnesses organization, and was again subject to a judicial committee and reproved. Heard moved to yet other Jehovah's Witnesses congregations in South Dakota and Oregon where he molested additional children, and was presumably subject to a judicial committee

and disfellowshipped before being criminally convicted in Klamath Falls, Oregon. (See excerpts of Alvin Heard's deposition attached hereto as **Exhibit 5**). Excerpts from Heard's testimony clearly describe Heard's molestation of many children while affiliated with several different congregations. Heard's testimony also indicates that he had several interactions with Elders subsequent to 1981: judicial committee for sexual molestation in Oroville, CA for molesting children in Paradise; interaction with Elders in Oregon and South Dakota who knew about his sexual molestations from the past and dealt with new allegations and the impacts of the changes in Watchtower Society policies in 1997 which led to communications among Elders regarding Heard's past abuse. It is hard to imagine information that is more relevant.

The Watchtower Defendants have also objected to providing testimony or documentation related to James Henderson that post-dates his molestation of Tim Ward and the resulting judicial committee (December 1994). Again, it is Plaintiffs' position that testimony and documentation regarding the Watchtower Defendants' handling of sexual abuse matters are relevant. An excellent example of how information that post-dates the abuse can provide admissible evidence is found in the March 17, 1997 letter to all Bodies of Elders in the United States. (A copy of the letter is attached hereto as **Exhibit 3**.) The 1997 letter requires that all Bodies of Elders create thorough reports regarding prior abusers that held positions of authority within each congregation (this would include Heard and Henderson), the details of the abuse, who was notified and the outcome of the judicial committee. The letter also required each congregation to submit a copy of the materials to the Watchtower Defendants' headquarters and the congregations where the perpetrator is affiliated. The receipt of such a letter, the compliance and the materials created in response are extremely relevant.

Plaintiffs have requested testimony and documentation regarding all molestations, sexual abuse reports, judicial committees and requests for reinstatement for Alvin Heard. The documentation sought is clearly relevant to Alvin Heard's patterns of abuse, and the Watchtower Defendants' handling of abuse allegations specifically related to Alvin Heard.

The anticipated testimony and documentation may also lead to the discovery of information regarding people who had notice of Alvin Heard's propensity to sexually abuse children.

Plaintiffs request the Court issue an order overruling the Watchtower Defendants' objection that the testimony and documentation sought is overbroad as to time, irrelevant or is not calculated to lead to the discovery of admissible evidence.

CONCLUSION

Plaintiffs respectfully request that this Court find that the above discovery matters are relevant and are not protected by the penitential communication privilege. Plaintiffs further request that the Court issue an order compelling the Watchtower Defendants to provide testimony and documents in connection with the above categories of inquiry and duces tecum requests

.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

MOTION # 2

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 1

Copy of Notice of Taking Deposition

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 9586
Telephone: (916) 733-0600
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Hartley Hampton, SBN 08874400
FIBICH, HAMPTON & LEEBRON, LLP
1401 McKinney, Suite 1800
Houston, Texas 77010
Telephone: (713) 751-0025
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Greg Love, SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, Texas 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

DANIEL WEST, SHANE PENCE, and AMBER PENCE	§	Case No. CV03-1439
vs.	§	**NOTICE OF TAKING DEPOSITION**
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al	§	

TO DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and ITS ATTORNEYS OF RECORD

DATE:

TIME:

PLACE: Brooklyn, New York

WITNESS: Person(s) Most Knowledgeable regarding:

The deposition will be taken before a certified court reporter and will continue from day to day until completed. The deposition will also be videotaped. You are hereby authorized to attend and cross examine the witness.

The deposition of Defendant shall concern the matters set forth below. The Defendant is to designate a person or persons to testify as to the matters that are known or reasonably available to the corporation. The matters to be inquired about during the deposition are as follows:

1. The organizational structure of the Jehovah's Witnesses from 1972 until the present.

2. The process by which policies are promulgated by the Jehovah's Witnesses and published to members, congregations and leaders within the organization from 1972 until the present.

3. Any document retention policy that the Jehovah's Witnesses have had from 1972 until the present.

4. The responsibilities of elders when they learned, or had reason to believe, between 1972 until the present, that a member of the Jehovah's Witnesses organization was a pedophile or child molester.

5. Policies of the Jehovah's Witnesses pertaining to reporting allegations of child sexual abuse to secular authorities from 1972 to the present.

6. The July 1, 1989 letter from the Watchtower Bible and Tract Society of New York, Inc. to All Bodies of Elders.

7. The appointment or deletion as an servant, elder, ministerial servant or pioneer of:

a. Alvin Heard

b. James Heard (Alvin Heard's brother)

c. Howard Heard (Alvin Heard's uncle)
d. James Henderson
e. Tim Silva
f. Ed Villegas
g. A.V. Harriman

8. Any reports or allegations of sexual misconduct involving:
   a. Alvin Heard
   b. James Henderson
   c. Tim Silva
   d. Ed Villegas
   e. A.V. Harriman

9. Any communications to or from any congregation concerning:
   a. Alvin Heard
   b. James Henderson
   c. Tim Silva
   d. Ed Villegas
   e. A.V. Harriman

10. Any discipline administered by any congregation to:
   a. Alvin Heard
   b. James Henderson
   c. Tim Silva
   d. Ed Villegas
   e. A.V. Harriman

11. The incident in approximately 1977 when Alvin Heard was deleted as ministerial servant.

12. Any reports to the Watchtower Society made by any congregation pursuant to the March 14, 1997 and/or July 20, 1998 Letters to All Bodies of Elders concerning:
   a. Alvin Heard
   b. James Henderson
   c. Tim Silva
   d. Ed Villegas
   e. A.V. Harriman

13. Any documents pertaining to any requests for reinstatement, and the consideration of such requests, made by:
   a. Alvin Heard
   b. James Henderson

c. Tim Silva
d. Ed Villegas
e. A.V. Harriman

This Notice of Deposition will also serve as a subpoena duces tecum and the representative(s) designated by Defendant shall bring with them to the deposition, the following items:

1. Any documents that describe the organizational structure of the Jehovah's Witnesses. Organization from 1972 until the present.

2. Any documents that describe the process by which policies are promulgated by the Jehovah's Witnesses and published to members, congregations and leaders within the Jehovah's Witnesses organization from 1972 until the present.

3. Any documents that describe the responsibilities of elders when they learned or had reason to believe, between 1972 and the present, that a member of the Jehovah's Witnesses organization was a pedophile or child molester.

4. Any documents that describe any retention policy that the Jehovah's Witnesses have had from 1972 until the present.

5. Any documents that describe the policies of the Jehovah's Witnesses from 1970 to the present pertaining to reporting allegations of child sexual abuse to secular authorities.

6. All drafts of the July 1, 1989 letter from the Watchtower Bible and Tract Society of New York, Inc. to All Bodies of Elders.

7. Any documents that pertain to the appointment or deletion as a servant, elder, ministerial servant or pioneer of:
   a. Alvin Heard
   b. James Heard (Alvin Heard's brother)
   c. Howard Heard (Alvin Heard's uncle)
   d. James Henderson
   e. Tim Silva
   f. Ed Villegas
   g. A.V. Harriman

8. Any documents that pertain to any reports or allegations of sexual misconduct involving:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

9. Any documents that pertain to any communications to or from any congregation concerning:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

10. Any documents that pertain to any discipline administered by any congregation to:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

11. Any documents that pertain to the incident in approximately 1977 when Alvin Heard was deleted as ministerial servant.

12. Any documents that pertain to any reports to the Watchtower Society made by any congregation pursuant to the March 14, 1997 and/or July 20, 1998 Letters to All Bodies of Elders concerning:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

13. Any documents pertaining to any requests for reinstatement, and the consideration of such requests, made by:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

14. Any and all S-77, 79a, 79b and S-2 and/or other forms pertaining to:
    a. Alvin Heard
    b. James Heard (Alvin Heard's brother)
    c. Howard Heard (Alvin Heard's uncle)
    d. James Henderson
    e. Tim Silva
    f. Ed Villegas
    g. A.V. Harriman

15. Any and all "Child Abuse Telememos" that mention:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman
    f. Tim Ward
    g. Julie Gutierrez
    h. Josh Wimberley
    i. Daniel West
    j. Amber Pence West
    k. Shane Pence
    l. Charissa Welch
    m. Nicole Donahue
    n. Tabatha Hart
    o. Ken Little.

16. Any video or audio recordings that pertain to:
    a. Alvin Heard
    b. James Henderson
    c. Tim Silva
    d. Ed Villegas
    e. A.V. Harriman

17. Any video or audio recordings that pertain to:
    a. Tim Ward
    b. Julie Gutierrez
    c. Josh Wimberley
    d. Daniel West
    e. Amber Pence West
    f. Shane Pence
    g. Charissa Welch

h. Nicole Donahue
i. Tabatha Hart
j. Ken Little.

18. Any and all documents created prior to the filing of this lawsuit pertaining to:
    a. Tim Ward
    b. Julie Gutierrez
    c. Josh Wimberley
    d. Daniel West
    e. Amber Pence West
    f. Shane Pence
    g. Charissa Welch
    h. Nicole Donahue
    i. Tabatha Hart
    j. Ken Little.

MOTION # 2

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 2

September 29, 2005 Ruling

ENDORSED

SEP 29 2005

Clerk of the Napa Superior Court
By: Jean E. Pell
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED MOTION TO COMPEL PRODUCTION OF DOCUMENTS

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

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

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

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

1. Penitential Privilege

Evidence Code section 1032 provides:

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

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

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

2. Attorney-client privilege

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

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

Dated: 09/29/2005

/s/ Raymond A. Guadagni
Raymond A. Guadagni, Judge

NAPA SUPERIOR COURT

Certificate of Mailing

Charissa W., et al vs Roes 1-100 et al. **(G)** **26-22191**

Robert J. Schnack — Attorney for Defendant
Bullivant Houser Bailey
11335 Gold Express Dr.
Ste. 1105
Gold River, CA 95670-4491

Rudy Nolen — Attorney for Plaintiff
Nolen Saul Brelsford
350 University Avenue
Ste. 280
Sacramento, CA 95825

**** *CERTIFICATION* ****

I hereby certify that I am not a party to this cause and that copies of the foregoing document were mailed (first class postage pre-paid) in sealed envelopes at Napa, California on this date and that this certificate is executed at Napa, California this date.

STEPHEN A. BOUCH, Court Executive Officer

09/29/2005
DATE

J. PIHL
Deputy Court Executive Officer

MOTION # 2

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 3

March 17, 1997 letter



WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483, U.S.A. PHONE (718) 625-1500

March 14, 1997

CONFIDENTIAL

TO ALL BODIES OF ELDERS

Dear Brothers:

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

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

WHO IS A 'KNOWN CHILD MOLESTER'?

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

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

PROTECTING OUR CHILDREN

What can we do to protect our children and preserve the cleanness of Jehovah's organization? The primary responsibility for protecting our children rests upon the parents. Fine suggestions for parents can be found in the January 22, 1985, *Awake!* article "Child Molesting—You *Can* Protect Your Child." Other articles that parents do well to consider are those in the October 8, 1993, *Awake!* entitled "How Can We Protect Our Children" and the December 1, 1996, *Watchtower* entitled "Parents, Find Pleasure in Your Children," specifically pages 13 and 14, paragraphs 18 and 19.

What can the elders do to help protect our children? The elders should be alert to the activity of any who are known to have molested children in the past. Individuals who have manifested a weakness in this regard should be sensitive to their need not to be alone with children. They should refrain from holding children or displaying other forms of affection for them. It would be appropriate for elders to give kindly cautions to any who are doing things that may be a temptation or a cause for concern to others in the congregation.—1 Cor. 10:12, 32.

What should elders do when a former child molester moves to another congregation? As outlined in the February 1991 *Our Kingdom Ministry* "Question Box" and the August 1, 1995, letter to all Bodies of Elders, our policy is always to send a letter of introduction when a publisher moves to another congregation. *It is imperative that this be done when one who is known to have been a child molester moves.* The secretary should write on behalf of the elders to the new congregation's body of elders and outline this publisher's background and what the elders in the old congregation have been doing to assist him. Any needed cautions should be provided to the new congregation's body of elders. This letter should not be read to or discussed with the congregation. This information should be kept in the congregation's confidential files where it can be reviewed by any elder. The elders should send a copy of this letter to the Watchtower Bible and Tract Society in one of the "Special Blue" envelopes.

PRIVILEGES OF SERVICE IN THE CONGREGATION

In the January 1, 1997, issue of *The Watchtower*, the article "Let Us Abhor What Is Wicked" stated on page 29: "For the protection of our children, a man known to have been a child molester *does not qualify for a responsible position in the congregation. Moreover, he cannot be a pioneer or serve in any other special full-time service.*" We have had a number of inquiries asking how this applies in the congregation, and this is being given consideration.

It may be possible that some who were guilty of child molestation were or are now serving as elders, ministerial servants, or regular or special pioneers. Others may have been guilty of child molestation before they were baptized. The bodies of elders should not query individuals. However, the body of elders should discuss this matter and give the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past.

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

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

Your brothers,

Watchtower B. & T. Society
OF NEW YORK, INC.

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

MOTION # 2

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 4

July 20, 1998 letter

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

25 COLUMBIA HEIGHTS, BROOKLYN, NEW YORK 11201-2483 U.S.A. PHONE (718) 625-3600

July 20, 1998

CONFIDENTIAL

TO ALL BODIES OF ELDERS

Dear Brothers:

We are here providing, for your future reference, information that was presented at the 15-hour supplementary course for congregation elders on certain serious matters.

Child Molestation: The Society's letter to all bodies of elders dated March 14, 1997, page 2, paragraph 5, states: *"[G]ive the Society a report on anyone who is currently serving or who formerly served in a Society-appointed position in your congregation who is known to have been guilty of child molestation in the past."* Reports indicate that some elders think this direction does not apply if before his baptism the person sexually abused a child. However, even in such a situation, the elders should write the branch office. This is true even if what occurred was many years ago. If any body of elders has not yet reported such a matter, they should immediately do so. Furthermore, any correspondence put in the confidential congregation file about an individual accused of child molestation, proven or otherwise, should be marked "Do Not Destroy" and be kept indefinitely.

In the Kingdom Ministry School Supplementary Course for Congregation Elders there was a panel discussion in Unit 5b, "USE DISCERNMENT IN HANDLING SERIOUS MATTERS." This portion of the course addressed questions related to the problems associated with child abuse. Question 6 to the panel asked: "What factors should be considered in determining what congregation privileges, if any, a former child molester can enjoy?" The answer included the statement: "There are also legal considerations." Some have inquired about how and why legal considerations should affect our recommendations of those who have been guilty of child abuse in the past.

Those who are appointed to privileges of service, such as elders and ministerial servants, are put in a position of trust. One who is extended privileges in the congregation is judged by others as being worthy of trust. This includes being more liberal in leaving children in their care and oversight. The congregation would be left unprotected if we prematurely appointed someone who was a child abuser as a ministerial servant or an elder. In addition, court officials and lawyers will hold responsible any organization that knowingly appoints former child abusers to positions of trust, if one of these, thereafter, commits a further act of child abuse. This could result in costly lawsuits, involving dedicated funds that should be used to further the Kingdom work. So, legal considerations must also be weighed along with the degree of notoriety, the extent of the misconduct, how many years ago the sin occurred, and how the brother is now viewed by the congregation and people in the community including those he victimized.

Scriptural Freedom to Remarry: The 1991 Kingdom Ministry School textbook, page 135, paragraph 1, describes a situation where an adulterous mate unilaterally obtains a divorce over the objection of the innocent mate. In such a case, the guilty one is not free to remarry.

What if the innocent mate consents to the divorce by signing the divorce papers? Does this free the guilty mate to remarry? Yes, Jesus' counsel at Matthew 5:37 applies here: "Let your *Yes* mean Yes, your *No*, No." If the innocent mate, perhaps in an effort to protect herself financially or to obtain custody of children, agrees to a divorce obtained by her adulterous husband, the adulterous one is then free to remarry. Although the innocent one may claim forgiveness, by signing the divorce papers she indicates her rejection of the adulterous mate. Since she has rejected that one, she holds no further claim on him, and he is Scripturally free to remarry.

Another situation involving the Scriptural freedom to remarry is where an unscriptural divorce is obtained and then, some time later, one of the mates commits fornication. In such a case, does either one have a Scriptural basis to remarry?

If a man takes the initiative and divorces his mate without a Scriptural basis and his divorced wife later commits adultery, both are free to remarry. This is because, by his previous unscriptural action of divorcing his wife, the husband has given evidence of his wanting to reject her. What is stated in the 1991 Kingdom Ministry School textbook, page 135, paragraph 6, applies: *"A person who commits adultery after having been divorced by his or her mate on unscriptural grounds would be Scripturally free to remarry, since he or she had already been rejected by the mate that obtained the divorce."* However, the converse is not necessarily true. If the one who initiated the unscriptural divorce later commits adultery, that one is still obligated to confess to the mate, although they are legally divorced. The innocent mate must be given the opportunity to determine whether to forgive or not. However, in both cases, the one committing adultery would need to meet with a judicial committee.

While the principles outlined above should prove helpful in handling inquiries from publishers about the Scriptural freedom to remarry, the elders should always exercise extreme caution when providing an answer. They should never inform a publisher that there appears to be a basis for Scriptural freedom to divorce and remarry, *unless conclusive evidence has been established* (1) that adultery was committed, (2) that the innocent mate has rejected the guilty one, and (3) that a legal, final divorce has been obtained. Because of the numerous factors involved in such matters, in many cases it will be best to write the Society. When doing so, always provide as many details as possible, including the names of the individuals involved. The Society will then provide the needed assistance.

When a divorced brother or sister wishes to remarry, the elders should kindly request to see the divorce papers to make sure that that one is legally free to do so. They should also determine that it has been established that both parties involved are Scripturally free to remarry. (Matt. 19:9) This will help servants of Jehovah to preserve the cleanness of the congregation and avoid entering adulterous marriages. Always review the Society's letter to all bodies of elders

dated May 15, 1988, regarding guidelines on wedding procedures before agreeing to solemnize any marriage.

Please be assured of our prayers on your behalf as you endeavor to fulfill your weighty responsibilities as shepherds of the flock. We send herewith a warm expression of our Christian love and best wishes.

Your brothers,

Watchtower B. & T. Society
OF NEW YORK, INC.

P.S. to Body of Elders: At the next meeting of the entire body of elders, the presiding overseer should have this letter read and should have each elder make the following notations in the margins of his personal copy of the 1991 Kingdom Ministry School textbook:

On page 93, next to paragraphs 10-11: See the Society's letters dated July 20, 1998; March 14, 1997; August 1, 1995; February 3, 1993; March 23, 1992; and July 1, 1989.

On page 135, next to paragraphs 1-6: See the Society's letter dated July 20, 1998.

MOTION # 2

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 5

Excerpts of Alvin Heard's Deposition

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF TEHAMA

JULIANNE WIMBERLEY GUTIERREZ, et al.,) Case No.: 52598
Plaintiffs,) JCCP no. 4374
v.
WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC., et at.,)
Defendants.
AND COORDINATED CASES

VIDEOTAPED DEPOSITION OF
ALVIN BLANCHARD HEARD

Taken at the instance of the Plaintiffs

February 17 ,2006
10:30 a.m.
82911 Beach Access Road
Umatilla, Oregon 97882

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BE IT REMEMBERED that the deposition of ALVIN BLANCHARD HEARD was taken in behalf of the Plaintiffs pursuant to the California Rules of Civil Procedure before Susanne Starkweather, Professional Shorthand Reporter for Oregon, on Friday, the 17th day of February, 2006, at the Two Rivers Correctional Institution, 82911 Beach Access Road, Umatilla, Oregon 97882, commencing at the hour of 10:30 a.m.

* * *

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I N D E X:

Julianne Wimberley Gutierrez, et al., v. Watchtower Bible and Tract Society of New York, Inc., et al.

Case No. S2598 JCCP No. 4374

February 17, 2006

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STIPULATIONS:

Standing objection under Evidence Code Section 1030, et seq, with respect to the privilege issues for all of Mr. Heard's testimony about the judicial committee. 113

PRODUCTION REQUESTS:
(None)

E X H I B I T S:
(None)

for drunk driving?
A. Yes.
Q. And you believe that occurred sometime in '98?
A. Yes, sir.
Q. All right. And there's a record of that, you believe, in the police records in Rapid City?
A. Yes, there is.
Q. Did you hold a valid driver's license for the state of Oregon at the time of your arrest?
A. Yes, I did.
Q. And did you hold a valid driver's license while you lived in South Dakota?
A. I did for awhile. Because when I was -- had attended an alcohol treatment program.
And I could have gotten it back, but I couldn't -- we couldn't afford insurance. So you have to have insurance to have your driver's license back there. So when I got to Oregon, I had it renewed, so --
Q. But you had a driver's license in South Dakota for some period of time?

A. Oh yes. I had to have that to drive back and forth on the freeway, deliver the papers and so forth.
Q. When you were privately reproved, did you appear personally in front of a judicial committee?
A. Yes.
Q. Composed of three elders?
A. I believe there was three. Yes.
Q. And what was the result of the private reprovement?
A. I was just reproved for alcohol. And I didn't -- wouldn't be holding anything in the congregation. But I wasn't even attending then, so --
Q. So it really had no effect on you personally as far as the church was concerned?
A. No.
Q. Is that correct?
A. That's correct.
Q. During your affiliation with the Altamont congregation in Klamath Falls, did you appear in front of any judicial committees?
A. It was not a judicial committee. I just come in, in front of some elders. And

they were aware that I had been a child molester.
So they would have to watch me and make sure there was no -- I didn't use the rest room without being watched or any of that, so --
Q. And how did they know that you were a molester?
A. Because I told, when I was in South Dakota, I told those brothers there that I had been a child molester at one time. And they told me, you know, they'd pass it on to the congregation.
I guess evidently after 1995, I think it was 1997, Watchtower come out at that time saying that child molesters couldn't be used in positions of responsibility or anything like that, so --
Q. Do you remember the elders that you told in South Dakota that you were a child molester?
A. One was Roger Kelly. And the other one I believe was Steve Taylor. I don't remember the other one, the other one that was there, what his name was.

Q. Did you voluntarily provide this information to these two individuals?
A. Yes.
Q. Did you understand that you were under some obligation to do that at the time that you made this statement to them?
A. Yes. I was a baptized person, so I needed to do that.
Q. And when they learned that you had a history of child molestation, what special precautions did they take with you in terms of the other members of the congregation?
A. They told me that I wasn't allowed to hold any position in the congregation. And basically I wasn't attending meetings, so there wasn't a problem there.
Q. Well, you attended meetings from '92 to '95.
A. That's in Rapid City, South Dakota.
Q. Right.
A. And the question had never come up until that time until the information come out, I believe it was 1997 it came out.
I wasn't attending meetings at all during that time, from '97 to '98.

Q. Well, I'm trying to put some time frame here. When you had this conversation with the two elders, Kelly and Taylor, was this after you stopped attending services?
A. Yes, it was.
Q. So when you first arrived in Rapid City, and you attended services from '92 to '95, you didn't reveal this information to the congregation, is that right?
A. Right. It wasn't necessary to do that. They send a letter of record, your publisher's card, to the congregation that you're going to attend. And it's on that. So they would have been aware of it anyway.
Q. And you think that Watchtower had a new policy in '97 that required you to reveal this information to the elders?
A. Well, absolutely. You would have to.
Q. What happened in 1997 that changed?
A. In '97, I had that DUI. And they brought me in on that. And then they asked me if I had problems in that area and I told them yes, so --
Q. Okay. I'm asking about what church

policy changed in 1997 that prompted you to tell these two elders in South Dakota that you were a child molester?
A. They just outright asked the question, Roger Kelly did so -- that's as much as I can recollect.
Q. So you didn't go to them, they came to you, that's right?
A. Yes. And they asked if I would come to a committee meeting and I said yes, so --
Q. And you attended a committee meeting that was made up of these two individuals?
A. And there was another brother there too.
Q. Do you remember his name?
A. No, I don't.
Q. And in this committee meeting you revealed or acknowledged your history of child molestation?
A. Well, Roger Kelly directed that question right to me. And I told him I had been.
Q. Did you understand that he already knew?
A. No. In fact, I don't know if he did

or not. I know that when they send your publisher's card to another congregation, that information's usually on that.
And maybe enough time had passed in between that it wasn't there. I don't know.
Q. Did any of these elders that made up this committee meeting tell you they had received information from another congregation about your history of child molestation?
A. No.
Q. When you got to Altamont, did you disclose to them that you had a history of child molestation?
A. No. They called me in and said that they were going to have to let my niece and nephew know, because they had a child. So they did do that.
Q. So Cindy and Chester were members of the Jehovah Witnesses, correct?
A. They are.
Q. They attended church?
A. Yes.
Q. And you were called to a committee meeting of elders?
A. No. Just two elders talked to me.

Q. Do you remember those two elders?
A. One was Mark Durr. And you'd have to get the other one's name from him, because I don't recall.
Q. How do you spell Mark's last name?
A. I believe it's D-u-r-r or D-u-r.
Q. All right. Now, it's important for me to understand whether you volunteered this information or you only gave the information when they asked.
A. I gave the information when they asked.
Q. Okay. And after you told them or acknowledged that you were a child molester, did they then want to contact Cindy and Chester Miller and let them know?
A. Let me straighten something out. I was brought to the floor on that by Roger Kelly in South Dakota.
When I got here, he had sent the information he had. It would have been on my publisher's card. So that's how they knew here.
So then they called me and asked about it. And they said they were going to

A. No. Because the information was already there. And when they sent it to another congregation, if there was any restrictions on it, then I'd be notified of that.
Q. So only if there was some negative history on the card such as a private or public reproving or a disfellowshipping would the new congregation meet with you?
A. No. They would automatically know on that, what was on the card, so --
Q. While you attended services in Rapid City, South Dakota, did the other -- and I don't want you to guess about this, but were you ever at a meeting of the church where it was made known to the members of that congregation that you had a history of child molestation?
A. No.
Q. You know that these two elders knew about it, correct?
A. Yes. Because I told them.
Q. Right. But you don't know what they did with that information in terms of passing it on to the other members of the congregation,

correct?
A. Correct.
Q. And then you said that you told this -- or Mark Durr and Altamont also knew, because apparently he had received information from South Dakota that you were a child molester, correct?
A. Yes.
Q. Do you know whether Mark Durr and the other individual whose name you don't recall, both of whom were elders, ever pass that information on to the other members of the congregation in Altamont?
A. It wasn't really necessary for them to do that. They would keep an eye on the individual that's --
Q. That's not my question. I want to know if you were ever told or sitting in the congregation at a meeting where you heard an announcement made that, to the other members of the congregation, that you had a history of child molestation.
A. No.
Q. Let's go to Susanville now. I take it from the chronology we've gone through so

far that you were in Susanville in 1991, approximately?
A. It would be -- actually I moved to Rapid City, South Dakota, just in '92, so --
Q. So you were in Susanville immediately before going to Rapid City, South Dakota, correct?
A. Yes.
Q. And so that would have been 1991 that you were in Susanville, correct?
A. Yes.
Q. All right. By the way, while you were in Rapid City, South Dakota, you were arrested, correct?
A. Yes.
Q. For pedophilia?
A. No.
Q. I have here a felony warrant of arrest, File No. 04-1762, dated May 4, 2004, that is an indictment for the crimes of criminal pedophilia against Alvin Heard.
A. That was -- I had left South Dakota and was in Klamath Falls. And I was even incarcerated then when that was brought to me. So I was in the Klamath County Jail when that

was brought forward to me.
Q. So you were in fact arrested in South Dakota?
A. Just for drunk driving.
Q. What is this felony warrant of arrest that I have here for criminal pedophilia then?
A. That's because of what happened in 1998 with some boys that I molested. And I had moved to Klamath Falls.
So they sent out a fugitive warrant. And I was arrested and given a plea bargain. If I would take this 75 months, that would be dropped. And it was.
Q. I just want to make sure this is clear. It's your testimony then that you were never arrested in South Dakota for allegations of child molestation?
A. No.
Q. That's correct?
A. Not when I was in South Dakota.
Q. All right. Let's return to Susanville. While you were in Susanville living with your niece and nephew, did you hold any positions of authority in the Susanville

congregation?
A. No.
Q. Did you attend the services regularly?
A. Yes.
Q. Up to this point in time, had you ever been arrested for child molestation?
A. No.
Q. But you had been molesting children up to this point, correct?
A. Yes.
Q. All right. And did you contact any of the elders in the Susanville congregation and tell them that you were a pedophile?
A. No.
Q. Why not?
A. It just wasn't necessary at the time.
Q. Why wasn't it necessary?
A. Well, the information that we had prior to the 1997 I think it was, information was -- it was taken care of within the congregation that you were in, so --
Q. Are you telling me then that that congregation, that is the elders in the

Susanville congregation already knew?
A. Actually they wouldn't. I don't see how they would have known.
Q. Well, you had --
A. Other than one elder that had been on a committee that I was in front of in Paradise, California.
That's when I was still married. And he may have passed that information on, I don't know.
Q. All right. So one of the elders, I mean we're going backwards here and I'm doing this for a very specific reason, because we're dealing with time frames that go all the way back, we're going to go back into the '70's here.
There was an elder in Susanville at the time you were there that had previously been an elder in Paradise?
A. He was in Paradise. And he went to the Susanville congregation to give a Bible talk. And I believe he talked to the residing overseer there. I'm not for sure.
Q. Well, that's okay. Who was this elder that had come from Paradise?

A. Dennis Thompson.
Q. Dennis Compton?
A. Thompson.
Q. Thompson. And Dennis Thompson knew of your acts of child molestation?
A. That's correct. Because he handled the committee meeting that was on it.
Q. And this involved the Herman children?
A. No. This involved children in Paradise -- I mean in Oroville, California.
Q. Oroville?
A. Because I lived in Oroville at the time. And when that meeting went on, that I went before a committee, I was in Paradise at the time. I had moved from Oroville to Paradise.
Q. We're going to get there, but I want to deal here with Susanville. So Dennis Thompson comes to Susanville during this one year period that you're there and gives a presentation to that congregation?
A. Yes.
Q. And he knows you're there?
A. Yes.

Q. Do you know whether he told any of the elders in Susanville about his experience with you in Paradise?
A. I don't know. I know he talked to the presiding over at the time who was Glen Strahan.
Q. Could I have his name again please?
A. Glen Strahan. I don't know if he's affiliated with the congregation still or not there.
Q. Glen Strahan, for the one year period that you were there, was the presiding overseer for the Susanville congregation?
A. Yes.
Q. While you were in Susanville, did anybody make any reference to this publisher's card that we talked about earlier?
A. No. Not that I know of.
Q. Under your understanding of the purpose of this card, this card would have come from the preceding congregation, correct?
A. Right.
Q. And before Susanville, where did you attend?
A. Paradise, California. I'm starting

to remember some things now on that card. The thing that I remember, it goes to the field overseer.

When you get into a new congregation, they'll send for it. And then it's sent there.

Very seldom would it be sent along with you. It's sent there separately. That's to know your activity even if you're standing in the congregation at the time. So that's basically what I can remember.

Q. Now, when you move from let's say Paradise to Susanville and you begin attending services in Susanville, do you call Paradise and let them know that you've now affiliated with the Susanville congregation, is that the way you do it?

A. No. They were aware that I was going to be leaving. And I wasn't for sure where I was going to go at the time.

Q. Well, that's what I'm trying to find out. How would the people in Paradise know where you're going?

A. Because the field overseer writes or calls and has them send my publisher's card to

their congregation.

Q. But you have to tell them where you are, correct?

A. Yeah.

Q. You'd have to tell Susanville that you've previously come from Paradise and then they would get the information from Paradise or you would have to tell Paradise to send it to Susanville, correct?

A. Well, he, the field overseer -- I talked to the field overseer. When you become a member of that congregation, they have to have a publisher's card first.

And they will call or write the field overseer of the other congregation. Then it sends it forth.

Q. So how long were you a member of the Paradise congregation?

A. I can't recall exactly on that.

(Short pause in the proceedings).

Q. I'm going to represent to you that according to your wife Hazel, that you lived in Paradise from roughly 1988 until you moved to Susanville. Does that sound about right?

A. No. Because in 1980 I was in Para-

dise.

Q. 1988.

A. Yeah. But I was -- in 19 -- yeah, it would have been '88. 1990 I was in Paradise, so --

Q. All right. So in 1988, you're living in Paradise and you're attending services at the Kingdom Hall there, is that right?

A. Yes.

Q. Now, are you working?

A. Yes, I am.

Q. And where are you working while you lived in Paradise?

A. I worked for Louisiana Pacific in Oroville, California.

Q. Now, did you live in Paradise continuously until you moved to Susanville?

A. No. Because before Paradise, we had lived, Hazel and I had lived in Chico, California.

Q. Now, from Paradise you moved to Susanville, correct?

A. Correct.

Q. And I just want to know if for the entire period of time that you lived in

Paradise, okay --

A. Yes, I did.

Q. Let me rephrase the question. From 1988 when you moved to Paradise until you moved to Susanville in 1991, did you live continuously for that three year period in Paradise?

A. Yes.

Q. All right. Now, while you were in Paradise, you confessed to the elders of that congregation that you had been molesting children, is that right?

A. That I had molested children in the Oroville congregation.

Q. Fine. In Oroville. But you confessed to the molestations, correct?

A. Yes.

Q. And did you do that in front of a judicial committee of elders?

A. When I confessed?

Q. Yes.

A. No. Two elders were there. And then when I confessed it, they wrote up -- took all the information down. Then I went before a committee.

Q. Okay. So first you tell two elders

outside of a committee?
A. Yes.
Q. Then they convene the committee, and you related your admissions to them again?
A. Yes.
Q. Who were the two elders that you told before the committee was convened?
A. Actually I can picture their faces in my mind, but I can't remember their names. I can remember who was on the committee.
Q. Who's on the committee?
A. The one that I can remember would be Dennis Thompson. And he was the same one, by the way, that was in Susanville to give that talk.
Q. Anyone else that you can remember, even a first name that was on the committee?
A. I can't remember their names. I don't recollect.
Q. And the two elders that you told before you made the confession, were either one or both of these individuals on the judicial committee?
A. One of them, I believe one of them was. He was the older brother that was there,

so --
Q. And as a result of this admission of molesting children in Oroville, what action was taken?
A. I was privately reproved because -- I was privately reproved, so -- If you want further details, you'll have to ask.
Q. I'm going to, yes.
A. Okay.
Q. First of all, I want you to tell me what a private reproving is in the Jehovah Witness religion.
A. Privately reproved means that it's done within, right there. It doesn't have to be announced if you're privately reproved.
If it's public reproved, yes. In other words, if there's people that are around that are aware of the whole situation and those parents of those children that were involved were invited there.
If they would have came, then it would have been a public reprove. Since none of them showed up, then it was a private reprove.
Q. And your understanding is that this

admission on your part did not have to be communicated to the parents of these children, is that right?
A. No. Not at all. I told -- I went and told the parents myself. And told them that I would wait there at their house if they wanted to call the sheriff or whatever.
Q. That doesn't answer my question though, Mr. Heard. And I want to try it again.
When you were privately reproved, if the parents were not there for this judicial committee meeting and it was just you and the three elders, is it your understanding that the elders would not have had to go to these parents and tell them?
A. They went to the parents. I mean, they talked to the parents. The thing on private reprove is that when the judicial committee was convened and I was there, since none of the parents showed up, they were invited to show up, to come there.
And they were told that they still could take action within six years afterwards.
Q. So it's your understanding then that the parents already had been informed and knew

as well as the fact that you had told them?
A. Yes. Absolutely.
Q. All right. Now, this molestation involved four girls, is that right?
A. One boy and three girls.
Q. One boy and three girls?
A. Yes.
Q. And do you remember their names?
A. I don't recall.
Q. Do you remember the names, the last names?
A. Belmont was the name of the boy, the last name of the boy. Nathan was his first name, Nathan Belmont.
Q. What was the name of the boy?
A. Nathan Belmont.
Q. Nathan Belmont.
And were the three girls all in one family?
A. No, they weren't.
Q. What were their last names?
A. I don't recall.
Q. I'm going to give you some names and see if it refreshes your recollection. Was there a girl by the name of Maria?

A. No.
Q. Was one of the girls, did one of the girls have the last name of Herman?
A. That was in the Red Bluff congregation.
Q. I'm only talking about Oroville right now.
A. Okay.
Q. How about -- let me look here.
(Short pause in the proceedings).
Q. Did you ever molest a young girl by the name of Maria Sackoll, S-a-c-k-o-l-l?
A. Not that I recall. No.
Q. Did you ever molest Roxanne, Heather, and Natalie -- Roxanne, Heather, and Natalie Herman?
A. I just touched them inappropriately at one time.
Q. All three?
A. All three.
Q. Okay. Mona McIntosh?
A. She accused me. But, no, I never did molest Mona. That was my ex-wife's sister.
Q. Shawn McIntosh?
A. Yes.

I had. That's as near as I can recall.
Q. Well, I don't want you to guess. I mean if --
A. Well, she didn't want to deal with that.
Q. She dealt with it before, correct?
A. Right.
Q. And this was another instance of child abuse that had come to her attention?
A. Yes.
Q. And she left you?
A. Yes.
Q. And where did she --
A. Excuse me. She didn't leave me, because I didn't confess to that until after she left. She went to Sacramento then.
Q. Where did she move when she separated from you?
A. She moved to Chico, California.
Q. And do you know where she lived?
A. I can just remember -- recall an apartment there. I moved back. We went back together there so --
Q. So she got an apartment in Chico and moved from your residence in Paradise?

Q. Vickie Carroll?
A. Yes.
Q. But as you sit here today you cannot remember the names, and I've got them in here but I'm not going to take the time right now, the names of the children in Oroville other than Nathan Belmont?
A. The one kid's mother's name was Pat. But I can't remember what her last name is. It might have been Sackoll. Is that the one you --
Q. Yeah.
A. And then I never did know the name of her child. Just, she was two years old when I touched her inappropriately.
Q. As a result of -- Well, let me put the question differently. While you were living in Paradise, did you and your wife Hazel separate?
A. Yes, we did.
Q. Do you know why -- well, first of all, did she leave you?
A. Yes, she did.
Q. And do you know why she left you?
A. I guess because of the problems that

A. Yes.
Q. And how long did she live in Chico before you reunited?
A. Actually she -- I believe at one time she moved back to Red Bluff. And I went and got a -- well, that's when we lived --
I'm trying to get this all put together, where I can help you with that. In Paradise she had left me twice.
The first time she went to Sacramento. And then we got back together after that.
But when she was in Sacramento, I confessed to this other child molestation, or the ones that happened in Oroville.
Q. Do you remember what year you admitted to the molestations in Oroville?
A. It would have had to have been right after we moved to Paradise, California.
Q. Around 1988, correct?
A. Right. Because we moved from Paradise -- I mean, from Oroville. Let me get it straight now.
We moved from Oroville to Paradise. And then she -- that's where she left me was i

Paradise the first time. Then we got back together. And then she left another time right around 1990.

Q. Why did you admit to the molestation of the four children in Oroville?

A. Because of conscience, Bible conscience, conscience. I was having a struggle to try to -- with this sort of behavior.

Q. So you just decided that you were going to tell the elders?

A. Yes, I did.

Q. And it isn't because anybody was accusing you of anything, is that right?

A. No. No, they weren't.

Q. That includes the parents of these children?

A. Yes.

Q. And you said that you went to the parents and told them as well?

A. I did. The ones that I couldn't face, I called.

Q. Now, when you were privately reproved in Paradise, that didn't prevent you from attending services, correct?

A. No, no.

Q. And private reproval didn't mean that any of the other members of the congregation knew what had happened, correct?

A. Right. Yes.

Q. That's correct?

A. Yes.

Q. And to your knowledge, none of the other members of the congregation knew of this private reproving, correct?

A. No, they didn't.

Q. And you remained in that congregation, attending services there until you relocated to Susanville in 1991, correct?

A. Yes. Yes. But our addresses in Paradise had changed, so --

Q. And do you know as you sit here today whether the publisher's card that showed up in Susanville made note of the admission of child molestation in Paradise?

A. I have no idea. I don't think it did.

Q. Do you know whether that publisher's card noted your private reproving in Paradise?

A. It probably did. But I don't know. I can't recollect, so -- not that I can't

recollect, I just don't know.

Q. Okay. And if you're privately reproved and it's put on the card, the card doesn't have to say what you were reproved for, correct?

A. I'm not aware, so I don't know.

Q. Well, that would be a publishing of the reproval. And the whole concept of the private reproval is to keep it within this meeting involving the elders and the person that's involved, isn't that right?

MR. SCHNACK: I'm going to object to the form of the question. I think you're mischaracterizing his testimony.

You can answer.

THE WITNESS: Rephrase the question.

MR. NOLEN: Sure.

Q. (BY MR. NOLEN:) The private reproving, as you've explained it, means that the information that's discussed in this session with the elders remains private?

A. Yes, it does.

Q. And it's not announced to the congregation, correct?

A. Correct.

Q. And it's not given to the other elders, correct?

A. The other elders would have known what -- that there was a private reprove that took place.

Q. But beyond that, no one else knows the reasons, correct?

A. No.

Q. And therefore would the publishing card that we've been talking about contain the specific information about the private reproving?

A. It depends on how many -- this is my own thinking on it. It depends on how long ago that it took effect. If it was within the last few years or so forth. And I don't recall.

Q. Okay.

MR. NOLEN: Why don't we take a short break.

THE VIDEOGRAPHER: I'm off the record.

(Short recess).

THE VIDEOGRAPHER: We're back on the record.

Q. (BY MR. NOLEN:) Mr. Heard, according to information provided by your former wife, you lived in Oroville beginning in about 1985?
A. Yes.
Q. And did you live in Oroville continuously from 1985 until you moved to Paradise in 1988?
A. Yes, sir.
Q. And were you affiliated with the congregation of Jehovah's Witnesses while you were living in Oroville?
A. Yes.
Q. And do you remember the name of that congregation?
A. No, I don't.
Q. Do you remember the street location?
A. I can't remember that either.
Q. Did you attend services on a regular basis?
A. For awhile, yes.
Q. How long did you attend regularly at the congregation in Oroville?
A. Probably eight months to a year, nearly as I can remember.

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Q. And I haven't asked this question, I probably should. When you would attend services, would you always go together; that is, you and your wife?
A. Most of the time, yes.
Q. She was a member of the Jehovah Witness faith?
A. Yes, she was.
Q. And with just rare exceptions, the two of you would attend the meetings and the services together, correct?
A. Most of the time we both did. My daughter also attended.
Q. That's Beth?
A. Beth.
Q. So better yet, explain it to us why you didn't attend services except for eight months to a year while you lived in Oroville.
A. Just sometimes you just get involved too much in work and other activities that knocks it out, so --
Q. Where were you working?
A. I was working for Louisiana Pacific.
Q. The same place you worked while you lived in Paradise, correct?

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A. Yes.
Q. What did you do for Louisiana Pacific?
A. I pulled chain and did grading.
Q. Is that what you did while you lived in Paradise?
A. Yes.
Q. Did you hold any positions of leadership at the Kingdom Hall in Oroville?
A. No.
Q. When did you begin molesting the children in Oroville?
A. It was several months after -- well, as near as I can recollect, it was probably a month or so after I quit attending meetings. And I can't recall exactly when that was.
Q. And how did you come in contact with these children?
A. My daughter was a regular pioneer. And they would come to the house, so --
Q. So the molestations all occurred in your personal residence?
A. Yes.
Q. And this is while the children were there to see your daughter?

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A. Well, they would leave them there because my daughter would be out -- go out in the field service with her mother or whatever.
Q. So you were in effect baby-sitting these children?
A. Just the one, Nathan. The other one, she was just there at one time I think with Beth.
Q. Well, there were four children, correct?
A. Three.
Q. All right. Nathan and two girls?
A. Right.
Q. And you don't remember their names?
A. The one I believe, since you brought up Pat Sackoll, it would have been her little daughter who was two years old. And I inappropriately touched her.
Q. She was only two years old?
A. Yes.
Q. Were you ever confronted by the parents of these children while you lived in Oroville?
A. No.
Q. They didn't know about it, correct?

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

DECLARATION OF RUDY NOLEN IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS.

(DISCOVERY MOTION 2)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

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I, RUDY NOLEN, declare:

I am an attorney at law duly licensed to practice before all the Courts in the State of California. I am one of the Plaintiffs attorneys in these matters which are coordinated in the Superior Court for the County of Napa.

Attached as **Exhibit 1** to the Memorandum of Points and Authorities in Support of Motion to Compel is a true and correct copy of the Notice of taking Deposition which we have served on the Watchtower defendants.

Attached as **Exhibit 2** to the Memorandum of Points and Authorities is a true and correct copy of this Court's September 29, 2005 ruling regarding Plaintiffs' Motion to Compel Production of Documents.

Attached as **Exhibit 3** to the Memorandum of Points and Authorities is a true and correct copy of the March 14, 1997 letter addressed "To All Bodies of Elders".

Attached as **Exhibit 4** to the Memorandum of Points and Authorities is a true and correct copy of the July 20, 1998 letter addressed "To All Bodies of Elders".

Attached as **Exhibit 5** to the Memorandum of Points and Authorities are true and correct copies from the deposition transcript of Alvin Heard.

Considerable discussions were had regarding whether Defendants would produce anyone in response to the Notice of Deposition which is the subject of this motion. The culmination of those discussions was that the Watchtower Defendants' attorney would assert privileges based upon the penitential communication privilege as to most matters sought in the Notice of Deposition. The final result of those discussions is set forth in the E-mail, a copy of which is attached **Exhibit 6** to this Declaration, from one of the attorneys for Plaintiffs to the Watchtower Defendants' attorney. It was agreed that Plaintiffs would seek the Court's ruling concerning the production of a person to testify concerning these matters.

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I declare under penalty of perjury that the foregoing is true and correct, executed this 14 day of September at Sacramento, California.

Rudy Nolen
Attorney for Plaintiffs

MOTION # 2

Declaration of Rudy Nolen in Support of Motion to Compel PMK Deposition and Document Request Regarding General Discovery Matters

Exhibit 6

E-mail

Steve Owens

From: Hartley Hampton [hhampton@FHL-Law.com]

Sent: Friday, September 08, 2006 1:24 PM

To: Schnack, Bob

Cc: gslove@airmail.net; Rudy Nolen; Steve Owens

Subject: meet and confer letter re: motions to compel

This will confirm that we have met and conferred today concerning our two PMK notices.

We have been unable to reach any agreement concerning the PMK notice inquiring about the legal department and the Child Abuse Telememos. Accordingly, we will file a motion to compel.

Concerning the other PMK notice, I understand that you will assert objections based on clergy-penitent privilege to items 7 through 10, 12 and 13 to any discovery pertaining to anyone other than Alvin Heard and James Henderson. I understand that you will assert additional objections to 12 and 13 that the requested discovery involves matters that post-date August, 1981 and, therefore, is not reasonable calculated to lead to the discovery of admissible evidence. I understand that you will object to anything regarding Alvin Heard that post-dates August, 1981 (his last alleged abuse of the Wimberley plaintiffs and the judicial committee action in August 1981 regarding Alvin Heard) and anything regarding James Henderson that post-dates the Tim W issues (abuse of Tim W. and the related judicial committee proceedings of Dec. 1994, etc.) We will file a motion to compel pertaining to those items.

We also agreed that plaintiffs' request for documents would include documents related to elders' or judicial committee investigations and proceedings regarding the alleged perpetrators from the Woodland, Colfax and Napa congregations and any reports, communications, etc. related thereto to the Service Department in New York.

Thank you for your cooperation. Please call with questions or comments.

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PROOFS OF SERVICE ON NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS, DECLARATION OF RUDY NOLEN AND PROPOSED ORDER.

(DISCOVERY MOTION 2)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION # 2) PROPOSED ORDER – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS** to be served as follows:

____ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Mailed copy to::

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION # 2) NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION OF RUDY NOLEN – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS** to be served as follows:

____ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Mailed copy to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens
3392

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Bowles
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

NOTICE OF MOTION AND MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT.

(DISCOVERY MOTION 3)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

At the time and place indicated, Plaintiffs move the Court for an order compelling the Watchtower defendants to produce a Person(s) Most Knowledgeable consistent with

the PMK Notice of Taking Deposition which is attached to the supporting Memorandum of Points and Authorities.

This motion is made on the grounds that the documents and testimony are relevant to the subject matter of the action and defendants have refused to produce a person to so testify. The motion is based upon this Notice and Motion, the attached Memorandum of Points and Authorities and Declaration, and the records and files in this action.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Owen
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT.** **(DISCOVERY MOTION 3)** Date: October 10, 2006 Time: 8:30 a.m. Dept: A Judge: Hon. Raymond A. Guadagni

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INTRODUCTION

Plaintiffs are moving to compel the Watchtower Defendants to produce documentation and deposition testimony consistent with the PMK Notice of Taking Deposition which is currently set for October 18-19, 2006. (A copy of the Notice of Taking Deposition is attached as **Exhibit 1.**)

On November 15, 2005, Gary N. Breaux was deposed as the person most knowledgeable about, among other things, "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." During the course of the deposition, Mr. Breaux identified certain functions that were handled by the legal department, rather than the service department in which he worked. He was unable to answer several questions about the role of the legal department in the formation and implementation of the policies in question.

LEGAL AUTHORITY

California Code of Civil Procedure § 2025.450(a) provides that a party may move for an order "compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice."

In addition, California Code of Civil Procedure § 2020.480(a) provides that a "party seeking discovery may move the court for an order compelling" an answer to a question or the production of a document which is under a deponent's control and is not answered or produced at the deposition.

CATEGORIES OF TESTIMONY TO BE COMPELLED

The deposition notice in question designates matters fairly included within the scope of "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." Specifically, it designates the following matters:

1. The organization, staffing and operation of the Legal Department from the date of the department's creation until the present.

2. The Legal Department's role in responding to and investigating allegations of child sexual abuse within the Jehovah's Witnesses organization from the date of the department's creation until the present.

Neither designation invades the attorney-client privilege or seeks to inquire about work product. The designations concern policies and their implementation and, but for his lack of personal knowledge, Mr. Breaux would have addressed them. (See excerpts of deposition of Gary N. Breaux attached hereto as **Exhibit 2.)**

TESTIMONY ABOUT PRODUCED DOCUMENTS TO BE COMPELLED

At the depositions, Defendants produced many documents pursuant to a duces tecum. However, several of the documents were created and utilized by the Legal Department and, again, Mr. Breaux did not have sufficient personal knowledge to testify about those documents. (The produced documents in question would be attached hereto as **Exhibit 3** except that they may still be subject to a Stipulated Protective Order. For that reason, they will be provided to the Court at the time of the hearing.) Items 3 through 5 address three of those documents:

3. The development and use of "Child Abuse Telememos."

4. Records kept by or under the direction of the Legal Department concerning allegations of child sexual abuse.

5. Answers to the "Survey Questions" on p.2 or the 1993 "Child Abuse Telememo, page WTNY 00570 of the exhibits to the deposition of Gary N. Breaux and J. Richard Brown, Bates numbers SR 00000094.

Items 3 and 5 pertain to actual documents produced at the depositions. Exemplars of the "Child Abuse Telememos" were produced and Plaintiffs are entitled to examine defendant about the development and use of those documents. The "Survey" questions

were found on one of the "Child Abuse Telememos" and Plaintiffs seek only to learn the results of that survey.

Item 4 seeks only to discover, generally, information about the type of records kept by the legal department, how long such records have been kept, the number of records, etc., in order to determine whether a request for specific documents would be appropriate.

GOOD CAUSE JUSTIFIES THE PRODUCTION OF THE DOCUMENTS AND ANSWERS TO THE QUESTIONS

These questions and documents go to the heart of the Plaintiffs' accusations of child sexual abuse and defendants' knowledge of that abuse. The knowledge of various individuals in the Jehovah's Witnesses organization is key to Plaintiffs' proof of their case in these matters.

The individual who was produced as the person most knowledgeable was unable to address various topics due to his lack of knowledge. Plaintiffs, through this motion, seek to have the Watchtower Defendants produce an individual with knowledge of the applicable topics and documents.

CONCLUSION

Plaintiffs respectfully request that this Court find that the above discovery matters are not protected by the attorney-client privilege or the work product doctrine, and issue an order compelling the Watchtower Defendants to produce a witness or witnesses that will provide testimony in connection with the above five categories of inquiry.

Date: September 14, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Rudy Nolen
Attorney for Plaintiffs

MOTION # 3

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding the Legal Department

Exhibit 1

Copy of Notice of Taking Deposition

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Stephen W. Owens, SBN 84859
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Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

DANIEL WEST, SHANE PENCE, and AMBER PENCE	§	Case No. CV03-1439
vs.	§	**NOTICE OF TAKING DEPOSITION**
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al	§	

TO DEFENDANT WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and ITS ATTORNEYS OF RECORD

DATE:

TIME:

PLACE: Brooklyn, New York

WITNESS: Person(s) Most Knowledgeable regarding:

The deposition will be taken before a certified court reporter and will continue from day to day until completed. The deposition will also be videotaped. You are hereby authorized to attend and cross examine the witness.

The deposition of Defendant shall concern the matters set forth below. The Defendant is to designate a person or persons to testify as to the matters that are known or reasonably available to the corporation. The matters to be inquired about during the deposition are as follows:

1. The organization, staffing and operation of the Legal Department from the date of the department's creation until the present.

2. The legal department's role in responding to and investigating allegations of child sexual abuse within the Jehovah's Witnesses organization from the date of the department's creation until the present.

3. The development and use of "Child Abuse Telememos."

4. Records kept by or under the direction of the Legal Department concerning allegations of child sexual abuse.

5. Answers to the "Survey Questions" on p. 2 of the 1993 "Child Abuse Telememo", page WTNY 00570 of the exhibits to the depositions of Gary N. Breaux and J. Richard Brown, Bates numbers SR00000094.

This Notice of Deposition will also serve as a subpoena duces tecum and the representative(s) designated by Defendant shall bring with them to the deposition, the following items:

1. Any documents that describe the organization, staffing and operation of the Legal Department from the date of the department's creation until the present.

2. Any documents that describe the legal department's role in responding to and investigating allegations of child sexual abuse within the Jehovah's Witnesses organization from the date of the department's creation until the present.

3. Any documents that describe the records kept by or under the direction of the Legal Department concerning allegations of child sexual abuse from the date of the department's creation until the present.

4. Any documents that pertain to the "Survey Questions" on p. 2 of the 1993 "Child Abuse Telememo", page WTNY 00570 of the exhibits to the depositions of Gary N. Breaux and J. Richard Brown, Bates numbers SR00000094, including any documents that describe or tabulate the answers to such questions.

5. The actual documents that contain the answers to the Answers to the "Survey Questions" on p. 2 of the 1993 "Child Abuse Telememo", page WTNY 00570 of the exhibits to the depositions of Gary N. Breaux and J. Richard Brown, Bates numbers SR00000094.

MOTION # 3

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding the Legal Department

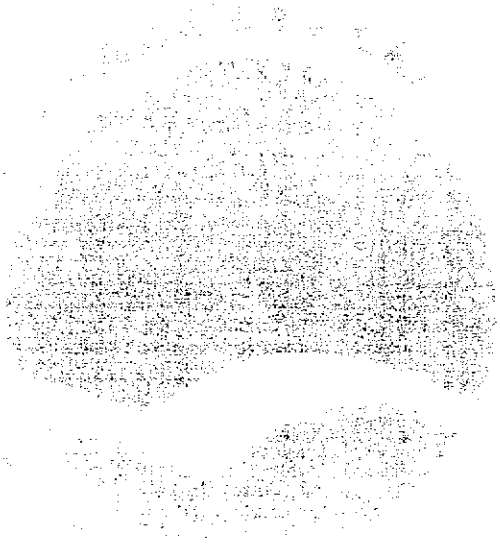
Exhibit 2

Excerpts of Deposition of Gary N. Breaux

SUBJECT TO PROTECTIVE ORDER

ORAL DEPOSITION OF GARY N. BREAUX

November 15, 2005



CONDENSED TRANSCRIPT AND CONCORDANCE
PREPARED BY:

Sunbelt Reporting & Litigation Services
(713) 667-0763 Houston
(214) 747-0763 Dallas
(361) 882-0763 Corpus

Page 97

the congregation. Right? 11:23:38
A. That's right. 11:23:40
Q. But you've also told us that the 11:23:41
elders are not trained in the type of 11:23:43
investigative techniques that law enforcement 11:23:46
employs. True? 11:23:49
A. That's right. 11:23:50
Q. So my question is -- is not 11:23:51
directed at anybody other than the -- than the 11:23:54
expectation of what the elders should do. My 11:23:56
question is simply this: Why don't the elders, 11:23:59
as soon as they receive an allegation of child 11:24:03
sexual abuse, pick up the phone and call the 11:24:07
police and ask the police to come in and 11:24:10
investigate? 11:24:13
A. You're speaking of prior to '94? 11:24:13
Q. Yes, sir. 11:24:16
A. Well, it would depend -- many 11:24:17
states didn't require it. And the position of 11:24:20
the body of elders is to -- is to care for that 11:24:22
individual within the confines of the 11:24:24
congregation. But at times it did require 11:24:27
individuals to call the authorities. 11:24:30
Q. Okay. 11:24:31
A. And certainly the family and 11:24:32

Page 98

those -- those that are knowledgable of it to 11:24:37
inform the authorities for extra protection. 11:24:39
Q. But prior to 1994, it was not 11:24:40
the policies -- I don't know what the policy is 11:24:42
after '94 and I'm not suggesting what it is 11:24:45
after '94. But at least up through 1994, it 11:24:48
was not the policy of the Jehovah's Witnesses 11:24:52
to have the elders pick up the phone and call 11:24:55
the police and have them come over and 11:24:58
investigate allegations of child sexual abuse 11:25:00
across the board, was it? 11:25:03
A. Well, no, it was not a policy, 11:25:04
but it doesn't mean that the congregation 11:25:06
didn't do something to protect. Certainly they 11:25:08
didn't encourage people not to call the 11:25:12
authorities. 11:25:14
Q. Well, one of the things that you 11:25:17
are designated as the person most knowledgeable 11:25:32
about is number 8 on the deposition notice. 11:25:35
I'll read it. It says, the "Person most 11:25:42
knowledgeable regarding any and all policies 11:25:47
that the Jehovah's Witness organization had for 11:25:49
handling accusations and proof of child sexual 11:25:52
abuse from 1970 to the present." Correct? 11:25:55
A. Yes. 11:25:59

Page 99

Q. Now, you've told me that you 11:25:59
don't know anything about these forms produced 11:26:00
by the legal department, including this child 11:26:08
abuse telememo that's Bates numbered 566. You 11:26:10
know nothing about that. 11:26:17
A. That is correct. I -- I'm not 11:26:20
in the legal department and I was not involved 11:26:21
in the preparation of this form. 11:26:23
Q. Okay. But one thing that you do 11:26:25
know, Mr. Breaux, is that it has been the 11:26:30
policy since you first became associated with 11:26:34
the Jehovah's Witnesses that the first thing 11:26:36
that an elder is expected to do if he receives 11:26:41
an allegation or any information that suggests 11:26:46
that a child has been the victim of sexual 11:26:49
abuse, that elder is supposed to call the legal 11:26:53
department. True? 11:26:56
A. Yes. I think -- I think about 11:26:57
the middle of the 1980s that was the direction 11:26:58
given. 11:27:01
Q. Well, that's been the direction 11:27:01
given way before the 1980s, wasn't it? That 11:27:04
was the direction given as early as 1965, when 11:27:07
you joined the organization, wasn't it, or when 11:27:11
you came to Brooklyn? 11:27:14

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A. If there was some legal issue? 11:27:15
I don't even think we had a legal department 11:27:18
back in the sixties. 11:27:20
Q. Well, you have -- you have 11:27:21
actually produced some documents that -- 11:27:22
THE VIDEOGRAPHER: Excuse me, 11:27:41
counsel. We need to change tapes. 11:27:41
MR. HAMPTON: Let's change the 11:27:48
tape. This is a good time to do it. 11:27:48
THE VIDEOGRAPHER: The time is 11:27:48
11:27 a.m. This concludes tape number one in 11:27:48
the deposition of Gary Breaux. We're off the 11:27:57
record. 11:28:00
(A recess was taken from 11:27 a.m. 11:30:29
to 11:38 a.m.) 11:30:29
THE VIDEOGRAPHER: The time is 11:30:29
11:38 a.m. This is cassette two in the 11:30:33
deposition of Gary Breaux. We're on the 11:30:37
record. 11:30:40
Q. Mr. Breaux, before we took a 11:30:41
break, you said that you -- you said something 11:30:43
about you didn't know when -- or you didn't 11:30:46
think you had a legal department before a 11:30:50
certain period of time and -- I don't remember 11:30:53
exactly what you said. And I bring that -- I'm 11:30:54

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A. If he's moving into a congregation and he's served previously and that search has already been done, then no, it's -- there won't be a second search. 03:35:02 03:35:04 03:35:06 03:35:09

Q. I'm sorry. I didn't understand that. Can you run that by me one more time? 03:35:19 03:35:21

A. He's an elder in one congregation and now he's -- he moves to a different congregation, then when he moves, a recommendation is made and at that time he will be reappointed. 03:35:24 03:35:25 03:35:28 03:35:30 03:35:34

Q. Well, what if he doesn't want to be reappointed? What if an elder in congregation A moves to congregation B and does not choose to seek appointment as an elder? First of all, the branch office is notified of that move. Correct? 03:35:36 03:35:38 03:35:42 03:35:44 03:35:47 03:35:51

A. If he is not going to be recommended in the next congregation, then we're not notified that he's moving. 03:35:53 03:35:55 03:35:57

Q. I want to make sure that we're on the same page. When you say "recommended," do you mean recommended as an elder, or recommended for membership in the congregation? 03:35:59 03:36:01 03:36:04 03:36:06

A. No. As an elder or an appointed 03:36:08

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position. 03:36:11

Q. So there's no notification if an elder moves from congregation A to congregation B unless he seeks reappointment. 03:36:12 03:36:14 03:36:17

A. That's correct. To the branch office. 03:36:19 03:36:20

Q. Okay. In that case, the only information about that elder's past that would be reported through Jehovah's Witness channels, if you will, would be in the letter of introduction that accompanies him to the new -- or that goes to the new congregation. 03:36:21 03:36:25 03:36:30 03:36:34 03:36:37 03:36:39

A. That would be correct. 03:36:42

Q. And if the individual moving from congregation A to congregation B were not an elder or a ministerial servant or a pioneer, there would be nothing -- there would never be a report to the branch office under any circumstances, would there? 03:36:44 03:36:50 03:36:50 03:36:55 03:36:56 03:37:00

A. Unless there was some other judicial issues or questions to be raised. But normally not; there would not be a copy of the introduction letter sent to the branch when a person moves to another congregation. 03:37:03 03:37:05 03:37:07 03:37:11 03:37:14

Q. Normally there would only be the 03:37:15

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introduction letter to the new congregation. 03:37:18

A. That's correct. 03:37:20

Q. Okay. Now, you say if there were judicial issues and some other things, there might be a report to the branch office? Under what circumstances would that happen? 03:37:20 03:37:21 03:37:23 03:37:25

A. If there was some complicated issue that the judicial committee was having problems with and they needed some further spiritual guidance. 03:37:29 03:37:31 03:37:33 03:37:36

Q. And that would depend on there being an ongoing judicial committee investigation at the time the individual moved. 03:37:38 03:37:40 03:37:43

A. Yes, that's -- that's right. 03:37:46

Q. Okay. Other than that, there wouldn't be a report? 03:37:49 03:37:50

A. There would not be. 03:37:52

Q. Okay. The -- this -- this notice asked that a person be designated who was most knowledgeable regarding any and all policies that the Jehovah's Witnesses -- Jehovah's Witness organization had for handling accusations and proof of child sexual abuse from 1970 to the present. Can you think of anything we haven't discussed that pertains to 03:37:52 03:38:01 03:38:08 03:38:11 03:38:16 03:38:20 03:38:21 03:38:23

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those policies? 03:38:25

A. No, nothing comes to my mind. 03:38:30

Q. All right. Similarly, you were designated to testify about the policies the Jehovah's Witness organization had for warning congregations and their members when a known child molester joined the congregation from 1970 to the present. Can you think of anything that we haven't discussed that pertains to those policies? 03:38:33 03:38:37 03:38:44 03:38:47 03:38:50 03:38:52 03:38:55 03:38:57

A. Nothing comes to my mind. 03:39:01

Q. All right. My understanding is that you are not going to answer any questions about documents produced by the legal department in response to our document request, even if those documents pertain to policies that the Jehovah's Witness organization had for handling accusations and proof of child sexual abuse. Is that correct? 03:39:04 03:39:05 03:39:10 03:39:13 03:39:16 03:39:21 03:39:26 03:39:30

MR. SCHNACK: I think that misstates my objections. He doesn't have personal knowledge about the legal forms and the legal department procedures, is what the objection was. 03:39:31 03:39:32 03:39:32 03:39:32 03:39:35

Q. Well, regardless of what the 03:39:36

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objection was, are you -- are you prepared to answer questions about the documents produced by the legal department and how they're used and their purpose? 03:39:38 03:39:42 03:39:46 03:39:48

MR. SCHNACK: He lacks personal knowledge in that regard. That was the objection. 03:39:50 03:39:51 03:39:53

MR. HAMPTON: Okay. 03:39:54

MR. SCHNACK: His own testimony supports that. 03:39:54 03:39:55

MR. HAMPTON: And I believe he was instructed not to answer as well. 03:39:55 03:39:56

Q. Is that correct? Were you instructed not to answer? 03:39:58 03:39:59

MR. SCHNACK: Well, let's -- let's go question by question if you want to pursue it, because if there are questions I'll allow him to answer -- just the way it's stated, I can't blanket say no. 03:40:01 03:40:01 03:40:04 03:40:06 03:40:13

Q. My understanding is that you're produced here today without -- that you have no personal knowledge about the role of the legal department in carrying out, implementing the policies that the Jehovah's Witness organization has concerning accusations and 03:40:13 03:40:15 03:40:19 03:40:22 03:40:27 03:40:29

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proof of child sexual abuse. Is that true? 03:40:32

MR. SCHNACK: From 1994 and prior. 03:40:36 03:40:38

MR. HAMPTON: That's correct. Well, actually from 1990 -- 1970 to the present, is what the notice says. 03:40:38 03:40:38 03:40:42

MR. SCHNACK: But we did object to the notice based on dates. 03:40:43 03:40:44

MR. HAMPTON: Regardless. Any date. 03:40:46 03:40:48

MR. SCHNACK: It's not regardless. 03:40:48 03:40:48

Q. Any date. You have -- you do not have personal knowledge of how the legal department fits into this, these policies. Is that fair? 03:40:49 03:40:50 03:40:52 03:40:55

MR. SCHNACK: Within the time frame up through '94. That's what he's here to testify about. 03:40:56 03:40:57 03:41:00

MR. HAMPTON: Okay. 03:41:01

Q. Up through '94, you don't know how the legal department participates in these policies for handling accusations and proof of child sexual abuse, do you? 03:41:02 03:41:03 03:41:06 03:41:09

A. I do not know how those forms 03:41:11

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were used by the legal department. 03:41:13

Q. You don't know how -- what the legal department does in participating in these policies, do you? 03:41:15 03:41:16 03:41:20

MR. SCHNACK: With respect to the same time frame, go ahead and answer. 03:41:23 03:41:23

A. No, I don't. 03:41:26

Q. So we have to talk to somebody from the legal department about that. 03:41:27 03:41:29

A. Yes, you would. 03:41:31

Q. We'd have to talk to somebody in the legal department about the forms that were produced by the legal department that we've already talked about, wouldn't we? 03:41:32 03:41:33 03:41:35 03:41:37

A. Yes, that's correct. 03:41:40

Q. Okay. Have you understood all my questions? 03:41:41 03:41:42

A. Yes, I have. 03:41:44

MR. HAMPTON: Well I appreciate your time. I enjoyed meeting you and talking to you. 03:41:47 03:41:48 03:41:51

THE WITNESS: Thank you very much. 03:41:53 03:41:53

MR. SCHNACK: Let's go off the record for just a second. I think we're going 03:41:55 03:41:56

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to be done, but I just want to make sure. 03:41:58

THE VIDEOGRAPHER: The time is 3:41. We're off the record. 03:49:05 03:49:06

(A recess was taken from 3:41 p.m. to 3:48 p.m.) We're on the record. 03:49:06 03:49:09

EXAMINATION 03:49:09

BY MR. SCHNACK: 03:49:09

Q. Mr. Breaux, I just have a few questions. 03:49:10 03:49:12

When you were answering Mr. Hampton's questions there at the end about the legal department, your answers referred to the forms that were produced in connection with your deposition. Is that correct? 03:49:12 03:49:13 03:49:16 03:49:19 03:49:21

A. That's correct. 03:49:23

Q. And that you're not sure how those forms are specifically used in the legal department. Is that correct? 03:49:23 03:49:24 03:49:26

A. That's correct. 03:49:27

Q. Do you have a general understanding what the legal department does when elders from local congregations in the United States call in? 03:49:28 03:49:29 03:49:30 03:49:33

A. Yes, I do. 03:49:34

Q. Just tell us generally what your 03:49:35

MOTION # 3

Memorandum of Points and Authorities in Support of Motion to Compel PMK Deposition and Document Request Regarding the Legal Department

Exhibit 3

The produced documents in question
(copies of the Child Abuse Telememos)

DOCUMENTS RESPONSIVE TO REQUEST NO. 4 IN PLAINTIFFS' FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF PERSON MOST KNOWLEDGEABLE IN "TRACK I" CASES, PRODUCED SUBJECT TO THE CONFIDENTIALITY AND NONDISCLOSURE TERMS CONTAINED IN THE "STIPULATED PROTECTIVE ORDER AND NONDISCLOSURE AGREEMENT ENTERED BY THE NAPA COUNTY (CALIFORNIA) SUPERIOR COURT ON OR ABOUT 06/13/2005

Legal

CHILD ABUSE TELEMEMO

Service _____

1. Date and time of telephone call: _____
2. Person handling call: _____
3. Name and phone number of caller: _____
4. Congregation name, city, and state of caller: _____
5. Name, age, and congregation status of offender: _____
6. Name, age, and congregation status of victim: _____
7. Briefly describe the nature and extent of abuse: _____

CONFIDENTIAL

8. When did the abuse occur? _____
9. Is victim in same home with offender? _____
10. What efforts are being made to protect victim? _____
11. Has a report been made to authorities? YES-☐ NO-☐
12. Give details of how reported: _____
13. Who else has knowledge of abuse? _____
14. Have any elders been contacted by authorities for testimony or cong. records? YES-☐ NO-☐
15. Direction given:

NONREPORTING ☐

The elders have no duty to report child abuse under the _____ child abuse reporting law. Whether others who have knowledge make a report or pursue the matter legally is a personal decision. We explained the Society's policy of confidentiality and directed the elders to contact the Legal Department if they are subpoenaed. We had no legal objection to the elders handling this matter as they would any other case of serious wrongdoing. The elders should refer to the *Awake!* issues on child abuse (6-22-82, 1-22-85, 12-22-86, 10-1-83) in giving appropriate spiritual assistance to the family. Positive steps should be taken to prevent further abuse. The elders should monitor the situation carefully for the protection of other potential victims.

REPORTING ☐

The elders have a duty to report child abuse under the _____ child abuse reporting law. They should speak to the offender directly and find out if he is willing to turn himself in. If he is unwilling, there may be someone else who has knowledge of the abuse who will make a report. If no one who has knowledge of the abuse is willing to make a report, two elders should make an anonymous phone report from a neutral location, such as a phone booth. They should keep a written record of who made the call, to whom it was made, the date and time of the call, and other pertinent factors. This record should then be signed by the two elders and placed in congregation files as proof that a report of child abuse was made in compliance with the law. We explained the Society's policy of confidentiality and directed the elders to contact the Legal Department if they are subpoenaed. We had no legal objection to the elders handling this matter as they would any other case of serious wrongdoing. The elders should refer to the *Awake!* issues on child abuse (6-22-82, 1-22-85, 12-22-86, 10-1-83) in giving appropriate spiritual assistance to the family.

16. Other direction: _____
17. Follow up required: _____

See Reverse Side ☐

1989

WTNY 00566

DESK: *Legal* *Service*

CHILD ABUSE TELEMEMO

Date of telephone call:

Person handling call:

Name of caller:

Congregation name, city, and state of caller:

Name, age, and congregation status of offender:

Name, age, and congregation status of victim:

Briefly describe the nature and extent of abuse:

CONFIDENTIAL

Direction given:

Follow up required:

1992

Legal

CHILD ABUSE TELEMEMO

Service _____

1. Date and time of telephone call: _____
2. Person handling call: _____
3. Name and phone number of caller: _____
4. Congregation name, city, and state of caller: _____
5. Name, age, and congregation status of offender: _____
6. Name, age, and congregation status of victim: _____
7. Briefly describe the nature and extent of abuse: _____

CONFIDENTIAL

8. When did the abuse occur? _____ ☐ Confessed ☐ Denied ☐ Unknown
9. Is victim in same home with offender? _____
10. What efforts are being made to protect victim? _____
11. Has a report been made to authorities? YES-☐ NO-☐
12. Give details of how reported: _____
13. Who else has knowledge of abuse? _____
14. Have any elders been contacted by authorities for testimony or cong. records? YES-☐ NO-☐
15. Direction given:

NONREPORTING ☐

Elders have no duty to report child abuse under the _____ child abuse reporting law. Whether others who have knowledge make a report or pursue the matter legally is a personal decision. We explained the Society's policy of confidentiality and asked the elders to review the letter of July 1, 1989. Encourage parties not to involve the congregation if authorities investigate. Contact the Legal Department if they are subpoenaed. No legal objection to the elders handling this as any other case of serious wrongdoing. The elders should refer to the letter of March 23, 1992, and use the articles cited on child abuse in giving appropriate spiritual assistance to the family. (See also *Awake!* 10-8-93) Treat victim with extreme thoughtfulness and kindness. Is it necessary to make the sexual abuse victim, who is still a minor, confront the accused? Positive steps should be taken to prevent further abuse. The elders should monitor the situation carefully for the protection of other potential victims.

REPORTING ☐

Elders have a duty to report child abuse under the _____ child abuse reporting law. They should speak to the offender directly and find out if he is willing to turn himself in. If he is unwilling, there may be someone else who has knowledge of the abuse who will make a report. If no one who has knowledge of the abuse is willing to make a report, two elders should make an anonymous phone report from a neutral location, such as a phone booth. They should keep a written record of who made the call, to whom it was made, the date and time of the call, and other pertinent factors. This record should then be signed by the two elders and placed in congregation files as proof that a report of child abuse was made in compliance with the law. We explained the Society's policy of confidentiality and asked the elders to review the letter of July 1, 1989. Encourage parties not to involve the congregation if authorities investigate. Contact the Legal Department if they are subpoenaed. No legal objection to the elders handling this as any other case of serious wrongdoing. The elders should refer to the letter of March 23, 1992, and use the articles cited on child abuse in giving appropriate spiritual assistance to the family. (See also *Awake!* 10-8-93) Treat victim with extreme thoughtfulness and kindness. Is it necessary to make the sexual abuse victim, who is still a minor, confront the accused? Positive steps should be taken to prevent further abuse. The elders should monitor the situation carefully for the protection of other potential victims.

16. Other direction: _____
17. Follow up required: _____

See Reverse Side ☐

1993

WTNY 00569

18. Additional comments: _____

CONFIDENTIAL

SURVEY QUESTIONS

1. What action has been taken by the elders? _____
2. How long have the elders known of the accusation before calling Legal? _____
3. Have the elders reviewed the letter of:

	Yes	No
July 1, 1989	___	___
March 23, 1992	___	___
February 3, 1993	___	___

4. Have previous accusations been made against the accused? _____
5. Has the child received a medical examination? _____
6. What person brought this charge to the elders? _____
7. Where did any conversations with the child occur? _____
8. Did the elders talk directly with the child? _____
9. How many elders felt that the victim was somewhat at fault or willingly participated in the acts? _____

CM PROFILE

Attorney-Client Privileged

CONFIDENTIAL

Legal:

Service:

1. Date entered:
   Person handling call:
2. Caller's name:
   Phone number:
   Congregation:
   City: State:
3. Accused:
   Congregation status:
   Congregation:
   Date of Baptism:
   Date of Birth:
   Age:
   Did he ever serve as an elder, ministerial servant, or pioneer? ○ No ○ Yes
   When did he serve? In what capacity?
   Relationship(s) of accused to victim(s)?
4. Victim(s):
   Congregation status:
   Congregation:
   Age:
5. Who reported:
   When first told elders:
   Relationship of reporter to victim? to accused?
6. Have elders spoken with the accused? ○ No ○ Yes
   Under what circumstances?
   Admitted to elders? Denied? ○ Confessed ○ Denied ○ Unknown
7. Briefly, the nature and extent of abuse:
8. Categorize the abuse:
9. When did abuse occur?
10. Now living in same home? ○ No ○ Yes
11. Other minors living in same home?
12. What efforts to protect victim(s)?
13. Reported to authorities? ○ No ○ Yes
    Give details of how reported:
14. Who has knowledge of abuse?
15. Elders contacted by authorities? ○ No ○ Yes
    Direction given: See Statutes book

16. Other direction:

17. Comments...

18. Follow-up description:
    Follow-up date:

1993

WTNY 00571

DOCUMENTS RESPONSIVE TO REQUEST NO. 5 IN PLAINTIFFS' FIRST AMENDED NOTICE OF TAKING DEPOSITION DUCES TECUM OF PERSON MOST KNOWLEDGEABLE IN "TRACK I" CASES, PRODUCED SUBJECT TO THE CONFIDENTIALITY AND NONDISCLOSURE TERMS CONTAINED IN THE "STIPULATED PROTECTIVE ORDER AND NONDISCLOSURE AGREEMENT ENTERED BY THE NAPA COUNTY (CALIFORNIA) SUPERIOR COURT ON OR ABOUT 06/13/2005

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF RUDY NOLEN IN SUPPORT OF PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT.** **(DISCOVERY MOTION 3)** Date: October 10, 2006 Time: 8:30 a.m. Dept: A Judge: Hon. Raymond A. Guadagni

///

///

I, RUDY NOLEN, declare:

I am an attorney at law duly licensed to practice before all the Courts in the State of California. I am one of the Plaintiffs attorneys in these matters which are coordinated in the Superior Court for the County of Napa. Attached as **Exhibit 1** to the Memorandum of Points and Authorities in Support of Motion to Compel is a true and correct copy of the Notice of taking Deposition which we have served on the Watchtower defendants.

Attached to the Memorandum of Points and Authorities as **Exhibit 2** are excerpts from the deposition of Gary N. Breaux, the individual who was produced as the Person Most Knowledgeable by the Watchtower defendants concerning certain topics. As can be seen on Pages 99, 227-229, and 230-231, Mr. Breaux was unable to testify concerning documents produced by the legal department, the organization of the legal department, and the legal department's policy regarding accusations of child sexual abuse.

Attached to the Memorandum of Points and Authorities as **Exhibit 3** are the true and correct copies of the Child Abuse Telememos. (These documents may still be subject to a Stipulated Protective Order and they will be provided to the Court at the time of the hearing on this matter.)

The Watchtower defendants' attorney indicated that the Watchtower Defendants were unwilling to produce anyone who can testify about the legal department and the Child Abuse Telememos. It was agreed that Plaintiffs would seek the Court's ruling concerning the production of a person to testify concerning these matters. The E-mail concerning our inability to reach any agreement is attached as **Exhibit 4**.

I declare under penalty of perjury that the foregoing is true and correct executed this 14 day of September at Sacramento, California.

Rudy Nolen
Attorney for Plaintiffs

MOTION # 3

Declaration of Rudy Nolen in Support of Motion to Compel PMK Deposition and Document Request Regarding the Legal Department

Exhibit 4

E-mail

Steve Owens

From: Hartley Hampton [hhampton@FHL-Law.com]

Sent: Friday, September 08, 2006 1:24 PM

To: Schnack, Bob

Cc: gslove@airmail.net; Rudy Nolen; Steve Owens

Subject: meet and confer letter re: motions to compel

This will confirm that we have met and conferred today concerning our two PMK notices.

We have been unable to reach any agreement concerning the PMK notice inquiring about the legal department and the Child Abuse Telememos. Accordingly, we will file a motion to compel.

Concerning the other PMK notice, I understand that you will assert objections based on clergy-penitent privilege to items 7 through 10, 12 and 13 to any discovery pertaining to anyone other than Alvin Heard and James Henderson. I understand that you will assert additional objections to 12 and 13 that the requested discovery involves matters that post-date August, 1981 and, therefore, is not reasonable calculated to lead to the discovery of admissible evidence. I understand that you will object to anything regarding Alvin Heard that post-dates August, 1981 (his last alleged abuse of the Wimberley plaintiffs and the judicial committee action in August 1981 regarding Alvin Heard) and anything regarding James Henderson that post-dates the Tim W issues (abuse of Tim W. and the related judicial committee proceedings of Dec. 1994, etc.) We will file a motion to compel pertaining to those items.

We also agreed that plaintiffs' request for documents would include documents related to elders' or judicial committee investigations and proceedings regarding the alleged perpetrators from the Woodland, Colfax and Napa congregations and any reports, communications, etc. related thereto to the Service Department in New York.

Thank you for your cooperation. Please call with questions or comments.

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

SEP 15 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PROOFS OF SERVICE ON NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT, DECLARATION OF RUDY NOLEN AND PROPOSED ORDER.

(DISCOVERY MOTION 3)

Date: October 10, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION # 3) NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES, and DECLARATION OF RUDY NOLEN – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT** to be served as follows:

____ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Copy Mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens
3421

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On September 15, 2006, I caused the within **(MOTION # 3) PROPOSED ORDER – IN SUPPORT OF MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT** to be served as follows:

____ **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Courtesy Copy
Honorable Raymond A. Guadagni
Department A
Napa County Superior Court

Copy Mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 15, 2006, at Sacramento, California.

Stephen W. Owens

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

ORIGINAL

FILED

SEP 2 1 2006

Clerk of the Napa Superior Court
By: [signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **NOTICE OF ENTRY OF ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006A**
AND COORDINATED CASES	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that the Court has entered its Order dated September 6, 2006 re Case Management Conference of August 24, 2006. A true and correct copy of the Order is attached hereto.

DATED: September 14, 2006

BULLIVANT HOUSER BAILEY PC

By [signature]
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

Received
SEP 15 2006
Napa Superior Court

4215649.1*****

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Attorneys for The Church Defendants

ENDORSED
SEP - 6 2006
Clerk of the Napa Superior Court
By: M.M. FIELDS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006**
AND COORDINATED CASES	

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

A further judicial case management conference ("CMC") in all remaining coordinated actions came regularly for hearing on August 24, 2006 at 9:30 AM before the Honorable Raymond A. Guadagni in Dept. A. Plaintiffs' counsel Rudy Nolen and the Church Defendants' counsel Robert Schnack each appeared in person. Renee Kennedy of the Tehama County Superior Court also participated by telephone in the portions of the CMC regarding setting of trial dates in the Track I cases. The Court discussed and considered the written submissions of the parties with respect to proposed discovery plans and heard and considered related arguments of counsel. Now, therefore, being fully advised, and pursuant to agreement of the above-referenced counsel for plaintiffs and the Church Defendants,

IT IS HEREBY ORDERED as follows:

Track I Cases -- Tehama County cases of *Tim W.* and *Wimberley Gutierrez, et al*

1. Trial Dates: The two Track I cases are hereby set for trial as follows: *Tim W.* is set for April 3, 2007; and *Wimberley Gutierrez, et al* is set for trial May 15, 2007, with each case scheduled for a 10-day jury trial. The parties shall consider those trial dates to be firm. Each case will be tried at the courtroom at the Juvenile Justice Center located at 1790 Walnut Street in Red Bluff, CA. The Tehama County Superior Court will send a notice of assignment of the trial judge who will preside over the trials of the Track I cases within approximately 30 days from the date of this CMC.

2. Non-Expert Discovery and Motion for Summary Judgment deadlines: The deadline for completion of all non-expert discovery and for the filing of summary judgment and summary adjudication motions in the Track I cases shall be December 1, 2006. The court can extend those deadlines for good cause shown.

3. Expert Discovery: Expert disclosures will be made per Code of Civil Procedure sections 2034.210, *et seq.*, with expert depositions to be taken in March 2007.

4. Coordination: The Napa County Superior Court will continue to hear and rule on all discovery and summary judgment or summary adjudication motions filed by the parties in the Track I coordinated cases.

Non-Track I cases -- Napa County cases of *Charissa W., et al* and *Tabitha H.*; Placer County case of *Ken L.*; and Yolo County case of *Daniel West, et al*

1. Initial written discovery (form and special interrogatories, requests for production of documents, requests for admissions) shall be propounded by September 15, 2006;

2. Objections and responses to written discovery shall be due by October 20, 2006;

3. Court hearings on any discovery motions concerning the above referenced written discovery shall be held by December 15, 2006;

4. Depositions of parties: Plaintiffs' depositions are to be scheduled for late November/early December 2006, and depositions of any plaintiff's family members are to be scheduled starting no more than about 45 days after the plaintiffs' depositions; local

congregation elders and PMK's of the entity defendants are to be completed by February 28, 2007 (but can proceed during written discovery, subject to activity in the Track I cases taking precedence over non-Track I cases due to pending trial dates in the Track I cases);

5. Depositions of non-party percipient or fact witnesses shall be completed by June 29, 2007;

6. Deadline for filing summary judgment/summary adjudication motions shall be August 1, 2007;

7. A judicial case management conference is set for July 12, 2007 in Department A in the Napa County Superior Court, at which time the Court intends to set trial dates for October and November 2007 in the non-Track I cases, following procedures similar to that followed in the Track I cases; and

8. Expert discovery shall be governed by CCP sections 2034.210, *et seq.*

9. Coordination: The Napa County Superior Court will continue to hear and rule on all discovery and summary judgment or summary adjudication motions filed by the parties in the non-Track I coordinated cases.

DATED: September 6, 2006

By RAYMOND A. GUADAGNI
Raymond A. Guadagni
Superior Court Judge

4224712.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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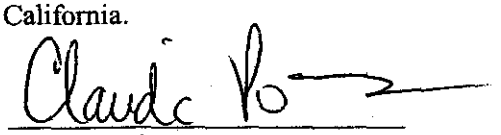
_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 1, 2006, at Sacramento, California.

By 
Claudia Pohlman

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Shawn Appling Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882
Plaintiff In Pro Per Orphee D. Adkins 1936 Northwood Dr., Unit 4 Vacaville, CA 95687	

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER RE CASE MANAGEMENT CONFERENCE OF AUGUST 24, 2006

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

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XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 14, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

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Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Attorneys for Shawn Appling Adrian L. Randolph Randolph Cregger & Chalfant 1030 G St. Sacramento, CA 95814
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Plaintiff In Pro Per Orphee D. Adkins 1936 Northwood Dr., Unit 4 Vacaville, CA 95687	

NOLEN & ASSOCIATES
ATTORNEYS

1501 28TH STREET
SACRAMENTO, CA 95816

PHONE: 916-733-0600
FAX: 916-733-0601

FILED
SEP 22 2006
Clerk of the Napa Superior Court
By: Sora O'Doherty
Deputy

September 20, 2006

Napa County Superior Court
825 Brown Street
Napa, CA 94559

Attention: Sora O'Doherty

Re: ***West v. Watchtower, et al.***
Napa County Superior Court Case No. 26-22191

Dear Sora:

As per your discussion with my secretary on today's date, I am writing this letter to confirm that the three Motions to Compel filed with the Court on September 15, 2006, originally set for October 10, 2006, are continued and will now be heard on Friday, October 13, 2006 at 8:30 a.m.

We appreciate your efforts in attempting to continue the hearing to a later *time*, but as you informed us, due to the Court's scheduling, these motions can only be heard at 8:30 a.m.

Enclosed please find a check in the amount of Sixty Dollars ($60.00) made out to the Napa County Superior Court for continuation fees.

Very truly yours,

NOLEN & ASSOCIATES

Stephen W. Owens

SWO/ps
Enclosures

cc: Robert Schnack;
Attorney for Defendants

RHUDOLPH NOLEN, JR.
E-MAIL: RNOLEN@NOLENLAW.NET
MEMBER, AMERICAN BOARD OF TRIAL ADVOCATES

STEPHEN W. OWENS
E-MAIL: SOWENS@NOLENLAW.NET

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
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Attorneys for The Church Defendants

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: J. Oliver Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

BY FAX

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

(DISCOVERY MOTION NO. 1)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

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I. INTRODUCTION

The Church Defendants respectfully submit this response to plaintiffs' discovery motion no. 1 regarding only the *Daniel West, et al* case and depositions of elders of the local congregation defendant in that case. The specific issue presented is the applicability of the clergy-penitent privilege to the particular facts of this non-Track I case.

Contrary to what plaintiffs urge in their discovery motion no. 1, the earlier ruling did not in any way address the non-Track I cases. In the prior discovery motion filed last year, plaintiffs sought to compel the disclosure of documents and information related to spiritual communications that the two co-defendants in the Track I cases, James Henderson and Alvin Heard, had separately with clergy within the defendant Red Bluff North Congregation of Jehovah's Witnesses. (*See* Track I plaintiff Tim W's prior Motion to Compel at p.3, line 7 – p.4, line 28, and plaintiffs Wimberley's prior Motion to Compel, p.3. line 7–p.4, line 28.) Thus, plaintiffs suggestion that the Court has already ruled on the clergy-penitent issue in the non-Track I cases is simply incorrect.[1]

In addition, the Court's earlier ruling was based strictly on communications within judicial committees convened by the defendant Red Bluff congregation, as well as on an erroneous misperception that the "Judicial Committee was under *no duty* to keep the communications private. In fact, the evidence establishes that the Judicial Committee was *required* to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters." *See* this Court's "Ruling on Submitted Motion to Compel Production of Documents" at p. 2 (issued September 29, 2005)(emphasis added). In addition to the quoted language being factually incorrect, as demonstrated by the congregation elders' declarations filed herewith, the communications at issue here include penitential and

[1] Plaintiffs' counsel earlier advised defense counsel that the "law of the case" doctrine applied here. However, under California law, the law of the case doctrine applies only to appellate court rulings on the merits in the same case and between the same parties, and no comparable effect is given to trial court rulings. *E.g.*, Cal. Prac. Guide: Civ. Appeals and Writs (The Rutter Group, 2006) §14:174, citing *Lennane v. Franchise Tax Board* (1996) 51 Cal.App.4th 1180, 1186. Similarly, an appellate court's summary denial of a writ petition is *not* considered law of the case, because such a denial is not a ruling on the merits. *Kowis v. Howard* (1992) 3 Cal.4th 888, 894. Accordingly, the law of the case doctrine indisputably does *not* apply here.

confidential communications *outside of* any judicial committee setting. Thus, the Court's prior ruling does not address or decide the issues here.

In addition, in an apparent effort to discredit the Church Defendants before this Court, plaintiffs (as well as their Texas counsel Gregory Love through his sworn declaration) disingenuously suggest that the Church Defendants ignored this Court's prior ruling in the Track I cases by objecting to certain questions in the August 16, 2006 depositions of three Red Bluff elders in the Track I case of *Tim W.* However, as plaintiffs' counsel were then and still are well aware, the Church Defendants were then seeking appellate review of the prior trial court ruling. (The California Supreme Court did not rule on the Church Defendants' petition for review until the week *after* the August 16th depositions and, indeed, the time to seek further appellate review in the U.S. Supreme Court still has not expired.) Moreover, defense counsel Schnack had earlier proposed to plaintiffs' counsel that the Red Bluff elders' August 16th depositions be postponed until appellate review of this Court's prior ruling in the Track I cases was completed, but plaintiffs' counsel declined to postpone the depositions. Thus, because of the pending appellate review, defense counsel was *forced* by plaintiffs' counsel to object at the August 16th depositions in order not to waive the clergy-penitent privilege issue that was on appeal in the Track I cases.

II. CLERGY-PENITENT PRIVILEGE

In this *Daniel West, et al* case, there are four penitential and privileged communications within the meaning of California Evidence Code sections 1030, 1032, and 1034 at issue, as follows: (1) Confidential communications in the mid-1980's from a teenage male in the congregation to an elder concerning co-defendant Timothy Silva's spiritual health (Silva then attended the South Congregation of Jehovah's Witnesses, Woodland, California ("South Congregation"), but he was not then a ministerial servant in any congregation of Jehovah's Witnesses) and related confidential spiritual communications with Silva; (2) confidential communications in 1991 between the South Congregation elders, the circuit overseer, who also is an elder, and elders in the United States Service Department concerning Silva's spiritual qualifications for appointment as a congregation ministerial servant; (3) a 1996 confidential

communication from South Congregation elders to elders in the United States Service Department concerning Silva's spiritual qualifications for Ministerial Training School; and (4) confidential communications in May 1997 between Daniel West and three South Congregation elders concerning Silva's spiritual health, related confidential spiritual communications in May 1997 between the South Congregation elders and Silva and the South Congregation elders and elders in the United States Service Department, and related confidential spiritual communications in June 1997 concerning Silva's spiritual qualifications as a ministerial servant.

The alleged abuse of all plaintiffs in this case had ended by that latter time frame. Therefore, any later communications, even if this Court, *arguendo,* should find them not to be confidential and privileged, are irrelevant and not reasonably calculated to lead to discovery of admissible evidence in this case, because they cannot be used as evidence of "notice" to the elders in this case.

A. Discussion

The information about which plaintiffs seek to compel discovery in this non-Track I case of *Daniel West, et al* is protected by the clergy–penitent privilege. Cal. Evid. Code §§ 1030, *et seq.* Evidence Code section 1033 provides:

> "Subject to section 912, a penitent, whether or not a party, has a privilege to refuse to, and to prevent another from disclosing, a penitential communication if he claims the privilege."

Evidence Code section 1034 further provides:

> "Subject to section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege."

Under California's statutory scheme, a "penitent" is defined simply as "a person who has made a penitential communication to a clergyman." Evid. Code § 1031. In turn, a "penitential communication" is also defined in the Code:

> " '[P]enitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyman who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenants of his church, denomination or organization, has a duty to keep such communication secret."

Evid. Code § 1032. Consequently, a "penitential communication" is not limited to just confessions in the stereotypical sense of the word. It is *any* communication that fits the statutory description. California case law supports that analysis. The court in *People v. Edwards* defined the elements of the rule of privilege as follows:

> "In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and (3) such member of the clergy has a duty under the discipline or tenants of the church, religious denomination or organization to keep such communications secret."

People v. Edwards (1988) 203 Cal.App.3d 1358, 1362-63.

The only instances in which the rule of privilege has been found *not* to apply are those in which either the communication was not made with a reasonable expectation of privacy, or the communication was made for a secular purpose rather than with the intention of receiving spiritual guidance or counseling, or the receiver of the communication was acting in a secular rather than ministerial capacity, or the tenets of the church did not require ministers to keep the subject communications secret. *People v. Edwards, supra* (defendant sought advice on how to avoid secular consequences of her criminal conduct rather than spiritual counseling and consented to disclosure of communication to lay members of the church who could help her deal with secular problems); *People v. Johnson* (1969) 270 Cal.App.2d 204 (communication was not made in confidence nor in the course of the required relationship and no evidence was presented that minister was authorized or accustomed to hear such communications or that he had a duty to keep such communications secret); *United States v. Webb* (1980) 615 F.2d 828 (communication was not confidential since made in presence of officer in addition to prison chaplain); *United States v. Luther* (1973) 481 F.2d 429 (rule of privilege did not apply to data in church financial records sought by Internal Revenue Service and which did not contain any communications from congregants seeking spiritual guidance of counseling); *People v. Thompson* (1982) 133 Cal.App.3d 419 (minister was acting in secular capacity when hired by company as ethics officer to improve sales and there was no expectation of confidentiality in the

communication).

In this *Daniel West, et al* case, there is no evidence that the communications at issue were made in a fashion other than that required for the rule of privilege to apply. Importantly, *the only evidence before this Court on this motion (i.e., the congregation elders' declarations submitted by the Church Defendants) is that they were made with a reasonable expectation of privacy under the religious beliefs and tenets of Jehovah's Witnesses.* Under these circumstances, Evidence Code section 917 provides that the confidential quality of the communications *must be presumed.* California Evidence Code section 917 provides:

> "Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergyman-penitent, or husband-wife relationship, the communication is presumed to have been in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential."

Moreover, there has not been any waiver of the privilege here by the congregation member or the clergy involved (*i.e.*, the local congregation elders), who are each independent holders of the privilege. Further, congregation elders *may also be penitents under* Evidence Code section 1031 when they engage in confidential spiritual communications with other elders (*i.e.*, clergy). Therefore, any confidential spiritual communications between the local congregation elders and a circuit overseer or elders in the United States Service Department of the Jehovah's Witnesses for the purpose of obtaining spiritual counsel and guidance are also penitential communications under Evidence Code section 1032 and thus protected from disclosure by Evidence Code sections 1033 and 1034.

Consequently, the Woodland elders should not be compelled to testify concerning the information conveyed in the subject communications with the elders. If this court requires any such testimony, as well as production of any documents prepared in conjunction with or as a result of those communications, the objective and policy underlying the rule of privilege will be frustrated and undermined.

In *Trammel v. United States* (1980) 445 U.S. 40, 100 S.C. 906, the U.S. Supreme Court described the seriousness of the need to preserve confidence in the communications between

persons and their spiritual counselors. In that case, the U.S. Supreme Court stated that the *minister-communicant* privilege is "rooted in the imperative need for confidence and trust. The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor in total and absolute confidence, what are believed to be flawed acts or thoughts to recover priestly consolation and guidance in return." *Id.*, 445 U.S. at 51. The declarations and affidavits submitted demonstrate that need to preserve confidence within the Jehovah's Witnesses' religion with respect to the communications sought to be discovered by plaintiffs here.

Moreover, any contention that the rule of privilege does not apply to the Woodland elders (or to judicial committees of the Woodland congregation) would be a violation of the First Amendment of the U.S. Constitution and its California analog. The First Amendment states, in relevant part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The U.S. Supreme Court has interpreted the establishment clause to require strict government neutrality towards religion. *Serbian Eastern Orthodox Diocese v. Millivojevich* (1976) 426 U.S. 696; *School District v. Schempp* (1963) 374 U.S. 203. Denying the right conferred in the rule of privilege on the basis of a distinction between an elder or a judicial committee of Jehovah's Witnesses and ministers of other religions, or on the bases of the differences between Jehovah's Witnesses' pastoral procedures and those of other religions, would violate the federal and state constitutional requirement of government neutrality toward religion. Granting this statutory right to one religion while denying it to another based on the ecclesiastical structure of the churches would show judicial preference of one form of worship over another. Such judicial preference would result in an unconstitutional establishment of religion by essentially expressing a preference for one religion over another.

Plaintiffs have previously relied on *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417, to support their position. However, as relevant here, in *Roman Catholic Archbishop of Los Angeles* the Court of Appeal ruled only that with respect to the Catholic church, the clergy-penitent privilege was inapplicable to protect communications by a Catholic priest where a "Vicar for Clergy" and a bishop were also both

present, because there was not a Catholic religious belief or tenet that required both the Vicar for Clergy and the bishop to be present during such penitential communications.

Thus, *Roman Catholic Archbishop of Los Angeles* thus does not affect the issue here one way or the other, because the Jehovah's Witnesses religion *mandates* the presence of at least three elders for judicial committee proceedings under Jehovah's Witnesses' religious tenets and doctrine. Here, extraneous third parties are not allowed to be present during confidential spiritual communications, but Jehovah's Witnesses' religious belief and practice is to have at least three elders present during judicial committee meetings to provide greater spiritual guidance and counseling. In the Jehovah's Witnesses religion and faith, the three or more elders making up a judicial committee to whom a congregation member communicates confidential spiritual information related to his sin or alleged sin constitute the "clergy" under Evidence Code sections 1030, *et seq.*, and those clergy have a legal as well spiritual duty to keep such confidential spiritual communications with congregation members confidential and private. Any contrary ruling by this court invalidating the clergy-penitent privilege based on the fact that more than one elder is present during a judicial committee meeting would be unconstitutional, and *Roman Catholic Archbishop of Los Angeles* does nothing to change or affect that.

Roman Catholic Archbishop of Los Angeles is also inapplicable because it dealt with testimony and evidence that was to be presented to a grand jury in a *criminal* proceeding, not in civil litigation like that here. There, the court held that "disclosure was required because the government has a compelling interest in prosecuting child molesters." However, these non-Track I coordinated cases plainly are *not* criminal prosecutions of child molesters. Thus, the facts and any claimed state interest in these non-Track I cases are distinguishable from *Roman Catholic Archbishop of Los Angeles*. There simply is not any sufficiently compelling state interest in these cases to invalidate the clergy–penitent privilege.

Likewise, any contention by plaintiffs here that the establishment clause does not apply to state judiciary proceedings would be flawed. The U.S. Supreme Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof has been made wholly

applicable to the states by the Fourteenth Amendment ... in a series of cases, the court has repeatedly reaffirmed the doctrine ...." *Abington School District v. Schemp* (1963) 374 U.S. 203, 216. This extension of the First Amendment to the states applies to judicial as well as legislative action. *NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, 463. "The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all of its creatures." *West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624, 637. "Judicial action is to be regarded as action of the state for the purposes of the Fourteenth Amendment [and] is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy." *Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.

Moreover, denying the right conferred in the rule of privilege would also violate the Jehovah's Witnesses' right to the free exercise of religion. Only a neutral law of general applicability may burden that right. *Employment Division Department of Human Resources of Oregon v. Smith* (1990) 494 U.S. 872. "A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 531. A non-neutral judicial avocation of the rule of privilege would make it unconstitutional *as applied.* Consequently, although the judicial system's need for testimony may be a compelling governmental interest, it cannot be used to justify denying the right conferred in the rule of privilege to Jehovah's Witnesses, while granting that same privilege to other religions. Such non-neutral judicial application would violate the constitutional right of free exercise of Jehovah's Witnesses.

Accordingly, for each of the reasons discussed, this Court should deny plaintiff's motion No. 1. The specific communications at issue fall within the clergy-penitent privilege, and this Court should so rule.

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III. DOCUMENTS AND INFORMATION THAT POST-DATE THE ALLEGED ABUSE AT ISSUE IN THIS CASE ARE NOT DISCOVERABLE

In the event that plaintiffs in this *Daniel West, et al* case also seek to compel discovery of confidential and privileged information and documents that post-date the alleged abuse of each of the three plaintiffs, the Church Defendants also address that separate issue here. In addition to the foregoing privilege analysis, any such discovery that post-dates the alleged time period of abuse of each plaintiff in *Daniel West, et al* is overly broad, irrelevant, and not reasonably calculated to lead to discovery of admissible evidence. It may also result in the invasion of privacy rights of other persons not parties this action. Such discovery should therefore be denied (unless such documents make reference to abuse of others by Silva that any of the Church Defendants were informed of *prior to* the abuse of any of the three plaintiffs in *Daniel West, et al*).

A key element, among others, of each plaintiff's causes of action against the Church Defendants is that each of the Church Defendants knew or had reason to know of the alleged propensity of Silva to sexually abuse children (or the element of so-called "notice"). That is because, as a matter of law, the Church Defendants cannot be liable under any theory of vicarious liability or respondeat superior for the alleged sex abuse of these three plaintiffs while they were minors.

California case law makes it crystal clear that sexual misconduct falls outside the course and scope of any person's agency or employment and cannot be imputed to the person's principal or employer. *E.g., Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609 (in "an action against a religious institution based on allegations of childhood sexual abuse perpetrated by one of its clergy [,] ... the abuse is committed outside the scope of the cleric's employment [and] the doctrine of respondeat superior is not available"); *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291 (hospital not liable under respondeat superior theory for hospital technician's sexual assault of patient); *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438 (school district not vicariously liable for molestation of child by teacher); *Jeffrey E. v. Central Baptist Church* (1988) 197 Cal.App.3d

718 (church not liable under doctrine of respondeat superior for molestation of student by Sunday school teacher).

In addition, the mere fact that Silva may have been a ministerial servant within a local congregation at the time he allegedly abused the plaintiffs does not, by itself, create liability for any of the Church Defendants. *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1013 ("for purposes of respondeat superior, employees do not act within the scope of employment when they abuse job-created authority over others for purely personal reasons"); *see also Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 394-95 (same holding).

Thus, in order for any plaintiff in this *Daniel West, et al* case to prevail, he or she must establish, among other required elements of their causes of action, the "notice" to *each* of the Church Defendants ***prior to the period of alleged abuse***. *E.g., Juarez v. Boy Scouts of America, Inc., supra*, at 395-97 (emphasis added.)

Accordingly, any documents and information that in any way post-date the time period of alleged abuse for each plaintiff are, by definition, irrelevant, inadmissible, and not reasonably calculated to lead to the discovery of admissible evidence. As noted above, such discovery may also invade the privacy rights of other persons who are not parties to these coordinated actions. Stated differently, it is irrelevant and of no consequence what any of the Church Defendants knew or should have known *after* each plaintiff's alleged abuse ended, because any such information or knowledge that post-dates the alleged abuse of any plaintiff will not support any plaintiff's claims (and will thus be inadmissible).

For all of the reasons stated, the Court should deny any request by plaintiffs in *Daniel West, et al* for discovery that post-dates the alleged abuse at issue in that case.

IV. ALTERNATIVELY, THE COURT SHOULD CONDUCT AN *IN CAMERA* REVIEW OF THE DOCUMENTS AND INFORMATION AT ISSUE HERE

As an alternative to all of the foregoing, this Court should conduct an *in camera* review of any documents and information that are at issue here regarding the clergy-penitent privilege. California law holds that an *in camera* review by the trial court may be appropriate to resolve a

dispute as to whether requested documents containing privileged information are discoverable. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20 (*in camera* review is appropriate where parties disputed whether documents contain privileged matter); *Wellpoint Health Networks, Inv. v. Superior Court* (1997) 59 Cal.App.4th, 110, 120-21 (*in camera* inspection required to determine whether documents were protected by privilege).

DATED: September 29, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

4227180.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 29, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for The Church Defendants

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

DECLARATION OF J. GARY HAYES IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

(DISCOVERY MOTION NO. 1)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I, J. Gary Hayes, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Esparto, California.

2. That I am a duly ordained minister and elder of the South Congregation of Jehovah's Witnesses, Woodland, California.

3. That I am thoroughly familiar with the religious beliefs, teachings, and practices

of Jehovah's Witnesses.

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder, has a responsibility to provide spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one.—Isaiah 32:2; James 5:14-16; Hebrews 13:17. In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling, and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

7. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is

explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would undermine respect for their positions; it would make individuals hesitant to come to them; yes, in time it might even make it impossible for them to fulfill their role as spiritual shepherds.

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and another elder from the South Congregation, Woodland, California, met with Tim Silva, then a baptized member of the congregation, in about the early to mid 1980's so as to provide him spiritual counsel and assistance. There were no non-clergy or other third persons present during this confidential meeting with Mr. Silva. Further, the specifics of that meeting were not reported to any elders of the United States Service Department for

Jehovah's Witnesses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge. Executed this 29 day of September, 2006 at Woodland, California.

J. Gary Hayes

4228344.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF J. GARY HAYES IN SUPPORT OF CHURCH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS (DISCOVERY MOTION NO. 1)

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

___ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 29, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601 **Via Fed Ex**	Attorneys for Plaintiff Hartley Hampton *Fibich, Hampton & Leebron* Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Robert J. Schnack, SBN 191987
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Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: J. Olsen
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

DECLARATION OF ARTURO ALMANZA IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

(DISCOVERY MOTION NO. 1)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I, Arturo Almanza, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Woodland, California.

2. That I am a duly ordained minister and elder of the North Congregation of Jehovah's Witnesses, Woodland, California and was formerly an elder in the South Congregation of Jehovah's Witnesses, Woodland, California.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder, has a responsibility to provide spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one.—Isaiah 32:2; James 5:14-16; Hebrews 13:17. In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would undermine respect for their positions; it would make individuals hesitant to come to them; yes, in time it might even make it impossible for them to fulfill their role as spiritual shepherds.

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and two other elders from the South Congregation, Woodland, California, met with Tim Silva, a then appointed ministerial servant in the congregation, on or about May 7, 1997, so as to provide him spiritual counsel and assistance. There were no non-clergy or other third persons present during this confidential meeting with Mr. Silva. Because Tim Silva was

an appointed congregation ministerial servant at the time, on or about May 29, 1997, a written and confidential report was sent by the three elders who met with Tim Silva to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and procedure, for their review of Tim Silva's spiritual qualifications as a ministerial servant and for any additional spiritual counsel and assistance for Tim Silva or the three elders who met with him.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge. Executed this 29 day of September, 2006 at Sacramento, California.

Arturo Almanza

4228346.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ARTURO ALMANZA IN SUPPORT OF CHURCH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 29, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS

(DISCOVERY MOTION NO. 2)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I. INTRODUCTION

The Church Defendants respectfully submit this response to plaintiffs' discovery motion no. 2 regarding what plaintiffs identify as "general" discovery matters concerning a notice of "PMK" deposition directed to defendant Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"). The specific issues presented are: (1) the clergy-penitent privilege as it applies in the various non-Track I cases, and (2) documents and information that post-date the

alleged abuse at issue in each of the coordinated cases.

II. THE CLERGY-PENITENT PRIVILEGE

Contrary to what plaintiffs urge in their discovery motion no. 2, the Court's earlier ruling did not in any way address the non-Track I cases. In their prior discovery motion filed last year, the Track I plaintiffs sought to compel the disclosure of documents and information related to spiritual communications that co-defendants in the Track I cases, James Henderson and Alvin Heard, had separately with clergy within a particular Jehovah's Witnesses congregation, *i.e.*, the Track I defendant Red Bluff congregation. (*See* Track I plaintiff Tim W.'s prior Motion to Compel at p.3, line 7 – p.4, line 28; *see* plaintiffs Wimberley's prior Motion to Compel, p.3. line 7–p.4, line 28.) Thus, plaintiffs suggestion that the Court has already ruled on the clergy-penitent issue in the non-Track I cases is simply incorrect.[1]

In addition, the Court's earlier ruling was based strictly on communications within judicial committees convened by the Track I defendant Red Bluff congregation, as well as on an erroneous misperception that the "Judicial Committee was under *no duty* to keep the communications private. In fact, the evidence establishes that the Judicial Committee was *required* to communicate information it obtained regarding potential cases of child molestation to the Watchtower Society Headquarters." *See* this Court's "Ruling on Submitted Motion to Compel Production of Documents" at p. 2 (issued September 29, 2005)(emphasis added). In addition to the quoted language being factually incorrect, as established by the various congregation elders' declarations filed herewith, the communications at issue here include penitential and confidential communications *outside of* any judicial committee setting. Thus, the Court's prior ruling does not address or decide the issues here.

[1] Plaintiffs' counsel earlier advised defense counsel that the "law of the case" doctrine applied here. However, under California law, the law of the case doctrine applies only to appellate court rulings on the merits in the same case and between the same parties, and no comparable effect is given to trial court rulings. *E.g.*, Cal. Prac. Guide: Civ. Appeals and Writs (The Rutter Group, 2006) §14:174, citing *Lennane v. Franchise Tax Board* (1996) 51 Cal.App.4th 1180, 1186. Similarly, an appellate court's summary denial of a writ petition is *not* considered law of the case, because such a denial is not a ruling on the merits. *Kowis v. Howard* (1992) 3 Cal.4th 888, 894. Accordingly, the law of the case doctrine indisputably does *not* apply here

A. Overview of clergy-penitent privilege

The documents and information plaintiffs seek to compel discovery of in the non-Track I cases are protected by the clergy–penitent privilege. Cal. Evid. Code §§ 1030, *et seq.* Evidence Code section 1033 provides:

> "Subject to section 912, a penitent, whether or not a party, has a privilege to refuse to, and to prevent another from disclosing, a penitential communication if he claims the privilege."

Evidence Code section 1034 further provides:

> "Subject to section 912, a clergyman, whether or not a party, has a privilege to refuse to disclose a penitential communication if he claims the privilege."

Under California's statutory scheme, a "penitent" is defined simply as "a person who has made a penitential communication to a clergyman." Evid. Code § 1031. In turn, a "penitential communication" is also defined in the Code:

> " '[P]enitential communication' means a communication made in confidence, in the presence of no third person so far as the penitent is aware, to a clergyman who, in the course of the discipline or practice of his church, denomination, or organization, is authorized or accustomed to hear such communications and, under the discipline or tenants of his church, denomination or organization, has a duty to keep such communication secret."

Evid. Code § 1032. Consequently, a "penitential communication" is not limited to just confessions in the stereotypical sense of the word. It is *any* communication that fits the statutory description. California case law supports the foregoing analysis. The courts have defined the elements of the rule of privilege as follows:

> "In order for a statement to be privileged, it must satisfy all of the conceptual requirements of a penitential communication: (1) it must be intended to be in confidence; (2) it must be made to a member of the clergy who in the course of his or her religious discipline or practice is authorized or accustomed to hear such communications; and (3) such member of the clergy has a duty under the discipline or tenants of the church, religious denomination or organization to keep such communications secret."

People v. Edwards (1988) 203 Cal.App.3d 1358, 1362-63.

The only instances in which the rule of privilege has been found *not* to apply are those in which either the communication was not made with a reasonable expectation of privacy, or the

communication was made for a secular purpose rather than with the intention of receiving spiritual guidance or counseling, or the receiver of the communication was acting in a secular rather than ministerial capacity, or the tenets of the church did not require ministers to keep the subject communications secret. *People v. Edwards, supra* (defendant sought advice on how to avoid secular consequences of her criminal conduct rather than spiritual counseling and consented to disclosure of communication to lay members of the church who could help her deal with secular problems); *People v. Johnson* (1969) 270 Cal.App.2d 204 (communication was not made in confidence nor in the course of the required relationship and no evidence was presented that minister was authorized or accustomed to hear such communications or that he had a duty to keep such communications secret); *United States v. Webb* (1980) 615 F.2d 828 (communication was not confidential since made in presence of officer in addition to prison chaplain); *United States v. Luther* (1973) 481 F.2d 429 (rule of privilege did not apply to data in church financial records sought by Internal Revenue Service and which did not contain any communications from congregants seeking spiritual guidance of counseling); *People v. Thompson* (1982) 133 Cal.App.3d 419 (minister was acting in secular capacity when hired by company as ethics officer to improve sales and there was no expectation of confidentiality in the communication).

In the non-Track I cases, there is no evidence that the communications at issue were made in a fashion other than that required for the rule of privilege to apply. The *only* evidence before this Court on this motion is that they were made with a reasonable expectation of privacy under the religious beliefs and tenets of the Jehovah's Witnesses religion. Under these circumstances, Evidence Code section 917 provides that the confidential quality of the communications *must be presumed.* Evidence Code section 917 provides:

> "Whenever a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of the lawyer-client, physician-patient, psychotherapist-patient, clergyman-penitent, or husband-wife relationship, the communication is presumed to have been in confidence and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential."

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Moreover, the clergy involved here, as holders of the privilege, have not disclosed the communications or otherwise waived the privilege. Further, congregation elders may also be penitents under Evidence Code section 1031 when they engage in confidential spiritual communications with other elders (*i.e.*, clergy). Therefore, any confidential spiritual communications between congregation elders and a circuit overseer (who also is an elder) or elders in the United States Service Department of the Jehovah's Witnesses United States Branch Office for the purpose of obtaining spiritual counsel and guidance are also penitential communications under Evidence Code section 1032 and thus protected from disclosure by Evidence Code sections 1033 and 1034.

Consequently, Watchtower NY or any other Church Defendant should not be compelled to provide any testimony about or produce documents that contain the information conveyed in the subject privileged communications to the elders. If this court requires any such testimony or documents to be provided or produced, the objective and policy underlying the rule of privilege will be frustrated and undermined.

In *Trammel v. United States* (1980) 445 U.S. 40, 100 S.C. 906, the U.S. Supreme Court described the seriousness of the need to preserve confidence in the communications between persons and their spiritual counselors. In that case, the U.S. Supreme Court stated that the minister-communicant privilege is "rooted in the imperative need for confidence and trust. The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor in total and absolute confidence, what are believed to be flawed acts or thoughts to recover priestly consolation and guidance in return." *Id.*, 445 U.S. at 51. The declarations and affidavits submitted demonstrate that need to preserve confidence within the Jehovah's Witnesses' religion with respect to the communications sought to be discovered by plaintiffs here.

Claiming that the rule of privilege does not apply to the elders of the United States Service Department, the congregation defendants, or to judicial committees of local congregations of Jehovah's Witnesses would be a violation of the First Amendment of the U.S. Constitution and its California analog. The First Amendment states, in relevant part:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

The U.S. Supreme Court has interpreted the establishment clause to require strict government neutrality towards religion. *Serbian Eastern Orthodox Diocese v. Millivojevich* (1976) 426 U.S. 696; *School District v. Schempp* (1963) 374 U.S. 203. Denying the right conferred in the rule of privilege on the basis of a distinction between an elder or a judicial committee of Jehovah's Witnesses and ministers of other religions, or on the bases of the differences between Jehovah's Witnesses' pastoral procedures and those of other religions, would violate the federal and state constitutional requirement of government neutrality toward religion. Granting this statutory right to one religion while denying it to another based on the ecclesiastical structure of the churches would show judicial preference of one form of worship over another. Such judicial preference would result in an unconstitutional establishment of religion by essentially expressing a preference for one religion over another.

Plaintiffs earlier relied on *Roman Catholic Archbishop of Los Angeles v. Superior Court* (2005) 131 Cal.App.4th 417 to support their position. However, as relevant here, in *Roman Catholic Archbishop of Los Angeles* the Court of Appeal ruled only that with respect to the Catholic church, the clergy-penitent privilege was inapplicable to protect communications by a Catholic priest where a "Vicar for Clergy" and a bishop were also both present, because there was not a Catholic religious belief or tenet that required both the Vicar for Clergy and the bishop to be present during such penitential communications.

Thus, *Roman Catholic Archbishop of Los Angeles* thus does not affect the issue here one way or the other, because the Jehovah's Witnesses religion *mandates* the presence of at least three elders for judicial committee proceedings under Jehovah's Witnesses' religious tenets and doctrine. Here, extraneous third parties are not allowed to be present during confidential spiritual communications, but Jehovah's Witnesses' religious belief and practice is to have at least three elders present during judicial committee meetings to provide greater spiritual guidance and counseling. In the Jehovah's Witnesses religion and faith, the three or more elders making up a judicial committee to whom a congregation member communicates confidential spiritual information related to his sin or alleged sin constitute the "clergy" under Evidence Code sections 1030, *et seq.*, and those clergy have a legal as well spiritual duty to keep such

confidential spiritual communications with congregation members confidential and private. Any contrary ruling by this court invalidating the clergy-penitent privilege based on the fact that more than one elder is present during a judicial committee meeting would be unconstitutional, and *Roman Catholic Archbishop of Los Angeles* does nothing to change or affect that.

Roman Catholic Archbishop of Los Angeles is also inapplicable because it dealt with testimony and evidence that was to be presented to a grand jury in a *criminal* proceeding, not in civil litigation like that here. There, the court held that "disclosure was required because the government has a compelling interest in prosecuting child molesters." However, these non-Track I coordinated cases plainly are *not* criminal prosecutions of child molesters. Thus, the facts and any claimed state interest in these non-Track I cases are distinguishable from *Roman Catholic Archbishop of Los Angeles*. There simply is not any sufficiently compelling state interest in these cases to invalidate the clergy–penitent privilege.

Likewise, any contention by plaintiff here that the establishment clause does not apply to state judiciary proceedings would be flawed. The U.S. Supreme Court has decisively settled that the First Amendment's mandate that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof has been made wholly applicable to the states by the Fourteenth Amendment ... in a series of cases, the court has repeatedly reaffirmed the doctrine...." *Abington School District v. Schemp* (1963) 374 U.S. 203, 216. This extension of the First Amendment to the states applies to judicial as well as legislative action. *NAACP v. Alabama ex rel. Patterson* (1958) 357 U.S. 449, 463. "The Fourteenth Amendment, as now applied to the states, protects the citizens against the state itself and all of its creatures." *West Virginia Board of Education v. Barnette* (1943) 319 U.S. 624, 637. "Judicial action is to be regarded as action of the state for the purposes of the Fourteenth Amendment [and] is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common law policy." *Shelley v. Kramer* (1948) 334 U.S. 1, 15, 20.

Moreover, denying the right conferred in the rule of privilege would also violate the Jehovah's Witnesses' right to the free exercise of religion. Only a neutral law of general applicability may burden that right. *Employment Division Department of Human Resources of*

Oregon v. Smith (1990) 494 U.S. 872. "A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babaluiaaye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 531. A non-neutral judicial avocation of the rule of privilege would make it unconstitutional *as applied*. Consequently, although the judicial system's need for testimony may be a compelling governmental interest, it cannot be used to justify denying the right conferred in the rule of privilege to Jehovah's Witnesses, while granting that same privilege to other religions. Such non-neutral judicial application would violate the constitutional right of free exercise of Jehovah's Witnesses.

III. DOCUMENTS AND INFORMATION THAT POST-DATE THE ALLEGED ABUSE AT ISSUE IN EACH OF THE COORDINATED CASES ARE NOT DISCOVERABLE

Plaintiffs also seek to compel discovery of *all* information and documents about each of the persons who allegedly committed the abuse at issue in these coordinated cases, regardless of the time frame involved. Any such discovery that post-dates the alleged time period of abuse of each plaintiff in these coordinated cases thus is overly broad, irrelevant, and not reasonably calculated to lead to discovery of admissible evidence. Further, it may result in the invasion of privacy rights of other persons not parties to these coordinated actions. Such discovery should therefore be denied (unless such documents make reference to plaintiffs or to abuse of others by the alleged abusers that any of the Church Defendants were informed of *prior to* the abuse of any plaintiff).

A key element, among others, of each plaintiff's causes of action against the Church Defendants is that each of the Church Defendants knew or had reason to know of the alleged abuser's propensity to sexually abuse children (the element of so-called "notice"). The notice element is required because, as a matter of law, none of the Church Defendants can be liable on any vicarious liability or respondeat superior theories for the alleged sex abuse of plaintiffs while they were minors.

California case law makes it very clear that sexual misconduct falls outside the course and scope of any person's agency or employment and cannot be imputed to the person's

principal or employer. *E.g., Mark K. v. Roman Catholic Archbishop of Los Angeles* (1998) 67 Cal.App.4th 603, 609 (in "an action against a religious institution based on allegations of childhood sexual abuse perpetrated by one of its clergy[,] ... the abuse is committed outside the scope of the cleric's employment [and] the doctrine of respondeat superior is not available"); *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291 (hospital not liable under respondeat superior theory for hospital technician's sexual assault of patient); *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438 (school district not vicariously liable for molestation of child by teacher); *Jeffrey E. v. Central Baptist Church* (1988) 197 Cal.App.3d 718 (church not liable under doctrine of respondeat superior for molestation of student by Sunday school teacher).

In addition, the mere fact that any of the alleged abusers in these coordinated cases may have been an elder or otherwise held what might be called a position of authority within a local congregation does not, by itself, create liability for any of the Church Defendants. *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1013 ("for purposes of respondeat superior, employees do not act within the scope of employment when they abuse job-created authority over others for purely personal reasons"); *see also Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377, 394-95 (same holding).

Thus, in order for any plaintiff in these coordinated cases to prevail, he or she must establish, among other required elements of their causes of action, the "notice" to *each* of the Church Defendants ***prior to the period of alleged abuse in each case***. *E.g., Juarez v. Boy Scouts of America, Inc., supra*, at 395-97.

Accordingly, any documents or information that in any way post-dates the time period of alleged abuse for each plaintiff is, by definition, irrelevant, inadmissible, and not reasonably calculated to lead to the discovery of admissible evidence. As noted above, such discovery may also invade the privacy rights of other persons who are not parties to these coordinated actions. Stated differently, it is irrelevant and of no consequence what any of the Church Defendants knew or should have known *after* each plaintiff's alleged abuse ended, because any such information or knowledge that post-dates the alleged abuse of any plaintiff will not support any

plaintiff's claims (and will thus be inadmissible).

For all of the reasons stated, the Court should deny any discovery that post-dates the alleged abuse at issue in each of the coordinated actions.

IV. ALTERNATIVELY, THE COURT SHOULD CONDUCT AN *IN CAMERA* REVIEW OF THE DOCUMENTS AND INFORMATION AT ISSUE

As an alternative to all of the foregoing, this Court should conduct an *in camera* review of any documents and information that are at issue in these coordinated actions regarding the clergy-penitent privilege. California law holds that an *in camera* review by the trial court may be appropriate to resolve a dispute as to whether requested documents containing privileged information are discoverable. *Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1619-20 (*in camera* review is appropriate where parties dispute whether documents contain privileged matter); *Wellpoint Health Networks, Inv. v. Superior Court* (1997) 59 Cal.App.4th, 110, 120-21 (*in camera* inspection required to determine whether documents were protected by privilege).

DATED: September 29, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Church Defendants,

4227182.1

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER

KEN L. Plaintiff v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO.: 52594 Judicial Council Coordination Proceeding No. Coordinated with Napa County Superior Court Case No. **DECLARATION OF WILLIAM E. BLORE**

I, William E. Blore, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Chicago Park, California.

2. That I am a duly ordained minister and elder of the West Congregation of Jehovah's Witnesses, Colfax, California.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provides spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one. (Isaiah 32:2; James 5:14-16; Hebrews 13:17.) In

addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling, and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would

> undermine respect for their positions; it would make individuals hesitant to come to them; yes, *in time it might even make it impossible for them to fulfill their role* as spiritual shepherds.

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and other elders from the Colfax Congregation, California, met with Albert Harriman several times in mid to late 1987 so as to provide him with spiritual counsel and assistance. There were no non-clergy or other third persons present during these confidential meetings with Mr. Harriman. Because Albert Harriman was an appointed congregation elder at the time, a written and confidential report was sent by the elders who met with him to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and procedure, for their review of Mr. Harriman's spiritual qualifications as an elder and for any additional spiritual counsel and assistance for Mr. Harriman or the three elders who met with him. An additional confidential report was sent, as required by church practice and procedure, by the three elders who met with him when he was disfellowshipped in October 1987.

13. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Respectfully submitted,



William E. Blore

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, vs. Plaintiff v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO.: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF DAVID W. BECKER**

I, David W. Becker, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Napa, California.

2. That I am a duly ordained minister and elder of the River Park Congregation of Jehovah's Witnesses, Napa, California.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provides spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should

approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one. (Isaiah 32:2; James 5:14-16; Hebrews 13:17.) In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling, and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowl-

edge in the congregation or community.

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

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and two other elders from the River Park Congregation, Napa, California, met with Edward Villegas several times on or about January 1994 so as to provide him with spiritual counsel and assistance. There were no non-clergy or other third persons present during these confidential meetings with Mr. Villegas. Although a report relating to Mr. Villegas' disfellowshipping was sent by the three elders who met with him to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and procedure, the specifics of the conversations that the three elders had with Mr. Villegas were not included in these two reports.

13. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Respectfully submitted,

David W. Becker

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

CHARISSA W. and NICOLE D. Plaintiffs, vs. Plaintiff v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO.: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION OF ARVID W. KRON**

I, Arvid W. Kron, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Napa, California.

2. That I am a duly ordained minister and ministerial servant in the Oak Knoll Congregation of Jehovah's Witnesses, Napa, California, and that I served as an elder in the West Congregation, Napa, California, (River Park's former name) from approximately 1972 until 1991.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provides spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one. (Isaiah 32:2; James 5:14-16; Hebrews 13:17.) In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling, and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that

> they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowledge in the congregation or community.
>
> Those mature ministers will not discuss even with their wives and close friends what they thus learn in confidence. They know that if they did so it would undermine respect for their positions; it would make individuals hesitant to come to them; yes, in time it might even make it impossible for them to fulfill their role as spiritual shepherds.

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and two other elders from the West Congregation, Napa, California, met with Edward Villegas several times on or about January 1989 so as to provide him with spiritual counsel and assistance. There were no non-clergy or other third persons present during these confidential meetings with Mr. Villegas. Although a report relating to Mr. Villegas' disfellowshipping was sent by the three elders who met with him to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and

procedure, the specifics of the conversations that the three elders had with Mr. Villegas were not included in these two reports.

13. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Respectfully submitted,

Arvid W. Kron

Arvid W. Kron

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

TABITHA H. Plaintiffs, vs. . Plaintiff v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO.: 26-23929 Judicial Council Coordination Proceeding No. 4374 Coordinated with Napa County Superior Court Case No. 26-22191 **DECLARATION OF DAVID W. BECKER**

I, David W. Becker, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Napa, California.

2. That I am a duly ordained minister and elder of the River Park Congregation of Jehovah's Witnesses, Napa, California.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provides spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should

approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one. (Isaiah 32:2; James 5:14-16; Hebrews 13:17.) In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

6. That it is the religious belief and practice of Jehovah's Witnesses, based upon Scripture and church tradition, that elders must maintain in strict confidence any church communications with congregants connected with the need for spiritual help or counseling, and congregants expect such communications to elders are and will remain confidential—regardless of who initiated the conversation.—Proverbs 15:22; 25:9, 10.

7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

9. That the requirement of keeping communications to elders confidential is explained in the official publications of Jehovah's Witnesses as follows:

> In each congregation of Jehovah's witnesses there are mature ministers appointed to care for various assignments. (1 Tim. 3:2, 12) As they discharge their duties they often are told about confidential things, and it is essential that they respect this confidence. For instance, James 5:13-16 shows that a member of the congregation who has some spiritual problem, perhaps even having committed a sin, should go to the spiritually older men for help. Isaiah 32:2 prophetically pictured these men as places of comfort and protection. What a fine thing it is to be able to explain one's problem and get balanced spiritual help, and at the same time have full confidence that the matter will not become general knowl-

edge in the congregation or community.

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

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

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

11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and two other elders from the River Park Congregation, Napa, California, met with Edward Villegas several times on or about January 1994 so as to provide him with spiritual counsel and assistance. There were no non-clergy or other third persons present during these confidential meetings with Mr. Villegas. Although a report relating to Mr. Villegas' disfellowshipping was sent by the three elders who met with him to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and procedure, the specifics of the conversations that the three elders had with Mr. Villegas were not included in these two reports.

13. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Respectfully submitted,

David W. Becker

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF NAPA

TABITHA H. Plaintiffs, vs. . Plaintiff v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS.	CASE NO.: 26-23929 Judicial Council Coordination Proceeding No. 4374 Coordinated with Napa County Superior Court Case No. 26-22191 **DECLARATION OF ARVID W. KRON**

I, Arvid W. Kron, after being duly sworn, depose and say:

1. That I am over 21 years of age and reside in Napa, California.

2. That I am a duly ordained minister and ministerial servant in the Oak Knoll Congregation of Jehovah's Witnesses, Napa, California, and that I served as an elder in the West Congregation, Napa, California, (River Park's former name) from approximately 1972 until 1991.

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

4. That duly ordained ministers of Jehovah's Witnesses responsible for teaching and pastoral care of congregation members are called "elders."

5. That it is a religious belief and practice of Jehovah's Witnesses based on God's Word, the Bible, that an elder has a responsibility to provides spiritual counseling to those who seek it, and that any person who needs spiritual help or is aware of another in such need should approach the congregation elders and convey to them whatever information may be needed to provide spiritual assistance to the erring one. (Isaiah 32:2; James 5:14-16; Hebrews 13:17.) In addition, for similar reasons, there are times when elders initiate discussions relating to the spiritual condition of congregation members.

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7. That revealing such confidential communications would call into question an elder's qualifications and could result in his removal as an elder in the congregation.

8. That if I or any elder is compelled to disclose such confidential information, our credibility and effectiveness as elders would be adversely affected and compromised, since congregants will no longer be able to trust and rely that problems and confidential information they disclose to elders will not be revealed through discovery and used against them in a court action.

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

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

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11. That if I or any other elder is compelled to produce any papers, reports, minutes or other documents prepared in conjunction with or as a result of the above-described confidential communications, our credibility and effectiveness will be adversely affected and compromised, and the confidentiality of the oral communications will be rendered worthless.

12. That I and two other elders from the West Congregation, Napa, California, met with Edward Villegas several times on or about January 1989 so as to provide him with spiritual counsel and assistance. There were no non-clergy or other third persons present during these confidential meetings with Mr. Villegas. Although a report relating to Mr. Villegas' disfellowshipping was sent by the three elders who met with him to the elders in the United States Service Department for Jehovah's Witnesses, as required by church practice and

procedure, the specifics of the conversations that the three elders had with Mr. Villegas were not included in these two reports.

13. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my information, belief, and knowledge.

Respectfully submitted,

Arvid W. Kron

Arvid W. Kron

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

PROOF OF SERVICE RE: CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS

(DISCOVERY MOTION NO. 2)

Hearing: October 13, 2006
Time: 8:30 am
***Dept.:* A**
Before: Hon. Raymond A. Guadagni

4228487.1

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PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is *1415 L Street, Suite 1000, Sacramento, California 95814. I am over the* age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

1. CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS (DISCOVERY MOTION NO. 2)
2. DECLARATION OF WILLIAM E. BLORE (IN KEN L.)
3. DECLARATION OF DAVID W. BECKER (IN CHARISSA W.)
4. DECLARATION OF ARVID W. KRON (IN CHARISSA W.)
5. DECLARATION OF DAVID W. BECKER (IN TABITHA H.)
6. DECLARATION OF ARVID W. KRON (IN TABITHA h.)

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers *the hours of 9:00 a.m. and 5:00 p.m. on* _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 29, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601 **VIA FED EX**	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

Robert J. Schnack, SBN 191987
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1415 L Street, Suite 1000
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Telephone: 916.930.2500
Facsimile: 916.930.2501
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Attorneys for The Church Defendants

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE WATCHTOWER LEGAL DEPARTMENT

(DISCOVERY MOTION NO. 3)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I. INTRODUCTION.

In plaintiffs' discovery motion no. 3, they boldly and transparently seek to compel testimony from a lawyer within the Watchtower Legal Department about thet Legal Department's organization, the Legal Department's internal documents and records, the creation of documents by the Legal Department under the attorney–client privilege and/or the attorney

FILED
SEP 29 2006
Napa Superior Court

work product rule, the Legal Department's recordkeeping practices, and information obtained on a confidential attorney–client basis by the Legal Department. In doing so, plaintiffs fail to cite to this Court even one legal authority that would allow such unprecedented discovery of attorney–client privileged materials and information and attorney work product materials and information.

The declaration filed concurrently herewith of Mario F. Moreno, an attorney and associate general counsel in the Watchtower Legal Department, supports this opposition to plaintiffs' transparent and improper attempt to invade the attorney-client and work product privileges. Simply stated, plaintiffs' discovery motion no. 3 must be denied in its entirety. Otherwise, the attorney-client privilege will be rendered empty and meaningless. In addition, a ruling adverse to the Church Defendants here will have the wholly undesired effect of allowing the Church Defendants to depose lawyers from plaintiffs' three law firms about their recordkeeping practices relative to these cases, their documentation of information obtained from pre-litigation and other interviews of their clients and witnesses, etc. Plaintiffs' motion no. 3 must be denied.

II. DISCUSSION.

California law is clear and uncompromising that a client, whether or not a party, has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the client and his or her or its attorney. Cal. Evid. Code § 954. The essential purpose underlying the attorney-client privilege is "to safeguard the confidential relationship between clients and their attorneys so as to promote full and open discussion of the facts and tactics surrounding individual legal matters." 2,022 Ranch LLC v. Superior Court (2003) 113 Cal.App.4th 1377, 1387-88, citing Mitchell v. Superior Court (1984) 37 Cal.3d 591, 599. The privilege applies to all confidential communications between the attorney and client unless the communication falls within a statutory exception or is not made in the course of the attorney-client relationship. The attorney–client privilege is absolute, and disclosure of privileged information may not be ordered regardless of relevance, necessity, or any particular circumstances in the case. 2,002 Ranch LLC, supra, 113 Cal.App.4th at 1388, citing Gordon v.

Superior Court (1997) 55 Cal.App.4th 1546, 1557.

The attorney-client privilege applies to an entity's confidential communications with in-house counsel, as well as such communications with outside counsel. Alpha Beta Co. v. Superior Court (1984) 157 Cal.App.3d 818, 826 (confidential communications between general counsel and high-ranking corporate officer for purpose of preparing defense to litigation were privileged). The information contained in the concurrently filed sworn declaration of Mario F. Moreno, an attorney and associate general counsel in the Watchtower Legal Department, establishes that the privilege thus applies to the Watchtower Legal Department and all of its work involving its clients, including, without limitation, the defendant congregations in these coordinated actions and those congregations' elders.

Moreover, the compelled testimony of an opposing party's counsel is presumptively improper and should be permitted only upon a showing that (1) no other means exist to obtain the information, (2) the information sought is relevant and not privileged, and (3) the information is crucial to the preparation of the case. Spectra-Physics, Inc. v. Superior Court (1988) 198 Cal.App.3d 1487, 1496; see also Massachusetts Mut. Life Ins. Co. v. Cert. (N.D. Cal. 1998) 177 F.R.D. 472, 478-79, citing Shelton v. American Motors Corp. (8th Cir. 1986) 805 F.2d 1323, 1327-28. Attorney depositions should be extremely restricted and permitted only in very limited situations, because they are disruptive to the adversarial nature of the judicial system and can create a "chilling effect" on truthful communications from client to attorney. See Hickman v. Taylor (1947) 329 U.S. 495, 513; Spectra-Physics, Inc. v. Superior Court (1988) 198 Cal.App.3d 1487, 1494-95; Fireman's Fund Ins. Co. v. Superior Court (1977) 72 Cal.App.3d 786, 790 (when allowed at all, depositions of opposing counsel "should be severely restricted, and permitted only upon of extremely good cause").

A leading California case regarding the propriety of attorney depositions is Spectra-Physics, Inc. v. Superior Court, supra. See Estate of Ruchti (1993) 12 Cal.App.4th 1593, 1600. In Spectra-Physics, the settling parties in a groundwater contamination case sought, and the trial court granted, permission to depose counsel for the non-settling defendants to determine whether they had acted in bad faith or unreasonably impeded the settlement process. Spectra-

Physics (1988) 198 Cal.App.3d at 1490. On appeal, the court pointed to California's strong policy against attorney depositions and noted that such discovery was disruptive and antithetical to the adversarial nature of the judicial process. It further questioned the usefulness of the procedure given that "the likelihood the attorney will assert claims of work product and attorney-client privilege is great ...." Id. at 1494. For those reasons, the Court of Appeal held that such discovery was improper unless (1) no other means exist to obtain the information, (2) the information sought is relevant and not privileged, and (3) the information is crucial to the preparation of the case. Id. at 1493-96, citing Shelton v. American Motors Corp., supra, 805 F.2d at 1327.

The Court of Appeal in Spectra-Physics then ruled that the three-part test had not been met. First, the requesting information could have been obtained by other means, such as asking plaintiffs about the non-settling defendants efforts to interfere, expert evaluations regarding the value of plaintiffs' case and the defendants' potential shares of liability. Regarding the second prong, the court did find that the requested information was relevant and that privilege alone would not prevent the depositions entirely. Finally, the court found that the conduct of the non-settling defendants' counsel was not "immediately crucial" to the case because it was the non-settling defendants' burden to demonstrate that the settlement was not in good faith. Id. at 1496-97. Accordingly, and based on the strong policy considerations against attorney depositions, the Court of Appeal issued a writ of mandate ordering the trial court to vacate its order permitting the depositions of counsel. Id. at 1497-98.

In Estate of Ruchti, supra, co-executors of a will filed a petition to determine the nature and extent of the estate being withheld by the deceased's heirs. 12 Cal.App.4th at 1598-99. The parties stipulated to the use of a retired judge to conduct the litigation. Thereafter, the heirs sought to withdraw the stipulation and recuse the retired judge, alleging that opposing counsel had misrepresented his relationship with the judge. Id. After being served with a subpoena for his deposition, opposing counsel sought a protective order. The heirs argued that since the co-executors did not have personal knowledge of all of the facts alleged in their petition, only their attorney did. On that basis, the heirs asserted the deposition was proper. Id. at 1600. The Court

of Appeal disagreed, noting that the heirs could not satisfy the three-prong test set forth in Spectra-Physics because other discovery tools were available to obtain the requested information. Id. at 1600-01.

Discovery requests directed to a party's in-house counsel or legal department, like those in the instant case directed to the Watchtower Legal Department by plaintiffs, are equally inappropriate where the Spectra-Physics burden cannot be met, such as when the requests will likely lead to the disclosure of privileged information. In a wrongful death action against a hospital, plaintiffs sought to discover information contained in the "occurrence reports" that had been prepared by hospital employees and maintained by the hospital's legal department, concerning the deceased's condition during his hospital stay. Scripps Health v. Superior Court (2003) 109 Cal.App.4th 529.[1] The Court of Appeal held that the attorney-client privilege prohibited the requested disclosures because the dominant purpose of the reports was "transmittal to an attorney in the course of the professional attorney-client relationship under circumstances where [the hospital] expected confidentiality." Id. at 534-36. The reports had always been maintained by the legal department confidentially as an attorney-client communication between employees and in-house counsel and were designed to be an internal risk and claim assessment profile for the hospital. Id. As such, court held the reports to be privileged, whether or not litigation was actually threatened at the time the report was made. Id. at 535 (emphasis added). Further, the reports did not lose their protections under the privilege just because they primarily contained "observational" rather than "opinion" information. Id.

The same analysis applies here, because plaintiffs may argue that some of the information was obtained and recorded before any litigation was imminent or threatened (such as with respect to the "Telememos" or the "Survey Questions"). However, under Scripps Health v. Superior Court, supra, such an argument would fail. Thus, even though a blank form of the "Telememo" and other documents utilized by the Watchtower Legal Department have been

[1] In Scripps Health, the hospital produced a blank report form that was marked "confidential" at the top of the page, contained questions about the occurrence, and asked for an evaluation of the significance level of the incident. Id. at 532

produced here with a "confidential" stamp on them, see the declaration of Mario F. Moreno filed concurrently herewith, that fact does not support plaintiffs' motion, because the hospital in Scripps Health had similarly produced such a blank form with a "confidential" stamp. See footnote 1, supra. As discussed above, the Court of Appeal in Scripps Health held that the hospital had not waived any privileges thereby or otherwise opened the door to the discovery sought by the plaintiff from the hospital's in-house legal department. The same ruling applies to defeat plaintiffs' discovery motion here, because the information at issue was communicated to the Legal Department during the course of attorney-client relationships with congregation elders and about which the Legal Department and the elders expected confidentiality. See declaration of Mario F. Moreno.

Similarly, the court in Alpha Beta Co. v. Superior Court (1984) 157 Cal.App.3d 818, held that discussions between corporate general counsel and the president of the corporate defendant were privileged, because they were made in confidence and for the purpose of mounting a defense to the current litigation. In Alpha Beta Co., the plaintiff sought to depose the defendant's general counsel, who was also the vice president of the company, regarding the corporate defendant's verified answer to the complaint. Id. at 823. The general counsel refused to answer many of the deposition questions on grounds that his discussions with the corporation's president and with outside counsel were confidential and made for the purpose of providing a legal opinion as to the merits of the lawsuit. Id. at 823-24. The Court of Appeal held that the deposition was improper to the extent plaintiff sought information based upon communications with a privileged source that would lead to the disclosure of privileged information. Id. at 826-27.

The holding of Alpha Beta Co. applies here, because plaintiffs seek to obtain information obtained by the Watchtower Legal Department attorneys from their clients (i.e., from elders in local congregations of Jehovah's Witnesses). See the declaration of Mario F. Moreno. Requiring disclosure pursuant to plaintiffs' discovery motion of information obtained from such confidential and privileged communications would indisputably lead to the disclosure of privileged information. See the declaration of Mario F. Moreno. The holding of Alpha Beta

Co. prohibits such disclosures. Again, plaintffs' discovery motion no. 3 must be denied.

III. CONCLUSION.

For each of the independent the reasons discussed, plaintiffs' motion no. 3 must be denied. Plaintiffs improperly seek to invade the attorney-client privilege and the attorney work product rule, without citation to any legal authority that would support such a motion. That fact alone shows the weakness of plaintiffs' position. The bottom line is that plaintiffs' motion no. 3 must be denied, because plaintiffs' requests for privileged materials and information from the Watchtower Legal Department are patently improper, are not supported by legal authority and, indeed, fly in the face of both the legal authorities cited above by the Church Defendants and the strong California and federal public policy against attorney depositions in adversarial and other proceedings. Granting plaintiffs' motion would be antithetical and wholly disruptive to the adversarial nature of these coordinated cases and to the judicial system generally, and it also would generally create a chilling effect on truthful communications from client to attorney. In these particular cases, it also would have the undesired effect of opening the door to depositions of plaintiffs' attorneys in the three law firms representing them to address similar topics regarding recordkeeping, interviews of clients and witnesses, etc. Plaintiffs' discovery motion no. 3 must be denied.

DATED: September 28, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for the Church Defendants

4227185.1

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PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT (Discovery Motion No. 3)

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 28, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601 **Via Fed Ex**	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for The Church Defendants

ORIGINAL

FILED

SEP 29 2006

Clerk of the Napa Superior Court
By: Dora O. Sherry
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

DECLARATION OF MARIO F. MORENO, ESQ., IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE WATCHTOWER LEGAL DEPARTMENT

(DISCOVERY MOTION NO. 3)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I, Mario F. Moreno, declare as follows:

1. I am an attorney and associate general counsel for the Legal Department of Watchtower Bible and Tract Society of New York, Inc. ("Watchtower Legal Department"). In that capacity, from time to time I act and have acted as attorney and legal counsel for Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY") and various

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congregations of Jehovah's Witnesses, including without limitation the congregation defendant in the Track I cases, North Congregation of Jehovah's Witnesses, Red Bluff, California, and the congregation defendants in the non-Track I cases. I am legally competent in all respects and make the following statements based on my own personal knowledge.

2. Watchtower NY is a not-for-profit religious corporation. The Watchtower Legal Department is and functions as in-house legal counsel for Watchtower NY, similarly to in-house legal departments for private companies and corporations. The Watchtower Legal Department has a number of attorneys who serve as associate general counsel or associate legal counsel in the Legal Department. The Watchtower Legal Department's clients include various corporations of Jehovah's Witnesses in the United States, the Governing Body of Jehovah's Witnesses, the United States Branch Committee, other departments at the United States branch offices in New York, congregations of Jehovah's Witnesses in the United States, including congregations in California, and the elders of those congregations. The Watchtower Legal Department thus has an attorney-client relationship with the United States Service Department and congregations and their elders. The Watchtower Legal Department considers its lawyers' communications from, to, and with the United States Service Department and congregations and their elders to be confidential and privileged under the attorney-client privilege and any other applicable privileges. As a congregation elder and as associate general counsel for the Watchtower Legal Department, it is my understanding and belief that United States Service Department and congregation elders who have communicated with the Watchtower Legal Department attorneys for legal advice consider those communications to be privileged and confidential, and the attorneys in the Legal Department in fact frequently remind the elders that their communications with the Legal Department are privileged and confidential under the attorney-client privilege.

3. There are four blank forms (dated 1989, 1992, 1993, and 1993, respectively) contained in Exhibit 3 to plaintiffs' discovery motion no. 3 concerning the Watchtower Legal Department. Watchtower NY earlier produced each of those forms in discovery, and each was stamped "CONFIDENTIAL" prior to being produced. The Watchtower Legal Department and its attorneys used one of these forms when taking calls from congregation elders who sought

legal advice from the Legal Department on child abuse matters from about July 1989 until about 1995. Each of these forms, when used, was completed by attorneys and legal assistants working under the attorneys' legal supervision within the Legal Department after attorneys and their legal assistants obtained information through confidential and privileged communications with congregation elders as clients of the Legal Department. The completed forms are used by attorneys in the Legal Department to assist in providing legal advice to the elders as clients of the Legal Department and document the legal advice given to the congregation elders. Thus, any such completed forms retained in the Legal Department contain confidential and privileged information obtained through confidential and privileged communications between a Legal Department attorney and a client of the Legal Department. As such, disclosure in this litigation or otherwise of any such completed forms or of the information contained in any such completed forms would necessarily result in the disclosure of confidential and privileged communications between a Legal Department attorney and a client of the Legal Department. In addition, disclosure of any summary that might have been prepared by the Legal Department of any of the confidential and privileged information contained in the completed forms would likewise result in the disclosure of confidential and privileged communications between a Legal Department attorney and a client of the Legal Department or potentially of attorney work product information.

4. This Court should not allow plaintiffs to here invade the attorney-client privilege or the work product rule by granting any part of plaintiffs' discovery motion no. 3. To do otherwise would violate and render meaningless the strong public policy considerations underlying the confidential and privileged nature of attorney-client communications, thereby chilling open and frank communications involving legal advice between attorneys in corporate legal departments and their clients, regardless of whether such in-house legal departments are within non-profit religious corporations or within private for-profit companies and corporations.

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I declare under penalty of perjury under the laws of the United States and of the State of California that the foregoing is true and correct upon my knowledge, information and belief.

Executed on September 27, 2006, at Patterson, New York.

Mario F. Moreno

4227184.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF MARIO F. MORENO, ESQ., IN SUPPORT OF CHURCH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE WATCHTOWER LEGAL DEPARTMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 28, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601 **Via Fed Ex**	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for The Church Defendants

FILED
SEP 29 2006
Clerk of the Napa Superior Court
By: Lora O'Doherty
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF CHURCH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE WATCHTOWER LEGAL DEPARTMENT

(DISCOVERY MOTION NO. 3)

Hearing Date: October 13, 2006
Time: 8:30 am
Dept.: A
Before: Hon. Raymond A. Guadagni

I, Robert J. Schnack, declare as follows:

1. I am an attorney licensed to practice law in California, a shareholder in the law firm of Bullivant Houser Bailey PC, and one of the Church Defendants' attorneys of record in this action. I make the following statements from personal knowledge.

///

SEP 29 2006

2. On behalf of Watchtower Bible and Tract Society of New York, Inc., I prepared and served objections to a notice of 'PMK' deposition that had been served by plaintiffs' counsel. (The designated PMK for that deposition was Gary Breaux, who was deposed on November 15, 2005, as referenced in plaintiffs' supporting memorandum for motion no. 3 at p.2.) The objections asserted included, among others, the attorney - client privilege and the work product privilege, as follows:

"[PLAINTIFFS'] REQUEST NO. 4:

"A blank or redacted copy of any form(s) used in connection with allegations or proof of child sexual abuse.

"[DEFENDANTS'] RESPONSE TO REQUEST NO. 4:

"Objection. ... This request ... calls for communications and documents protected by ... the attorney-client and work product privileges.

"Subject to and without waiving those objections, ... Defendant Watchtower NY responds as follows: ... and also see attached documents for relevant years.

- Redacted Child Abuse Telememo dated 1989.
- Redacted Child Abuse Telememo dated 1992.
- Redacted Child Abuse Telememo dated 1993.
- Redacted CM Profile dated 1993."

3. The four documents referenced above are the documents included in Exhibit 3 to plaintiffs' discovery motion no. 3 concerning the Watchtower Legal Department. (Those documents are also addressed in the concurrently filed declaration of Mario F. Moreno, Esq., who is an attorney and associate general counsel with the Watchtower Legal Department.) The Church Defendants thus asserted the attorney-client privilege and the work product privilege in connection with the referenced documents upon their initial production in blank form with a "CONFIDENTIAL" stamp on them. Further, their production in blank form with a "CONFIDENTIAL" stamp on each does not waive, or estop the Church Defendants from asserting, any applicable privileges. E.g., Scripps Health v. Superior Court (2003) 109 Cal.App.4th 529.

I declare under penalty of perjury under the laws of the State of California that the

foregoing is true and correct. Executed this 27th day of September, 2006, at Sacramento, California.

ROBERT J. SCHNACK

4228150.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

DECLARATION OF ROBERT J. SCHNACK IN SUPPORT OF CHURCH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE WATCHTOWER LEGAL DEPARTMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

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XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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_____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on September 28, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601 **Via Fed Ex**	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 0 6 2006
Clerk of the Napa Superior Court
By: _____ Deputy

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT.

(DISCOVERY MOTION 3)

Date: October 13, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

BACKGROUND

The Watchtower Defendants' Opposition to Plaintiffs' motion does an excellent job of going through the extensive California Case Law dealing with attorney-client privileges

and communications. However, that is not what Plaintiffs' motion is about. Plaintiffs have never said that they need a lawyer from the Watchtower Legal Department. It may well be that a lawyer is the applicable person but Defendants have not represented that to this Court. Previous deposition testimony has disclosed that there are numerous people in the Legal Department who are not lawyers.

Plaintiffs are seeking, through this deposition, to determine how documents which have already been produced to Plaintiffs are created and used in the Watchtower organization. Assuming arguendo that these documents obtained attorney-client privileged information, that privilege would have been waived when the Watchtower Defendants produced the documents.

The production of a person who can testify concerning how the Watchtower Defendants handled allegations of sexual abuse is, and can lead to, the discovery of relevant information. Since any information which is privileged is not discoverable (CCP § 2017.010) the Watchtower Defendants can make the appropriate objection at the time of the deposition. However, Plaintiffs are entitled to inquire concerning the documents which are relevant to the sexual abusers and to the notice which the Watchtower Defendants had of the sexual abuse.

CONCLUSION

Based upon the motion, and this reply, it is requested that this Court order that the documents be produced and the testimony be compelled.

Date: October 5, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Stephen W. Owens
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 6, 2006, I caused the within **REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING THE LEGAL DEPARTMENT** to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

XX **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Copy Mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 6, 2006, at Sacramento, California.

Praveen Singh

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

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Stephen W. Owens, SBN 84859
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 0 6 2006
Clerk of the Napa Superior Court
By: _____ Deputy

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS

(DISCOVERY MOTION 1)

Date: October 13, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

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DEFENDANTS' OPPOSITION IS UNPERSUASIVE

Defendants' primary argument is that this Court's earlier ruling was an "erroneous mis-perception" that the communications with the Judicial Committee do not fall within the scope of the penitential communication privilege. This exact issue was extensively briefed for the August 31, 2005 hearing. Pursuant to Evidence Code § 352, this Court is requested to take Judicial Notice of Plaintiff's Motion to Compel and Defendants' Opposition to that motion. That motion and opposition are hereby incorporated by reference into this motion.

A brief review of the Watchtower Defendants' Opposition to Plaintiffs' 2005 motion indicates that the exact same arguments and virtually the same authorities, were being argued by the Church Defendants. This Court rejected those arguments in its ruling of September 29, 2005. The California Court of Appeal and the California Supreme Court have also rejected the Church Defendants' Writs of Mandate. This Court should again reject the position of the Church Defendants and make a new order that the penitential communication privilege does not apply and that the Church Defendants may not continue to direct their agents to refuse to testify based upon the non-applicable privilege.

It is precisely this type of abuse of the discovery process which the coordination of these actions sought to prevent. If the Watchtower Defendants continue to assert the clergy privilege each time Plaintiffs attempt to depose a new set of Elders, then the coordination of these actions is meaningless.

The real issue here is when the various Elders had notice of the sexual abuse of the minor Plaintiffs. Defendants seek to prevent the discovery of this notice, and its supporting documentation, by the continual assertion of the privilege and the direction that neither the documents be produced nor that the Church Elders be questioned concerning the notice. The Church Defendants' attempts to prevent the discovery of notice is further shown by the Church Defendants' arguments that documents and testimony that post-date "the sexual abuse" are not discoverable. It may well be that some of these matters are not relevant, at the time of trial, and will be excluded by the trial court. However, these

documents and testimony are "reasonably calculated to lead to the discovery of admissable evidence." California Code of Civil Procedure § 2017.010. It may well be that the documents reference matters that predate the abuse of the minor Plaintiffs. It is also possible that the deposition testimony will report on events that happened prior to the sexual abuse of the Plaintiffs. Defendants attempt to preclude this evidence is contrary to California Law.

In order to avoid the clear import of this Court's earlier ruling, Church Defendants now attempt to cloak various communications as "related confidential spiritual communications" between Elders and the sexual abusers. At Page 3 Lines 3-7, the Church Defendants have the audacity to suggest that a communication between one of the Plaintiffs and the Church Elders concerning the abusers' actions, somehow related to the "spiritual health" of the sexual abuser. Nothing could be further from the truth.

CONCLUSION

Based upon the foregoing, it is requested that this Court order the Watchtower Defendants produce the Woodland Elders for deposition. It is further requested that the Watchtower Defendants be ordered not to refuse to answer questions based upon the penitential communication privilege.

Date: October 5, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Stephen W. Owens
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 10, 2006, I caused the within **REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND/OR MOTION FOR A PROTECTIVE ORDER REGARDING THE WOODLAND ELDERS** to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

XX **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

_____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Copy mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 10, 2006, at Sacramento, California.

Praveen Singh

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 0 6 2006
Clerk of the Napa Superior Court
By: Deputy

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL PMK DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS.

(DISCOVERY MOTION 2)

Date: October 13, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

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INTRODUCTION

Defendants' Opposition is merely a rehashing of the clergy-penitent privilege argument that they had previously unsuccessfully made in opposition to Plaintiffs' August 2005 Motion to Compel Production of Documents. This argument was rejected by this Court and by the California Court of Appeal and California Supreme Court when they denied Defendants Writs of Mandate.

Plaintiffs incorporate by reference their Reply to Defendants' Opposition to Discovery Motion # 1 which is to be heard on the same date and time as this hearing. The arguments dealing with the clergy-penitent privilege and the discoverability of documents that post-date the alleged disputes are the same in both motions.

CONCLUSION

Based upon Plaintiffs' motion and their Reply to the Opposition to Discovery Motion # 1, it is requested that this Court order that the Watchtower Defendants produce a Person(s) Most Knowledgeable consistent with the PMK Notice of Taking Deposition which Plaintiffs have previously served. It is further requested that the Watchtower Defendants produce the requested documents.

Date: October 5, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Stephen W. Owens
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 6, 2006, I caused the within **REPLY BRIEF TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEPOSITION AND DOCUMENT REQUEST REGARDING GENERAL DISCOVERY MATTERS** to be served as follows:

XX **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

XX **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Mailed copy to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 6, 2006, at Sacramento, California.

Praveen Singh

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
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Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 0 6 2006

Clerk of the Napa Superior Court
By: _____ Deputy

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

FILED BY FAX
ATTORNEY'S DIVERSIFIED SERVICES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED ACTIONS	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **REQUEST FOR JUDICIAL NOTICE** **(DISCOVERY MOTION 1)** Date: October 13, 2006 Time: 8:30 a.m. Dept: A Judge: Hon. Raymond A. Guadagni

Plaintiffs request that this Court take Judicial Notice, pursuant to Evidence Code §§ 452 and 453, of the pleadings and files in this matter. Specifically, Plaintiffs request that this Court take Judicial Notice of Plaintiffs' Memorandum of Points and Authorities in

Support of Motion to Compel Watchtower Defendants' responses to Request for Production of Documents, (a copy of the face sheet is attached) and Church Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motions to Compel responses to Request for Production of Documents. (A copy of the face sheet is also attached).

Date: October 5, 2006

Respectfully Submitted,

NOLEN & ASSOCIATES

Stephen W. Owens
Attorney for Plaintiffs

Rudy Nolen, Esq., SBN 59808
William L. Brelsford, Esq.,
SBN 202839
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Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
JULIEANNE WIMBERLEY GUTIERREZ
and JOSHUA WIMBERLEY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TEHAMA

JULIEANNE WIMBERLEY GUTIERREZ and JOSHUA WIMBERLEY,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS.

CASE NO: 52598

Judicial Council Coordination Proceeding No. 4374

Coordinated with Napa County Superior Court Case No. 26-22191

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL WATCH TOWER DEFENDANTS' RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Date: August 22, 2005
Time: 9:30 am
Dept. B (Napa County Superior Court)

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
11335 Gold Express Drive, Suite 105
Sacramento, California 95670-4491
Telephone: 916.852.9100
Facsimile: 916.852.5777
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

ENDORSED

AUG 22 2005

BY: SORA O'DOHERTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (lead case)

JCCP No. 4374

CHURCH DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS' MOTIONS TO COMPEL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Hearing: August 31, 2005
Time: 9:30 am
Dept: C
Place: Napa County Superior Court

0000247

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 6, 2006, I caused the within **REQUEST FOR JUDICIAL NOTICE** to be served as follows:

XX **MAIL** – I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

XX **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

_____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

_____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Copy mailed to:

Co-Counsel for Plaintiffs
Greg Love
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 6, 2006, at Sacramento, California.

Praveen Singh

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Motion **PID # :**	**Case #** 26-22191 **Event Date:** October 13, 2006 **Clerk:** D. Harry **Reporter:** Karen Kronquest, #7482 **Cite/Report #:**

Appearances:
Hartley Hampton and Gregory Love, Counsels representing Plaintiffs appearing via Court Call
Rudy Nolan, Counsel for Plaintiff
Robert J. Schnack, Counsel for Defendants Watch Tower

This matter comes before the Court for hearing on Motions to Compel.

The Court inquires of Counsel if they have anything further to add to their moving papers, to which they reply in the negative.

The Court hears comments of Counsel.

The Court takes these matters under submission and advises Counsel a written decision shall be issued.

-o0o-

FILED
OCT 16 2006
Clerk of the Napa Superior Court
By: M. Herrera
Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA,

COUNTY OF NAPA

CHARISSA W., et al.,

Plaintiffs,

v.

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

Defendants.

Case No.: 26-22191
JCCP No. 4374

RULING ON SUBMITTED DISCOVERY MOTIONS

Plaintiffs' Motions To Compel Discovery came on for hearing on October 13, 2006. The court, having read and considered the papers in support of and in opposition to the motion and having heard oral argument, took the motions under submission and now rules as follows:

Plaintiffs' Motion to Compel Depositions and/or for Protective Order re: the Woodland Elders (Motion #1)

The Watchtower defendants have informed the plaintiffs that, at the depositions of four Church Elders, they will invoke the clergy-penitent privilege and object to "any inquiries concerning judicial investigations and judicial committees." Plaintiffs seek an order compelling the deponents to attend their depositions and to respond to such inquiries.

This court has previously ruled in the Track I cases that the penitential communication privilege does not apply to communications between the alleged abusers and the Judicial Committee. (See Court's ruling of September 29, 2005.) Although that ruling is not res judicata in non-track I cases, defendants provide no convincing reason why the court should rule differently in this case. For the reasons expressed in the earlier ruling, the court concludes that the witnesses may not assert the penitential communication privilege. To the extent the motion also encompasses the production of documents, defendants shall produce responsive documents, regardless of when they are dated. As plaintiffs note, it is possible that documents dated after the alleged abuse will contain relevant information. For these reasons, plaintiffs' motion #1 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – General (Motion #2)

Plaintiffs have noticed the deposition of the Church defendants' Person(s) Most Knowledgeable (PMK) on a number of specified topics. Defendants have objected to six areas of inquiry, again invoking the clergy-penitent privilege. For the reasons discussed above and in the court's earlier ruling, the court finds that the clergy-penitent privilege does not apply to these areas of inquiry. Defendants also object to the scope of the document requests, claiming that documents that post-date the alleged abuse are not relevant or likely to lead to the discovery of admissible evidence. As above, the court finds that the documents are discoverable. For these reasons, plaintiffs' motion #2 is GRANTED.

Plaintiffs' Motion to Compel PMK Deposition and Documents – Legal (Motion #3)

Plaintiffs previously issued a PMK deposition notice concerning "any and all policies that the Jehovah's Witnesses organization had for handling accusations and proof of child sexual abuse from 1970 to the present." During that PMK deposition of Mr. Breaux, he identified functions that were handled by the Legal Department rather than by the Service Department, where he worked. As to these, he lacked the information necessary to provide responses.

Plaintiffs subsequently noticed a PMK deposition to inquire into (1) the organization, staffing and operation of the Legal Department; (2) the Legal Department's role in responding to

and investigating child sexual abuse allegations within the organization; (3) the development and use of "Child Abuse Telememos" which were forms developed to obtain and record information concerning reports of abuse (blank forms were produced in discovery); (4) records kept by or under the direction of the Legal Department concerning allegations of abuse; and (5) answers given to "survey questions" contained on one of the Telememos.

Defendants have objected that these areas of inquiry are protected by the attorney-client and/or work product privileges. As to the first two categories, plaintiffs contend that they concern only policies and implementation, and do not invade any privileges. As to categories 3 and 5, they assert only that the requested information is related to the blank documents they already received in discovery, and that the information goes to the heart of their case. Finally, as to category 4, they claim again, that no privileges would be invaded, because they seek general information about the types of records kept by the legal department.

The court agrees that items 1, 2 and 4, which seek general structural, policy and organizational information concerning the Legal Department, implicate neither the attorney-client nor the work product privileges. Items 3 and 5, on the other hand, seek protected information. As set forth in the declaration of the Church's associate general counsel, the Telememo forms are completed by attorneys or legal assistants based upon information provided them by congregation elders, and are used to assist in giving legal advice to the elders, as clients of the Legal Department. Similarly, any compilation of information, as from the "survey questions" constitutes attorney work product and is not discoverable.

For these reasons, the court will GRANT the motion as to items 1, 2 and 4 and will DENY the motion as to items 3 and 5.

Dated: 10/16/06

Raymond A. Guadagni, Judge

CERTIFICATE OF MAILING

Napa Courts

Civil, Criminal, Appeals, Small Claims

CHARISSA W.,et al,

Plaintiffs,

vs.

CASE NO: 26-22191
JCCP No. 4374

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

Defendants.

Rudy Nolen
Nolen & Brelsford
1501 - 28th Street
Sacramento, CA 95816

Sent by facsimile to: 916-733-0601 and by US Mail this date.

Hartley Hampton
Fibich, Hampton & Leebron, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Sent by facsimile to: 713-751-0030 and by US Mail this date.

Greg Love
Love & Norris
314 Main Street, Suite 300
Fort Worth, TX 76102-2800

Sent by facsimile to: 817-335-2912 and by US Mail this date.

Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr., Suite 1105
Gold River, CA 95670-4491

Sent by facsimile to: 916-930-2501 and by US Mail this date.

I hereby certify that I am not a party to this cause and that copies of the attached **RULING ON SUBMITTED DISCOVERY MOTIONS** mailed (first class postage pre-paid) to the above parties at Napa, California on this date and that this certificate is executed at Napa, California this date.

10/16/06
DATE

M. Fields
Deputy Court Executive Officer

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
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314 Main Street, Suite 300
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Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 30 2006

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

NOTICE OF MOTION AND MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS

(California Code of Civil Procedure 404.4)

Date: November 27, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

Received

OCT 27 2006

Napa Superior Court

///

Plaintiffs in the above entitled action will move this Court that it hear a Petition for Coordination of an Add On case to determine whether a new action should be coordinated with the previously coordinated actions in Judicial Council Coordination Proceeding Number 4374.

This motion is made pursuant to California Rules of Court 1544 and California Code of Civil Procedure 404.4 and is based upon this notice, the attached Memorandum of Points and Authorities and the attached Affidavit of Rudy Nolen.

Respectfully submitted,

NOLEN & ASSOCIATES

Dated: 10-26-06

Rudy Nolen, Esq.
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 26, 2006, I caused the within **NOTICE OF MOTION AND MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS** to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

Robert J. Schnack — *Attorney for Watchtower Defendants*
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Alvin Heard — *Defendant In Pro Per*
703 Delta Street
Klamath Falls, OR 97661

James Henderson — *Defendant In Pro Per*
265 Gilmore Rd. #17
Red Bluff, CA 96080

Chair, Judicial Council of California — *Courtesy Copy*
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Greg Love — *Courtesy Copy*
LOVE & NORRIS — *Co-Counsel for Plaintiffs*
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq. — *Courtesy Copy*
FIBICH, HAMPTON & LEEBRON — *Co-Counsel for Plaintiffs*
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 26, 2006, at Sacramento, California.

Praveen Singh

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
OCT 30 2006
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS

Date: November 27, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

///

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Received
OCT 27 2006
Napa Superior Court

BACKGROUND

On October 6, 2006, Plaintiffs' attorneys in the coordinated actions filed an action in San Diego Superior court. Attached as **Exhibit A** is a true and correct copy of that Complaint.

Plaintiffs' attorneys in the San Diego action are requesting that this Court coordinate an add on case with the previously coordinated matters. A copy of this request is being mailed to the Chair of the Judicial Council and Defendant's attorney in the coordinated actions is also being notified of this request.

REQUEST TO INCLUDE PENDING ACTION

Pursuant to California Code of Civil Procedure Section 404.4 plaintiffs are moving that this court hear a Petition for Coordination of an Add On Case pursuant to California Rule of Court 1544.

California Code of Civil Procedure Section 404.4 provides that:

> The presiding judge of any court in which there is pending an action sharing a common question of fact or law with actions coordinated pursuant to section 404, on... the motion of any party supported by an affidavit stating facts showing that the action meets the standard specified in Section 404.1... may request the judge assigned to hear the coordinated actions for an order coordinating the action.

California Rules of Court 1544 provides that:

> A request to coordinate an add-on case must comply with the requirements of Rules 1520 through 1523, except that the requests must be submitted to the coordination trial judge under Section 404.4 of the Code of Civil Procedure, with proof of mailing of one copy to the Chair of the Judicial Council and proof of service is required by rule 1510.

The affidavit of Rudy Nolen shows that this action meets the standards set forth in California Code of Civil Procedure Section 404.1.

California Code of Civil Procedure Section 404.1 provides that:

> Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product

of counsel; the efficient utilization of judicial facilities and manpower; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, the likelihood of settlement of the actions without further litigation should coordination be denied.

CONCLUSION

In conclusion, pursuant to the California Code of Civil Procedure and California Rules of Court, Plaintiffs ask that this Court hear a Petition for Coordination of an Add-On case.

Respectfully submitted,

NOLEN & ASSOCIATES

Dated: 10-26-06

Rudy Nolen, Esq.
Attorney for Plaintiffs

FILED
EAST COUNTY DIVISION
GIE034558
2007 OCT -6 PM 2:36
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
Facsimile: (916) 733-0601

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GIE034558

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive.

Defendants.

CASE NO: _____

ORIGINAL COMPLAINT FOR DAMAGES:

1. **Common Law Negligence**
2. **Negligent Appointment, Retention and Supervision**
3. **Gross Negligence -- Willful Misconduct**
4. **Breach of Fiduciary Duty**

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H., Plaintiffs in the above-numbered and entitled cause, and file this, their Original Complaint, and allege as follows:

I.

PARTIES

1. S.H., born August 28, 1990, is, and at all times mentioned herein, was a resident of San Diego County, California.

2. Plaintiff N.H., born November 8, 1988, is, and at all times mentioned herein, was a resident of San Diego County, California.

EXHIBIT A

3. Plaintiff G.G., born October 17, 1986, is, and at all times mentioned herein, was a resident of San Diego County, California.

4. Plaintiff A.B., born May 10, 1984, is, and at all times mentioned herein, was a resident of San Diego County, California.

5. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, has conducted business within the State of California through its agents and alter egos and may be served with process through its California agent for service of process James M. McCabe, 4817 Santa Monica Avenue, San Diego CA 92107.

6. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, a corporation organized and existing under the laws of the State of Pennsylvania, has conducted business within the State of California through its agents and alter egos and may be served with process at its offices located at 1630 Spring Run Road Extension, Coraopolis, Pennsylvania 15108.

7. Defendant JEHOVAH'S WITNESSES ALPINE CONGREGATION is a corporation organized and existing under the laws of the State of California. At all material times, it maintained its offices at Kingdom Hall Building, 3408 East Victoria Drive, Alpine, San Diego County, California, 91901.

8. Plaintiffs allege on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who therefore sue such Defendants by such fictitious names, and will amend the complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

10. The Defendant entities are collectively referred to herein as the "WATCHTOWER DEFENDANTS" because each is the agent and alter ego of each other and operate as a single business enterprise. Each Defendant was acting within the scope and course of his or its authority as an agent, servant, and/or alter ego of the other and each of them engaged in, joined in and conspired with the other wrongdoers in carrying out the tortuous and unlawful activities alleged in this complaint.

II.

JURISDICTION AND VENUE

11. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

12. Venue is proper in San Diego County, California because each minor plaintiff was the victim of tortuous conduct within that county.

III.

FACTS COMMON TO ALL CAUSES OF ACTION

13. All paragraphs of this Complaint are based on information and belief, except for those allegation, which pertain to the Plaintiffs and their counsel. Plaintiffs' information and belief are based upon, inter alia, the investigation conducted to date by Plaintiffs and their counsel. Each allegation in this Complaint either has, or is likely to have, evidentiary support upon further investigation and discovery.

14. The WATCHTOWER DEFENDANTS comprise a hierarchical organization made up of different corporations and other entities. The Watchtower Bible and Tract Society of New York is the parent organization of all entities of Jehovah's Witnesses in the United States. The "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses throughout the world, and operates through various corporate entities including the Watch Tower Bible and Tract Society of Pennsylvania.

15. Local congregations are led by Elders, Ministerial Servants and Pioneers who are appointed by the Governing Body and/or the Watchtower Bible and Tract Society of New York Local Congregation. Elders, Ministerial Servants and Pioneers are agents of the

Watchtower Bible and Tract Society of New York and the Governing Body and are required to obey and follow the rules handed down by the Governing Body and the Watchtower Society.

16. Through their rules and policies, the WATCHTOWER DEFENDANTS assumed a duty to protect children in their organization, including Plaintiffs. The WATCHTOWER DEFENDANTS negligently failed to exercise reasonable care in fulfilling that duty.

17. The WATCHTOWER DEFENDANTS undertook the responsibility to instruct their elders as to what to do when they received allegations of child sexual abuse. They promulgated policies and rules directing the elders to call the WATCHTOWER DEFENDANTS' "Legal Department" for direction about whether to report allegations of sexual abuse to police and law enforcement. The policies were designed to prevent cooperation with, if not frustrate, secular investigations. Elders were sometimes instructed to make anonymous calls from telephone booths so that law enforcement authorities would be unable to contact them for more information.

18. The WATCHTOWER DEFENDANTS promulgated policies and rules requiring local congregations, through their elders, to investigate allegations of child sexual abuse. They enacted evidentiary and procedural rules governing the formation and operation of "judicial committees," comprised of elders, which gathered and considered evidence, questioned witnesses and rendered judgments about whether child sexual abuse had or had not occurred. Often these judgments were based on the "two witness rule," which allowed allegations of child sexual abuse to be disregarded unless the perpetrator confessed or there were two eye witnesses to the crime. Additionally, the elders were instructed not to reveal to law enforcement authorities the results of their investigations.

19. The WATCHTOWER DEFENDANTS assumed the duty to punish organization members who were guilty of child sexual abuse. Since the allegations were often concealed from secular authorities, the perpetrators often received no punishment except for that meted out by the WATCHTOWER DEFENDANTS. Sometimes the offenders were "disfellowshipped," or expelled from the organization. Other times their punishment was

secret; they were "privately reproved" or placed on "restrictions" so that other congregation members would not know that a dangerous child abuser was in their midst.

20. The WATCHTOWER DEFENDANTS' policies, which were ostensibly promulgated to protect children in the organization, emphasized secrecy above all other concerns. Victims of child sexual abuse, and their families, were routinely told not to inform secular authorities. Victims were often discouraged, if not prevented, from obtaining appropriate medical and psychological care or from confiding in their siblings or close friends. Instead, they were instructed to rely on elders for counsel.

21. The WATCHTOWER DEFENDANTS instructed the local congregations and elders to make written reports to the WATCHTOWER DEFENDANTS' "Service Department" about allegations of child sexual abuse leveled against elders, ministerial servants and pioneers, as well as written reports of judicial committee actions concerning child sexual abuse allegations made against any Jehovah's Witness. The WATCHTOWER DEFENDANTS have for years maintained files and, more recently, a computerized database containing such information. The WATCHTOWER DEFENDANTS undertook the responsibility to compile this information to protect congregation members and they therefore assumed a duty to utilize this information with reasonable care. However, despite having confidential information that would allow parents, law enforcement authorities and even elders to identify sexual predators and actually take steps to protect children, the WATCHTOWER DEFENDANTS negligently concealed this information from the persons who needed it most urgently.

22. The WATCHTOWER DEFENDANTS have, at all material times, had the ability to know when a "known pedophile," a term they sometimes use, moves from one congregation to another. However, they have negligently failed to utilize the information they have compiled to monitor the movement of sexual predators through their organization and issue appropriate warnings. The WATCHTOWER DEFENDANTS promulgated rules and policies that require the former congregation to write a "letter of instruction" when a member moved to another congregation. However, the WATCHTOWER DEFENDANTS negligently failed to take any steps to ensure that such a

letter was actually sent or that the letter contained accurate information and adequate warnings. If a sexual predator moved from a congregation where he was known to be a pedophile, but then moved a second time, the WATCHTOWER DEFENDANTS' rules did not even require the first congregation's letter to be passed along to the third congregation.

23. These are but a few examples of the WATCHTOWER DEFENDANTS assuming a duty to protect children in the organization but failing to exercise reasonable care in fulfilling that duty.

24. Frederick McLean was appointed Ministerial Servant by the Governing Body and/or the Watchtower Bible and Tract Society of New York. A Ministerial Servant is an agent of the Watchtower Bible and Tract Society of New York, the Governing Body and the other Watchtower Defendants.

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

26. The WATCHTOWER DEFENDANTS knew, or should have known, that Frederick McLean was a pedophile. Nevertheless, he was appointed Ministerial servant and allowed to occupy a leadership position in the Jehovah's Witnesses organization.

27. Beginning in approximately 1991, McLean used the position of trust that his status as a Ministerial Servant represented and conferred, to obtain access to Plaintiffs so that he could sexually abuse them. He abused SH and NH from approximately 1993 to 1999. He abused GG from approximately 1992 to 1999, and abused AB from approximately 1991 to 1999. The abuse occurred primarily in San Diego County, California.

IV.

FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

28. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Plaintiffs allege that at all times herein mentioned, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization. The WATCHTOWER DEFENDANTS knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Frederick McLean, but failed to act to protect them from such harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiffs, thereby causing great harm to Plaintiffs.

30. Despite the fact that the Watchtower Defendants knew or should have known of McLean's history of pedophilia, they negligently failed to warn Plaintiffs or their families of McLean's history of sexually abusing children.

31. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of McLean's history of pedophilia, they negligently permitted him to be alone with children, including Plaintiffs, in the congregations.

32. As a legal result of Defendants' conduct as described herein above, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from obtaining the full enjoyment of life.

V.

SECOND CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

33. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Plaintiffs allege that at all times herein mentioned, the WATCHTOWER DEFENDANTS knew or should have known of McLean's propensity to use his position as a leader in the local congregations to engage in acts of sexual abuse of young, vulnerable

and defenseless victims such as Plaintiffs. The WATCHTOWER DEFENDANTS failed to adequately investigate, evaluate, and otherwise research McLean's background prior to appointing him to a leadership position and allowing him unsupervised access to young victims such as Plaintiffs.

35. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of McLean's history of pedophilia, they negligently appointed him to the office of Ministerial Servant when they knew or should have known that he would be allowed unsupervised access to minor children in the course and scope of his duties.

36. The WATCHTOWER DEFENDANTS negligently failed to monitor and/or supervise McLean despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

37. As a legal result of Defendants' conduct as described herein above, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from obtaining the full enjoyment of life.

VI.

THIRD CAUSE OF ACTION
GROSS NEGLIGENCE/WILFUL MISCONDUCT

38. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. Plaintiffs allege, at all times mentioned herein, that the WATCHTOWER DEFENDANTS demonstrated a conscious indifference to the safety and welfare of Plaintiffs. The WATCHTOWER DEFENDANTS knew or should have known of the dangerous

propensities of their agent, Frederick McLean, yet failed to act to protect the health, safety and welfare of children in the WATCHTOWER DEFENDANTS' organization thereby allowing Plaintiffs to be sexually abused. But for the WATCHTOWER DEFENDANTS' willful misconduct and gross negligence in failing to implement safeguards to protect Plaintiffs, the sexual abuse would have been prevented.

40. Plaintiffs further allege that WATCHTOWER DEFENDANTS' actions, constituting willful misconduct and gross negligence described herein above, caused significant mental, emotional, and physical injuries as a result of the acts of sexual abuse described herein above.

41. As a legal result of Defendants' conduct as described herein above, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will be continue to be prevented from obtaining the full enjoyment of life.

VII.

FOURTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

42. Plaintiffs incorporate herein by this reference and re-allege paragraphs 1 through 41 of this Complaint as if fully set forth herein.

43. Plaintiffs allege, at all times mentioned herein, that by assuming the responsibility to protect and care for Plaintiffs, who were young and vulnerable, the WATCHTOWER DEFENDANTS created a fiduciary relationship with Plaintiffs. The WATCHTOWER DEFENDANTS occupied positions of trust and confidence with Plaintiffs and such relationship imposed on them a duty to act to protect Plaintiffs' best interests.

44. Plaintiffs further allege that because of this special relationship, Plaintiffs placed their trust and confidence in the WATCHTOWER DEFENDANTS to protect them from harm and to warn Plaintiffs of the potential harm. The conduct described above constituted a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

45. As a legal result of Defendants' misconduct as described herein above, Plaintiffs have suffered, and will continue to suffer great pain of mind, body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life. Further, Plaintiffs were prevented and will continue to be prevented from obtaining the full enjoyment of life.

VIII.
PRAYER

WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;
2. For past and future medical expenses according to proof;
3. For past and future loss of earnings according to proof;
4. For prejudgment interest;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Dated: September 29, 2006 **NOLEN & ASSOCIATES**

Rudy Nolen, Esq.,
Attorneys for Plaintiffs.

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 26, 2006, I caused the within **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS** to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

Robert J. Schnack — *Attorney for Watchtower Defendants*
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Alvin Heard — *Defendant In Pro Per*
703 Delta Street
Klamath Falls, OR 97661

James Henderson — *Defendant In Pro Per*
265 Gilmore Rd. #17
Red Bluff, CA 96080

Chair, Judicial Council of California — *Courtesy Copy*
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Greg Love — *Courtesy Copy*
LOVE & NORRIS — *Co-Counsel for Plaintiffs*
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq. — *Courtesy Copy*
FIBICH, HAMPTON & LEEBRON — *Co-Counsel for Plaintiffs*
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 26, 2006, at Sacramento, California.

Praveen Singh

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
Facsimile: (916) 733-0601

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Greg Love, SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

OCT 30 2006

Clerk of the Napa Superior Court

By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

DECLARATION OF RUDY NOLEN IN SUPPORT OF MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS

Date: November 27, 2006
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond A. Guadagni

Received
OCT 27 2006
Napa Superior Court

///

I, RUDY NOLEN, declare as follows:

I am an attorney at law duly licensed to practice before all of the courts of the State of California and am one of the attorneys for Plaintiffs in the above-entitled action.

Judicial Council Coordination Proceeding No. 4374 consists of a series of cases which have been filed by my office and co-counsel against the Watchtower Bible and Tract Society of New York, Inc., the Watchtower Bible and Tract Society of Pennsylvania, Inc., and various local Jehovah's Witnesses Congregations. Two of these cases have been designated as Tract I. Four other cases have been designated as Non-Tract I. The Tract I cases have been set for trial. The first is set to commence on April 3, 2007. Discovery is progressing in those cases although there is considerable discovery which still needs to be conducted.

The Non-Tract I cases are in the initial stages of discovery. The depositions of the Plaintiffs in one case have been taken although the depositions of the Plaintiffs in three other of the cases have not been scheduled. The deposition of one witness has been taken in those cases. Initial sets of discovery have been exchanged between the parties. The depositions of the Elders (the individuals who oversee the local Jehovah's Witnesses Organization) have yet to be taken in any of the Non-Tract I cases. Due to the discovery which has been conducted in the Non-Tract I cases, the discovery in the instant action can be expected to proceed quickly. Therefore, the discovery in this matter will be such that coordination is consistent with the relative development of the actions and the work product of counsel.

Based on information, research and belief, the included actions involve the following questions of fact and law: Various perpetrators, all of whom were Jehovah's Witnesses who held leadership positions and who exercised authority over members of the congregation, each engaged in nefarious acts under different circumstances. Crucial to every case, the molestations by these individuals became known to other church leaders at the local Kingdom Halls and eventually the information was

disseminated further into the church's organizational structure. Common to each case was a decision by church officials to keep these crimes from law enforcement officials. Common to each case was a decision to manage internally the criminal behavior of their fellow member by counseling the perpetrator within the church's structure. Common to each case was a concomitant decision not to tell other members of the congregation that one of their leaders was a sexual predator who had committed heinous and criminal acts on children of their fellow church members. Common to each case, the perpetrator/church leader continued to molest members' children after the perpetrator's criminal acts were known. Each lawsuit asserts identical legal theories consisting of common law negligence; negligent appointment, retention, and supervision; gross negligence – wilful misconduct; breach of fiduciary duty. Some of the cases assert fraud – intentional misrepresentation; fraud – concealment; conspiracy; and intentional infliction of emotional distress. These questions predominate and are significant in each action. The pleadings have been tested on numerous occasions and the coordination judge has ruled on the various theories of liability and causes of action.

The actions are complex: Each plaintiff is claiming emotional and psychological injuries caused by the trauma of the molestations. The injuries and damages, although complex and personal as to each individual, are no more involved than other tort actions claiming personal injuries. The complexity of these cases is related more to the number of injured individuals, their inter-family relationships in the context of their Jehovah's Witnesses beliefs and the control and influence the organization exercised over its members. This cult milieu demanded obedience to the church leadership, and a corresponding fear of ostrization if the leaders' directives were not followed. These facts allowed the events of these lawsuits to persist for years resulting in further injuries to a number of innocent children. Because the allegations involve a religious entity, unique issues of a constitutional nature are extant which are unlike those usually found in most

tort claims.

The trial of these common issues before one judge at one site will (1) advance the efficient use of judicial resources, (2) prevent duplicative and inconsistent rulings, orders and judgments, and (3) increase the likelihood of settlement: Consuming the time of a number of judges and their staffs with telephone calls, lengthy and complex briefs, time consuming law and motion hearings could all be avoided by a single judge presiding over the case. His or her familiarity with the case would certainly expedite these procedures and the amount of time devoted to each matter. Naturally, multiple jury trials would clearly consume an enormous amount of time and expense, particularly when the same legal theories will be tried in each case. It is likely, given the unique constitutional issues and the anticipated objections to discovery, the potential of several judges reaching different opinions is inevitable. Most importantly, since these cases will be the subject of motions for summary judgment and/or adjudication, a single briefing and hearing would best serve the interests of justice. The possibility that judges would issue different rulings on *in limine* motions and evidentiary objections during a trial is unmistakable. Whether collateral estoppel applies from one case to another is likely to be another contested matter. Appeals from these rulings, given the enormity of the claims, creates further consumption of judicial resources that can be avoided if a single trial were ordered.

Napa County is the best county for coordination of these actions. This County is located close proximity of the law offices of Plaintiffs' and Defendants' counsel. Although the Plaintiffs and the Elders of the local congregation in the instant action are in Southern California, many of the same depositions of the New York and Pennsylvania Defendants would not be located in Southern California. Therefore, coordination of the new action with the included actions will serve to protect the convenience of the parties and counsel.

Defendants' attorneys have been informed of this motion and request and have informed Plaintiffs' counsel that they will be opposing coordination this new action.

Therefore, Plaintiffs have scheduled this hearing date far enough in advance that will allow for a hearing if one is requested by this Court pursuant to Rules of Court 1544(c).

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. This declaration was executed on this 26th day of October, 2006 at Sacramento, California.

Respectfully submitted,

NOLEN & ASSOCIATES

Dated: 10-26-06

Rudy Nolen, Esq.
Attorney for Plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On October 26, 2006, I caused the within **DECLARATION OF RUDY NOLEN IN SUPPORT OF MOTION FOR A REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED ACTIONS** to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

Robert J. Schnack — *Attorney for Watchtower Defendants*
BULLIVANT HOUSER BAILEY
1415 L Street
Sacramento, CA 95814

Alvin Heard — *Defendant In Pro Per*
703 Delta Street
Klamath Falls, OR 97661

James Henderson — *Defendant In Pro Per*
265 Gilmore Rd. #17
Red Bluff, CA 96080

Chair, Judicial Council of California — *Courtesy Copy*
Administrative Office of the Courts
Attn: Appellate & Trial Court Judicial Services
(Civil Case Coordination)
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Greg Love — *Courtesy Copy*
LOVE & NORRIS — *Co-Counsel for Plaintiffs*
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq. — *Courtesy Copy*
FIBICH, HAMPTON & LEEBRON — *Co-Counsel for Plaintiffs*
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 26, 2006, at Sacramento, California.

Praveen Singh

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-Mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
NOV - 3 2006
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

BY FAX

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191

JCCP No. 4374

NOTICE OF OPPOSITION TO REQUEST THAT THE COORDINATION TRIAL JUDGE DETERMINE WHETHER TO SUBMIT A CASE AS AN ADD ON CASE TO PREVIOUSLY COORDINATED CASES

DATE: November 27, 2006
TIME: 8:30 AM
DEPT.: B
Judge: Hon. Raymond A. Guadagni

In accordance with Rule 1544 of the California Rules of Court, Defendants THE CHURCH DEFENDANTS hereby give notice of their opposition to Plaintiffs' Motion for a Request that the Coordination Trial Judge Determine whether to submit a Case as an Add On to Previously Coordinated Action. Church Defendants' Memorandum of Points and Authorities in support of their Opposition shall be submitted on or before 15 days of this notice.

///

///

DATED: November 2, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

4231809.1

*****

PROOF OF SERVICE

Case No. 26-2219 (lead case); JCCP No. 4374
Charissa W. v. Watchtower Bible and Tract Society of New York, et al

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

DEFENDANTS' NOTICE OF OPPOSITION TO MOTION TO ADD ON

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[___] (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Gold River, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

[__] (BY MESSENGER) I caused such envelope(s) to be hand delivered to

[___](BY FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to.

[__X_](BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above-listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **November 3, 2006**, at Sacramento, California.

By _____
Janet A. Schultz

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882
In Pro Per James Henderson 35 Gilmore Road, #10 Red Bluff, CA 96080	

****
*** MULTI TX/RX REPORT ***
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TX/RX NO	4858	
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	(2)	918173352912#
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Bullivant | Houser | Bailey PC

Attorneys at Law

FAX

From: Robert J. Schnack **Date:** November 3, 2006

C/M #: 23491/00005 **Reference:**

Number of pages being transmitted including the cover page: ____

		Fax No.	Telephone No.
To:	Rudy Nolen Nolen & Associates	(916) 733-0601	
	Greg Love Love & Norris	(817) 335-2912	(817) 335-2800
	Hartley Hampton Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 980-8116

Message/Document(s) faxed:

Please call fax operator at (916) 930-2501 if all pages are not received.

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CONFIDENTIALITY NOTE: The documents accompanying this facsimile transmission contain information belonging to Bullivant Houser Bailey which is confidential and/or legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have ... arrange for return of the original documents to us.

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*** TX REPORT ***
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TX/RX NO	4860
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USAGE T	01'08
PGS. SENT	5
RESULT	OK

Bullivant | Houser | Bailey PC
Attorneys at Law

FAX

From: Robert J. Schnack **Date:** November 3, 2006

C/M #: 23491/00005 **Reference:**

Number of pages being transmitted including the cover page: ____

		Fax No.	Telephone No.
To:	Rudy Nolen Nolen & Associates	(916) 733-0601	
	Greg Love Love & Norris	(817) 335-2912	(817) 335-2800
	Hartley Hampton Fibich, Hampton, Leebron & Garth	(713) 751-0030	(713) 980-8116

Message/Document(s) faxed:

Please call fax operator at (916) 930-2501 if all pages are not received.

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Superior Court of California
County of Napa

FILED

NOV - 6 2006

Clerk of the Napa Superior Court
By: _____
Deputy

Executive Officer
Stephen A. Bouch

Asst. Executive Officers
Georgene Larsen
Richard D. Feldstein

Planning and Research Director
Tammy P. Glathe

General Counsel
Joanna Mittman

November 6, 2006

Angelique Taylor
1216 Lanvale Drive
Webster Groves MO 63119

RE: Charissa W., et al vs Roes 1-100 et al., Case No. 26-22191

Dear Ms. Taylor:

The court is in receipt of your recent letter to the judge regarding the above referenced matter.

Because it is improper for a judge to receive communications about pending cases directly from litigants, we are returning your correspondence to you. He is not ethically permitted to read it, and he has not. Any communications should come to the court through your attorney, with copies to all other counsel. If you are unrepresented, you must still proceed through the normal channels of presenting your arguments or defense.

Respectfully,

Fawn Huss

Fawn Huss
Civil Division Supervisor

Telephone
(707) 299-1100

Historic Courthouse
825 Brown Street
Napa, CA
94559-3031
FAX
(707) 299-1250

Criminal Courts Building
1111 Third Street
Napa, CA
94559-3001
FAX
(707) 253-4673

Bullivant | Houser | Bailey PC

Attorneys at Law

ROBERT J. SCHNACK
Admitted in California and Oregon
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E-mail: bob.schnack@bullivant.com

FILED
NOV 0 8 2006
Clerk of the Napa Superior Court
By: M. Fields
Deputy

November 7, 2006

Via Facsimile

The Honorable Raymond A. Guadagni
Yolo County Superior Court
825 Brown St.
Napa, CA 94559

Re: *Charissa W. et al v. Watchtower Bible and Track Society, et al*
Napa County Superior Court Case No. 26-22191
and Coordinated Cases under JCCP No. 4374
Plaintiff's Motion to Add On
November 27. 2006 at 8:30 am - D-A

Dear Judge Guadagni:

This letter requests on behalf of all parties, that the above motion be continued to **December 5, 2006 at 9:00 am**, to allow counsel to be present for ruling. Also, the parties hereby request that a short (30-40 minutes) in person case management conference be held in chambers after hearing on the motion. Please advise if your schedule permits. Thank you.

Very truly yours,

Robert J. Schnack

RJS:js
cc: Hartley Hampton
Greg Love
Rudy Nolen
4232398.1

OK per Judge Guadagni to move Motion from 11.27.06 to 12.5.06 @ 9am. RAG cannot guarantee time on his calendar for the 30-40 minute CMC requested. Mr. Schnack notified. M. Fields

Received
NOV 0 8 2006
Napa Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☐ Amended Notice (If checked)

TO: Rudy Nolen
Nolen & Brelsford
1501 - 28th Street
Sacramento, CA 95816

DATE: December 5, 2006 **TIME:** 9:00 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Motion Other has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

I certify that I am over age 18, not a party to this action, and am employed as a clerk by the Superior Court of California, County of Napa in the Criminal Courthouse, 1111 3rd Street, Napa, CA 94559 or Historic Courthouse, 825 Brown Street, Napa, CA 94559. Following the ordinary business practices, I placed for collection and mailing at the above named courthouse, a copy of the attached ***Notice of Hearing*** in a sealed envelope, with postage fully prepaid, addressed as stated below.

I am readily familiar with the Court's standard practice for collection and processing of correspondence for mailing with the United State's Postal Service and, in the ordinary course of business, the correspondence would be deposited with the United States Postal Service on the day on which it is collected at the Courthouse.

Date: 11/8/2006

Stephen A. Bouch, Court Executive Officer

By: M. Fields
Deputy Court Executive Officer

*An Assistive listening system is available upon request pursuant to Section 54.8(a) of the Civil Code.

Counsel are referred to the Local Rules of Court. The term "Counsel" includes parties appearing In Propria Persona.

Effective April 16, 1998, the Courtcall telephonic program is available at the Napa Courts for selected civil hearings. For more information on the services provided by Courtcall, please call 1 (888) 88-COURT.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☐ Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: December 5, 2006 **TIME:** 9:00 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Motion Other has been scheduled in the Napa Superior Court at the time, date and location listed above.

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1415 L ST STE 1000
SACRAMENTO CA 95814-3951

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☐ Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
11335 Gold Express Dr. Ste. 1105
Gold River, CA 95670-4491

DATE: December 5, 2006 **TIME:** 9:00 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

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Date: 11/8/2006

Stephen A. Bouch, Court Executive Officer

By: M.M. FIELDS
Deputy Court Executive Officer

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

Case Name: Charissa W., et al vs Roes 1-100 et al. (G)
Case Number: 26-22191 ☑ Amended Notice (If checked)

TO: Robert J. Schnack
Bullivant Houser Bailey
1415 L Street Ste. 1000
Sacramento, CA 95814-3961

DATE: December 5, 2006 **TIME:** 9:00 am **ROOM:** Department A

LOCATION: 825 Brown Street, 2nd Floor, Napa

YOU ARE HEREBY NOTIFIED a Motion Other has been scheduled in the Napa Superior Court at the time, date and location listed above.

Certificate of Mailing

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Date: 11/14/2006

Stephen A. Bouch, Court Executive Officer

By: M. A. Eddy
Deputy Court Executive Officer

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Bullivant Houser Bailey
11335 Gold Ex[illegible]
Gold River, CA

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Superior Court of California
County of Napa

Executive Officer
Stephen A. Bouch

Asst. Executive Officer
Richard D. Feldstein

Human Resources Manager
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Criminal Courts Building
1111 Third Street
Napa, CA 94559-3001
FAX
(707) 253-4673

November 7, 2006

Lisa Honnell
8026 Westview Drive
Coeur D'Alene, ID 83815

Re: Charissa W., et al, vs. Watchtower, et al., 26-22191

Dear Ms. Honnell:

The court is in receipt of your recent letter to Judge Guadagni regarding the above matter.

Judge Guadagni is unable to respond to your letter, as it is an ex parte communication, which is a communication directly from you to the Judge. Because it is improper for him to receive ex parte communications about cases, Judge Guadagni has asked me to acknowledge your correspondence.

All parties to the case will be getting a copy of this letter and your correspondence, as Judge Guadagni is required to let them know of this situation. We apologize for any inconvenience.

Sincerely,

Maia Fields

Maia Fields
Judicial Assistant II

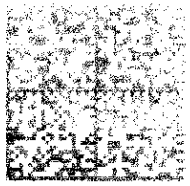
Enclosure

cc: Mr. Rudy Nolen, Esq.
Mr. Hartley Hampton, Esq.
Mr. Greg Love, Esq.
Mr. Robert J. Schnack, Esq.

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SACRAMENTO CA 95814-3961

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Superior Court of California
County of Napa

Executive Officer
Stephen A. Bouch

Asst. Executive Officer
Richard D. Feldstein

Human Resources Manager
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Criminal Courts Building
1111 Third Street
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FAX
(707) 253-4673

November 7, 2006

Peggy Alderman
P.O. Box 1269
Rathdrum, ID 93858

Re: Charissa W., et al, vs. Watchtower, et al., 26-22191

Dear Ms. Alderman:

The court is in receipt of your recent letter to Judge Guadagni regarding the above matter.

Judge Guadagni is unable to respond to your letter, as it is an ex parte communication, which is a communication directly from you to the Judge. Because it is improper for him to receive ex parte communications about cases, Judge Guadagni has asked me to acknowledge your correspondence.

All parties to the case will be getting a copy of this letter and your correspondence, as Judge Guadagni is required to let them know of this situation. We apologize for any inconvenience.

Sincerely,

Maia Fields
Judicial Assistant II

Enclosure

cc: Mr. Rudy Nolen, Esq.
Mr. Hartley Hampton, Esq.
Mr. Greg Love, Esq.
Mr. Robert J. Schnack, Esq.

NAPA SUPERIOR COURT
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Mr. Greg Love, Esq.
Love & Norris
314 Gold Exp
Ft. Worth, TX

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Superior Court of California
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Asst. Executive Officer
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1111 Third Street
Napa, CA 94559-3001
FAX
(707) 253-4673

November 7, 2006

Lisa Honnell
8026 Westview Drive
Coeur D'Alene, ID 83815

Re: Charissa W., et al, vs. Watchtower, et al., 26-22191

Dear Ms. Honnell:

The court is in receipt of your recent letter to Judge Guadagni regarding the above matter.

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Sincerely,

Maia Fields

Maia Fields
Judicial Assistant II

Enclosure

cc: Mr. Rudy Nolen, Esq.
Mr. Hartley Hampton, Esq.
Mr. Greg Love, Esq.
Mr. Robert J. Schnack, Esq.

Received
NOV 17 2006
Napa Superior Court

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
NOV 21 2006
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

CHURCH DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S PETITION TO COORDINATE AN "ADD ON" CASE

DATE: **December 5, 2006**
TIME: **9:00 AM**
DEPT.: **A**
Judge: Hon. Raymond A. Guadagni

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NOV 21 2006

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The Church Defendants respectfully submit this response in opposition to Plaintiffs' application to "add on" a recently filed San Diego case (*A.B., et al v. Watchtower Bible and Tract Society of New York, et al.*, San Diego County Case No. GIE 034558) to six cases that previously were coordinated and assigned to the Napa County Superior Court as the court overseeing coordination.[1] (The Church Defendants in the new San Diego case are composed of two national non-profit religious corporations, Watchtower Bible and Tract Society of New York, Inc. ("Watchtower NY"), Watch Tower Bible and Tract Society of Pennsylvania ("Watch Tower PA"), and a local San Diego association known as Alpine Congregation of Jehovah's Witnesses. Those Defendants are collectively referred to hereinafter as the "Church Defendants").

I. INTRODUCTION

In Plaintiffs' original Memorandum of Points and Authorities in Support of Petition for Coordination filed in May 2004, Plaintiffs' counsel sought to alarm the Court into coordinating those cases by prognosticating that it was in "the interests of justice and the economics of trying *20 to 40 cases* is unwieldy and seemingly impractical." (*Memorandum*, p. 9, lns. 15–20, emphasis added.) Also, in the original Declaration of Rudy Nolen in Support of Petition for Coordination filed in May 2004, Plaintiffs' counsel envisioned that "[a]ppeals from these rulings, given the *enormity of the claims*, creates further consumption of judicial resources that can be avoided if a single trial is ordered." (*Declaration of Nolen*, ¶ 7 at p.12, lns. 1- 2, emphasis added.)

However, the truth of the matter is that after some three to four years of aggressive "Town Hall meetings" conducted by Plaintiffs' counsel and related media advertisements to try to recruit and enlist more plaintiffs, Plaintiffs' counsel now seeks to convince this court that to advance judicial economy it should add this one case filed in San Diego County, which is over 500 miles from Napa County, to the current list of six remaining coordinated cases. Those six remaining

---

[1] As background, Plaintiffs' counsel originally filed 17 cases in various northern California counties. Plaintiffs' counsel voluntarily dismissed five of those cases because they lacked merit, such that Plaintiffs' original Petition for coordination (filed in May 2004) sought to coordinate 12 different cases. Since then, Plaintiffs' counsel voluntarily dismissed an additional six cases, leaving only six remaining coordinated cases before the Napa Court. (The six cases that were voluntarily dismissed since Plaintiffs' original Petition for Coordination are: (1) *Javier C.*, Placer County; (2) *Lisa H.*, Monterey County; (3) *Nathan D.*, Tehama County; (4) *Jocelyn A.*, Sonoma County; (5) *Danielle A.*, Sonoma County; and (6) *Dennis S.*, Sonoma County.)

cases are now three years old, and two of those cases are scheduled for trial in April and May of 2007.[2] The Church Defendants submit that contrary to Plaintiffs' counsel assertions, these six remaining coordinated cases before the Napa Court do *not* represent the "logjam of cases which gives rise to coordination." *McGhan Med. Corp. v. Superior Court* (1993) 11 Cal.App.4th 804, 812, 14 Cal.Rptr.2d 264, 269-70 (emphasis added).

As described in greater detail below, the Church Defendants request that the Court deny Plaintiffs' request to coordinate a new case from San Diego County as an "add on" case which involves Plaintiffs, an alleged abuser, and a Defendant congregation wholly different from all six of the presently remaining northern California coordinated cases. The Church Defendants base this request on the following grounds: (a) imminence of trial; (b) unfairness; (c) inefficiency; (d) inconsistency; (e) likelihood of settlement; and (f) undue burden on the Courts.

That said, the Church Defendants will stipulate that a very narrow and limited aspect of discovery could effectively be consolidated, specifically written discovery propounded to and depositions of representatives of the two national non-profit religious corporations, Defendants Watchtower NY and Watch Tower PA. However, for that to occur, this newly filed San Diego case does *not* need to be coordinated with the six coordinated cases now before the Napa court, because the Church Defendants will stipulate to such limited consolidation without any need for formal coordination.

In addition, the Church Defendants' defense counsel in the new San Diego case will include San Diego attorney James McCabe. Thus, there will be some different counsel involved in the San Diego case than in the six coordinated cases. Coordination of the San Diego case in the Napa Court would be inconvenient plainly for him.

///

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[2] As noted, Plaintiffs' counsel initially filed 17 cases. Therefore, given that almost two-thirds of the 17 cases originally filed by Plaintiffs' counsel have been dismissed, including many *before* the pleadings were even at issue, the Court should *not* consider Plaintiffs' counsel's statement that designation of the new San Diego case as an "add on" case will not lead to "further consumption of judicial resources". The fact that Plaintiffs' counsel filed numerous unmeritorious complaints that were eventually voluntarily dismissed by Plaintiffs because they had no legal merit reveals it is *Plaintiffs*, and not the Church Defendants, who have unnecessarily consumed judicial resources in these matters. For Plaintiffs' counsel to use their own apparent waste of judicial resources as a basis for now arguing to the Court to conserve judicial economy lacks all credibility.

II. DISCUSSION

Plaintiffs filed their petition to "add on" the new San Diego case to previously coordinated actions pursuant to CCP §404.4 and Rule 1544 of the Rules of Court. For coordination to occur, CCP §404.4 states that "[t]he presiding judge of any court in which there is pending an action sharing a common question of fact or law with actions coordinated pursuant to Section 404, on … the motion of any party supported by an affidavit stating facts showing that the action meets the standards specified in Section 404.1, … may request the judge assigned to hear the coordinated actions for an order coordinating the action. Coordination of the action shall be determined under the standards specified in Section 404.1." Thus, initially Section 404.1 requires that the civil actions "shar[e] a common question of fact or law". Then, once that threshold criterion is met, the court must determine whether coordination of the cases "will promote the ends of justice[,] taking into account" several factors, including:

- Whether the common question of fact or law is predominating and significant to the litigation;
- The convenience of the parties, witnesses, and counsel;
- The relative development of the actions and the work product of counsel;
- The efficient utilization of judicial facilities and manpower;
- The calendar of the courts; and
- The disadvantage of duplicative and inconsistent rulings, orders, or judgments.

See CCP §404.1.

Additionally, Rule 1544 of the California Rules of Court ("CRC") states that "[a] request to coordinate an add-on case must comply with the requirements of rules 1520 through 1523, except that the request must be submitted to the coordination trial judge under section 404.4 of the Code of Civil Procedure, with proof of mailing of one copy to the Chair of the Judicial Council and proof of service as required by CRC 1510."

As noted below, Church Defendants submit that the request to "add on" the new San Diego case with the six previously coordinated cases before the Napa court is improper under the applicable code sections and rules, based on the following grounds in opposition.

///

A. REQUEST TO ADD ON THE SAN DIEGO COUNTY CASE INTO A SINGLE, UNIFIED TRIAL WITH THE COORDINATION OF SIX (6) NAPA COUNTY CASES WILL *NOT* RESULT IN EFFICIENT JUDICIAL ADMINISTRATION OR OTHERWISE ENHANCE JUDICIAL EFFICIENCY, NOR WILL A SINGLE UNIFIED TRIAL BE CONVENIENT FOR THE MANY NON-PARTY WITNESSES FROM SAN DIEGO.

Notwithstanding recent rulings from the Napa court *rejecting* Plaintiffs' earlier request that the six remaining coordinated cases be unified for a single trial, Plaintiffs' counsel now disingenuously continue to contend here that *a single, unified trial* should be conducted with this new case filed in San Diego County and the six coordinated Napa County cases. (*Declaration of Nolen*, p.4, lns. 1 – 9.) The request by Plaintiffs for a single unified trial of the six (6) coordinated cases has already been denied, as noted, because any such unified trial would *not* lead to more judicial efficiency. Adding another case from San Diego County would only make such a trial even more judicially inefficient, as well as inconvenience the many non-party witnesses for the San Diego case who live in southern California.

Clearly, to add on this present San Diego County case to the six previously coordinated Napa County cases for a single unified trial, as now again advocated by Plaintiffs' counsel, would neither result in efficient judicial administration nor enhance judicial efficiency, because the San Diego County case is so factually unrelated that a separate jury composed of jurors from the community of San Diego County would need to be seated for the new case. (The six coordinated cases remaining before the Napa court involve ten different Plaintiffs accusing five different alleged abusers/co-Defendants who allegedly had some affiliation with six different northern California congregations; each of those six cases has distinct and different facts and circumstances in which the sex abuse of each Plaintiff allegedly occurred and each alleged abuser had differing relationships with each Plaintiff and a differing status with the Church Defendants.) A separate jury for the San Diego case would be in addition to the different juries that will be needed for each of the Plaintiffs' six cases currently coordinated before the Napa Court. It is clear that the logistical problems and judicial *inefficiency* that would be created by having to shuttle the several juries in and out of the courtroom from witness to witness in a single, unified trial would be considerable and burdensome to the court and to the counsel and the parties.

In addition, a single unified trial with each of the six Napa cases, as Penient for the witnesses in the new San Diego case, because the majority of fact witnesses or percipient witnesses for the San Diego case will not be "local" to any of the six previously coordinated cases. On this point, Plaintiffs' counsel appears to be confused when stating that, "[a]lthough the Plaintiffs and the Elders of the local congregation in the instant action are in Southern California … coordination of the new action with the included actions will serve to protect the conveniences of the parties and counsel." (*Declaration of Rudy Nolen*, p. 4, lns. 21-25, emphasis added.)

While it is true that "adding on" the San Diego case would "protect the convenience" of Plaintiffs' counsel[3], it would quite obviously adversely and severely impact the *fact witnesses or percipient witnesses* for the new San Diego case. This is because the facts of the new San Diego case in comparison to each of the six coordinated cases before the Napa Court will be completely different – as noted, there are 10 different Plaintiffs involved in the six previously coordinated actions, five different alleged abusers, and six different local congregations, as well as the distinct and different facts and circumstances in which the sex abuse of each of the 10 Plaintiffs allegedly occurred, the different circumstances involving each alleged abuser's relationship with the particular Plaintiff alleging claims against him, and each alleged abuser's relationship with the local congregation involved. Likewise, the facts supporting any alleged notice to each local congregation and the other Church Defendants that the alleged abuser was a danger to children in the San Diego County case will be different from each of the six cases presently coordinated before the Napa Court.

Thus, a single unified trial like that now advocated again by Plaintiffs' counsel will *not* be convenient for the all of the witnesses involved in the new San Diego case in comparison with the witnesses for each of the six previously coordinated cases (or for the various San Diego plaintiffs, for that matter). Therefore, the Church Defendants respectfully submit that a single unified trial like that proposed by Plaintiffs in the instant motion to "add on" the new San Diego case will simply *not* promote the ends of justice.

[3] As noted, defense counsel for the Church Defendants in the new San Diego case will include San Diego attorney James McCabe, so it will be inconvenient for him if the new San Diego case is coordinated before the Napa Court.

B. IMMINENCE OF TRIAL

CRC 1521(d) states that "imminence of a trial in any action otherwise appropriate for coordination may be a ground for summary denial of a petition for coordination, in whole or in part". Plaintiffs concede, as they must, that the two coordinated Track I cases are already set to commence trial on April 3, 2007 and May 15, 2007. (*See Declaration of Rudy Nolen*, p. 2, lns. 10-12.) This means that from the date the cases were filed in 2003, more than three years have elapsed due to motion practice, discovery, and depositions of witnesses. Given the time that it has taken to complete this process (which is still not completed, even for the Track I cases), it is inconceivable how Plaintiffs can now assert that Church Defendants would not be disadvantaged by the Court designating the present case as an "add on" coordinated case. Therefore, Church Defendants request that this Court deny Plaintiffs' request to designate this case as an "add on" case in view of the imminence of a trial in the Track I cases.

Although Plaintiffs' counsel states in his Declaration (at p. 2, lns. 13-15) that the four (4) non-Track I cases are "in the initial stages of discovery," the facts show that that two (2) Track I cases, as well as the *Daniel West, et al* non-Track I case, are far along with written discovery and depositions. Given the almost three years that it has taken to conduct the motion practice, discovery, and depositions completed thus far in the Track I and non-Track I cases, and given the imminence of trials of the two Track I cases, the Church Defendants request this Court to deny Plaintiffs' request to designate the recently filed San Diego County case as a "add on" case.[4]

Moreover, the Church Defendants respectfully submit to the Court that there may be one or two of these types of cases filed against any corporation, charitable corporation, religious entity, or individual within a given number of years. To allow Plaintiffs to continually petition the court to "add on" such cases right up until and after a trial has commenced would obviate the provisions of CRC 1521.

[4] The Declaration of Plaintiffs' attorney contains some factual inaccuracies. For example, in Mr. Nolen's Declaration at p. 3, lns 1-2, he incorrectly states that "[c]ommon to each case was a decision by church officials to keep these crimes form law enforcement officials." As Mr. Nolen is aware, his own client, plaintiff Tim W., testified that a local church elder told him and his mother to report the matter to the police. That is just one example of several inaccurate statements about alleged "common[alities] to each case" in the sworn Declaration.

C. **UNFAIRNESS**

The criteria stated in CCP §404.1 to promote the ends of justice takes into account "the relative development of the actions". Therefore, to approve Plaintiffs' request to "add on" the new San Diego case with the six previously coordinated cases, two of which are set for trial, places an unfair and prejudicial burden on the Church Defendants. As noted, motion practice, discovery, depositions, and other work necessary to develop the six previously coordinated cases has taken some three years. Defendants respectfully submit that approval of Plaintiffs' Petition would not advance the ends of justice, in that it would not allow Church Defendants thorough discovery, depositions, and motion practice that could lead to the eventual dismissal of all or some of the claims of some or all of the Plaintiffs in the new San Diego County case.

In addition, although similar legal issues may be raised in each case, including whether an actionable legal duty is owed by each of the corporate entity Church Defendants to each Plaintiff, notice issues regarding the alleged abuse of each Plaintiff, First Amendment limitations on each Plaintiff's claims against each of the corporate entity Church Defendants, etc., the resolution of *each* of those *legal* issues will very likely depend on the particular *facts* developed in each separate case. As noted above, the particular facts and circumstances of each Plaintiff's case will be different, including the facts and circumstances of the alleged sex abuse of each Plaintiff, each Plaintiff's relationship with the alleged perpetrator of his or her abuse, each Plaintiff's own family situation, the facts regarding alleged notice to the local congregation Defendant about each particular Plaintiff's alleged abuse, the facts regarding alleged notice to each of the three national corporate Defendants regarding each particular Plaintiff's alleged abuse, and so on.

To avoid unfairness in the treatment of the diverse development of the actions and work product of counsel in the six previously coordinated cases to the San Diego case, the Church Defendants request that the court deny Plaintiffs' request to designate the recently filed San Diego County case as an "add on" to the six remaining coordinated cases.

D. **INEFFICIENCY**

Not only would a single, unified trial as now again proposed by Plaintiffs' counsel create severe logistical and case management problems for the Court, a unified trial almost inevitably

would result in prejudicial and reversible error in many, if not all, of the cases. The Church Defendants submit that a jury hearing all of the evidence for all of the six presently coordinated cases plus the recently filed San Diego case would be thoroughly confused in an effort to separate the evidence relevant to each case and each party and the instructions relevant to each case and each party. Hearing evidence that is not relevant to a particular case and to particular parties would also prejudice such a jury. Thus rather than enhance judicial efficiency, a single, unified trial like that advocated by Plaintiffs' counsel would result in the expenditure of *more* judicial resources because most, if not all, of the cases, including the recently filed San Diego County case, would likely go up on appeal if a single, unified trial were held. Further, it is not a stretch of the imagination to suggest that several of the cases would have to be remanded for new trials after the appellate process had been concluded.

E. INCONSISTENCY

In Plaintiffs' original Petition to coordinate 12 cases, some 19 Plaintiffs were included; however, there are now just 10 Plaintiffs in six cases.[5] In the recently filed San Diego County case, the Plaintiffs identify one alleged perpetrator. Obviously, the particular facts and circumstances surrounding the alleged sex abuse of each Plaintiff by the alleged perpetrator involved in the San Diego case will be different from any of the previously coordinated cases.

For example, in *West, et al. v. Watchtower NY, et al.* (Yolo County), the three Plaintiffs have variously testified in deposition that their alleged abuse occurred at the alleged perpetrator's Woodland, California apartment, on a trip to Hawaii, and perhaps even on a trip to Europe. In *Tim W. v. Watchtower NY, et al.* (Tehama County), the alleged sex abuse occurred on one or more non-church related business-related trips in Northern California on which Plaintiff accompanied the perpetrator, as well as in the alleged perpetrator's business office. In *Charissa W., et al. v. Watchtower NY, et al.* (Napa County), Plaintiffs allege they were abused at a daycare operated at the private Napa home of the perpetrator and his wife. Thus, the facts and circumstances of each

[5] As noted, there are five different alleged perpetrators in the six remaining cases coordinated before the Napa Court. Four alleged perpetrators were originally named as individual Defendants in the particular cases involving their alleged sexual misconduct, and the fifth alleged perpetrator died in the 1990's.

of Plaintiff's alleged abuse in the San Diego case will certainly differ factually from the six remaining coordinated cases now before the Napa court, and the facts underlying each Plaintiff's claimed damages will certainly differ as well. Thus, with respect to the core issue concerning the claimed sex abuse of each Plaintiff, the six remaining coordinated cases certainly will *not* share with the San Diego County case a *common* question of *fact* that is *predominating*.

Equally important, each of the six previously coordinated cases will also turn *factually* on the differing relationships between the various parties, including (i) each Plaintiff's particular relationship with the alleged perpetrator involved in each case, (ii) each Plaintiff's particular relationship with the local congregation in each case, (iii) each alleged perpetrator's particular relationship with the local congregation in each case, (iv) each Plaintiff's relationships with the two (2) national corporate Defendants (Watchtower NY, and Watch Tower PA), and (v) each alleged perpetrator's relationships with the two national corporate Defendants.

The facts underlying each of those relationships will differ depending on the peculiar facts and factors surrounding each case. For example, because the Complaint in each case alleges that each Plaintiff was a minor at the time of the alleged abuse, each Plaintiff's own particular family situation will very likely supply relevant facts in each case.[6] In addition, each alleged perpetrator's relationship with the local congregation might be relevant. For example, Plaintiffs allege in the various complaints that some of the alleged perpetrators were elders in a local congregation, that one was a ministerial servant in a local congregation, that one was a presiding overseer in a local congregation, etc. Thus, each case will have different factual settings underlying each Plaintiff's claims.

The recently filed San Diego case likewise will have facts from each of the four named Plaintiffs that will differ depending on the peculiar facts and factors surrounding each of the six case. For example, since all four Plaintiffs in the new San Diego case allege that they were

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[6] *See Quigley v. First Church of Christ, Scientist* (1998) 65 Cal.App.4th 1027, 76 Cal.Rptr.2d 792, in which the plaintiff, who was the mother of a child who had committed suicide after receiving spiritual counseling, sued a church based on an alleged duty of care owed by the church to the child. As is relevant here, the Court of Appeal in *Quigley* stated that the father who had legal custody of the child at issue owed the child a duty of care and that the child's dependency was thus on his father and not the defendant church.

minors at the time of the alleged abuse, each Plaintiff's own particular family situation will very likely supply relevant facts in each case. (*See* footnote 6, *supra.*) In fact, the Church Defendants' initial investigation reveals that one or more of the San Diego Plaintiffs might have a familial relationship with the alleged perpetrator. Should that fact be established, then evidence regarding whether it was that familial relationship that allowed the alleged perpetrator to gain access to the Plaintiff will predominate in those proceedings. In addition, the alleged perpetrator's relationship with the local congregation might be relevant. For example, Plaintiffs allege that the perpetrator in the recently filed San Diego case was a ministerial servant. However, in the previously six coordinated cases in Napa County, as noted, the Plaintiffs' various complaints state that some of the alleged perpetrators were elders in a local congregation, that one was a ministerial servant in a local congregation, that one was a presiding overseer in a local congregation, etc. Thus, each case will have different factual settings underlying each Plaintiff's claims.

Again, given the different and varied facts underlying the alleged sexual abuse of each Plaintiff in the recently filed San Diego case in comparison with the alleged sexual abuse of each Plaintiff by the different alleged perpetrator involved in each of the six coordinated cases now before the Napa Court, coupled with the different and varied facts associated with each of the various relationships underlying each Paintiff's claims, there simply is *not* any *common* question of fact that is *predominating*, as required by CCP §404.1 to "add on" the San Diego case with the six cases.

F. LIKELIHOOD OF SETTLEMENT

CCP § 404.1 states that one of the criteria to consider regarding coordination of cases is whether there is "the likelihood of settlement of the actions without further litigation should coordination be denied". Likewise California Civil Practice Procedures § 25:51(7) includes a similar provision as a standard to consider coordination, namely, where there is "the likelihood of settlement of the actions without further litigation, should coordination be denied". The *Practice Notes* of California Civil Practice Procedures § 25:51 state that "[s]uits that are likely to settle are not good candidates for coordination because actions that have been coordinated are more difficult to settle". Plaintiffs have not asserted, and cannot assert, that the present San Diego case

does not have a likelihood of settlement. As this Court is aware, Plaintiffs' Complaint was only filed in San Diego County Superior Court on October 6, 2006, and one of Church Defendants' defense counsel, Robert Schnack, did not formally accept service of the Complaint until October 20, 2006. Thus, it is impossible to know whether there is any possibility of settlement.

Only after discovery is completed will it be possible for Plaintiffs and Church Defendants to ascertain whether the case lacks any merit or whether there is evidence that would lead to a settlement. In view of the fact that the two Track I cases are scheduled for trial in April 2007 and May 2007, and that there might be a likelihood of settlement in the recently filed San Diego case, Church Defendants request the Court to summarily deny Plaintiffs' request to "add on" the recently filed San Diego case with the six previously coordinated Napa cases.

G. UNDUE BURDEN ON THE COURTS

Although there have been a number of coordinated cases approved by the Chair of the Judicial Council, the recently filed San Diego case does not fall within those parameters because the purpose of coordinating cases is stated as "the intent of the Judicial Council to vest in the coordinating judge whatever great breadth of discretion may be necessary and appropriate to ease the transition through the judicial system of the logjam of cases which gives rise to coordination". *McGhan Med. Corp. v. Superior Court, supra*, 11 Cal.App.4th at 812, 14 Cal.Rptr.2d at 269-70 (emphasis added); *see also* California Practice Guide: Civil Trials and Evidence § 4:432.35.

As discussed above, contrary to what has been asserted by Plaintiffs' counsel, litigation against the Church Defendants has not become the "20 to 40 cases" which would make trying them in separate courts "unwieldy and seemingly impractical". In reality, after almost three years of filing complaints, only six of Plaintiffs' counsel's original 17 cases have survived. Contrary to the apparent assertion of Plaintiffs' counsel, the San Diego case is unlike the breast implant cases noted in *McGhan* where the court stated that they were "advised by counsel for petitioners that some 600 cases are now pending in over 20 counties in California, and that additional cases are being filed almost daily". *McGhan Med. Corp. v. Superior Court, supra,* 11 Cal.App.4th at 808, 14 Cal.Rptr.2d at 266.

The Church Defendants submit that Plaintiffs here have not met the necessary threshold of

evidence to persuade the court that it should overlook the (a) imminence of trial, (b) unfairness, (c) inefficiency, (d) inconsistency, (e) likelihood of settlement, and (f) undue burden on the courts so as to "add on" the instant San Diego case to the six previously coordinated cases before the Napa Court.

H. THE PRESENT SAN DIEGO COUNTY CASE DIFFERS SUBSTANTIALLY FROM PRIOR COORDINATED CASES.

The reported appellate cases that have discussed and authorized coordination have involved situations very different from the distinct factual scenarios presented in this present case, such as tort liability for product defects (breast implants, for example) or related actions pending in different courts but arising from a single transaction or occurrence (a plane crash, for example). None of the California cases authorizing or upholding coordination involve prescribing that a San Diego County case be coordinated with the already existing six Napa County cases concerning very fact-specific allegations of sex abuse of the Plaintiffs by different perpetrators in distinctly different factual settings, involving different local defendants in each case and in each county, etc. *See, e.g., McGhan Med. Corp. v. Superior Court, supra* (ordering coordination of "some 600 cases" pending in over 20 counties involving product defect claims against breast implant manufacturers); *Keenan v. Superior Court* (1980) 111 Cal.App.3d 336, 168 Cal.Rptr. 561; *Pesses v. Superior Court* (1980) 107 Cal.App.3d 117, 165 Cal.Rptr. 680 (involving five negligence claims arising from the same crash of a commercial airliner).

The *McGhan* case is instructive in that the number of breast implant cases was significantly greater ("some 600 cases") than the six coordinated cases before the Napa Court and the one new San Diego case that Plaintiffs seek to coordinate here as an "add on" case. In addition, the issue in *McGhan* plainly presented a *common* question to be resolved by the court, that being the liability resulting from each plaintiff having received silicone breast implants. By contrast, these cases are not mass tort-type of cases involving a single product (such as silicone breast implants) or a single occurrence (such as plane crash). Here, the facts in the recently filed San Diego case will differ substantially from the varying facts in each of the six previously coordinated actions. (Again, in the six coordinated actions, there are 10 different Plaintiffs involved, five different alleged

perpetrators involved, and six different local congregations involved; there will be distinct and different facts and circumstances concerning when, how, and where the sex abuse of each Plaintiff allegedly occurred; there will be different facts and circumstances involving each alleged perpetrator's relationship with the particular Plaintiff alleging claims against him and each alleged perpetrator's relationship with the local congregation involved; there will be different facts in each case concerning alleged notice to each local congregation of the alleged abuse by the alleged perpetrator in each case; etc.)[7]

As noted, there is only one San Diego case that Plaintiffs' counsel has requested to "add on" to the six previously coordinated cases before the Napa County Court. Adding on just one case alone raises questions about any perceived efficiencies that might be gained by extensive coordination of the present San Diego case with the six previously coordinated cases, particularly with the varied factual differences involved in each case. Coordination will not promote the ends of justice, and Plaintiffs' Petition should be denied.

The bottom line is that extensive coordination of the recently filed San Diego County case with the six coordinated cases before the Napa court will *not* result in any enhanced judicial efficiencies or judicial economy. Indeed, given that each individual Plaintiff's case will involve different factual settings, different relationships between the alleged perpetrator of the sex abuse and each Plaintiff, different family relationships involved in each Plaintiff's case, lists of different fact or percipient witnesses, etc., the Church Defendants submit that it does not make sense from a judicial efficiency or judicial economy standpoint to coordinate the new San Diego case as an "add on" case.

In addition, as noted above, coordination of these cases for a single unitary trial in one court or one county, as Plaintiffs' counsel proposes anew here, also will not promote the convenience of the witnesses, because enormous logistical problems would be involved in subpoenaing witnesses from San Diego County. Each case will undoubtedly have a large number of local witnesses for each Plaintiff's case. Moreover, as noted in the introduction section of this

[7] Of interest, the *McGhan* court did not include the 60 cases that also alleged medical malpractice in its order -- likely because the facts of each such case were different as in the cases Plaintiffs are asking this Court to consider.

response, the Church Defendants will stipulate without any need for coordination that written discovery from the two national non-profit religious corporations named as Defendants and depositions of the representatives of those two national non-profit religious corporations be "consolidated". That stipulation plainly can be accomplished *without* formal or extensive coordination of the recently filed San Diego County case with the six previously coordinated cases.

III. CONCLUSION

The Church Defendants have demonstrated that the threshold criteria for coordination of the new San Diego case as an "add on" case, *i.e.*, that there is a *common* question of *fact or law* that is *predominating*, is not present between the six previously coordinated cases and the one (1) new San Diego case that Plaintiffs seek to "add on." The new San Diego case does not involve the same group of Defendants, the San Diego case and its underlying facts are over 500 miles away from the six northern California coordinated cases and involve a different local congregation, different witnesses, and a different alleged perpetrator. Plaintiffs also allege different causes of action against the Defendants in the various cases. (*Declaration of Rudy Nolen*, p. 3, lns. 9-13). Each Plaintiff's case also will turn on the facts peculiar to that case, including the facts relating to the alleged abuse of each Plaintiff, each Plaintiff's own family circumstances, the differing relationships between each alleged perpetrator and each Plaintiff, each alleged perpetrator's relationship to the local congregation in each case, and the alleged notice to each local congregation regarding each Plaintiff's alleged abuse, etc.

In addition, a single, unified trial like that proposed again by Plaintiffs' counsel would *not* result in efficient judicial administration or otherwise enhance judicial efficiency, because the recently filed San Diego case is so factually unrelated to the six previously coordinated cases 10 different plaintiffs, five different alleged perpetrators, six different local congregations, the distinct and different facts and factual settings in which the alleged sex abuse occurred, the different relationships between the parties in each particular case, etc.). For those and the other independent reasons discussed herein, Plaintiffs' Petition for Coordination of the San Diego case as an "add on" case should be denied.

DATED: November 17, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

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PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

CHURCH DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S PETITION TO COORDINATE AN "ADD ON" CASE

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

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____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____ and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **November 17, 2006**, at Sacramento, California.

By _____ for
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs: Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: (916) 733-0601	*Attorneys for Plaintiff:* Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax: (713) 751-0030
Attorneys for Plaintiffs: Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: (817) 335-2912	
In Pro Per: James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	*Defendant In Pro Per:* Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
NOV 30 2006
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al. Defendants. AND COORDINATED CASES.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 **PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS' PETITION TO COORDINATE AN "ADD ON" CASE** Date: December 5, 2006 Time: 9:00 a.m. Dept. A Judge: Hon. Raymond A. Guadagni

I. CLARIFICATION OF PLAINTIFF'S POSITION

The main basis of defendant's opposition to plaintiff's petition is based upon a misconception of the purpose of adding the San Diego case to the previously coordinated actions. Plaintiffs are not proposing a "single, unified trial" and are in

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agreement with the procedure which has been proposed by this Court that this Court handle the coordination of the pretrial aspects of these cases and assign the cases to other counties for trial.

It is the position of plaintiffs that coordinating the recently filed San Diego action with the previously coordinated actions carries out the purposes of California Code of Civil Procedure Section 404.1 and will "promote the ends of justice."

Respectfully submitted,

Dated: November 27, 2006

NOLEN ■ OWENS

By: _____

Rudy Nolen
Attorneys for plaintiffs

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 350 University Avenue, Suite 280, Sacramento, California 95825. I am over the age of 18 years and not a party to the above-entitled action.

On November 27, 2006, I caused the within **PLAINTIFFS' REPLY TO DEFENDANT'S OPPOSITION TO PLAINTIFFS' PETITION TO COORDINATE AN "ADD ON" CASE,** the original of which was produced on recycled paper, to be served as follows:

_X_ **MAIL** –I am readily familiar with the Nolen Saul Brelsford's practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On November 27, 2006 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 564-9991, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack (by fax and mail)
BULLIVANT HOUSER BAILEY
11335 Gold Express Drive, Suite 105
Gold River, CA 95670-6310
Facsimile No. (916) 852-5777

Defendant In Pro Per
Alvin Heard
703 Delta Street
Klamath Falls, OR 97661

In Pro Per
James Henderson
265 Gilmore Road, #17
Red Bluff, CA 96080

Courtesy Copy
Chair, Judicial Council of California
Administrative Office of the Courts
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(Civil Case Coordination)
455 Golden Gate Avenue
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Courtesy Copy Co Counsel for Plaintiffs
Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 27, 2006, at Sacramento, California.

Sophia Acken

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

ORIGINAL

FILED

DEC 05 2006

Clerk of the Napa Superior Court
By: J. Olivier
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS

Plaintiffs and the Church Defendants hereby stipulate to extend (i) the December 1, 2006 deadline in the two Track I cases for non-expert discovery, and (ii) the December 1, 2006 deadline for dispositive motions in the Track I case of *Julianne Wimberley Gutierrez, et al*, to a future date or dates to be set by the Court at a further Case Management Conference. The reasons for the stipulated extensions are that despite both plaintiffs and Church Defendants good faith efforts, (1) non-expert discovery cannot be completed in the two Track I cases by December 1, 2006, and (2) an additional out-of-state deposition needs to be taken before a summary judgment motion can be filed in the Track I case of *Wimberley-Gutierrez, et al.*

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Received
NOV 30 2006
Napa Superior Court

IT IS SO STIPULATED AND AGREED:

Dated: November __, 2006. Fibich, Hampton & Leebron

By: _____
Hartley Hampton

Attorneys for Plaintiffs

Dated: November 21, 2006. Bullivant Houser Bailey PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

Based on the foregoing stipulation and otherwise finding good cause therefore,

IT IS HERBY ORDERED that the December 1, 2006 deadline in the two Track I cases for non-expert discovery and the December 1, 2006 deadline for dispositive motions in the Track I case of *Wimberley Gutierrez, et al*, are extended to a future date to be set by this Court at a further Case Management Conference.

Dated: November ___, 2006 By _____
Judge Raymond A. Guadagni

*****

IT IS SO STIPULATED AND AGREED:

Dated: November __, 2006.

Fibich, Hampton & Leebron

By: _____
Hartley Hampton

Attorneys for Plaintiffs

Dated: November 21, 2006.

Bullivant Houser Bailey PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

Based on the foregoing stipulation and otherwise finding good cause therefore,

IT IS HERBY ORDERED that the December 1, 2006 deadline in the two Track I cases for non-expert discovery and the December 1, 2006 deadline for dispositive motions in the Track I case of *Wimberley Gutierrez, et al*, are extended to a future date to be set by this Court at a further Case Management Conference.

Dated: ~~November~~ 12/5, 2006

By _____
Judge Raymond A. Guadagni

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on November 22, 2006, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Motion **PID # :**	**Case #** 26-22191 **Event Date:** December 5, 2006 **Clerk:** J. Gleeson **Reporter:** Benita Duncan, #6715 **Cite/Report #:**

Appearances:
None

This matter comes before the Court for Hearing on Request to Coordinate Add-On Case.

There being no appearances, the Court adopts the Tentative Ruling making it the order of the Court and directs it be made a part of the minute order.

Ruling: Plaintiffs' request to add on the San Diego action filed on October 6, 2006 (file marked October 6, 2007) is granted. As the court has previously indicated, these matters are not coordinated for purposes of a single unified trial, but for purposes of coordinating discovery and rulings on dispositive motions.

-oOo-

FILED
DEC - 5 2006
Clerk of the Napa Superior Court
By: M. Perez
Deputy

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS**

Plaintiffs and the Church Defendants hereby stipulate to extend (i) the December 1, 2006 deadline in the two Track I cases for non-expert discovery, and (ii) the December 1, 2006 deadline for dispositive motions in the Track I case of *Julianne Wimberley Gutierrez, et al*, to a future date or dates to be set by the Court at a further Case Management Conference. The reasons for the stipulated extensions are that despite both plaintiffs and Church Defendants good faith efforts, (1) non-expert discovery cannot be completed in the two Track I cases by December 1, 2006, and (2) an additional out-of-state deposition needs to be taken before a summary judgment motion can be filed in the Track I case of *Wimberley-Gutierrez, et al.*

///

///

Received
DEC 0 1 2006
Napa Superior Court

IT IS SO STIPULATED AND AGREED:

Dated: November __, 2006.

Fibich, Hampton & Leebron

By: _____
Hartley Hampton

Attorneys for Plaintiffs

Dated: November 21, 2006.

Bullivant Houser Bailey PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

Based on the foregoing stipulation and otherwise finding good cause therefore,

IT IS HERBY ORDERED that the December 1, 2006 deadline in the two Track I cases for non-expert discovery and the December 1, 2006 deadline for dispositive motions in the Track I case of *Wimberley Gutierrez, et al*, are extended to a future date to be set by this Court at a further Case Management Conference.

Dated: ~~November~~ Dec. 5, 2006

By _____
Judge Raymond A. Guadagni

*****

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
DEC 07 2006
Clerk of the Napa Superior Court
By: J. Oliver
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

NOTICE OF CHANGE OF ADDRESS OF DEFENDANT JAMES HENDERSON

TO ALL PARTIES AND THEIR COUNSEL:

Please take notice that defendant in pro per, James Henderson, has advised the undersigned that, effective immediately, his new address is:

James Henderson
35 Gilmore Road, #6
Red Bluff, CA. 96080

Telephone: 530/527-4209

///

///

///

Received
DEC 04 2006
Napa Superior Court

DATED: December 1, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

4221762.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF CHANGE OF ADDRESS OF DEFENDANT JAMES HENDERSON

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on December 1, 2006, at Sacramento, California.

By _____
Janet A. Schultz

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiffs Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
Defendant In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

ORIGINAL

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

DEC 11 2006

Clerk of the Napa Superior Court
By: D. Contreras Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

v.

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

Defendants.

AND COORDINATED CASES

Case No.: 26-22191 (Lead Case)

JCCP No. 4374

NOTICE OF ENTRY OF ORDER RE: STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS

Please take notice that the Court has entered its Order dated December 5, 2006 re **STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS**, a true and correct copy of which is attached hereto.

DATED: December 6, 2006

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

Received
DEC 08 2006
Napa Superior Court

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER RE: STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

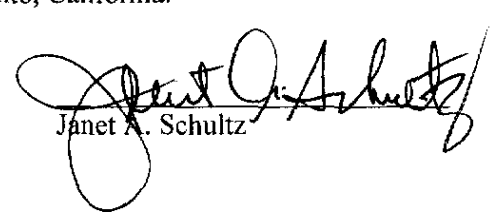
_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on December 7, 2006, at Sacramento, California.

By 
Janet A. Schultz

ENDORSED

DEC - 5 2006

Clerk of the Napa Superior Court
By: M.M. FIELDS
Deputy

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **STIPULATED ORDER EXTENDING CERTAIN DECEMBER 1, 2006 DEADLINES IN TRACK I CASES FOR NON-EXPERT DISCOVERY AND DISPOSITIVE MOTIONS**

Plaintiffs and the Church Defendants hereby stipulate to extend (i) the December 1, 2006 deadline in the two Track I cases for non-expert discovery, and (ii) the December 1, 2006 deadline for dispositive motions in the Track I case of *Julianne Wimberley Gutierrez, et al*, to a future date or dates to be set by the Court at a further Case Management Conference. The reasons for the stipulated extensions are that despite both plaintiffs and Church Defendants good faith efforts, (1) non-expert discovery cannot be completed in the two Track I cases by December 1, 2006, and (2) an additional out-of-state deposition needs to be taken before a summary judgment motion can be filed in the Track I case of *Wimberley-Gutierrez, et al.*

///

///

Received
DEC 0 1 2006
Superior Court

IT IS SO STIPULATED AND AGREED:

Dated: November __, 2006.

Fibich, Hampton & Leebron

By: _____
Hartley Hampton

Attorneys for Plaintiffs

Dated: November 21, 2006.

Bullivant Houser Bailey PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

Based on the foregoing stipulation and otherwise finding good cause therefore,

IT IS HERBY ORDERED that the December 1, 2006 deadline in the two Track I cases for non-expert discovery and the December 1, 2006 deadline for dispositive motions in the Track I case of *Wimberley Gutierrez, et al*, are extended to a future date to be set by this Court at a further Case Management Conference.

Dated: ~~November~~ DEC - 5 2006, 2006

By RAYMOND A. GUADAGNI
Judge Raymond A. Guadagni

*****

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
Facsimile: (916) 733-0601

Hartley Hampton, SBN 0227400
FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

DEC 2 7 2006

Clerk of the Napa Superior Court
By: M. Bonaudelli
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

ORDER GRANTING REQUEST TO COORDINATE AN ADD-ON CASE

Coordination Judge:
Honorable Raymond A. Guadagni

Attorneys for Plaintiffs
A.B., G.G., S.H., and N.H.;
S.H. and N.H. are minors,
by and through their Guardian Ad Litem,
their Mother, S.A.H.

///

Received
DEC 2 1 2006
Napa Superior Court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive.

Defendants.

CASE NO: GIE034558

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

The motion of Plaintiffs to add-on San Diego Superior Court Case No. GIE034558 came before this Court on December 5, 2006. After considering the motion and the opposition, this Court hereby grants Plaintiffs' motion. These matters are not coordinated for purposes of a single unified trial, but for purposes of coordinating discovery and rulings on dispositive motions. This case is added on to the coordinated cases entitled THE WATCHTOWER CASES and all further proceedings in this add-on case are stayed pursuant to California Rule of Court 1544.

Dated: December 26, 2006

Honorable Raymond A. Guadagni
Coordination Judge

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On December 20, 2006 I caused the within **ORDER GRANTING REQUEST TO COORDINATE AN ADD-ON CASE,** the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** -- I am readily familiar with Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Robert J. Schnack — *Attorney for Defendants*
BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, CA 95814

James Henderson — *Defendant, In Pro Per*
35 Gilmore Road, #6
Red Bluff, CA 96080

Alvin Heard – ID#14002521 — *Defendant, In Pro Per*
Department of Corrections
Coffee Creek Correctional Facility
P.O. Box 9000
Wilsonville, OR 97070

Hartley Hampton — *Co-Counsel for Plaintiffs*
FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Greg Love — *Co-Counsel for Plaintiffs*
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 20, 2006, at Sacramento, California.

Praveen Singh

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
Facsimile: (916) 733-0601

Hartley Hampton, SBN 0227400
FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025
Facsimile: (713) 751-0030

Greg Love, SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
JAN 10 2007
Clerk of the Napa Superior Court
By: M. Benavides
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

Received
DEC 29 2006
Napa Superior Court

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

APPLICATION AND ORDER ALLOWING AMENDED COMPLAINTS; DECLARATION OF STEPHEN W. OWENS

Coordination Judge:
Honorable Raymond A. Guadagni

Plaintiffs, CHARISSA W., NICOLE D., TABITHA H. and TIM W., by this application request the Court to allow the filing of the Amended Complaints, filed herewith, and that the filing be allowed without notice or hearing, as provided in Code of Civil Procedure section 473(a)(1). Counsel for the Church Defendants have stipulated to the filing of these

Received
JAN - 5 2007
Napa Superior Court

Amended Complaints. These non-substantive amendments are necessary to more adequately state the allegations of Plaintiffs, as set forth in the attached Declaration of attorney Stephen W. Owens.

NOLEN & ASSOCIATES

Dated: December 28, 2006

Stephen W. Owens

ORDER

Good cause appearing, it is ORDERED that Plaintiffs' applications for leave to file the Amended Complaints submitted with this application are granted. Plaintiffs may file a Third Amended Complaint in *Charissa W. and Nicole D*, a Second Amended Compliant in *Tabitha H.* and a Second Amended Complaint in *Tim W.*

Dated: January 9, 2006

Judge of the Superior Court
HON. RAYMOND A. GUADAGNI

///

///

///

DECLARATION OF STEPHEN W. OWENS IN SUPPORT OF APPLICATION FOR LEAVE TO FILE AMENDED COMPLAINTS

I, STEPHEN W. OWENS, declare:

I am one of the attorneys for Plaintiffs in this action, and I have personal knowledge of each fact stated in this Declaration.

Plaintiffs' proposed Amended Complaints do not seek to add or remove any of the causes of action. There are no substantive changes from Plaintiffs' earlier Complaints to the present Complaints.

These Amended Complaints merely set forth Plaintiffs' allegations which are supported by evidence that has been obtained throughout the discovery of these matters and more fully sets out Plaintiffs' case. These Amended Complaints were not made earlier since this evidence was obtained during the discovery phases of these actions. In addition, certain Defendants have been removed from the heading and body of the Complaints. These Defendants are no longer parties to this actions.

Plaintiffs are willing to stipulate that the earlier Answers be deemed to be the Answers to these Amended Complaints and that any new matter in the Amended Complaints is deemed controverted. Answers are not required to Amended Complaints which do not seek substantive changes. *Carraso vs. Crafts* (1985) 164 Cal App 3rd 796 at Pages 808-809.

Attached as **Exhibit 1** hereto is the Stipulation which has been entered into between the attorneys for the Church Defendants and attorneys for Plaintiffs.

Attached as **Exhibit 2** hereto is the proposed Third Amended Complaint in the *Charissa W. and Nicole D.* Matter.

Attached as **Exhibit 3** hereto is the proposed Second Amended Complaint in the *Tabitha H.* matter.

Attached as **Exhibit 4** hereto is the proposed Second Amended Complaint in the *Tim W.* Matter.

Defendants' counsel has reviewed these proposed Amended Complaints and has signed the Stipulation attached as Exhibit 1.

If this Court wishes any further information regarding these Amended Complaints, it will be provided by Plaintiffs' counsel or can be discussed at Plaintiffs' upcoming Motion to Amend the Tim W. Complaint to Add Punitive Damages. Hearing on that Motion is set before this Court for January 31, 2007.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: December 28, 2006

Attorney for Plaintiffs
Stephen W. Owens

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On December 28, 2006 I caused the within **APPLICATION AND ORDER ALLOWING AMENDED COMPLAINTS; DECLARATION OF STEPHEN W. OWENS,** the original of which was produced on recycled paper, to be served as follows:

XXX **MAIL** -- I am readily familiar with Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Robert J. Schnack — *Attorney for Defendants*
BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, CA 95814

James Henderson — *Defendant, In Pro Per*
35 Gilmore Road, #6
Red Bluff, CA 96080

Alvin Heard – ID#14002521 — *Defendant, In Pro Per*
Department of Corrections
Coffee Creek Correctional Facility
P.O. Box 9000
Wilsonville, OR 97070

Hartley Hampton — *Co-Counsel for Plaintiffs*
FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010

Greg Love — *Co-Counsel for Plaintiffs*
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 26, 2006, at Sacramento, California.

Praveen Singh

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **STIPULATED ORDER GRANTING LEAVE TO FILE CERTAIN AMENDED COMPLAINTS IN COORDINATED ACTIONS**
AND COORDINATED CASES	

Plaintiffs and the Church Defendants hereby stipulate to plaintiffs' filing of certain amended complaints in the following of these coordinated actions: (1) a Second Amended Complaint in *Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc., et al*; (2) a Third Amended Complaint in *Charissa W., et al v. Watchtower Bible and Tract Society of New York, Inc., et al*; and (3) a Second Amended Complaint in *Tim W. v. Watchtower Bible and Tract Society of New York, Inc., et al.*

IT IS SO STIPULATED AND AGREED:

Dated: December 27, 2006.

Nolen & Associates

By Stephen W. Owens

Stephen W. Owens
Attorneys for Plaintiffs

EXHIBIT 1

Dated: December 21, 2006.

Bullivant Houser Bailey PC

By _____
Robert J. Schnack

Attorneys for Church Defendants

Based on the foregoing stipulation and otherwise finding good cause therefore,

IT IS HERBY ORDERED that plaintiffs are granted leave of court to file amended complaints in these coordinated actions as follows: (1) a Second Amended Complaint in *Tabitha H. v. Watchtower Bible and Tract Society of New York, Inc., et al*; (2) a Third Amended Complaint in *Charissa W., et al v. Watchtower Bible and Tract Society of New York, Inc., et al*; and (3) a Second Amended Complaint in *Tim W. v. Watchtower Bible and Tract Society of New York, Inc., et al.*

Dated: _____, 200_

By _____
Judge Raymond A. Guadagni

*****

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CHARISSA W. and NICOLE D.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiff, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, AND DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-22191 Judicial Council Coordination Proceeding No. 4374 Jury Trial Demanded **[PROPOSED] THIRD AMENDED COMPLAINT FOR DAMAGES:** 1. Common Law Negligence 2. Negligent Appointment, Retention, and Supervision 3. Breach of Fiduciary Duty

COME NOW CHARISSA W. AND NICOLE D., Plaintiffs in the above entitled cause, and file this, their Third Amended Complaint, and allege as follows:

I.
PARTIES

1. Plaintiff, CHARISSA W., is a resident of Napa County, California.

2. Plaintiff, NICOLE D., is a resident of Napa County, California.

3. ///

EXHIBIT 2

4. Defendant, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York has appeared herein.

5. Defendant NAPA KINGDOM HALL, now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of California, has appeared herein.

6. OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES , NAPA, CA, INC., a corporation organized and existing under the laws of the State of California, has appeared herein.

7. Plaintiffs allege on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiffs who therefore sue such defendants by such fictitious names, and will amend the amended complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiffs allege on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

9. The Defendant entities are collectively referred to herein as the WATCHTOWER DEFENDANTS and operate as a single business enterprise.

II.
JURISDICTION AND VENUE

10. Each Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

11. Venue is proper in Napa County, California because most of the acts or omissions that give rise to Plaintiffs' claims occurred in Napa County, California and Defendant NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF

JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SILVERADO CONGREGATION are residents of Napa County.

III.
FACTS COMMON TO ALL CAUSES OF ACTION

12. The WATCHTOWER DEFENDANTS comprise a hierarchical organization made up of different corporations and other entities. The "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses and operates through various corporate entities, primarily the Watchtower Bible and Tract Society of New York, Inc.

13. Local congregations are led by elders and ministerial servants who are appointed by the Governing Body acting through the Watchtower Bible and Tract Society of New York, Inc. Local congregations, elders and ministerial servants are agents of the Watchtower Bible and Tract Society of New York, Inc. and the Governing Body and are required to obey and follow the rules handed down by those entities.

14. Local congregations, and their elders and ministerial servants are agents of the Governing Body and the Watchtower Bible and Tract Society of New York, Inc. At all times material hereto, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SILVERADO CONGREGATION as well as the elders of those congregations, were acting as agents and managing agents of the Governing Body and the Watchtower Bible and Tract Society of New York, Inc., and their wrongful conduct occurred during the course and scope of that agency relationship.

15. Through their rules and policies, the WATCHTOWER DEFENDANTS assumed a duty to protect children in their organization, including Plaintiffs; unfortunately, they negligently failed to exercise reasonable care in fulfilling that duty.

16. Despite the fact that the WATCHTOWER DEFENDANTS knew or should have known of the potential for children in the organization to be sexually exploited by appointed leaders, they negligently failed to enact common sense policies to prevent sexual abuse within the organization. For example, they negligently failed to promulgate

a policy forbidding unsupervised one-on-one contact between elders or ministerial servants and children.

17. Rather than taking reasonable steps to prevent children from being vulnerable to assault and abuse, the WATCHTOWER DEFENDANTS actually encouraged parents in the congregation to view elders and ministerial servants as persons with whom they could entrust their children's safety. They permitted children to go out on service, alone, with male congregation members; they encouraged children to attend unchaperoned Bible study and book study with adult males and they allowed elders to "counsel" children away from the Kingdom Hall and without any supervision.

18. The WATCHTOWER DEFENDANTS undertook the responsibility to instruct their elders as to what to do when they received allegations of child sexual abuse, but those policies were primarily intended to keep those allegations secret. They promulgated policies and rules directing the elders to call the WATCHTOWER DEFENDANTS' "Legal Department" for direction about whether to report allegations of sexual abuse to police and law enforcement. However, such policies were designed to prevent cooperation with, if not frustrate, secular investigations. For example, elders were sometimes instructed to make anonymous calls from telephone booths so that law enforcement authorities would be unable to contact them for more information.

19. The WATCHTOWER DEFENDANTS promulgated policies and rules requiring local congregations, through their elders, to investigate allegations of child sexual abuse, and prescribing the manner in which such investigation would be conducted. However, those policies had the effect of allowing child molesters to remain in the organization, sheltered from law enforcement, their crimes concealed from other members of the community. For example, the elders were required to apply the "two witness rule," which required allegations of child sexual abuse to be disregarded unless the perpetrator confessed or there were two eye witnesses to the crime. The WATCHTOWER DEFENDANTS enacted procedural and evidentiary rules governing the formation and operation of "judicial committees," comprised of elders, which gathered and considered evidence, questioned

witnesses and rendered judgments about what punishment, if any, would be imposed on a child abuser. The elders were forbidden from revealing the results of their investigations to law enforcement authorities or other congregation members.

20. The WATCHTOWER DEFENDANTS assumed the duty to punish organization members who were guilty of child sexual abuse. Since the allegations were usually concealed from secular authorities, the perpetrators often received no punishment except for that meted out by the WATCHTOWER DEFENDANTS. Sometimes the offenders were "disfellowshipped," or expelled from the organization. But other times their punishment was secret; they were "reproved" or placed on "restrictions" so that other congregation members would not know that a dangerous child abuser was in their midst. In either case, the WATCHTOWER DEFENDANTS would usually reinstate a disfellowshipped member or remove his restrictions after a shockingly short period of time. In the interim, the child molester often continued to attend meetings at the Kingdom Hall and members of the congregation were not warned.

21. The WATCHTOWER DEFENDANTS' policies, which ostensibly were promulgated to protect children in the organization, emphasized secrecy above all other concerns. Victims of child sexual abuse, and their families, were routinely told not to inform secular authorities. Victims were often discouraged, if not prevented, from obtaining appropriate medical and psychological care or from confiding in their siblings or close friends. Instead, they were instructed to rely on elders for counsel.

22. The WATCHTOWER DEFENDANTS instructed the local congregations and elders to make written reports to the WATCHTOWER DEFENDANTS' "Service Department" about allegations of child sexual abuse leveled against elders, ministerial servants and pioneers, as well as written reports of judicial committee actions concerning child sexual abuse allegations made against any Jehovah's Witness. The WATCHTOWER DEFENDANTS have for years maintained files and, more recently, a computerized database containing such information. The WATCHTOWER DEFENDANTS undertook the responsibility to compile this information to protect congregation members and they therefore assumed a duty to

utilize this information with reasonable care. However, despite having confidential information that would allow parents, law enforcement authorities and even elders to identify sexual predators and actually take steps to protect children, the WATCHTOWER DEFENDANTS negligently concealed this information from the persons who needed it most urgently and they negligently failed to implement any policies to actually *prevent* child sexual abuse.

23. The WATCHTOWER DEFENDANTS have, at all material times, had the ability to know when a "known pedophile," a term they sometimes use, moves from one congregation to another. However, they have negligently failed to utilize the information they have compiled to monitor the movement of sexual predators through their organization so that appropriate warnings could be issued.

24. The WATCHTOWER DEFENDANTS promulgated rules and policies that require the former congregation to write a "letter of introduction" when a member moved to another congregation. However, the WATCHTOWER DEFENDANTS negligently failed to take any steps to ensure that such a letter was actually sent or that the letter contained accurate information and adequate warnings. If a sexual predator moved from a congregation where he was known to be a pedophile, but then moved a second time, the WATCHTOWER DEFENDANTS' rules did not even require the first congregation's letter to be passed along to the third congregation.

25. These are but a few examples of the WATCHTOWER DEFENDANTS assuming a duty to protect children in the organization but failing to exercise reasonable care in fulfilling that duty.

26. Edward Villegas was appointed elder by the Governing Body acting through the Watchtower Bible and Tract Society of New York, Inc. An elder is an agent and managing agent of the Watchtower Bible and Tract Society of New York, Inc., and the Governing Body and the other Watchtower Defendants.

27. An elder is held out by the Watchtower Defendants to be a person of good character and a person one can trust to supervise minor children. Parents within the

Watchtower organization are encouraged to view elders as role models for their children. Children within the organization are taught to look up to and respect elders.

28. The WATCHTOWER DEFENDANTS knew or should have known that Edward Villegas was a pedophile. Nevertheless, he was appointed elder and allowed to occupy a leadership position in the Jehovah's Witnesses organization.

29. Beginning in approximately 1972, Villegas used the position of trust that his status as elder represented and conferred, to obtain access to Plaintiffs so that he could sexually abuse them. He abused Charissa W. from approximately 1972 to approximately 1985. He abused Nicole D. in approximately 1978.

IV.
FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

30. Plaintiffs incorporate and re-allege paragraphs 1 through 29 of this Amended Complaint as if fully set forth herein.

31. Plaintiffs allege that at all times herein mentioned, the WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiffs from sexual predators within the WATCHTOWER DEFENDANTS' organization.

32. However, they negligently failed to implement any policies to prevent unsupervised , unchaperoned contact between elders or ministerial servants and children within their congregations; to the contrary, they actually encouraged such contact. The WATCHTOWER DEFENDANTS knew or should have known that Plaintiffs were at risk of foreseeable harm by their agent, Edward Villegas, but failed to act to protect them from such harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiffs, thereby causing them great harm.

33. Despite the fact that the Watchtower Defendants knew or should have known of Villegas' dangerous propensities, they negligently failed to warn Plaintiffs or their families and they negligently permitted him to be alone with children in the congregations including Plaintiffs.

34. As a result of Defendants' negligence, Plaintiffs have suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

V.
SECOND CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

35. Plaintiffs incorporate and re-allege paragraphs 1 through 34 of this Amended Complaint as if fully set forth herein.

36. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of Villegas' dangerous tendencies, they negligently appointed him to the office of elder when they knew or should have known that he would be allowed unsupervised access to minor children in the course and scope of his duties.

37. The WATCHTOWER DEFENDANTS negligently failed to monitor and/or supervise Villegas despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

38. As a result of Defendants' negligence, Plaintiffs have suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VI.
THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

39. Plaintiffs incorporate and re-allege paragraphs 1 through 38 of this Amended Complaint as if fully set forth herein.

40. Plaintiffs allege, at all times mentioned herein, that by assuming the responsibility to protect and care for Plaintiffs, who were young and vulnerable, the WATCHTOWER DEFENDANTS created a fiduciary relationship with Plaintiffs. The

WATCHTOWER DEFENDANTS occupied positions of trust and confidence with Plaintiffs and such relationship imposed on them a duty to act to protect Plaintiffs' best interests.

41. Plaintiffs further allege that because of this special relationship, Plaintiffs placed their trust and confidence in the WATCHTOWER DEFENDANTS to protect them from harm and to warn Plaintiffs of potential harm. The conduct described above constituted a breach of the fiduciary duty owed to Plaintiffs by WATCHTOWER DEFENDANTS.

42. As a result of Defendants' misconduct as described hereinabove, Plaintiffs have suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VII.
PRAYER

WHEREFORE, Plaintiffs demand judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;

2. For past and future medical expenses according to proof;

3. For past and future loss of earnings according to proof;

4. For prejudgment interest;

5. For costs of suit incurred herein; and

6. For such other and further relief as the Court deems just and proper.

Dated: _____

NOLEN & ASSOCIATES

_____

Rudy Nolen, Esq.,
Attorneys for Plaintiffs.

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Attorneys for Plaintiff
TABITHA H.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

TABITHA H. Plaintiff, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES, AND DOES 1 through 20, inclusive. Defendants.	CASE NO: 26-23929 Judicial Council Coordination Proceeding No. 4374 Jury Trial Demanded **[PROPOSED] SECOND AMENDED COMPLAINT FOR DAMAGES:** 1. Common Law Negligence 2. Negligent Appointment, Retention, and Supervision 3. Breach of Fiduciary Duty

PLAINTIFFS' SECOND AMENDED ORIGINAL COMPLAINT

COMES NOW TABITHA H., Plaintiff in the above entitled cause, and files this, her Second Amended Complaint, and alleges as follows:

I.
PARTIES

1. ///

2. ///

3. Plaintiff, TABITHA H., is a resident of Napa County, California.

EXHIBIT 3

4. Defendant, WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York has appeared herein.

5. Defendant NAPA KINGDOM HALL, now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES, a corporation organized and existing under the laws of the State of California, has appeared herein.

6. OAK KNOLL CONGREGATION OF JEHOVAH'S WITNESSES , NAPA, CA, INC., a corporation organized and existing under the laws of the State of California, has appeared herein.

7. Plaintiff alleges on information and belief that at all relevant times, defendants DOES 1 through 20 inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants DOES 1 through 20, inclusive, are unknown to Plaintiff who therefore sues such defendants by such fictitious names, and will amend the amended complaint to show the true names and capacities of each DOE defendant when ascertained. Plaintiff alleges on information and belief that each defendant designated as a DOE is legally responsible in some manner for the events, happenings, and/or tortuous, and unlawful conduct that caused the injuries and damages alleged in this complaint.

9. The Defendant entities are collectively referred to herein as the WATCHTOWER DEFENDANTS and operate as a single business enterprise.

II.
JURISDICTION AND VENUE

10. Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

11. Venue is proper in Napa County, California because most of the acts or omissions that give rise to Plaintiff's claims occurred in Napa County, California and Defendant NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF

JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SILVERADO CONGREGATION are residents of Napa County.

III.
FACTS COMMON TO ALL CAUSES OF ACTION

12. The WATCHTOWER DEFENDANTS comprise a hierarchical organization made up of different corporations and other entities. The "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses and operates through various corporate entities, primarily the Watchtower Bible and Tract Society of New York, Inc.

13. Local congregations are led by elders and ministerial servants who are appointed by the Governing Body acting through the Watchtower Bible and Tract Society of New York, Inc. Local congregations, elders and ministerial servants are agents of the Watchtower Bible and Tract Society of New York, Inc. and the Governing Body and are required to obey and follow the rules handed down by those entities.

14. Local congregations, and their elders and ministerial servants are agents of the Governing Body and the Watchtower Bible and Tract Society of New York, Inc. At all times material hereto, NAPA KINGDOM HALL now doing business as NAPA CONGREGATION OF JEHOVAH'S WITNESSES and OAK KNOLL CONGREGATION and JEHOVAH'S WITNESSES SILVERADO CONGREGATION as well as the elders of those congregations, were acting as agents and managing agents of the Governing Body and the Watchtower Bible and Tract Society of New York, Inc., and their wrongful conduct occurred during the course and scope of that agency relationship.

15. Through their rules and policies, the WATCHTOWER DEFENDANTS assumed a duty to protect children in their organization, including Plaintiffs; unfortunately, they negligently failed to exercise reasonable care in fulfilling that duty.

16. Despite the fact that the WATCHTOWER DEFENDANTS knew or should have known of the potential for children in the organization to be sexually exploited by appointed leaders, they negligently failed to enact common sense policies to prevent sexual abuse within the organization. For example, they negligently failed to promulgate

a policy forbidding unsupervised one-on-one contact between elders or ministerial servants and children.

17. Rather than taking reasonable steps to prevent children from being vulnerable to assault and abuse, the WATCHTOWER DEFENDANTS actually encouraged parents in the congregation to view elders and ministerial servants as persons with whom they could entrust their children's safety. They permitted children to go out on service, alone, with male congregation members; they encouraged children to attend unchaperoned Bible study and book study with adult males and they allowed elders to "counsel" children away from the Kingdom Hall and without any supervision.

18. The WATCHTOWER DEFENDANTS undertook the responsibility to instruct their elders as to what to do when they received allegations of child sexual abuse, but those policies were primarily intended to keep those allegations secret. They promulgated policies and rules directing the elders to call the WATCHTOWER DEFENDANTS' "Legal Department" for direction about whether to report allegations of sexual abuse to police and law enforcement. However, such policies were designed to prevent cooperation with, if not frustrate, secular investigations. For example, elders were sometimes instructed to make anonymous calls from telephone booths so that law enforcement authorities would be unable to contact them for more information.

19. The WATCHTOWER DEFENDANTS promulgated policies and rules requiring local congregations, through their elders, to investigate allegations of child sexual abuse, and prescribing the manner in which such investigation would be conducted. However, those policies had the effect of allowing child molesters to remain in the organization, sheltered from law enforcement, their crimes concealed from other members of the community. For example, the elders were required to apply the "two witness rule," which required allegations of child sexual abuse to be disregarded unless the perpetrator confessed or there were two eye witnesses to the crime. The WATCHTOWER DEFENDANTS enacted procedural and evidentiary rules governing the formation and operation of "judicial committees," comprised of elders, which gathered and considered evidence, questioned witnesses and rendered judgments about what punishment, if any,

would be imposed on a child abuser. The elders were forbidden from revealing the results of their investigations to law enforcement authorities or other congregation members.

20. The WATCHTOWER DEFENDANTS assumed the duty to punish organization members who were guilty of child sexual abuse. Since the allegations were usually concealed from secular authorities, the perpetrators often received no punishment except for that meted out by the WATCHTOWER DEFENDANTS. Sometimes the offenders were "disfellowshipped," or expelled from the organization. But other times their punishment was secret; they were "reproved" or placed on "restrictions" so that other congregation members would not know that a dangerous child abuser was in their midst. In either case, the WATCHTOWER DEFENDANTS would usually reinstate a disfellowshipped member or remove his restrictions after a shockingly short period of time. In the interim, the child molester often continued to attend meetings at the Kingdom Hall and members of the congregation were not warned.

21. The WATCHTOWER DEFENDANTS' policies, which ostensibly were promulgated to protect children in the organization, emphasized secrecy above all other concerns. Victims of child sexual abuse, and their families, were routinely told not to inform secular authorities. Victims were often discouraged, if not prevented, from obtaining appropriate medical and psychological care or from confiding in their siblings or close friends. Instead, they were instructed to rely on elders for counsel.

22. The WATCHTOWER DEFENDANTS instructed the local congregations and elders to make written reports to the WATCHTOWER DEFENDANTS' "Service Department" about allegations of child sexual abuse leveled against elders, ministerial servants and pioneers, as well as written reports of judicial committee actions concerning child sexual abuse allegations made against any Jehovah's Witness. The WATCHTOWER DEFENDANTS have for years maintained files and, more recently, a computerized database containing such information. The WATCHTOWER DEFENDANTS undertook the responsibility to compile this information to protect congregation members and they therefore assumed a duty to utilize this information with reasonable care. However, despite having confidential information that would allow parents, law enforcement authorities and

even elders to identify sexual predators and actually take steps to protect children, the WATCHTOWER DEFENDANTS negligently concealed this information from the persons who needed it most urgently and they negligently failed to implement any policies to actually *prevent* child sexual abuse.

23. The WATCHTOWER DEFENDANTS have, at all material times, had the ability to know when a "known pedophile," a term they sometimes use, moves from one congregation to another. However, they have negligently failed to utilize the information they have compiled to monitor the movement of sexual predators through their organization so that appropriate warnings could be issued.

24. The WATCHTOWER DEFENDANTS promulgated rules and policies that require the former congregation to write a "letter of introduction" when a member moved to another congregation. However, the WATCHTOWER DEFENDANTS negligently failed to take any steps to ensure that such a letter was actually sent or that the letter contained accurate information and adequate warnings. If a sexual predator moved from a congregation where he was known to be a pedophile, but then moved a second time, the WATCHTOWER DEFENDANTS' rules did not even require the first congregation's letter to be passed along to the third congregation.

25. These are but a few examples of the WATCHTOWER DEFENDANTS assuming a duty to protect children in the organization but failing to exercise reasonable care in fulfilling that duty.

26. Edward Villegas was appointed elder by the Governing Body acting through the Watchtower Bible and Tract Society of New York, Inc. An elder is an agent and managing agent of the Watchtower Bible and Tract Society of New York, Inc., and the Governing Body and the other Watchtower Defendants.

27. An elder is held out by the Watchtower Defendants to be a person of good character and a person one can trust to supervise minor children. Parents within the Watchtower organization are encouraged to view elders as role models for their children. Children within the organization are taught to look up to and respect elders.

28. The WATCHTOWER DEFENDANTS knew or should have known that

Edward Villegas was a pedophile. Nevertheless, he was appointed elder and allowed to occupy a leadership position in the Jehovah's Witnesses organization.

29. Beginning in approximately 1972, Villegas used the position of trust that his status as elder represented and conferred, to obtain access to Plaintiff so that he could sexually abuse her. He abused Tabitha H. from approximately 1977 to 1980.

IV.
FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

30. Plaintiff incorporates and re-alleges paragraphs 1 through 29 of this Amended Complaint as if fully set forth herein.

31. Plaintiff alleges that at all times herein mentioned, the WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiff from sexual predators within the WATCHTOWER DEFENDANTS' organization.

32. However, they negligently failed to implement any policies to prevent unsupervised , unchaperoned contact between elders or ministerial servants and children within their congregations; to the contrary, they actually encouraged such contact. The WATCHTOWER DEFENDANTS knew or should have known that Plaintiff was at risk of foreseeable harm by her agent, Edward Villegas, but failed to act to protect her from such harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiff, thereby causing her great harm.

33. Despite the fact that the Watchtower Defendants knew or should have known of Villegas' dangerous propensities, they negligently failed to warn Plaintiff or her family and they negligently permitted him to be alone with children in the congregations including Plaintiff.

34. As a result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

V.
SECOND CAUSE OF ACTION

NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

35. Plaintiff incorporates and re-alleges paragraphs 1 through 34 of this Amended Complaint as if fully set forth herein.

36. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of Villegas' dangerous tendencies, they negligently appointed him to the office of elder when they knew or should have known that he would be allowed unsupervised access to minor children in the course and scope of his duties.

37. The WATCHTOWER DEFENDANTS negligently failed to monitor and/or supervise Villegas despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

38. As a result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VI.
THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

39. Plaintiff incorporates and re-alleges paragraphs 1 through 38 of this Amended Complaint as if fully set forth herein.

40. Plaintiff alleges, at all times mentioned herein, that by assuming the responsibility to protect and care for Plaintiff, who was young and vulnerable, the WATCHTOWER DEFENDANTS created a fiduciary relationship with Plaintiff. The WATCHTOWER DEFENDANTS occupied positions of trust and confidence with Plaintiff and such relationship imposed on them a duty to act to protect Plaintiff's best interests.

41. Plaintiff further alleges that because of this special relationship, Plaintiff placed her trust and confidence in the WATCHTOWER DEFENDANTS to protect her from harm and to warn Plaintiff of potential harm. The conduct described above constituted a breach of the fiduciary duty owed to Plaintiff by WATCHTOWER DEFENDANTS.

42. As a result of Defendants' misconduct as described hereinabove, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VII.
PRAYER

WHEREFORE, Plaintiff demands judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;
2. For past and future medical expenses according to proof;
3. For past and future loss of earnings according to proof;
4. For prejudgment interest;
5. For costs of suit incurred herein; and
6. For such other and further relief as the Court deems just and proper.

Dated: _____

NOLEN & ASSOCIATES

_____

Rudy Nolen, Esq.,
Attorneys for Plaintiff.

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Attorneys for Plaintiff
TIM W.

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TEHAMA

TIM W., Plaintiff, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC.) JAMES HENDERSON AND DOES 1) through 20, inclusive, Defendants.	CASE NO: S CV 52594 Coordinated with Case No.: 26-22191 Judicial Council Coordination Proceeding No. 4374 Jury Trial Demanded **[PROPOSED] SECOND AMENDED COMPLAINT FOR DAMAGES:** 1. Common Law Negligence 2. Negligent Appointment, Retention, and Supervision 3. Breach of Fiduciary Duty

PLAINTIFF'S SECOND AMENDED COMPLAINT

COMES NOW TIM W., Plaintiff in the above entitled cause, and files this, his Second Amended Complaint, and alleges as follows:

I.
PARTIES

1. Plaintiff TIM W., born October 26, 1977 is, and at all times mentioned herein, was a resident of Tehama County, California.

2. Defendant WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., a corporation organized and existing under the laws of the State of New York, has been served with process and has filed an answer.

EXHIBIT 4

3. Defendant NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC., a corporation organized and existing under the laws of the State of California, has been served with process and has filed an answer.

4. The Defendant entities, collectively referred to herein as the "WATCHTOWER DEFENDANTS," operate as a single business enterprise.

II.
JURISDICTION AND VENUE

5. Plaintiff has been damaged in an amount exceeding the minimum jurisdictional requirements of this Court.

6. Venue is proper in Tehama County, California because most of the acts or omissions that give rise to Plaintiff's claims occurred in Tehama County, California.

III.
FACTS COMMON TO ALL CAUSES OF ACTION

7. The WATCHTOWER DEFENDANTS comprise a hierarchical organization made up of different corporations and other entities. The "Governing Body" establishes policies and dictates practices for Jehovah's Witnesses and operates through various corporate entities, primarily the Watchtower Bible and Tract Society of New York.

8. Local congregations are led by elders and ministerial servants whom are appointed by the Governing Body acting through the Watchtower Bible and Tract Society of New York, Inc. and are required to obey and follow the rules handed down by those entities.

9. At all times material hereto, the North Congregation of Jehovah's Witnesses, Red Bluff, CA, Inc. as well as the elders of that congregation, were acting as agents and managing agents of the Governing Body and the Watchtower Bible and Tract Society of New York, Inc., and their wrongful conduct occurred during the course and scope of that agency relationship.

///

10. Through their rules and policies, the WATCHTOWER DEFENDANTS assumed a duty to protect children in their organization, including Plaintiff; unfortunately, they negligently failed to exercise reasonable care in fulfilling that duty.

11. Despite the fact that the WATCHTOWER DEFENDANTS knew or should have known of the potential for children in the organization to be sexually exploited by appointed leaders, they negligently failed to enact common sense policies to prevent sexual abuse within the organization. For example, they negligently failed to promulgate a policy forbidding unsupervised one-on-one contact between elders or ministerial servants and children.

12. Rather than taking reasonable steps to prevent children from being vulnerable to assault and abuse, the WATCHTOWER DEFENDANTS actually encouraged *parents in the congregation to view elders and ministerial servants as persons with whom* they could entrust their children's safety. They permitted children to go out on service, alone, with male congregation members; they encouraged children to attend unchaperoned Bible study and book study with adult males and they allowed elders to "counsel" children away from the Kingdom Hall and without any supervision.

13. The WATCHTOWER DEFENDANTS undertook the responsibility to instruct their elders as to what to do when they received allegations of child sexual abuse. They promulgated policies and rules directing the elders to call the WATCHTOWER DEFENDANTS' "Legal Department" for direction about whether to report allegations of sexual abuse to police and law enforcement. However, such policies were designed to prevent cooperation with, if not frustrate, secular investigations. For example, elders were sometimes instructed to make anonymous calls from telephone booths so that law enforcement authorities would be unable to contact them for more information.

14. The WATCHTOWER DEFENDANTS promulgated policies and rules requiring local congregations, through their elders, to investigate allegations of child sexual abuse, and prescribing the manner in which such investigation would be conducted. For example, the elders were required to apply the "two witness rule," which required allegations of child

sexual abuse to be disregarded unless the perpetrator confessed or there were two eye witnesses to the crime.

15. The WATCHTOWER DEFENDANTS enacted procedural and evidentiary rules governing the formation and operation of "judicial committees," comprised of elders, which gathered and considered evidence, questioned witnesses and rendered judgments about what punishment, if any, would be imposed on a child abuser. The elders were forbidden from revealing the results of their investigations to law enforcement authorities.

16. The WATCHTOWER DEFENDANTS assumed the duty to punish organization members who were guilty of child sexual abuse. Since the allegations were usually concealed from secular authorities, the perpetrators often received no punishment except for that meted out by the WATCHTOWER DEFENDANTS. Sometimes the offenders were "disfellowshipped," or expelled from the organization. But other times their punishment was secret; they were "reproved" or placed on "restrictions" so that other congregation members would not know that a dangerous child abuser was in their midst. In either case, the WATCHTOWER DEFENDANTS would usually reinstate a disfellowshipped member or remove his restrictions after a shockingly short period of time. In the interim, the child molester often continued to attend meetings at the Kingdom Hall and members of the congregation were not warned.

17. The WATCHTOWER DEFENDANTS' policies, which ostensibly were promulgated to protect children in the organization, emphasized secrecy above all other concerns. Victims of child sexual abuse, and their families, were routinely told not to inform secular authorities. Victims were often discouraged, if not prevented, from obtaining appropriate medical and psychological care or from confiding in their siblings or close friends. Instead, they were instructed to rely on elders for counsel.

18. The WATCHTOWER DEFENDANTS instructed the local congregations and elders to make written reports to the WATCHTOWER DEFENDANTS' "Service Department" about allegations of child sexual abuse leveled against elders, ministerial servants and pioneers, as well as written reports of judicial committee actions concerning

child sexual abuse allegations made against any Jehovah's Witness. The WATCHTOWER DEFENDANTS have for years maintained files and, more recently, a computerized database containing such information. The WATCHTOWER DEFENDANTS undertook the responsibility to compile this information to protect congregation members and they therefore assumed a duty to utilize this information with reasonable care. However, despite having confidential information that would allow parents, law enforcement authorities and even elders to identify sexual predators and actually take steps to protect children, the WATCHTOWER DEFENDANTS negligently concealed this information from the persons who needed it most urgently and they negligently failed to implement any policies to actually *prevent* child sexual abuse.

19. The WATCHTOWER DEFENDANTS have, at all material times, had the ability to know when a "known pedophile," a term they sometimes use, moves from one congregation to another. However, they have negligently failed to utilize the information they have compiled to monitor the movement of sexual predators through their organization so that appropriate warnings could be issued.

20. The WATCHTOWER DEFENDANTS promulgated rules and policies that require the former congregation to write a "letter of introduction" when a member moved to another congregation. However, the WATCHTOWER DEFENDANTS negligently failed to take any steps to ensure that such a letter was actually sent or that the letter contained accurate information and adequate warnings. If a sexual predator moved from a congregation where he was known to be a pedophile, but then moved a second time, the WATCHTOWER DEFENDANTS' rules did not even require the first congregation's letter to be passed along to the third congregation.

21. These are but a few examples of the WATCHTOWER DEFENDANTS assuming a duty to protect children in the organization but failing to exercise reasonable care in fulfilling that duty.

22. The Watchtower Bible and Tract Society of New York, Inc., had actual knowledge that James Henderson was a sexual predator since at least 1964. Yet, for the

better part of three decades, they appointed and re-appointed him to the positions of elder and ministerial servant. They also permitted him to move from congregation to congregation, committing acts of sexual perversion and abuse, acts which were reported, again and again, to various Jehovah's Witnesses entities.

23. On July 13, 1964, the Clearlake Highlands Congregation wrote the Service Department of the Watchtower Bible and Tract Society of New York, Inc., describing an incident in which Henderson had sodomized another congregation member who had passed out from intoxication. The letter quoted Henderson, who had occupied appointed positions in the congregation since 1962, as telling the victim that he had "done it only once before."

24. The letter, which actually sought counsel about whether to disfellowship Henderson's victim for having an extramarital, heterosexual affair, was received by Merton Victor Campbell, the service department "desk man" in charge of California. As a desk man, Campbell was responsible for providing advice to congregations, including, occasionally, direction as to whether a member should be disfellowshipped. He also had been delegated the authority to appoint elders and ministerial servants. He was a managing agent of the Watchtower Bible and Tract Society of New York, Inc.

25. Campbell recognized that Henderson was a danger to others in the congregation. Nevertheless, eight years later, Campbell, acting as an agent and managing agent of Watchtower Bible and Tract Society of New York, Inc. and the Governing Body, appointed Henderson to the positions of congregation servant, then elder and field overseer in the Ukiah, California Congregation.

26. Since at least the mid-1960's, congregations have sent letters of introduction, as described above, when a member moves to a new congregation, and those letter were supposed to describe any accusations of serious offenses, such as child sexual abuse. Thus, according to the policies of the WATCHTOWER DEFENDANTS, the Ukiah Congregation would have been advised about Henderson's past.

27. From Ukiah, Henderson moved to Yuba City where he was again appointed

elder. He was removed from that position in about 1974 after he confessed to a judicial committee that he had "done some perverted things with two young men." Even his wife was not told the reason he was reproved. The Jehovah's Witnesses' practice was, and remains, that members can be disciplined secretly and even their spouses are not told the reason. However, according to the policies of the WATCHTOWER DEFENDANTS, the service department would have received a report.

28. Henderson moved on to another congregation and, if the Watchtower Defendants' policies were followed, a letter of introduction followed him. At some point during the 1970's, Henderson was again reproved and removed from his position of elder or ministerial servant by a congregation in the Marysville, California area for sexual abuse. Another report would have been made to headquarters.

29. On January 21, 1981, The Upper Lake Congregation wrote a letter of introduction for Henderson to the Red Bluff Congregation stating, among other things, that Upper Lake had considered appointing him to be a ministerial servant. It mentioned nothing about his criminal past.

30. On November 23, 1988, Henderson, by then an elder in Red Bluff North, was appointed to be Red Bluff City Overseer. At about the same time, an elder or ministerial servant from the Red Bluff South Congregation received and ignored a report that Henderson had molested a young boy at Henderson' place of employment.

31. On October 20, 1992, a young man called an elder at the Red Bluff congregation and told him that he had been molested by Henderson. He also told the elder that Henderson had signed a confession admitting to abusing him and others. He offered to meet with the elder and give him a copy of the confession. The elder rejected the offer and told him not to contact him again.

32. After another Henderson victim went to the police in 1994, Henderson confessed to elder Bodie Lyon that he had committed child sexual abuse. Once again, the WATCHTOWER DEFENDANTS attempted to deal with Henderson with a slap on the wrist-reproval–until information about other victims, including Plaintiff, was brought to their

attention and, more importantly, the attention of the Red Bluff police. Finally, Henderson was disfellowshipped.

33. Thus, at least five times, between 1963 and 1993, when Henderson's abuse of Tim Ward began, the WATCHTOWER DEFENDANTS received reports that Henderson had committed a sexual crime.

34. Beginning in 1993, thirty years after the WATCHTOWER DEFENDANTS first had actual, incontrovertible knowledge that James Henderson was a dangerous sexual predator, they negligently allowed him unsupervised access to Plaintiff, Tim W. Predictably, he exploited the confidence and respectability that his status as elder and city overseer conferred and began to prey upon Tim W. The abuse continued until 1994.

35. By repeatedly appointing Henderson to serve as an elder and permitting him to remain in that position, the WATCHTOWER DEFENDANTS put him in a position of trust and confidence vis-à-vis his congregation. The WATCHTOWER DEFENDANTS knew that congregation members would view him as being worthy of their trust and that they would feel comfortable entrusting him with their children's safety. Likewise, the children in the congregation were taught that they could trust elders and ministerial servants such as Henderson.

36. The WATCHTOWER DEFENDANTS intentionally concealed a material fact from Plaintiff Tim W. and his mother. They withheld the knowledge that Henderson had been, for at least three decades, a sexual predator whose conduct they tolerated and covered up and thus aided and abetted. The WATCHTOWER DEFENDANTS concealed this information because they valued secrecy above the rights and safety of children in the congregation. They thus concealed this material fact with the intention of depriving Tim W. and others of their legal right to be safe.

IV.
FIRST CAUSE OF ACTION
COMMON-LAW NEGLIGENCE

37. Plaintiff incorporates and re-alleges paragraphs 1 through 36 of this Amended Complaint as if fully set forth herein.

38. Plaintiff alleges that at all times herein mentioned, WATCHTOWER DEFENDANTS assumed a duty to protect Plaintiff from sexual predators within the WATCHTOWER DEFENDANTS' organization.

39. However, they negligently failed to implement any policies to prevent unsupervised , unchaperoned contact between elders or ministerial servants and children within their congregations; to the contrary, they actually encouraged such contact.

40. The WATCHTOWER DEFENDANTS knew or should have known that Plaintiff was at risk of foreseeable harm by their agent, James Henderson, but failed to act to protect him from such harm. The WATCHTOWER DEFENDANTS breached their duty to Plaintiff, thereby causing him great harm.

41. Despite the fact that the Watchtower Defendants knew or should have known of Henderson's history of pedophilia, they negligently failed to warn Plaintiff or his family of Henderson's history of sexually abusing children and actually conceded those facts.

42. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of Henderson's history of pedophilia, they negligently permitted him to be alone with children in the congregations including Plaintiff.

43. As a result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

V.
SECOND CAUSE OF ACTION
NEGLIGENT APPOINTMENT, RETENTION AND SUPERVISION

44. Plaintiff incorporates and re-alleges paragraphs 1 through 43 of this Amended Complaint as if fully set forth herein.

45. Despite the fact that the WATCHTOWER DEFENDANTS knew, or should have known, of Henderson's history of pedophilia, they negligently appointed him to the office of Elder and City Overseer when they knew or should have known that he would be allowed unsupervised access to minor children in the course and scope of his duties.

46. The WATCHTOWER DEFENDANTS negligently failed to monitor and/or supervise Henderson despite their actual or constructive knowledge that he posed a potential and foreseeable danger to children.

47. As a result of Defendants' negligence, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VI.
THIRD CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

48. Plaintiff incorporates and re-alleges paragraphs 1 through 47 of this Amended Complaint as if fully set forth herein.

49. Plaintiff alleges, at all times mentioned herein, that by assuming the responsibility to protect and care for Plaintiff, who was young and vulnerable, the WATCHTOWER DEFENDANTS created a fiduciary relationship with Plaintiff. The WATCHTOWER DEFENDANTS occupied positions of trust and confidence with Plaintiff and such relationship imposed on them a duty to act to protect Plaintiff's best interests.

50. Plaintiff further alleges that because of this special relationship, Plaintiff placed his trust and confidence in the WATCHTOWER DEFENDANTS to protect him from harm and to warn Plaintiff of the potential harm. The conduct described above constituted a breach of the fiduciary duty owed to Plaintiff by WATCHTOWER DEFENDANTS.

51. As a result of Defendants' misconduct as described hereinabove, Plaintiff has suffered, and will continue to suffer psychological trauma, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life.

VII.
PRAYER

WHEREFORE, Plaintiff demands judgment against the WATCHTOWER DEFENDANTS individually, jointly and severally as follows:

1. For general damages according to proof;

2. For past and future medical expenses according to proof;

3. For past and future loss of earnings according to proof;

4. For prejudgment interest;

5. For costs of suit incurred herein; and

6. For such other and further relief as the Court deems just and proper.

Dated: _____

NOLEN & ASSOCIATES

_____

Rudy Nolen, Esq.,
Attorneys for Plaintiffs.

NOLEN & ASSOCIATES
ATTORNEYS

1501 26TH STREET
SACRAMENTO, CA 95816
PHONE: 916-733-0500
FAX: 916-733-0601

January 11, 2007

FILED
JAN 12, 2007
Clerk of the Napa Superior Court
By: [signature] Deputy

Via Facsimile - Only

Clerk of the Court
Napa County Superior Court
Department A
825 Brown Street
Napa, CA 94559

Re: ***Tim W., et al,***
Coordinated with Napa County Superior Court Case No. 26-22191
Judicial Council Coordination Proceeding No. 4374
Hearing Date: January 31, 2007 at 8:30 am in Department A

Dear Clerk:

This letter will confirm that the hearing on the Motion for Leave to Amend Complaint to Add Punitive Damages Claim, currently scheduled for January 31, 2007 **has been moved to Thursday, February 1, 2007 at 8:30 a.m. in Department A**.

The February 1, 2007 hearing date has also been confirmed with defense counsel.

Very truly yours,

NOLEN ■ OWENS

[signature]
Sophia Acken
Secretary to Stephen W. Owens

/sa

cc: Greg Love, Esq. - via facsimile
Hartley Hampton, Esq. - via facsimile

RHUDOLPH NOLEN, JR.
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Attorneys for Plaintiff
TIM W.

FILED
JAN 18 2007
Clerk of the Napa Superior Court
By: M. Bernardelli
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF TEHAMA

TIM W., Plaintiff, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC. NORTH CONGREGATION OF JEHOVAH'S WITNESSES, RED BLUFF, CA, INC. JAMES HENDERSON AND DOES 1 through 20, inclusive, Defendants.	CASE NO: S CV 52594 Coordinated with Case No.: 26-22191 Judicial Council Coordination Proceeding No. 4374 **DECLARATION STEPHEN W. OWENS IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD PUNITIVE DAMAGES CLAIM** Hearing Date: January 31, 2007 Time: 8:30 am Dept.: A Judge: Hon. Raymond A. Guadagni Date Action was filed: 7/24/03 Trial Date: April 3, 2007

I, STEPHEN W. OWENS, declare:

1. I am an attorney at law duly licensed to practice before all of the courts of the

Received
DEC 29 2006
Napa Superior Court

State of California and am one of the attorneys for Plaintiff, TIM W. in the above-entitled matter.

2. This declaration is being filed pursuant to California Rule of Court 327. The proposed Amended Complaint adds Paragraph 54 on Page 10 at Lines 24-26 to Plaintiff's prior pleading. It also adds item no. 2 in the Prayer on Page 11 on Lines 4-5.

3. These Amendments are necessary and proper in order for Plaintiffs to state a request for punitive damages.

4. The facts giving rise to the allegations have been discovered throughout the conduct of this litigation and Plaintiff is now making this motion to amend pursuant to California Code of Civil Procedure 425.14 which requires that Plaintiff seek an order from this Court to add the claim for punitive or exemplary damages. This amendment could not be made earlier due to the requirements of California Code of Civil Procedure 425.14.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of December at Sacramento, California.

Dated: December 28, 2006

STEPHEN W. OWENS

Napa County Superior Court Case No. 26-22191
Judicial Council Coordination Proceeding No. 4374

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On December 28, 2006, I caused the within: **DECLARATION OF STEPHEN W. OWENS IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD PUNITIVE DAMAGES CLAIM** the original of which was produced on recycled paper, to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

X **FACSIMILE** – On_____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601. I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
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BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, Ca 95814

In Pro Per
James Henderson
35 Gilmore Road, #6
Red Bluff, CA 96080

In Pro Per
Alvin Heard – State ID # 14002521
Department of Corrections
Coffee Creek Correctional Facility
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Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 28, 2006, at Sacramento, California.

Praveen Singh

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Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

JAN 30 2007

Clerk of the Napa Superior Court
By: M. Bernardez
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM - MINOR

Hearing Date: 2/1/07
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond Guadagni

Attorneys for Plaintiffs
A.B., G.G., S.H., and N.H.;
S.H. and N.H. are minors,
by and through their Guardian Ad Litem,
their Mother, S.A.H.

Received
JAN 29 2007
Napa Superior Court

/ / /

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H. Plaintiffs, vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive. Defendants.	CASE NO: GIE034558

MC-350

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
Rudy Nolen, Esq. SBN 59808 Stephen W. Owens, Esq. SBN 54859 Nolen Owens 1501 28th Street Sacramento, CA 95816 TELEPHONE NO.: (916)778-0600 FAX NO. (Optional): (916)788-0601 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Napa STREET ADDRESS: 825 Brown St. MAILING ADDRESS: CITY AND ZIP CODE: Napa, CA 94559 BRANCH NAME:	
CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc., et al.	CASE NUMBER: 26-22191
PETITION TO APPROVE: X **COMPROMISE OF DISPUTED CLAIM** __ **COMPROMISE OF PENDING ACTION** **DISPOSITION OF PROCEEDS OF JUDGMENT** X **Minor** __ **Adult Person With A Disability**	HEARING DATE: February 1, 2007 DEPT.: A TIME: 8:30 a.m.

NOTE: This form is to be used for the compromise of a disputed claim of a minor, the compromise of a pending action or proceeding in which a minor or an adult person with a disability (including a conservatee) is a party, or disposition of the proceeds of a judgment for a minor or adult person with a disability under Code of Civil Procedure section 372 et seq. or Probate Code section 3500 et seq. The person compromising the claim or the action and the minor or adult person with a disability must attend the hearing on this petition unless the court for good cause dispenses with the personal appearance. The court may require the presence and testimony of witnesses, including the attending or examining physician, and other evidence relating to the merits of the claim and the nature and extent of the injury, care, treatment, and hospitalization.

1. **Petitioner** *(name):* S.A.H.

2. **Claimant** *(name):* S.H.
   a. Address: 871 Saint George Drive, El Cajon, CA 92019
   b. Date of birth: 08/28/90 c. Age: 16 d. Sex: F e. X Minor __ Adult person with a disability

3. **Relationship**
   a. Petitioner's relationship to the claimant *(check all applicable boxes):*
      (1) X Parent (7) __ Other relationship *(specify):*
      (2) X Guardian ad litem
      (3) __ Guardian
      (4) __ Conservator
      (5) __ Disabled adult claimant is a petitioner. *(See instructions for items 3a(5) and (6) below.)*
      (6) __ Disabled adult claimant's express consent to the relief requested in this petition is provided on Attachment 3a(6).
      (If you checked item (5) or (6), state facts on Attachment 3a(5) or (6) showing that the claimant has capacity under Probate Code section 812 to petition or consent to a petition. Only an adult claimant who has sufficient capacity and who does not have a conservator of the estate may petition or consent to a petition. See Probate Code section 3613.)
   b. (1) Petitioner X is not __ is a plaintiff in a suit arising out of the same incident or accident from which the claim arises. *(If you answered "is," explain in Attachment 3b the circumstances and whether the petitioner's own claim or its disposition has in any way affected the proposed compromise of the claim that is the subject of this petition.)*
      (2) __ The claim that is the subject of this petition has been reduced to a judgment for the claimant.
   c. Petitioner X is not __ is a claimant against the recovery of the claimant.
      (If you answered "is," explain in Attachment 3c the circumstances and whether the petitioner's own claim or its disposition has in any way affected the proposed compromise of the claim or the proposed disposition of the proceeds of the judgment that is the subject of this petition.)

Form Adopted for Mandatory Use
Judicial Council of California
MC-350 [Rev. January 1, 2005]

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM OR PENDING ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR ADULT PERSON WITH A DISABILITY
(Miscellaneous)

Code of Civil Procedure § 372 et seq.;
Probate Code, § 3500 et seq.;
Cal. Rules of Court, rules 378, 7.950, 7.951

Legal Solutions Plus

CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc.,	CASE NUMBER: 26-22191

4. **Nature of claim**

The claim of the minor or adult person with a disability

a. ___ has not been filed in an action or proceeding. *(Complete items 5-23.)*

b. X is the subject of a pending action or proceeding that will be compromised without a trial on the merits of the claim.
Name of court: San Diego - Coordinated with Napa County Actions
Case No.: GIE 034558/Napa 26-22191 Trial date: None *(Complete items 5-23.)*

c. ___ has been or will be reduced to a judgment for the claimant after a trial on the merits of the claim.
Judgment filed on *(date)*: Amount: $
(Attach a copy of the (proposed) judgment as Attachment 4c and complete items 7–8, 10–11, 14–20, and 22–23.)

5. X **Incident or accident**

The incident or accident occurred as follows:

a. Date and time: Between 1993 and 1999
b. Place: San Diego County, California
c. Persons involved *(names)*: Plaintiff and Watchtower defendants and Frederick Mclean.

___ Continued on Attachment 5.

6. X **Nature of incident or accident**

The facts, events, and circumstances of the incident or accident are *(describe)*: This action alleges that Frederick Mclean sexually abused plaintiff from approximately 1993 to 1999. Plaintiff further alleges that the Watchtower defendants are liable under common law negligence; negligent appointment; retention and supervision; and breach of fiduciary duty. Plaintiff suffered emotional distress and other psychological and personal injuries due to the alleged sexual abuse.

___ Continued on Attachment 6.

7. **Injuries**

The following injuries were sustained by the claimant as a result of the incident or accident *(describe)*:

Mental, emotional and personal injuries resulting from years of sexual abuse.

Continued on Attachment 7.

8. **Treatment**

The claimant received the following care and treatment for the injuries sustained as a result of the incident or accident *(describe)*:

Plaintiff has not received medical or psychological treatment to date.

___ Continued on Attachment 8.

CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc.,	CASE NUMBER: 26-22191

9. X **Extent of injuries and recovery**

(An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the claimant's injuries, and a report of the claimant's present condition, must be attached to this petition as Attachment 9.) None .

a. The claimant has recovered completely from the effects of the injuries described in item 7, and there are no permanent injuries.

b. X The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are temporary *(describe the remaining injuries):*

Continued emotional and psychological affects from abuse.

Continued on Attachment 9b.

c. X The claimant has not recovered completely from the effects of the injuries described in item 7, and the following injuries from which the claimant has not recovered are permanent *(describe the permanent injuries):*

Injuries most likely are permanent

Continued on Attachment 9c.

10. **Medical expenses** As far as can be determined, plaintiff has incurred no medical expenses for her injuries.

a. **Totals**

(1) **Total charges:** $ None

(2) **Total amount paid (whether or not by insurance):** $

(3) **Total of negotiated reductions, if any:** $

(4) **Total net amount owed:** $

(5) **Total amount of medical liens, if any: $**

(6) **Total amount of medical expenses to be paid from proceeds of settlement or judgment:** $ None

(Explain any differences between items 10a (4), (5), and (6) in Attachment 10.)

b. The names of the hospitals, doctors, and other health-care providers that have furnished care and treatment for claimant, the respective charges for such care and treatment, the amounts paid, the amounts of negotiated reductions of the charges, if any, the net amounts owed to each provider, and the amount of the provider's lien, if any, are described below:

(1) (a) Provider *(name):*

(b) Address:

(c) Care or treatment *(describe):*

(d) Amount charged: $

(e) Amount paid (whether or not by insurance): $

(f) Negotiated reduction, if any: $

(g) Net amount owed: $

(h) Amount of lien, if any: $

(i) Amount to be paid from proceeds of settlement or judgment: $

(2) (a) Provider *(name):*

(b) Address:

(c) Care or treatment *(describe):*

(d) Amount charged: $

(e) Amount paid (whether or not by insurance): $

(f) Negotiated reduction, if any: $

(g) Net amount owed: $

(h) Amount of lien, if any: $

(i) Amount to be paid from proceeds of settlement or judgment: $

Continued on Attachment 10. *(Provide information about additional providers in the above format.)*

CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc.,	CASE NUMBER: 26-22191

11. **Information about attorney representing or assisting petitioner**

a. (1) ___ Petitioner has not been represented or assisted by an attorney in preparing this petition or in any other way with respect to the claim asserted *(if this item is checked, go to item 12).*

(2) X Petitioner has been represented or assisted by an attorney in preparing this petition or with respect to the claim asserted *(if this item is checked, answer questions 11b–11g below).*

b. The attorney who has represented or assisted petitioner is *(name):* Rudy Nolen, Greg Love and Hartly Hampton

(1) State Bar number: 59808

(2) Law firm:	NOLEN OWENS	LOVE & NORRIS	FIBICH, HAMPTON & LEEBRON, LLP
(3) Address:	1501 28th Street Sacramento, CA 95816	314 Main Street, Suite 300 Fort Worth, TX 76102-7423	1401 McKinney, Suite 1800 Houston, TX 77010
(4) Telephone number:	916-788-0600	(817) 335-2800	(713) 751-0025

c. The attorney X did not ___ did become concerned with this matter, directly or indirectly, at the instance of a party against whom the claim is asserted or a party's insurance carrier. *(If you answered "did," explain the circumstances in Attachment 11c.)*

d. The attorney X is not ___ is representing or employed by any other party or any insurance carrier involved in the matter. *(If you answered "is," identify the party or carrier and explain the relationship in Attachment 11d.)*

e. The attorney X has not ___ has received attorney's fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "has," identify the person who paid the fees or other compensation, the amounts paid, and the dates of payment):*

From whom *(names)*	Amounts	Dates
	$	
	$	
	$	

___ Continued on Attachment 11e.

f. The attorney X does not ___ does expect to receive attorney fees or other compensation in addition to that requested in this petition for services provided in connection with the claim giving rise to this petition *(if you answered "does," identify the person who will pay the fees or other compensation, the amounts to be paid, and the expected dates of payment):*

From whom *(names)*	Amounts	Expected dates
	$	
	$	
	$	

___ Continued on Attachment 11f.

g. Petitioner and the attorney ___ do not X do have an agreement for services provided in connection with the claim giving rise to this petition. *(If you answered "do," describe the terms of the agreement including the amount of any contingency fee):*

The terms of this agreement are confidential. The attorneys are requesting fees pursuant to California law and the exact amount will be presented at the hearing.

___ Continued on Attachment 11g.

CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc.,	CASE NUMBER: 26-22191

12. X **Amount and terms of settlement**

a. X By way of settlement, the following defendants have offered to pay the following sums to the claimant:

Defendants *(names)*	Amounts
The amounts to be paid will be presented	$
at the hearing in the form of a	$
structured settlement. The terms of the	$
settlement and payments are confidential.	**Total: $**

Continued on Attachment 12.

b. The terms of settlement are as follows *(if the settlement is to be paid in installments, both the total amount and the present value of the settlement must be included)*: The minor plaintiff and her mother have agreed to enter into an annunity contract which will be presented to the court at or before the hearing on Thursday, February 1, 2007.

Continued on Attachment 12.

13. X **Damage payments to others**

a. X By way of settlement, no defendant has offered to pay to any other person or persons money damages arising out of the same incident or accident that resulted in injury to the claimant.

b. By way of settlement, one or more defendants have offered to pay to another person or persons money damages arising out of the same incident or accident.

(1) The total amount offered by all defendants to others *(specify)*: $

(2) The damage payments are to be apportioned and distributed as follows:

Other plaintiffs or claimants *(names)*	Amounts
	$
	$
	$

Continued on Attachment 13b.

14. **Attorney fees and expenses (other than medical expenses) to be paid from proceeds of settlement or judgment**

a. Total amount of attorney fees for which court approval is requested: $ See 12a above.

(If attorney fees are requested, a declaration from the attorney explaining the basis for the requested fees must be attached as Attachment 14a.)

b. The following additional items of expense (other than medical expenses) have been incurred or paid, are reasonable, resulted from the incident or accident, and should be paid out of claimant's share of the proceeds of the settlement or judgment:

Items	Payees *(names)*	Amounts
A declaration will be presented		$
at the hearing as the terms and the		$
amounts of the settlement are		$
confidential. See 12a above.		$
		$
		$
		$
		$
		$
		$
		$
	Total:	$

Continued on Attachment 14b.

15. **Total balance**
The balance of the proceeds of the proposed settlement or judgment remaining for the claimant after payment of all requested fees and expenses is: $ See 12a above

16. **Disposition of balance of proceeds of settlement or judgment**
Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows:

a. ___ There is a guardianship of the estate of the minor or a conservatorship of the estate of the adult person with a disability filed in *(name of court)*:
Case No.:

(1) ___ $ ____ of the proceeds in money or other property will be paid or delivered to the guardian of the estate of the minor or the conservator of the estate of the conservatee. The money or other property is specified in Attachment 16a(1).

(2) ___ Petitioner is the guardian or conservator of the estate of the minor or the adult person with a disability. Petitioner requests authority to deposit or invest $ ____ of the money or other property to be paid or delivered under 16a(1) with one or more financial institutions in this state or with a trust company, subject to withdrawal only as authorized by the court. The money or other property and the name, branch, and address of each financial institution or trust company are specified in Attachment 16a(2).

(3) ___ Petitioner proposes that all or a portion of the proceeds **not** become part of the guardianship or conservatorship estate. Petitioner requests authority to deposit or transfer these proceeds as follows *(check all that apply)*:

(a) ___ $ ____ will be deposited in insured accounts in one or more financial institutions in this state from which no withdrawals can be made without a court order. The name, branch, and address of each depository are specified in Attachment 16a(3).

(b) ___ $ ____ will be invested in a single-premium deferred annuity subject to withdrawal only on order of the court. The terms and conditions of the annuity are specified in Attachment 16a(3).

(c) ___ $ ____ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the property to be transferred are specified in Attachment 16a(3).

(d) ___ $ ____ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the property to be transferred are specified in Attachment 16a(3)
A copy of the (proposed) judgment is attached as Attachment 4c.

(e) ___ $ ____ will be transferred to the trustee of a special needs trust under Probate Code sections 3602(d) and 3604 for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the property to be transferred are specified in Attachment 16a(3).

b. X There is no guardianship of the estate of the minor or conservatorship of the estate of the adult person with a disability. Petitioner requests that the balance of the proceeds of the settlement or judgment be disbursed as follows *(check all that apply)*:

(1) ___ A guardian of the estate of the minor or a conservator of the estate of the adult person with a disability will be appointed. $ ____ of money and other property will be paid or delivered to the person so appointed. The money or other property are specified in Attachment 16b(1).

(2) ___ $ ____ of money will be deposited in insured accounts in one or more financial institutions in this state, subject to withdrawal only upon the authorization of the court. The name, branch, and address of each depository are specified in Attachment 16b(2).

(3) X $ See 12a above. of money will be invested in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court. The terms and conditions of the annuity are specified in Attachment 16b(3).

16. b. **Disposition of proceeds of settlement or judgment**

(4) $ will be paid or transferred to the trustee of a special needs trust under Probate Code sections 3604 and 3611(c) for the benefit of the minor or the adult person with a disability. The terms of the proposed special needs trust and the money or other property to be paid or transferred are specified in Attachment 16b(4).

(5) $ will be paid or delivered to a parent of the minor, upon the terms and under the conditions specified in Probate Code sections 3401–3403, without bond. The name and address of the parent and the money or other property to be delivered are specified in Attachment 16b(5). *(Value of minor's entire estate, including the money or property to be delivered, must not exceed $5,000.)*

(6) $ will be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act. The name and address of the proposed custodian and the money or other property to be transferred are specified in Attachment 16b(6).

(7) $ will be transferred to the trustee of a trust that is either created by or approved of in the order approving the settlement or the judgment given or to be given for the minor. This trust is revocable when the minor attains the age of 18 years and contains all other terms and conditions determined to be necessary by the court to protect the minor's interests. The terms of the proposed trust and the money or other property to be transferred are specified in Attachment 16b(7).
A copy of the (proposed) judgment is attached as Attachment 4c.

(8) $ of money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions are specified on Attachment 16b(8). *(Value must not exceed $20,000.)*

(9) $ of property other than money will be held on such conditions as the court in its discretion determines is in the best interest of the minor or the adult person with a disability. The proposed conditions and the property are specified in Attachment 16b(9).

(10) $ will be deposited with the county treasurer of the County of *(name)*: The deposit is authorized under and subject to the conditions specified in Probate Code section 3611(h).

(11) $ will be paid or transferred to the adult person with a disability. The money or other property is specified in Attachment 16b(11).

Continued on Attachment 16.

17. **Medi-Cal notice**
Notice of the claim or action has X has not been given under Welfare and Institutions Code section 14124.73.
(If notice has not been given, explain):

There are no liens of any kind, including any from Medi-Cal.

Continued on Attachment 17.

18. **Statutory liens for special needs trust**
Petitioner requests a court order for payment of funds to a special needs trust *(explain how statutory liens under Probate Code section 3604, if any, will be satisfied):*

Continued on Attachment 18.

CASE NAME: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H. v. Watchtower Bible and Tract Society of New York, Inc.	CASE NUMBER: 26-22191

19. **Summary** - See 12 a above

a. Gross amount of proceeds of settlement or judgment for claimant: $

b. Medical expenses to be paid from proceeds of settlement or judgment: $

c. Attorney fees to be paid from proceeds of settlement or judgment: $

d. Expenses (other than medical) to be paid from proceeds of settlement or judgment: $

e. Total of fees and expenses to be paid from proceeds of settlement or judgment *(add (b), (c), and (d))*: $ ( )

f. Balance of proceeds of settlement or judgment available for claimant after payment of all fees and expenses *(subtract (e) from (a))*: $

20. ☐ **Additional orders**
Petitioner requests the following additional orders *(specify and explain)*:

☐ Continued on Attachment 20.

21. X **Petitioner has made a careful and diligent inquiry and investigation to ascertain the facts relating to the incident or accident in which the claimant was injured; the responsibility for the incident or accident; and the nature, extent, and seriousness of the claimant's injuries. Petitioner fully understands that if the compromise proposed in this petition is approved by the court and is consummated, the claimant will be forever barred from seeking any further recovery of compensation even though the claimant's injuries may in the future appear to be more serious than they are now thought to be.**

22. Petitioner recommends the compromise settlement or the proposed disposition of the proceeds of the judgment for the claimant to the court as being fair, reasonable, and in the best interest of the claimant and requests that the court approve this compromise settlement or proposed disposition and make such other and further orders as may be just and reasonable.

23. Number of pages attached: 0

Date: January 26, 2007

Stephen W. Owens, Esq.
(TYPE OR PRINT NAME OF ATTORNEY)

▶ Stephen W. Owens
(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January ___, 2007

S.A.H.
(TYPE OR PRINT NAME OF PETITIONER)

▶
(SIGNATURE OF PETITIONER)

CASE NAME: A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.
COURT: San Diego Superior Court
CASE NO.: GIE034558

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On January 26, 2007, I caused the within **PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM - MINOR** to be served as follows:

XXX **MAIL** -- I am readily familiar with Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601, I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

____ **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Robert J. Schnack, Esq.
BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, CA 95814

Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Tommy Fibich, Esq.
Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON, LEEBRON & GARTH
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 26, 2007, at Sacramento, California.

Sophia Acken

CM-200

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Robert J. Schnack, SBN 191987
Bullivant Houser Bailey PC
1415 L Street, Suite 1000
Sacramento, CA 95814
TELEPHONE NO.: (916) 930-2500 FAX NO. (Optional): (916) 930-2501
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

FILED

JAN 31 2007

Clerk of the Napa Superior Court
By: S. Garcia Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
STREET ADDRESS: 825 Brown Street
MAILING ADDRESS:
CITY AND ZIP CODE: Napa, CA 94559
BRANCH NAME:

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al. AND COORDINATED CASES

NOTICE OF SETTLEMENT OF ENTIRE CASE

CASE NUMBER:
26-22191 (LEAD CASE)
JCCP No. 4374

JUDGE: Raymond A. Guadagni
DEPT.: A

NOTICE TO PLAINTIFF OR OTHER PARTY SEEKING RELIEF

You must file a request for dismissal of the entire case within 45 days after the date of the settlement if the settlement is **unconditional.** You must file a dismissal of the entire case within 45 days after the date specified in item 1b below if the settlement is **conditional.** Unless you file a dismissal within the required time or have shown good cause before the time for dismissal has expired why the case should not be dismissed, the court will dismiss the entire case.

To the court, all parties, and any arbitrator or other court-connected ADR neutral involved in this case:

1. This entire case has been settled. The settlement is: for the seven coordinated actions shown on Exh. A hereto;
   a. ☒ **Unconditional.** A request for dismissal will be filed within 45 days after the date of the settlement. Expected Date of settlement: On or a bout February 1, 2007 (see also "note" on Exh. A hereto)
   b. ☐ **Conditional.** The settlement agreement conditions dismissal of this matter on the satisfactory completion of specified terms that are not to be performed within 45 days of the date of the settlement. A request for dismissal will be filed no later than *(date):*
2. Date initial pleading filed: Various dates.
3. Next scheduled hearing or conference: February 1, 2007
   a. Purpose: Petition for Approval of Minor's Compromise – this hearing is to remain on calendar
   b. ☒ (1) Date: 2/1/07
      (2) Time: 8:30 am
      (3) Department: A

Received
JAN 29 2007
Napa Superior Court

4. Trial date:
   a. ☐ No trial date set.
   b. ☒ (1) Date: Track I cases of Tim W. and Wimberley Gutierrez, et al set for trial on April 3, 2007 and May 15, 2007, respectively, in Tehama County.
      (2) Time:
      (3) Department:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 26, 2007

Robert J. Schnack
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ RJSchnack
(SIGNATURE)

Form Adopted for Mandatory Use
Judicial Council of California
CM-200 [Rev. January 1,2007]

NOTICE OF SETTLEMENT OF ENTIRE CASE

3673

Cal. Rules of Court, rule 3.1385
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

EXHIBIT A

EXHIBIT 'A'

This notice of settlement includes the following seven cases that have been coordinated under JCCP No. 4374:

Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.
Napa County Superior Court Case No. 26-22191 (designated as lead case)

Tabitha H. v. Watchtower Bible and Tract Society of N.Y., et al.
Napa County Superior Court Case No. 26-23929

Ken L. v. Watchtower Bible and Tract Society of N.Y., et al.
Placer County Superior Court Case No. SCV 16600

Tim W. v. Watchtower Bible and Tract Society of New York, et al.
Tehama County Superior Court Case No. 52594

Wimberley Gutierrez, et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.
Tehama County Superior Court Case No. 52598

Daniel West, et al. v. Watchtower Bible and Tract Society of New York, et al.
Yolo County Superior Court Case No. CV03-1439

A.G., G.G., et al. v. Watchtower Bible and Tract Society of New York, et al.
San Diego County Superior Court No. GIE034558

NOTE: In *A.G., G.G., et al.*, the settlement is subject to court approval of a minor's compromise for the minor plaintiff S.H.

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF SETTLEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on January 26, 2007, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
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LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB 1 2007

Clerk of the Napa Superior Court
By: _____
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

STIPULATION BETWEEN PARTIES TO SHORTEN TIME FOR HEARING ON PETITION TO APPROVE COMPROMISE OF MINOR'S CLAIM

Hearing: February 1, 2007
Time: 8:30 a.m.
Dept: A, Napa County Superior Court
Judge: Honorable Raymond A. Guadagni

Attorneys for Plaintiffs
A.B., G.G., S.H., and N.H.;
S.H. and N.H. are minors,
by and through their Guardian Ad Litem,
their Mother, S.A.H.

Received
JAN 25 2007
Napa Superior Court

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive.

Defendants.

CASE NO: GIE034558

TO EACH PARTY AND TO THE COUNSEL OF RECORD FOR EACH PARTY:

IT IS HEREBY STIPULATED AND AGREED by the Parties hereto through their respective attorneys as follows:

That time may be shortened to hearing plaintiff's petition to approve compromise of minor's claim be heard in Department A on February 1, 2007.

Dated: 1-23-07

NOLEN ■OWENS

By: _____
Stephen W. Owens, Esq.
Attorneys for plaintiffs

Dated: 1/23/07

BULLIVANT HOUSER BAILEY

By: _____
Robert J. Schnack, Esq.
Attorneys for defendants

IT IS SO ORDERED.

Dated: 1/30/07

By: _____
Honorable Raymond A. Guadagni
Coordination Judge

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 - 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On January 24, 2007, I caused the within **STIPULATION BETWEEN PARTIES ON SHORTEN TIME FOR HEARING ON PETITION TO APPROVE COMPROMISE OF MINOR'S CLAIM,** the original of which was produced on recycled paper, to be served as follows:

X **MAIL** –I am readily familiar with the Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)ss

___ **FACSIMILE** – On January 24, 2007 at _____ a.m./p.m., by use of facsimile machine telephone number (916) 733-0601. I served a true copy of the aforementioned document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

Attorney for Watchtower Defendants
Robert J. Schnack
BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, Ca 95814

Co Counsel for Plaintiffs
Greg Love
Kimberlee Norris
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76104

Hartley Hampton, Esq.
Mike Leebron, Esq.
FIBICH, HAMPTON & LEEBRON
1401 McKinney, Suite 1800
Five Houston Center
Houston, TX 77010

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 24, 2007, at Sacramento, California.

Sophia Acken

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Hearing: Civil Petition **PID # :**	**Case #** 26-22191 **Event Date:** 02-01-07 **Clerk:** D. Coffelt **Reporter:** Linda Shryack #12104 **Cite/Report #:**

Appearances:
Rudy Nolan, Counsel for Plaintiff
Robert J. Schnack, Counsel for Defendants Watchtower Bible and Tract Society of New York, Inc.

SEE AMENDED VERSION

RE: A.G, G.G. vs. Watchtower Bible and Tract Society of New York, et al
GIE034558 San Diego

Sara Howard, Minor and Sharon Howard, Parent present.

This matter comes before the Court for hearing Petition for Compromise of Minor's Claim.

Court and counsel meet in chambers for colloquy.

Court and counsel return to the courtroom and proceedings begin.

A Structured Settlement is announced on the record.

The Court approves the Compromise of Minor's Claim.

Robert Noland, Attorney for Plaintiff's shall prepare an order with approval as to form.

Pursuant to stipulation of counsel and made the order of the Court, the structured settlement shall be a confidential settlement.

The Court orders the court reporters transcript of this proceeding shall not be prepared unless ordered by the Court.

Continuance:
March 15, 2007 at 8:30 a.m. in Courtroom A for Order to Show Cause re Court's Motion to Dismiss as to all remaining cases.

Case Management Conference scheduled for July 12, 2007 shall be vacated.

Robert J. Schnack, Attorney for Defendants shall send notice to all parties.

The Court further orders any settlement documents in any of the remaining cases shall be sealed.

Coordinated remaining case:

Napa County
26-22191 Charissa W. et al vs. Watchtower Bible and Tract Society of New York, Inc.

26-23929 Tabitha H. vs. Watchtower Bible and Tract Society of New York, Inc.

Tehama County
52598 Wimberley et al vs. Watchtower Bible and Tract Society of New York, Inc.

52594 Tim W. vs. Watchtower Bible and Tract Society of New York, Inc.

Yolo County
CV031439 West, et al vs. Watchtower Bible and Tract Society of New York, Inc.

Placer County
SCV1600 Ken L. vs. Watchtower Bible and Tract Society of New York, Inc.

-oOo-

SUPERIOR COURT OF CALIFORNIA, COUNTY OF NAPA
AMENDED MINUTE ORDER

Case: Charissa W., et al vs Roes 1-100 et al. (G) **Judge:** Raymond A. Guadagni **Courtroom:** Department A **Event:** Hearing: Civil Petition **PID#**	**Case #:** 26-22191 **Event Date:** 02-01-07 **Clerk:** D. Coffelt **Reporter:** Linda Shryack #12104 **Cite/Report #**

Rudy Nolan, Counsel for Plaintiff
Robert J. Schnack, Counsel for Defendants Watchtower Bible and Tract Society of New York, In

AMENDED VERSION

RE: A.G, G.G. vs. Watchtower Bible and Tract Society of New York, et al
GIE034558 San Diego

Sara H., Minor and Sharon Howard, Parent present.

This matter comes before the Court for hearing Petition for Compromise of Minor's Claim.

Court and counsel meet in chambers for colloquy.

Court and counsel return to the courtroom and proceedings begin.

A Structured Settlement is announced on the record.

The Court approves the Compromise of Minor's Claim.

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Pursuant to stipulation of counsel and made the order of the Court, the structured settlement shall be a confidential settlement.

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Continuance:
March 15, 2007 at 8:30 a.m. in Courtroom A for Order to Show Cause re Court's Motion to Dismiss as to all remaining cases.

Case Management Conference scheduled for July 12, 2007 shall be vacated.

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Coordinated remaining case:

Napa County
26-22191 Charissa W. et al vs. Watchtower Bible and Tract Society of New York, Inc.

26-23929 Tabitha H. vs. Watchtower Bible and Tract Society of New York, Inc.

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CV031439 West, et al vs. Watchtower Bible and Tract Society of New York, Inc.

Placer County
SCV1600 Ken L. vs. Watchtower Bible and Tract Society of New York, Inc.

-oOo-

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
Telephone: (916) 733-0600
Facsimile: (916) 733-0601

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FIBICH, HAMPTON & LEEBRON, LLP
Five Houston Center
1401 McKinney, Suite 1800
Houston, TX 77010
Telephone: (713) 751-0025

Greg Love, SBN 12592020
LOVE & NORRIS
314 Main Street, Suite 300
Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED

FEB 05 2007

Clerk of the Napa Superior Court
By: J. Oliver
Deputy

[TO BE SEALED BY COURT]

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM - MINOR

Hearing Date: 2/1/07
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond Guadagni

Attorneys for Plaintiffs
A.B., G.G., S.H., and N.H.;
S.H. and N.H. are minors,
by and through their Guardian Ad Litem,
their Mother, S.A.H.

///

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive.

Defendants.

CASE NO: GIE034558

Approved as to form.

Dated: 2/2/07

BULLIVANT HOUSER BAILEY

By: _____

Robert J. Schnack, Esq.
Attorney for Defendants

Note from Barbara Anderson

By request of the Superior Court in Napa County, the following thirteen pages are deleted. The thirteen deleted pages contain settlement details.

The court's request is documented in a letter dated June 27, 2007 from Stephen A. Bouch, Court Executive Officer of the Superior Court of California, County of Napa. A copy of Mr. Bouch's letter follows the thirteen deleted pages. This letter should not be confused as being part of the Charissa et al coordinated lawsuits' case file. Mr. Bouch's letter was issued post-lawsuit settlement/dismissal as a result of the court releasing documents Mr. Bouch says should have been sealed.

Researchers are left to consider contemporary settlements in child abuse lawsuits against religious organizations. For example, in 2003 the Catholic Archdiocese of Seattle settled child abuse lawsuits against it for an average of about $500,000 per plaintiff. In 2007 the Rockford Diocese settled sexual abuse cases with victims receiving a little over $1,000,000 each.

Disclaimer: There was approximately a ten (10) day span between the Napa court sending these documents and its subsequent request for their deletion. During this period several copies were distributed to several individuals and organizations. This author has no control over how these documents might be used.

ATTORNEY OR PARTY WITHOUT ATTORNEY

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Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

Form Adopted for Mandatory Use
Judicial Council of California
MC-350 [Rev. January 1, 2005]

PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM OR PENDING ACTION OR DISPOSITION OF PROCEEDS OF JUDGMENT FOR MINOR OR ADULT PERSON WITH A DISABILITY
(Miscellaneous)

Code of Civil Procedure § 372 et seq.,
Probate Code, § 3500 et seq.,
Cal. Rules of Court, rules 378, 7.950, 7.951

Legal Solutions Plus

CASE NAME:

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

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..... Continued on Attachment 8.

CASE NAME:

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Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

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(h) Amount of lien, if any: $

(i) Amount to be paid from proceeds of settlement or judgment: $

Continued on Attachment 10. *(Provide information about additional providers in the above format.)*

CASE NAME

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

$
$
$
$

Continued on Attachment 14b.

Total: $

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

Continued on Attachment 11g.

CASE NAME

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

...deferred annuity, subject to
...ation of the court. The terms and conditions of the annuity are specified
in Attachment 16b(3).

CASE NAME

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

17.

18.

Continued on Attachment 18.

CASE NAME:

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Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

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I dec

Date

(SIGNATURE OF PETITIONER)

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

CASE NAME: A.B. ir

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

ATTORNEY OR PARTY

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

CASE NAME:

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

CASE NAME:

Deleted by Barbara Anderson at request of
Superior Court of California, County of Napa

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12.

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Superior Court of California
County of Napa

Judges
Francisca P. Tisher
Stephen T. Kroyer
Raymond A. Guadagni
Diane M. Price
Rodney G. Stone

Commissioners
Michael S. Williams
Monique Langhorne-Johnson

Executive Officer
Stephen A. Bouch

June 27, 2007

BY ELECTRONIC MAIL

Ms. Barbara Anderson
andersonsinfo@hotmail.com

Re: *Charissa W. and Nicole D. vs. Watchtower Bible and Tract Society of New York, Inc., et al.*
Napa Superior Court No. 26-22191

Dear Ms. Anderson:

Pursuant to your request on June 13, 2007, a CD with images of documents in the above-entitled case was provided to you.

As we discussed in our telephone conversation today, the Court has identified a confidential/sealed document that should not have been included on the CD. The 13-page document was filed on February 5, 2007, and is entitled PETITION TO APPROVE COMPROMISE OF DISPUTED CLAIM-MINOR. We are requesting this confidential/sealed document be deleted and not distributed. If you are unsure of which 13 pages comprise this confidential document, please contact me, and I will clarify this matter for you.

We apologize for any inconvenience this may have caused.

If you have any questions, please contact me at (707) 299-1110.

Sincerely,

Stephen A. Bouch /RDF

Stephen A. Bouch
Court Executive Officer

mal/crb

Telephone
(707) 299-1100

Historic Courthouse
825 Brown Street
Napa, CA 94559-3031
FAX
(707) 299-1250

Criminal Courts Building
1111 Third Street
Napa, CA 94559-3001
FAX
(707) 253-4673

Rudy Nolen, SBN 59808
Stephen W. Owens, SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
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Facsimile: (916) 733-0601

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FIBICH, HAMPTON & LEEBRON, LLP
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Fort Worth, TX 76102-7423
Telephone: (817) 335-2800
Facsimile: (817) 335-2912

Attorneys for Plaintiffs
CHARISSA W. and NICOLE D.

FILED
FEB 05 2007
Clerk of the Napa Superior Court
By: J. O'Dell
Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D.,

Plaintiffs,

vs.

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

Defendants.

AND COORDINATED ACTIONS

CASE NO: 26-22191

Judicial Council Coordination Proceeding No. 4374

ORDER APPOINTING GUARDIAN AD LITEM

Hearing Date: 2/1/07
Time: 8:30 a.m.
Dept: A
Judge: Hon. Raymond Guadagni

Attorneys for Plaintiffs
A.B., G.G., S.H., and N.H.;
S.H. and N.H. are minors,
by and through their Guardian Ad Litem,
their Mother, S.A.H.

///

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.

Plaintiffs,

vs.

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA, INC., JEHOVAH'S WITNESSES ALPINE CONGREGATION AND DOES 1 Through 20, Inclusive.

Defendants.

CASE NO: GIE034558

IT IS HEREBY ORDERED that Sharon Howard, biological mother of minor plaintiff Sarah Howard, is appointed Guardian ad Litem for all proceedings connected with her daughter's claims and causes of action against defendants.

IT IS SO ORDERED.

JUDGE OF THE SUPERIOR COURT

2/2/07

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
Stephen W. Owens, Esq., SBN 84859
Stephen W. Owens,Esq., SBN 84859
NOLEN & ASSOCIATES
1501 28th Street
Sacramento, CA 95816
TELEPHONE NO.: (916)733-0600 FAX NO. *(Optional)*: (916)733-0601
E-MAIL ADDRESS *(Optional)*:
ATTORNEY FOR *(Name)*: Plaintiffs

FOR COURT USE ONLY

FILED
FEB 05 2007
Clerk of the Napa Superior Court
By: V. Olivera
Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS: East County Regional Center
MAILING ADDRESS: 250 East Main Street
CITY AND ZIP CODE: El Cajon, CA 92020
BRANCH NAME:

PLAINTIFF/PETITIONER: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.H.
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York, Inc., et al.

APPLICATION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM — CIVIL

X EX PARTE

CASE NUMBER:
GIE 034558
Coordinated with Case No. 26-22191 Napa Sup. Court

Note: This form is for use in civil proceedings in which a party is a minor, an incapacitated person, or a person for whom a conservator has been appointed. A party who seeks the appointment of a guardian ad litem in a family law proceeding should use form FL-935. A party who seeks the appointment of a guardian ad litem in a probate proceeding should use form DE-350/GC-100. An individual may not act as a guardian ad litem unless he or she is represented by an attorney or is an attorney.

1. Applicant *(name)*: S.A.H. (please see Attachment 1) is
   a. [x] the parent of *(name)*: S.H., a minor, who is a plaintiff in this action
   b. [ ] the guardian of *(name)*:
   c. [ ] the conservator of *(name)*:
   d. [ ] a party to the suit.
   e. [ ] the minor to be represented *(if the minor is 14 years of age or older)*.
   f. [ ] another interested person *(specify capacity)*:

2. This application seeks the appointment of the following person as guardian ad litem *(state name, address, and telephone number)*:
   S.A.H. c/o Nolen & Associates
   1501 28th Street, Sacramento, CA 95816
   Telephone: (916) 733-0600

3. The guardian ad litem is to represent the interests of the following person *(state name, address, and telephone number)*:
   S.H. c/o Nolen & Associates
   1501 28th Street, Sacramento, CA 95816
   Telephone: (916) 733-0600

4. The person to be represented is:
   a. [x] a minor *(date of birth)*: S.H. (8-28-90)
   b. [ ] an incompetent person.
   c. [ ] a person for whom a conservator has been appointed.

5. The court should appoint a guardian ad litem because:
   a. [x] the person named in item 3 has a cause or causes of action on which suit should be brought *(describe)*:
   S.H. was a victim of sexual abuse which was carried out by an agent, servant or other party for whom defendants are responsible.

[ ] Continued on Attachment 5a.

Received
FEB 05 2007

Form Adopted for Mandatory Use
Judicial Council of California
982(a)(27) [Rev. January 1, 2004]

Legal Solutions Plus

Code of Civil Procedure, § 372 et seq.

PLAINTIFF/PETITIONER: A.B., G.G., N.H. and S.H., a minor, by and through her Guardian Ad Litem and mother, S.A.	CASE NUMBER: GIE 034558
DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society	

5. b. ___ more than 10 days have elapsed since the summons in the above-entitled matter was served on the person named in item 3, and no application for the appointment of a guardian ad litem has been made by the person identified in item 3 or any other person.

   c. ___ the person named in item 3 has no guardian or conservator of his or her estate.

   d. X the appointment of a guardian ad litem is necessary for the following reasons *(specify):*

   ___ Continued on Attachment 5d.

6. The proposed guardian ad litem's relationship to the person he or she will be representing is:
   a. X related *(state relationship):* Mother
   b. ___ not related *(specify capacity):*

7. The proposed guardian ad litem is fully competent and qualified to understand and protect the rights of the person he or she will represent and has no interests adverse to the interests of that person. *(If there are any issues of competency or qualification or any possible adverse interests, describe and explain why the proposed guardian should nevertheless be appointed):*

   ___ Continued on Attachment 7.

Stephen W. Owens, Esq., SBN 84859
(TYPE OR PRINT NAME)

▶ Stephen W. Owens
(SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 3, 2007

S.A.H.
(TYPE OR PRINT NAME)

▶ S.A.H.
(SIGNATURE OF APPLICANT)

CONSENT TO ACT AS GUARDIAN AD LITEM

I consent to the appointment as guardian ad litem under the above petition.

Date: 2/3/07

S.A.H.
(TYPE OR PRINT NAME)

▶ S.A.H.
(SIGNATURE OF PROPOSED GUARDIAN AD LITEM)

ORDER EX PARTE

THE COURT FINDS that it is reasonable and necessary to appoint a guardian ad litem for the person named in item 3 of the application, as requested.

THE COURT ORDERS that *(name):*
is hereby appointed as the guardian ad litem for *(name):*
for the reasons set forth in item 5 of the application.

Date: 2/3/07

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

CASE NAME: A.B., G.G., S.H., and N.H.; S.H. and N.H. are minors, by and through their Guardian Ad Litem, their Mother, S.A.H.
COURT: San Diego Superior Court
CASE NO.: *GIE034558*

PROOF OF SERVICE

I am a citizen of the United States, employed in the County of Sacramento, State of California. My business address is 1501 28th Street, Sacramento, California 95816. I am over the age of 18 years and not a party to the above-entitled action.

On February 5, 2007, I caused the within **APPLICATION AND ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM - CIVIL** to be served as follows:

____ **MAIL** -- I am readily familiar with Nolen & Associates' practice for collection and processing of correspondence for mailing with the United States Postal Services. Pursuant to said practice, each document is placed in an envelope, the envelope is sealed, the appropriate postage is placed thereon and the sealed envelope is placed in the office mail receptacle. Each day's mail is collected and deposited in a U.S. mailbox at Sacramento, California at or before the close of each day's business. (CCP Section 1013a(3).)

____ **FACSIMILE** – On _____ at _____ a.m./p.m., by use of facsimile machine *telephone number (916) 733-0601, I served a true copy of the aforementioned* document(s) on the parties in said action by transmitting by facsimile machine to the numbers as set forth above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3) and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Declaration.

XXX **PERSONAL SERVICE** – Delivered by hand to the addressee addressed as set forth below.

____ **OVERNIGHT COURIER** – By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:

Robert J. Schnack, Esq.
BULLIVANT HOUSER BAILEY
1415 L Street, Suite 1000
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 5, 2007, at Sacramento, California.

Sophia Acken

ORIGINAL

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED

FEB 13 2007

Clerk of the Napa Superior Court
By: M. Benavides
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **REQUEST FOR DISMISSAL OF CERTAIN COORDINATED ACTIONS**
AND COORDINATED CASES	

Filed herewith are "request for dismissal" forms for each of the following coordinated cases:

1. *Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.,* Napa County Superior Court Case No. 26-22191 (designated as lead case);

2. *Tabitha H. v. Watchtower Bible and Tract Society of N.Y., et al.*, Napa County Superior Court Case No. 26-23929;

3. *Ken L. v. Watchtower Bible and Tract Society of N.Y., et al.*, Placer County Superior Court Case No. SCV 16600;

4. *Tim W. v. Watchtower Bible and Tract Society of New York, et al.*, Tehama County Superior Court Case No. 52594;

Received
FEB - 9 2007
Napa Superior Court

5. *Wimberley Gutierrez, et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.*, Tehama County Superior Court Case No. 52598;

6. *Daniel West, et al. v. Watchtower Bible and Tract Society of New York, et al.*, Yolo County Superior Court Case No. CV03-1439;

7. *A.G., G.G., et al. v. Watchtower Bible and Tract Society of New York, et al.*, San Diego County Superior Court No. GIE034558.

Accordingly, we respectfully request that the requested dismissals be entered by this Court and that endorsed copies of each request for dismissal be returned to the undersigned defense counsel. (A Notice of Settlement was filed with the Court on January 31, 2007.)

DATED: February 8, 2007

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

4243973.1

*****

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack, SBN 191987 Bullivant Houser Bailey 1415 L Street, Suite 1000 Sacramento, Ca. 95814 ATTORNEY FOR (Name): The Church Defendants		
Insert name of court and name of judicial district and branch court, if any: Yolo County Superior Court		
PLAINTIFF/PETITIONER: Daniel West, et al DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al		
REQUEST FOR DISMISSAL ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other (specify):**	CASE NUMBER: CV03-1439 Napa County JCCP No. 4374	

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* Without an award of attorneys fees and costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice ▶ _____
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶ _____
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date):*
4. ☐ Dismissal entered on *(date):* as to only *(name):*
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify):*

6. ☐ a. Attorney or party without attorney notified on *(date):*
   b. Attorney or party without attorney *not notified.* Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory Use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and [illegible]ss): TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack, SBN 191987 Bullivant Houser Bailey 1415 L Street, Suite 1000 Sacramento, Ca. 95814 ATTORNEY FOR (Name): The Church Defendants	
Insert name of court and name of judicial district and branch court, if any: Tehama County Superior Court	
PLAINTIFF/PETITIONER: Tim W. DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al	
REQUEST FOR DISMISSAL ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other *(specify)* :**	CASE NUMBER: 52594 Napa County JCCP No. 4374
- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -	

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify):** Without an award of attorneys fees or costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. ***TO THE CLERK:*** *Consent* to the above dismissal is hereby given.**
   Date:

▶ _____
(SIGNATURE)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date):*
4. ☐ Dismissal entered on *(date):* as to only *(name):*
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify):*

6. ☐ a. Attorney or party without attorney notified on *(date):*
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov
American LegalNet, Inc.
www.FormsWorkflow.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and [redacted]ss): TELEPHONE NO.:
Robert J. Schnack, SBN 191987
Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, Ca. 95814

ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

Insert name of court and name of judicial district and branch court, if any:
Napa County Superior Court

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al

REQUEST FOR DISMISSAL

- ☒ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ ***Eminent Domain***
- ☐ **Other *(specify)*:**

CASE NUMBER:
26-22191

Napa County JCCP No. 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* Without an award of attorneys' fees or costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶ _____
(SIGNATURE)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov
American LegalNet, Inc.
www.FormsWorkflow.com

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and [redacted]ss):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack, SBN 191987 Bullivant Houser Bailey 1415 L Street, Suite 1000 Sacramento, Ca. 95814		
ATTORNEY FOR (Name): The Church Defendants		
Insert name of court and name of judicial district and branch court, if any: Tehama County Superior Court		
PLAINTIFF/PETITIONER: Wimberley Gutierrez et al DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al		
REQUEST FOR DISMISSAL ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other (specify) :**		CASE NUMBER: 52598 Napa County JCCP 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify):** Without an award of attorneys fees and costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶ _____
(SIGNATURE)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date):*
4. ☐ Dismissal entered on *(date):* as to only *(name):*
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify):*

6. ☐ a. Attorney or party without attorney notified on *(date):*
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack, SBN 191987 Bullivant Houser Bailey 1415 L Street, Suite 1000 Sacramento, Ca. 95814 ATTORNEY FOR (Name): The Church Defendants		
Insert name of court and name of judicial district and branch court, if any: Napa County Superior Court		
PLAINTIFF/PETITIONER: Tabatha H. DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of N.Y., et al		
REQUEST FOR DISMISSAL ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other (specify) :**		CASE NUMBER: 26-23929 Napa County JCCP 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* Without an award of attorneys' fees or costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
Date:

▶ _____
(SIGNATURE)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date)*:
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☐ a. Attorney or party without attorney notified on *(date)*:
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov
American LegalNet, Inc.
www.FormsWorkflow.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.:
Robert Schnack, SBN 191987
Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, Ca. 95814

ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

Insert name of court and name of judicial district and branch court, if any:
Placer County Superior Court

PLAINTIFF/PETITIONER: Ken L.

DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of N.Y., et al

REQUEST FOR DISMISSAL

- ☒ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ **Eminent Domain**
- ☐ ***Other (specify) :***

CASE NUMBER:
SCV 16600
Napa County JCCP No. 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ *Complaint* (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify):** Without an award of attorneys fees or costs to any party.

Date: February 1, 2007

Rudy Nolen
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

_____
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

▶ _____
(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date):*
4. ☐ Dismissal entered on *(date):* as to only *(name):*
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify):*

6. ☐ a. Attorney or party without attorney notified on *(date):*
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov

American LegalNet, Inc.
www.FormsWorkflow.com

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.:
Robert J. Schnack, SBN 191987
Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, Ca. 95814

FOR COURT USE ONLY

ATTORNEY FOR (Name): The Church Defendants

Insert name of court and name of judicial district and branch court, if any:
San Ddiego County Superior

PLAINTIFF/PETITIONER: A.G., G.G., et al

DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al

REQUEST FOR DISMISSAL

- ☒ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ **Eminent Domain**
- ☐ **Other (specify) :**

CASE NUMBER:
GIE034558

Napa County JCCP No. 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify):** Without an awsard of attorneys fees and costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice ▶ _____
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶ _____
(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☐ Dismissal entered as requested on *(date):*
4. ☐ Dismissal entered on *(date):* as to only *(name):*
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify):*

6. ☐ a. Attorney or party without attorney notified on *(date):*
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: Clerk, by _____, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov
American LegalNet, Inc.
www.FormsWorkflow.com

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

REQUEST FOR DISMISSAL OF COORDINATED ACTION

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 8, 2007, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.:
Robert J. Schnack, SBN 191987
Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, Ca. 95814

ATTORNEY FOR (Name): The Church Defendants

FOR COURT USE ONLY

FILED

FEB 13 2007

Clerk of the Napa Superior Court
By: M. Benavidez
Deputy

Insert name of court and name of judicial district and branch court, if any:
Napa County Superior Court

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al

REQUEST FOR DISMISSAL

- ☒ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ **Eminent Domain**
- ☐ **Other *(specify)*:**

CASE NUMBER:
26-22191

Napa County JCCP No. 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (4) ☐ Cross-complaint filed by *(name)*: on *(date)*:
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify)*:* Without an award of attorneys' fees or costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

▶ _____
(SIGNATURE)

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

▶ _____
(SIGNATURE)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

** If a cross-complaint-or Response (Family Law) seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

(To be completed by clerk)

3. ☒ Dismissal entered as requested on *(date)*: FEB 13 2007
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☒ a. Attorney or party without attorney notified on *(date)*: FEB 13 2007
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: FEB 13 2007

Clerk, by M. Benavidez, Deputy

Stephen A. Bouch

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov

Received
FEB - 9 2007
Napa Superior Court

American LegalNet, Inc.
www.FormsWorkflow.com

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

Request for Dismissal

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 8, 2007, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
FEB 21 2007
Clerk of the Napa Superior Court
By: Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants. AND COORDINATED CASES	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **NOTICE OF ORDER TO SHOW CAUSE RE: DISMISSAL**

PLEASE TAKE NOTICE that the Court, having received a "Notice of Settlement" regarding the coordinated cases identified on Exhibit A hereto, has scheduled an order to show cause ("OSC") hearing regarding dismissals of those cases for Thursday, March 15, 2007, at 8:30 AM in Department A of the Napa County Superior Court. If before that date and time a "Request for Dismissal" is on file for each of the cases identified on Exhibit A hereto, no appearances will be required.

///

///

///

Received
FEB - 5 2007
Napa Superior Court

DATED: February 1, 2007

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC. AND WATCHTOWER BIBLE AND TRACT SOCIETY OF PENNSYLVANIA

4243079.1

*****

EXHIBIT A

EXHIBIT A

EXHIBIT 'A'

Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.
Napa County Superior Court Case No. 26-22191 (designated as lead case)

Tabitha H. v. Watchtower Bible and Tract Society of N.Y., et al.
Napa County Superior Court Case No. 26-23929

Ken L. v. Watchtower Bible and Tract Society of N.Y., et al.
Placer County Superior Court Case No. SCV 16600

Tim W. v. Watchtower Bible and Tract Society of New York, et al.
Tehama County Superior Court Case No. 52594

Wimberley Gutierrez, et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.
Tehama County Superior Court Case No. 52598

Daniel West, et al. v. Watchtower Bible and Tract Society of New York, et al.
Yolo County Superior Court Case No. CV03-1439

A.G., G.G., et al. v. Watchtower Bible and Tract Society of New York, et al.
San Diego County Superior Court No. GIE034558

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF ORDER TO SHOW CAUSE RE: DISMISSAL

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 1, 2007, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	
In Pro Per James Henderson 35 Gilmore Road, #6 Red Bluff, CA 96080	Defendant In Pro Per Alvin Heard State ID #14002521 Two Rivers Correctional Institute 82911 Beach Access Road Umatilla, OR 97882

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

FILED
FEB 21 2007
Clerk of the Napa Superior Court
By: _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **NOTICE OF CASE MANAGEMENT CONFERENCE**
AND COORDINATED CASES	
DENNIS S. Plaintiff, Vs. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al Defendants.	Sonoma County Superior Court No. 234168

PLEASE TAKE NOTICE that the Court has scheduled a judicial case management conference in the above referenced Dennis S., et al matter for Thursday, March 15, 2007, at 8:30 AM in Department A of the Napa County Superior Court. All parties shall appear in person or through their attorney at the case management conference in said Department A.

Received
FEB - 5 2007
Napa Superior Court

DATED: February 1, 2007

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

4243075.1

*****

PROOF OF SERVICE

Charissa W. v. Watchtower Bible and Tract Society of new York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, California 95814. I am over the age of eighteen (18) and not a party to this within cause. On the date below, the following ordinary business practice, I served the foregoing document(s) described as:

NOTICE OF CASE MANAGEMENT

in the following manner, by placing a true copy(ies) thereof in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

XXX (BY MAIL) I caused such envelope(s) with First Class postage thereon fully prepaid to be placed in the U.S. Mail in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the U.S. Postal Service, and that practice is that said material is deposited with the U.S. Postal Service the same day as the day of collection in the ordinary course of business.

_____ (BY MESSENGER) I caused such envelope(s) to be hand delivered to

_____ (FEDERAL EXPRESS) I caused such envelope(s) to be hand-delivered by an authorized Federal Express agent, this date to

____ (BY FACSIMILE) I caused to be transmitted the aforementioned document, via facsimile machine, to each of the above identified parties' FAX numbers the hours of 9:00 a.m. and 5:00 p.m. on _____and received verification of each complete transmission.

[X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on February 1, 2007, at Sacramento, California.

By _____
Janet A. Schultz

SERVICE LIST

Charissa W. v. Watchtower Bible and Tract Society of New York, Inc., et al
Napa County Superior Court Coordinated Action No. 26-22191 (JCCP No. 4374)

In pro per: Fred Fritzinger P.O. Box 1055 Clear Lake, CA. 95401	

CIV-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack 191987 Bullivant Houser Bailey PC 1415 L Street, Suite 1000 Sacramento, CA. 95814 ATTORNEY FOR (Name): The Church Defendants	(916) 930-2500	FILED APR 10 2007 Clerk of the Napa Superior Court By: [illegible] DEPUTY
Insert name of court and name of judicial district and branch court, if any: Napa County Superior Court		
PLAINTIFF/PETITIONER: Charissa W., et al DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York et al		
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other** *(specify):*		CASE NUMBER: 26-22191 and Coordinated Cases under JCCP No. 4374

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: March 29, 2007

Robert J. Schnack ▶ [signature]

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:
   1415 L Street, Suite 1000
   Sacramento, CA. 95814
2. ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. ☐ *I deposited the envelope with the United States Postal Service,*
   b. ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: March 29, 2007
   d. Place of deposit *(city and state):* Sacramento, California
   e. Addressed as follows *(name and address):* See attached service list
3. ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 29, 2007

Janet A. Schultz (TYPE OR PRINT NAME) ▶ [signature] (SIGNATURE OF DECLARANT)

Received
APR 10 2007
Napa Superior Court

3732

Robert J. Schnack, SBN 191987
BULLIVANT HOUSER BAILEY PC
1415 L Street, Suite 1000
Sacramento, California 95814
Telephone: 916.930.2500
Facsimile: 916.930.2501
E-mail: bob.schnack@bullivant.com

Attorneys for The Church Defendants

ENDORSED

FEB 13 2007

Clerk of the Napa Superior Court
By: N. BENAVIDEZ
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF NAPA

CHARISSA W. and NICOLE D., Plaintiffs, v. WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al., Defendants.	Case No.: 26-22191 (Lead Case) JCCP No. 4374 **REQUEST FOR DISMISSAL OF CERTAIN COORDINATED ACTIONS**
AND COORDINATED CASES	

Filed herewith are "request for dismissal" forms for each of the following coordinated cases:

1. *Charissa W., et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.,* Napa County Superior Court Case No. 26-22191 (designated as lead case);

2. *Tabitha H. v. Watchtower Bible and Tract Society of N.Y., et al.*, Napa County Superior Court Case No. 26-23929;

3. *Ken L. v. Watchtower Bible and Tract Society of N.Y., et al.*, Placer County Superior Court Case No. SCV 16600;

4. *Tim W. v. Watchtower Bible and Tract Society of New York, et al.*, Tehama County Superior Court Case No. 52594;

5. *Wimberley Gutierrez, et al. v. Watchtower Bible and Tract Society of New York, Inc., et al.*, Tehama County Superior Court Case No. 52598;

6. *Daniel West, et al. v. Watchtower Bible and Tract Society of New York, et al.*, Yolo County Superior Court Case No. CV03-1439;

7. *A.G., G.G., et al. v. Watchtower Bible and Tract Society of New York, et al.*, San Diego County Superior Court No. GIE034558.

Accordingly, we respectfully request that the requested dismissals be entered by this Court and that endorsed copies of each request for dismissal be returned to the undersigned defense counsel. (A Notice of Settlement was filed with the Court on January 31, 2007.)

DATED: February 8, 2007

BULLIVANT HOUSER BAILEY PC

By _____
Robert J. Schnack
Attorneys for Defendants,
WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.

4243973.1

*****

PROOF OF SERVICE

***Charissa W. . v. Watchtower Bible and Tract Society of New York, Inc., et al.*;**
Napa County Superior Court Case No. 26-22191 and Consolidated Cases Under JCCP No. 4374

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, CA. 95814. I am over the age of 18 years and not a party to the within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

- **NOTICE OF ENTRY OF DISMISSAL**

in the following manner, by placing a true copy/true copies thereof in a sealed envelope/sealed envelopes, addressed as follows:

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	

_XX_ **(BY MAIL)** I caused such envelope(s) **NOTED ABOVE** with First Class postage thereon fully prepaid to be placed in the U.S. Mail *in Sacramento, California. I am readily familiar with my employer's normal business practice for collection and* processing of correspondence and other material for mailing with the United States Postal Service, and that practice is that said material is deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

____ **(BY PERSONAL SERVICE)** I caused such envelope(s) **NOTED ABOVE** to be hand-delivered by an authorized attorney messenger service, this date to the offices of the addressee(s).

____ **(BY FEDERAL EXPRESS)** I caused such envelope(s) to be delivered ina sealed Federal Express package, delivery fees for which are billed to this firm's account, to a Federal Express office for next-morning delivery. I am readily familiar with the business practices of my employer for the collection and processing of correspondence for mailing with Federal Express delivery service.

___ **(BY FACSIMILE)** I personally transmitted the aforementioned document, via facsimile machine, to each of the above listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____, and received verification thereafter of each complete transmission. A copy of that report, which was properly issued by the transmitting machine, is attached hereto.

___ **BY EMAIL – ESERVICE** I caused to be served upon each party via (1) their above email address; (2) through Lexis-Nexis Serve and File, or (3) through the court's electronic court filing system.

[XXX] **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 29, 2007, at Sacramento, California.

Janet A. Schultz

CIV-120

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):	TELEPHONE NO.:	FOR COURT USE ONLY
Robert J. Schnack 191987 Bullivant Houser Bailey PC 1415 L Street, Suite 1000 Sacramento, CA. 95814 ATTORNEY FOR (Name): The Church Defendants	(916) 930-2500	FILED APR 10 2007 Clerk of the Napa Superior Court By: Deputy
Insert name of court and name of judicial district and branch court, if any Napa County Superior Court		
PLAINTIFF/PETITIONER: Charissa W., et al DEFENDANT/RESPONDENT: Watchtower Bible and Tract Society of New York et al		
NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE ☒ **Personal Injury, Property Damage, or Wrongful Death** ☐ **Motor Vehicle** ☐ **Other** ☐ **Family Law** ☐ **Eminent Domain** ☐ **Other** *(specify):*		CASE NUMBER: 26-22191

TO ATTORNEYS AND PARTIES WITHOUT ATTORNEYS: A dismissal was entered in this action by the clerk as shown on the Request for Dismissal. *(Attach a copy completed by the clerk.)*

Date: March 29, 2007

Robert J. Schnack ▶ RJSchnack

(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY) (SIGNATURE)

PROOF OF SERVICE

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is:
   1415 L Street, Suite 1000
   Sacramento, CA. 95814
2. ☒ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by mailing them, in a sealed envelope with postage fully prepaid, as follows:
   a. ☐ I deposited the envelope with the United States Postal Service,
   b. ☒ I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
   c. Date of deposit: March 29, 2007
   d. Place of deposit *(city and state):* Sacramento, California
   e. Addressed as follows *(name and address):* See attached service list
3. ☐ I served a copy of the Notice of Entry of Dismissal and Request for Dismissal by personally delivering copies to the person served as shown below:
   Name: Date: Time: Address:
4. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 29, 2007

Janet A. Schultz ▶ Janet A. Schultz

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

Received
APR 10 2007
Napa Superior Court

CIV-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): TELEPHONE NO.:
Robert J. Schnack, SBN 191987
Bullivant Houser Bailey
1415 L Street, Suite 1000
Sacramento, Ca. 95814

FOR COURT USE ONLY

ENDORSED

FEB 13 2007

Clerk of the Napa Superior Court
By: N. BENAVIDEZ Deputy

ATTORNEY FOR (Name): The Church Defendants

Insert name of court and name of judicial district and branch court, if any:
Napa County Superior Court

PLAINTIFF/PETITIONER: Charissa W. and Nicole D.

DEFENDANT/ RESPONDENT: Watchtower Bible and Tract Society of New York, et al

REQUEST FOR DISMISSAL

- ☒ **Personal Injury, Property Damage, or Wrongful Death**
  - ☐ **Motor Vehicle** ☐ **Other**
- ☐ **Family Law**
- ☐ **Eminent Domain**
- ☐ **Other (specify) :**

CASE NUMBER:
26-22191

Napa County JCCP No. 4374

- A conformed copy will not be returned by the clerk unless a method of return is provided with the document. -

1. TO THE CLERK: Please **dismiss** this action as follows:
   a. (1) ☒ With prejudice (2) ☐ Without prejudice
   b. (1) ☐ Complaint (2) ☐ Petition
   (3) ☐ Cross-complaint filed by *(name):* on *(date):*
   (4) ☐ Cross-complaint filed by *(name):* on *(date):*
   (5) ☒ Entire action of all parties and all causes of action
   (6) ☒ Other *(specify):** Without an award of attorneys' fees or costs to any party.

Date: January 31, 2007

Gregory S. Love, attorney pro hac vice
(TYPE OR PRINT NAME OF ☒ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

*If dismissal requested is of specified parties only of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**
   Date:

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☐ PARTY WITHOUT ATTORNEY)

(SIGNATURE)

Attorney or party without attorney for:
☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross - complainant

** If a cross-complaint-or *Response (Family Law)* seeking affirmative relief -is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581 (i) or (j).

(To be completed by clerk)

3. ☒ Dismissal entered as requested on *(date)*: FEB 13 2007
4. ☐ Dismissal entered on *(date)*: as to only *(name)*:
5. ☐ Dismissal **not entered** as requested for the following reasons *(specify)*:

6. ☒ a. Attorney or party without attorney notified on *(date)*: FEB 13 2007
   b. Attorney or party without attorney not notified. Filing party failed to provide
   ☐ a copy to conformed ☐ means to return conformed copy

Date: FEB 13 2007

Clerk, by Stephen A. Bouch N. BENAVIDEZ, Deputy

Form Adopted for Mandatory use
Judicial Council of California
CIV-110 [Rev. January 1, 2007]

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 581 et seq.;
Cal. Rules of Court, rule 3.1390
www.courtinfo.ca.gov
American LegalNet, Inc.
www.FormsWorkflow.com

PROOF OF SERVICE

***Charissa W. . v. Watchtower Bible and Tract Society of New York, Inc., et al.*;**
Napa County Superior Court Case No. 26-22191

I am a citizen of the United States and am employed in Sacramento County, where this mailing occurs. My business address is 1415 L Street, Suite 1000, Sacramento, CA. 95814. I am over the age of 18 years and not a party to the within cause. On the date below, following ordinary business practice, I served the foregoing document(s) described as:

- **NOTICE OF ENTRY OF DISMISSAL**

in the following manner, by placing a true copy/true copies thereof in a sealed envelope/sealed envelopes, addressed as follows:

Attorneys for Plaintiffs Rudy Nolen Nolen & Associates 1501 – 28th Street Sacramento, CA 95816 Fax: 916-733-0601	Attorneys for Plaintiff Hartley Hampton Fibich, Hampton & Leebron Five Houston Center 1401 McKinney, Ste. 1800 Houston, TX 77010 Fax 713-751-0030
Attorneys for Plaintiffs Gregory S. Love LOVE & NORRIS 314 Main St., Ste 300 Fort Worth, TX 76102 Fax: 817-335-2912	

_XX_ **(BY MAIL)** I caused such envelope(s) **NOTED ABOVE** with First Class postage thereon fully prepaid to be placed in the U.S. Mail *in Sacramento, California*. I am readily familiar with my employer's normal business practice for collection and processing of correspondence and other material for mailing with the United States Postal Service, and that practice is that said material is deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

___ **(BY PERSONAL SERVICE)** I caused such envelope(s) **NOTED ABOVE** to be hand-delivered by an authorized attorney messenger service, this date to the offices of the *addressee(s)*.

___ **(BY FEDERAL EXPRESS)** I caused such envelope(s) to be delivered ina sealed Federal Express package, delivery fees for which are billed to this firm's account, to a Federal Express office for next-morning delivery. I am readily familiar with the business practices of my employer for the collection and processing of correspondence for mailing with Federal Express delivery service.

___ **(BY FACSIMILE)** I personally transmitted the aforementioned document, via facsimile machine, to each of the above listed parties' FAX numbers between the hours of 9:00 a.m. and 5:00 p.m. on _____, and received verification thereafter of each complete transmission. A copy of that report, which was properly issued by the transmitting machine, is attached hereto.

___ **BY EMAIL – ESERVICE** I caused to be served upon each party via (1) their above email address; (2) through Lexis-Nexis Serve and File, or (3) through the court's electronic court filing system.

[XXX] **(State)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[ ] **(Federal)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on March 29, 2007, at Sacramento, California.

Janet A. Schultz